

SCOMM

#23:2

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

October 15, 1980

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

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

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

(2) proposal of the council.

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

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

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

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

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

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

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

Sec. 29.08.050. TRANSITION. (Repeal)

ARTICLE 2. PROCEDURES

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

(1) class;

(2) name;

(3) boundaries;

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 29.09.070 (29.18.060, 070). REVIEW AND INVESTIGATION.

(a) The department shall review a petition for municipal incorporation and return a deficient petition for correction.

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

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

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

Sec. 29.09.080 (29.18.080, 090). HEARING AND DECISION.

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

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

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

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

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

Sec. 29.09.110 (29.18.110). INCORPORATION ELECTION.

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

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

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

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

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

Sec. 29.09.120 (29.18.120). ELECTION OF INITIAL OFFICERS.

(a) A nomination for an initial officer is made by petition in the form prescribed by the lieutenant governor and containing:

(1) the name and address of the nominee;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) 29.18.130 needs to be re-drafted.

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

CHAPTER 12. ALTERATION OF A MUNICIPALITY

Article 1. Change of Municipal Name

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

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

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

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

ARTICLE 2. ANNEXATION AND EXCLUSION.

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

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

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

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

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

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

Sec. 29.12.040 (29.68.020). ANNEXATION OF A MILITARY RESERVATION.

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

ARTICLE 3. MERGER AND CONSOLIDATION

Sec. 29.12.080 (29.68.030). No change.

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

- (1) the name and class of each municipality;
- (2) the name and class of the proposed municipality;
- (3) the proposed composition and apportionment of the assembly or council;
- (4) maps, documents, and other information required by the department;
- (5) the signature and resident address of 15 percent of the permanent resident voters in each municipality based on the number who voted in the last regular election.

Sec. 29.12.100 (29.68.050, 070). REVIEW AND INVESTIGATION.

(a) The department shall review a petition for merger or consolidation and return a deficient petition for correction.

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

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

Sec. 29.12.110 (29.68.070, 080). HEARING AND DECISION.

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

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

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

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

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

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

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

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

Sec. 29.12.150 (29.68.100). ASSETS AND LIABILITIES.

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

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

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

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

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

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

ANCHORAGE STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3800

MEMORANDUM

September 25, 1980

SUBJECT: Proposed drafting change
TO: Advisory Policy Committee -
Title 29 Revision
FROM: Tamara Brandt Cook *TBC*
Legislative Counsel

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

TBC:ljb

Enclosure

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

ARTICLE 1. General Powers

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

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

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

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

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

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

- (6) to levy taxes and special assessments;
- (7) to expend funds for public purposes;
- (8) to borrow money and issue evidences of indebtedness;
- (9) to acquire, manage, control, use and dispose of real and personal property for a purpose authorized by law irrespective of whether the property is situated within or outside the municipal boundaries; this power includes the power of a second class borough to expend money received from the disposal of land in a services area created under AS 29.63.090(f);
- (10) to enforce ordinances and prescribe penalties for violations;
- (11) to enter into agreements with a local government, the state, or the United States, including those for cooperative or joint administration of duties or powers;
- (12) to sue and be sued; and
- (13) to acquire membership in an organization which promotes legislation for the good of the municipality.

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

medical services, and cemeteries outside its boundaries and may regulate their use. If adopted under this section, a regulation 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, that municipality must by ordinance approve the exercise of the power; and

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

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

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

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

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

(c) The power 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, but this power may be extended for an additional period of not more than three years.

STATE OF ALASKA
THE LEGISLATURE

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LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

September 26, 1980

SUBJECT: Proposed drafting change

TO: Advisory Policy Committee -
Title 29 Revision

FROM: Tamara Brandt Cook
Legislative Counsel

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

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

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

TBC:ljb

Enclosure

CHAPTER 23. MUNICIPAL OFFICERS AND EMPLOYEES

ARTICLE 5. School Boards

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

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

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

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

ARTICLE 6. SERVICE AREAS

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

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

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

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

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

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

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

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

ARTICLE 6. SERVICE AREAS

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

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

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

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

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

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

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

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

ARTICLE 6. SERVICE AREAS

Sec. 29.63.090. ^{SERVICE AREAS. Subject to AS New 1 and AS New 2, a} Service area¹ to provide ^{ca} special services within a borough may be established, operated, altered or abolished by the assembly by ordinance. A special service includes a service not provided on an areawide basis within the borough or the borough area outside cities, or a higher or different level of service than that provided on an areawide basis or in the borough area outside cities.

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

(c) The assembly may provide for ^{an} appointed or elected board¹ to supervise the furnishing of a special service in a service area.

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

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

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

except as provided by (c) of this section,

(b) In a second or third class borough, each ~~exercised or~~
~~delegated~~ ^{*to be exercised in a service area*} power ¹ must be approved by a majority vote at a regular or special election held within the service area.

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

ARTICLE 4. POWERS AND DUTIES OF THIRD CLASS BOROUGHS

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

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

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

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

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

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

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

Sec. 29.41.010
Tamara Brandt Cook

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

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

ARTICLE 4. POWERS AND DUTIES OF THIRD CLASS BOROUGHS

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

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

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

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

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

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

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

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

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

AND DUTIES
ARTICLE 4. POWERS/OF THIRD CLASS BOROUGHS

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

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

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

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

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

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

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

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

October 2, 1980

SUBJECT: Proposed drafting change

TO: Policy Group
Title 29 Revision Commission

FROM: Tamara Brandt Cook *TBC*
Legislative Counsel

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

AS 29.53.020(e) currently contains the language

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

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

Policy Advisory Group
Page 2
October 2, 1980

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

TBC:maf

Enclosure

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

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

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

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

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

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

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

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

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

(5) money on deposit;

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

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

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

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

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

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

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

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

**PROPERTY TAX MATTERS GRANTS
EXEMPTIONS
Tamara Brandt Cook**

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

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

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

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

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

and report by Technical group 10/20/80

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

September 26, 1980

SUBJECT: Proposed drafting changes

TO: Advisory Policy Committee -
Title 29 Revision

FROM: Tamara Brandt Cook
Legislative Counsel *TBC*

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

1. An ordinance takes effect 30 days after adoption or at a later date specified in the ordinance. Currently the statutes are unclear as to when an ordinance is effective. The 30 day period, could, of course, be shortened or lengthened.
2. Copies of the ordinance are to be made available within five days. Currently, there is no time period designated and the statutes merely indicate that copies of an ordinance are to be made available. The five day period, could, of course, be lengthened or shortened.
3. In order to go along with the first two proposed substantive changes, I have added a requirement that ordinances be vetoed within 30 days. The existing law gives no time frame within which a veto must be exercised.
4. In the case of a veto, the mayor must immediately submit a statement advising of the veto and giving reasons. Under existing law, the mayor is required advise of a veto during the next regular meeting of the assembly or council. Since an assembly or council may not meet very often on a regular basis, I feel that the assembly or council ought to be

Advisory Policy Committee

Page 2

September 26, 1980

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

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

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

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

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

TBC:ljb

Enclosure

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

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

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

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

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

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

- (1) designate the borough seat;
- (2) establish, alter or abolish a municipal department;
- (3) fix the compensation of members of the assembly or council;
- (4) approve the transfer of a power to a borough from a city;
- (5) provide for the levying of taxes;
- (6) provide for the retention or sale of tax-foreclosed property;
- (7) make an appropriation, make a supplemental appropriation or transfer an appropriation;
- (8) provide for a fine or other penalty;

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

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

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

(12) grant, renew or extend a franchise;

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

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

Sec. 29.48.150. ORDINANCE PROCEDURE AND EFFECTIVE DATE.

(a) The following procedure governs the enactment of all ordinances except emergency ordinances:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section

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

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

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

EXPLANATION

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

(Alternate Section suggested by Joanne Shanley)

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

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

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

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

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

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

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

EXPLANATION

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

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

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

EXPLANATION

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

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

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

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

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

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

(5) Measures defining and regulating public nuisances.

EXPLANATION

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

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

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

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

EXPLANATION

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

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

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

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

EXPLANATION

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

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

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

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

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

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

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

EXPLANATION

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

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

EXPLANATION

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

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

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

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

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

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

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

EXPLANATION

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

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

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

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

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

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

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

EXPLANATION

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

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

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

EXPLANATION

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

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

EXPLANATION

Identical to AS 29.33.180.

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

EXPLANATION

Identical to AS 29.33.200.

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

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

EXPLANATION

Identical to AS 29.33.210.

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

EXPLANATION

Identical to AS 29.33.220.

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

EXPLANATION

Identical to AS 29.33.240.

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

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

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

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

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

EXPLANATION

Identical to AS 29.33.240.

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

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

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

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

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

EXPLANATION

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

Not adopted

ARTICLE ____ . CORRECTIONS, CANCELLATIONS AND REFUNDS OF TAXES.

Section 29.45.510 [new]. Corrections.

(a) Correction of Clerical Errors of Assessor.

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

(b) Correction of Clerical Errors of Tax Collector.

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

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

(d) Notice and Hearing Where Tax Increase Necessitated.

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

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

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

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

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

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

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

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

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

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

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

Section 29.45.514 [new]. Cancellations.

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

(1) more than once;

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

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

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

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

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

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

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

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

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

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

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

Section 29.45.516 [new]. Refunds.

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

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

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

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

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

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

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

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

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

(a) paid more than once;

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

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

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

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

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

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

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

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

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

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

Not adopted 12/6/80

Sec. 29.33.200 [29.48.260]

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

Formerly: AS 29.48.260

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) is not restricted by AS 29.30.090;
- (2) includes only a single subject;
- (3) relates to a legislative rather than to an administrative matter; and
- (4) would be enforceable as a matter of law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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. If no regular or special election occurs within 75 days after the certification of a petition, the assembly or council shall hold a special election within 75 days, but not sooner than 45 days after certification.

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

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

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

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

Sec. 29.30.170. PRESENTATION OF REFERENDUM. (a) Unless the ordinance or resolution is repealed, when a petition seeks a referendum 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. If no regular or special election occurs within 75 days of certification of a petition, the assembly or council shall hold a special election within 75 days, but not sooner than 45 days after certification.

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

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

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

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

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

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

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

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

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

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

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

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

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

D. FTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

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

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

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

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

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

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

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

- (1) the name of the official sought to be recalled;
- (2) the statement of the grounds for recall as set forth in the application for petition;
- (3) the date the petition is issued by the clerk;
- (4) notice that signatures must be secured within 60 days after the date the petition is issued;
- (5) spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing addresses of each signer;
- (6) a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13/9

CLASSES AND POWERS OF MUNICIPALITIES

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

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

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

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

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

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

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

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

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

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

Not adopted
12/6/80

November 18, 1980

TO: TITLE 29 TECHNICAL AND POLICY COMMITTEES
FROM: ALASKA ASSOCIATION OF MUNICIPAL CLERKS
SUBJECT: TITLE 29 REVISIONS

*John Stanley
V.P.*

We respectfully submit the following comments:

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

"(b) Voter registration by the municipality may not be required, and a municipality may not alter voter qualification requirements except that a municipality may by ordinance require a person to be a resident of and registered in the precinct, district, or service area in which he votes."

Explanation: Those voting on the issue are residents of the specific area and thus will have to live with the outcome of the election; requiring registration in the precinct, district or service area will hopefully eliminate some of the problems and the time demanded in trying to prove residency; such a procedure will give the Canvass Board clearer direction.

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

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

Mike Walker
Not adopted 10/2/60

APPENDIX A

A BILL

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

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

* Section 1. FINDINGS AND PURPOSE.

(a) The legislature has determined that,

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

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

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

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

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

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

CHAPTER _____ NATIVE VILLAGE GOVERNMENTS

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

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

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

- a) eligible to participate in all state programs to the same extent and in the same manner as a second-class city;
- b) entitled to notice concerning proposed actions by the state to the same extent as a government of a second-class city is entitled to notice; and
- c) entitled to consultation with the state on state actions and programs which affect the village to the same extent that the government of a second-class city is consulted on state actions and programs.

Sec. 29.--.030. AGREEMENTS.

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

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

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

Sec. 29.--.040. NONDISCRIMINATION.

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

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

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

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

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

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

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

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

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

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

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

APPENDIX B

A BILL

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

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

* Section 1. FINDINGS AND PURPOSE.

(a) The legislature has determined that,

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

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

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

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

(2) Provide for incorporation of Native village.

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

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

Not adopted 12/6/90

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

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

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

- 1) sell, lease, donate or exchange with the United States, the state, a Native village government or political subdivisions thereof real estate or other property or interests in such property;
- 2) establish a formal procedure for acquisition of real property or interests in real property from the state, or a village corporation formed pursuant to the Alaska Native Claims Settlement Act (43 USC 1601 et. seq.); or
- 3) sell, lease or dispose of real property or interests in real property to persons who agree to operate a beneficial new industry upon the terms and conditions the assembly or council considers advantageous to the municipality.

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

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

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

COMMENTS

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

- 1) The new section is reorganized to state a general principle governing disposals (subsection b) and gathers together all the exceptions (subsection c). Under this version, the ambiguity which arose in the Libby case is eliminated and it becomes clear that the rule regarding disposals does not apply to any exception.
- 2) Adds disposals for public purposes to current authorization for surplus disposals.
- 3) Clarifies that posting notice is acceptable only when no newspapers of general circulation exists.
- 4) Clarifies that disposals accepted from the general rule must also be made pursuant to an ordinance.
- 5) Clarifies that disposals of land to a Native government is authorized in light of controversy as to whether a Native Government is a federal instrumentality.
- 6) Provides for exception for management of 14(c)(3) lands similar to municipal land grants. Currently existing and future cities for ANCSA communities will not receive municipal land grants. Instead they will receive 14(c)(3) reconveyances. There is no logical reason to distinguish the two types of municipal land grants.
- 7) Overrules Libby case.

ARTICLE 2. MUNICIPAL LEGISLATIVE BODIES

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

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

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

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

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

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

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

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

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

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

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

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

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

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

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

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

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

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

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

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

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

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

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

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.24.150.

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

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.24.160. DEPARTMENTS. Repeal

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

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

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

- (1) fails to qualify or take office within 30 days after his election or appointment;
- (2) unless excused by the assembly or council, is absent for 90 days;
- (3) resigns and his resignation is accepted;
- (4) is physically or mentally unable to perform the duties of his office;
- (5) if a member of the assembly or council, misses three consecutive regular meetings unless excused;
- (6) is convicted of a felony or of an offense involving a violation of his oath of office; or
- (7) is convicted of a felony or misdemeanor described in AS 15.56 as a corrupt practice and two-thirds of the members concur in expelling him.

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

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

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

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

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

ARTICLE 3. MUNICIPAL EXECUTIVE

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

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

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

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

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

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

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

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

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

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

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

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

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

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

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

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

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

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

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

(c) The veto does not extend to

- (1) appropriation items in a school budget ordinance;
- (2) actions of the Board of Equalization or the Board of Adjustment;
- (3) adoption or repeal of the manager form of government.

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

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

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

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

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

(3) resigns and his resignation is accepted;

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

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

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

(7) is convicted of a felony or misdemeanor described in AS 15.56 as a corrupt practice.

(b) Except as provided in subsection (c), a vacancy in the office of mayor occurring six months before a regular election shall be filled by the legislative body. The person appointed shall serve until the next regular election and until a successor is elected and has qualified. If a member of the legislative body is chosen, he shall resign his seat on the assembly or council. If a vacancy occurs more than six months before a regular election, the legislative body shall call a special election to fill the unexpired term.

(c) In a second class city, the office of mayor is filled by and from the council.

EXPLANATION: This section is enlarged to deal with a vacancy occurring in the office of city as well as borough mayor. Allows the legislative body to establish the manner in which a vacancy occurs in the office of mayor and supplies situations which may result in vacancy if the body does not provide an alternative.

list
~~State~~ *top* officials only are subject to recall to recall to recall
recall of *Service area*
Recs

TITLE 29 REVISION

PROPOSAL FOR RECALL
(Formerly AS 29.28.130-250)

October 20, 1980

29.30.210 Recall. An application for a petition for the recall of an elected official of a home rule or general law municipality may be filed with the municipal clerk after the official has served six months of the term for which elected or appointed.

(This revision clarifies the dates to be used in determining when the six months period has run; it also adds officials who are appointed to elected positions.)

29.30.220 Grounds. Grounds for recall are
Failure to perform to the satisfaction of petitioners
(1) violation of an ordinance, law, or regulation made applicable to the official by his candidacy for or holding of such elected office,

(2) judicially declared incompetence arising out of a medical or mental condition, or

(3) failure to perform a duty of the office prescribed by ordinance, law, or regulation.

(This revision retains the present grounds but attempts to remove some of the ambiguities of the present language.)

29.30.230 Application for Petition. (a) An application for a petition to recall an elected official shall be filed with the municipal clerk.

(b) The application shall contain

(1) the signatures and resident addresses of at least ten qualified voters of the municipality as sponsors,

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

3 (3) a statement in 200 words or less of the
4 grounds of recall stated with particularity as to specific
5 instances, including reference to the pertinent ordinance,
6 law, regulation, or judicial decree.

7 (This section requires a submission of an
8 application to the clerk for a petition for recall. As
9 provided in a later section, the clerk will provide the
10 recall petition forms. The application procedure is necessary
11 as a part of a new, proposed procedure whereby the official
12 who is the subject of the petition will be given an opportunity
13 to have his statement answering the accusation placed upon
14 the petition before it is circulated.)

15 29.30.240 Petition. (a) If the municipal clerk
16 determines that the application meets the requirements of
17 §230, he shall submit a copy of the application to the
18 officer who is the subject of the application.

19 (b) The officer shall have ten days from receipt
20 of the application to provide the clerk with a statement of
21 200 words or less which shall be placed on the petition with
22 the statement of the grounds for recall.

23 (c) The municipal clerk shall prepare a recall
24 petition for circulation by the sponsors. A petition shall
25 contain

26 (1) the name of the officer sought to be
27 recalled,

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

(3) the statement of the officer sought to be

1 recalled, if provided,

2 (4) the date the petition is first issued by
3 the clerk,

4 (5) a statement that the signatures on the
5 petition must be secured within ³⁰~~60~~ days of the date first
6 issued,

7 (6) spaces for the required signatures, the
8 printed name of each person signing the petition, the date
9 of each signature, and both the resident and mailing address
10 of each signer,

11 (7) a statement to be signed and sworn to by
12 the circulator stating the number of signatures on the
13 petition page or pages, that the circulator personally
14 circulated the page or pages, that all signatures were
15 affixed in his presence, that he believes them to be genuine
16 signatures of the persons whose names they purport to be,
17 that each signer had an opportunity before signing to read
18 the grounds for recall and the statement of the official
19 printed on the petition, and that he believes each signer to
20 be a qualified municipal voter.

21 (This section is part of the application-
22 petition procedure and sets forth requirements similar to
23 those proposed under the initiative and referendum procedures
as it relates to petition content.)

24 29.30.250 Required Signatures. (a) Every petition
25 shall be signed by a number of registered voters residing
26 within the territorial limits of the municipality equal to
27 25³¹ percent of the number of ^{voters voting} votes cast in the municipality
in district - if elected persons represents district

last regular municipal

for that office.

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at the last state general or primary election which was held on or prior to the date of the first issuance of the petition. The necessary signatures on the petition shall be secured within 60 days of the date the clerk first issues the petition.

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

(c) A petition signer may withdraw his signature upon written application to the clerk at any time prior to certification of the petition by the clerk.

(d) The petition pages shall be assembled and filed as a single instrument within ^{if 30} 60 days of the date of first issuance of the petition. *within time petition given to petitioners*

(This continues the current 60 day signature gathering period. It also clarifies the election which is to be used as a standard for determining the number of signatures required. It is proposed that a state election be used. Prior to the 1972 revision of Title 29, the last gubernatorial election was the standard.)

29.30.260 Sufficiency of Petition. (a) Within ten days of the date the petition is file, the municipal clerk shall certify on the petition whether or not it is sufficient.

(b) If the petition is insufficient, it may be supplemented within ten days with additional signatures which are obtained within ten days after the date on which the petition is rejected. If the petition is insufficient for any other reason, it shall be rejected and filed as a public record.

2/28

Add - No 10 days if petition invalid on its face

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

5 (The only significant change to the corresponding
6 section of the present law is that the proposed section
7 makes it clear that signatures for the supplementary filing
must be those which are gathered during the ten day period
after the petition is first rejected.)

8 29.30.270 New Application. The rejection of a
9 petition for failure to contain sufficient signatures or for
10 any other reason does not preclude the filing of a new
11 application for a recall petition. However, a new application
12 may not be filed sooner than six months after a petition is
13 rejected.

14 (The only significant change is to prohibit a
15 new petition if the prior petition was rejected for any
reason in addition to rejection for insufficient signatures.)

16 29.30.280 Submission. If a recall petition is
17 sufficient, the clerk shall submit it to the assembly or
18 council at its next regular meeting.

19 (No significant change.)

20 29.30.290 Challenge of Petition. (a) The officer
21 who is the subject of a recall petition submitted to the
22 assembly or council may, within 30 days of the date the
23 petition is filed with the assembly or council, file an
24 action in the superior court for a determination of any of
25 the following questions:

26 (1) Whether any of the grounds for recall
27 stated are not grounds under §220.

Anyone can do this -

*Appeal to assembly
(or
to council)
Not subject
to majority
votes*

1 (2) Whether any of the acts alleged do not
2 constitute one or more of the permitted and alleged grounds.

3 (3) Whether one or more of the accepted
4 signatures should be rejected.

5 (b) Upon a finding that any of the acts alleged do
6 not constitute a permissible and alleged ground or that any
7 grounds alleged are not grounds set forth in §220 or that
8 sufficient accepted signatures should have been rejected to
9 cause the petition to be insufficient, or for any other
10 reason which the court finds appropriate, the court shall
11 order the petition rejected and shall order the name of the
12 officer subject to the rejected petition to be removed from
13 the ballot.

14 (c) If an officer who is the subject of a recall
15 petition submitted to the assembly or council files suit
16 under this section, no recall election may be held for the
17 officer who has filed the suit nor for any other officer who
18 is the subject of a recall petition until after the time for
19 appeal of the superior court judgment has passed.

20 (I believe the foregoing is relatively clear on
21 its face.)

22 29.30.300 Election. (a) If a regular election
23 occurs within 75 days, but not sooner than 40 days of the
24 later of either the submission ^{to the assembly} of a certified petition or
25 the passage of the time for appeal of a judgment in a suit
26 filed under §290, the assembly or council shall submit the
27 recall at that election.

1 (b) If no regular election will occur within such
2 time, the assembly or council shall hold a special election
3 within 75 days, but not sooner than 40 days after, the later
4 of the submission of a certified petition or the expiration
5 of the time for the appeal of a judgment of a suit brought
6 under §290.

7 (c) If a vacancy occurs in the office after a
8 sufficient recall petition is filed with the clerk, the
9 petition shall not be submitted to the voters. However, the
10 assembly or council may not appoint to such a vacancy the
11 officer who resigns from that office after a sufficient
12 recall petition is filed.

13 (The 40 day minimum was added to insure that a
14 petition submitted after the legal notices of the election
15 were published would not complicate the election and that
16 the election would not be held before the 30 days during
17 which the official has to file suit. Added in section (c)
18 is the prohibition against the appointment of an officer who
19 resigns after a sufficient recall petition is filed.)

20 29.30.310 Form of Recall Ballot. A recall ballot *de*
21 shall contain:

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

24 (2) the officer's statement of 200 words or
25 less if the statement is filed with the clerk for publication
26 and public inspection within 20 days before the election,
27 otherwise the statement of the officer, if any, which appeared
in the recall petition;

(3) the following question: "Shall (name of person)
be recalled from the office of (office)? Yes [] No []".

1 (The only significant change is to make reference
2 to the fact that the statement of the grounds is limited to
3 200 words and also to provide that the statement of the
4 officer which was used in the recall petition will appear on
5 the ballot unless the officer provides a different statement.)

6 29.30.320 Election Procedure. Procedures for
7 conducting a recall election are those of a regular municipal
8 election if the question is submitted at a regular election;
9 otherwise, the procedures shall be those applicable to a
10 special municipal election. *[Except that 20 days notice will
be required notwithstanding
municipal election procedures
to the contrary]*

11 (This section was changed to make reference to
12 special election procedures if the election is a special
13 election.)

14 29.30.330 Majority Required. A majority of those
15 voting on the question must vote in favor of recall to
16 recall an officer. Only those voters in the district or
17 area which elects the officer may vote on the recall of the
18 officer.

19 (This merely restates in different language the
20 majority vote requirement. The section also adds a new
21 sentence which makes it clear that if the officer is elected
22 by the voters of a district, then only the voters in that
23 district will vote on the recall question.)

24 29.30.340 Effect. If a majority of those voting
25 on the question vote to recall the officer, the officer's
26 seat shall become vacant immediately upon certification of
27 the result of the election on the question. If an incumbent
is not recalled at the recall election, a new application
for a recall petition on the same incumbent may not be filed
sooner than six months after the date of the certification
of the recall election.

(The first sentence is added to this section to

1 make it clear precisely when a recalled officer loses his
2 seat. The second sentence has been slightly changed to peg
3 the commencement of the six month period as the date of
certification of the election results.)

4 29.30.350 Successors. (a) If one or more officers
5 are recalled from an assembly or council, the assembly or
6 council, by the affirmative vote of a majority of the remaining
7 members, may appoint qualified persons to fill any vacancy
8 created by the recall.

9 (b) If all members of the assembly or council are
10 recalled, the governor shall appoint at least three
11 qualified persons to the assembly or council. Such appointees,
12 by an affirmative vote of a majority of the appointees,
13 shall appoint such additional members as are required to
14 fill any remaining vacancies.

15 (c) If one or more officers are recalled from a
16 school board or from a body created by the assembly or
17 council, then the assembly or council may appoint such
18 qualified persons as it deems necessary to fill any vacancy
19 created by the recall.

20 (d) A person appointed to fill a vacancy under
21 sections (a) through (c) shall serve until a successor is
22 elected, qualified, and takes office.

23 (e) If the voters recall an officer, the clerk
24 shall conduct an election for a successor to fill the unexpired
25 term. The election shall be held at least ten but not more
26 than 60 days from the date of the certification of the recall
27 election. However, if a regular or special election occurs

1 within 75 days of the certification of the recall election
2 and the certification occurs at least 20 days prior to the
3 latest date upon which first notice of the election must be
4 published, the successor to the recalled official shall be
5 chosen at that regular or special election. The procedures
6 and requirements for the regular election for the office
7 from which the incumbent is recalled apply to the election
8 conducted under this section; provided, nominations may be
9 filed until the later of seven days before the latest date upon
10 which first notice of the election must be published or the
11 deadline for the filing of nominations for regular elections.
12 Nominations may not be filed before the certification of
13 the recall election.

14 (Sections (a) through (d) are new and are
15 submitted to prevent a local government from having to
16 attempt to operate without a quorum of elected officers.
17 Section (e) was changed to take into account times required
18 for election notice and nominations.)
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or resolution "appears" use matter referred or initiated.

TITLE 29 REVISION

PROPOSAL FOR INITIATIVE AND REFERENDUM (Formerly AS 29.28.060-110)

October 20, 1980

29.30.090 Reservation of Powers. The powers of initiative and referendum are reserved to the residents of municipalities except the powers do not extend to matters restricted by §7, art. XI of the State Constitution.

policy group for but consider recommendations

(some support)

(Unchanged.) Add - Unless provided otherwise by ordinance ratified by voters, initiative & referendum procedures apply.

29.30.095 Application. An initiative or referendum is proposed by an application containing the legislative matter to be initiated or referred. The application shall be signed by not less than ten qualified voters as sponsors, shall contain the address to which all correspondence relating to the application may be sent, and shall be filed with the clerk. The clerk shall certify the application if he finds that the application is in proper form, and in addition, if the application is for an initiative, that the matter to be initiated is not restricted by §90, embraces only a single subject, and as to each part, would not be unenforceable as a matter of law. The clerk's certification or denial of certification shall be subject to judicial review.

use

this terminology all the way thro.

to 1/1/80 state constitution language

add must be legislative rather than administrative matter - legislators laws of general application.

(This section is new. The first part is modeled after §2 of the initiative article in the state constitution. As drafted, this section would also make it clear that the clerk is to review initiatives for substantive legality and that the clerk's decision is subject to appeal. This procedure will allow for a judicial determination of the legality of an initiative prior to the expense of an election.)

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Within 2 weeks

1 29.30.110 Petition. After certification of the
2 application, a petition, containing a summary of the subject
3 matter shall be prepared by the clerk for circulation by the
4 sponsors. The petition shall

5 (1) set out fully the ordinance or resolution
6 sought to be initiated or referred by the petition;

7 (2) state upon the petition the date first
8 issued by by the clerk;

9 (3) contain the statement, when circulated,
10 that the signatures on the petition must be secured within
11 60 days of the date first issued;

12 (4) contain spaces for the required signatures,
13 the printed name of each person signing the petition, the
14 date of each signature, and both the resident and the mailing
15 address of each signer;

16 (5) contain a statement to be signed and
17 sworn to by the circulator stating the number of signatures
18 on the petition page or pages, that the circulator personally
19 circulated the page or pages, that all signatures were
20 affixed in his presence, that he believes them to be genuine
21 signatures of the persons whose names they purport to be,
22 that each signer had an opportunity before signing to read
23 the full text of the proposed initiative or referred measure,
24 and that he believes each signer to be a qualified municipal
25 voter.

26 (This section would require the clerk to provide
27 the petition forms to the petitioners. This is similar to
the requirement levied upon the Lieutenant Governor in state

1 initiative proceedings. The petition contents are essentially
2 the same as present law (AS 29.28.065) with a shortening of
3 the petition circulation time from 90 to 60 days, some
4 expansion of the information the petition signers must
5 provide, and the addition of the circulator's affidavit in
6 (5) of the section.)

7
8 29.30.120 Required Signatures. (a) The necessary
9 signatures on a petition shall be secured within 60 days of
10 the date the clerk first issues the petition. The petition
11 shall be signed in ink or indelible pencil.

12 (b) Every petition, whether dealing with an areawide
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1 or a non-areawide matter, shall be signed by a number of
2 registered voters residing within the territorial limits of
3 the municipality equal to ^{20 leave as is 15 big pieces 25 small of votes} 25 percent of the number of votes
4 cast at the last regular municipal election in the municipality
5 which was held on or prior to the date of the first issuance
6 of the petition.

7 (c) Illegible signatures shall be rejected by the
8 clerk unless accompanied by a legible printed name. Signa-
9 tures not accompanied by a legible residence address shall
10 be rejected.

11 (d) A petition signer may withdraw his signature
12 upon written application to the clerk at any time prior to
13 certification of the petition by the clerk.

14 (e) The petition pages shall be assembled and
15 filed as a single instrument.

16 (This section carries forward the 60 day signature
17 gathering period. Although it does not eliminate the
18 possibility of an initiative or referendum on a matter which
19 affects only a service area, it does require that such
20 petitions contain the same number of signatures as a petition
21 on an areawise matter. Permitting a service area to initiate
22 and vote upon a matter on a service area basis is contrary
23 to the concept of the service area being under the control
24 of the entire legislative body. If service areas are permitted
25 to initiate and vote upon service area only initiatives,
26 service areas will have the authority to become essentially
27 autonomous units of government without a governing body.
Other minor changes were made to require rejection of signatures
which were illegible or failed to have additional legible
information accompanying the signature.)

29.30.130 Sufficiency of Petition. (a) Within
ten days of the date the petition is filed, the municipal
clerk shall certify on the petition whether or not it is
sufficient.

1 (b) If the petition is insufficient, it may be
2 amended or supplemented with additional signatures which are
3 obtained within ten days after the date on which the petition
4 is rejected as insufficient.

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

9 (The only significant change is to make it
10 clear that in providing supplementary signatures, the petitioners
11 have only ten days to gather the signatures and may not use
12 petition signatures which were gathered prior to the first
13 filing but not submitted, and that they may not use signatures
14 gathered during the period in which the clerk is checking
15 the petition.)

13 ^{out} 29.30.140 Protest. If the clerk certifies the
14 petition is insufficient, a signer of the petition may file
15 a protest with the municipal executive within seven days
16 after the certification and the municipal executive shall
17 present the protest at the next regular meeting of the
18 assembly or council which shall hear and decide the protest.

19 (No change.)

20 29.30.150 New Petition. Failure to secure sufficient
21 signatures does not preclude the filing of a new application for
22 an initiative or referendum petition. However, a new application
23 for a petition ^{on same subject} may not be filed sooner than six months after
24 the petition is rejected by the clerk.

25 (This section was changed slightly to take into
26 account the application procedure and to indicate that the
27 rejection from which the six months is counted is a rejection
by the clerk, not a rejection which might be deemed to have
occurred if the matter is appealed to the assembly and the
assembly sustains the clerk's rejection.)

determined by clerk as

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29.30.160 Presentation of Initiative. (a) When a petition seeks enactment of an ordinance or resolution within the powers of the assembly or council and not otherwise restricted by §90 of this chapter, the clerk shall ^{with or} present it to the assembly or council at its next ^{regular or special meeting} meeting after ^{called for the purpose} certification. The assembly or council may reject the petition if it determines the subject matter of the initiative or referendum is within the restrictions of §90 of this chapter or is unlawful.

(b) An initiative measure presented to the assembly or council and not rejected under section (a) shall be submitted to all the voters of the municipality at the next regular municipal election held more than 45 days after submission of the petition to the assembly or council, unless the assembly or council adopts substantially the same measure. If the assembly or council adopts substantially the same measure, ^{and if this is not vetoed} the petition shall be void and the question shall not be submitted to the voters.

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

(The changes here allow for the submission of an initiative measure at any time during the year, but it would be placed before the voters at the first regular municipal election occurring 45 days after submission to the assembly or council, unless rejected for cause or adopted in substantially the same form as presented. It also requires an areawide vote whether the matter is areawide or non-areawide for reasons outlined above.)

29.30.170 Presentation of referendum. (a) When a

Law to ordinance.

1 petition seeks a referendum vote on a legislative ordinance
2 or resolution, the clerk shall submit the ordinance or
3 resolution to all the voters of the municipality at the next
4 regular or special election unless the assembly or council
5 repeals the ordinance or resolution to be referred. If no
6 regular or special election occurs within 75 days of the
7 certification of a sufficient petition by the clerk, the
8 assembly or council shall hold a special election within 75
9 days of filing.

10 *OK* → (b) If a sufficient petition for referendum is
11 certified before the effective date of the ordinance or
12 resolution, the ordinance or resolution against which the
13 petition is filed ~~which is not in effect~~ shall be suspended pending the referendum
14 on the matter. During the period of suspension, the assembly
15 or council may not enact an ordinance or resolution substantially
16 similar to the suspended measure but may repeal the suspended
17 ordinance or resolution.

18 (c) If the assembly repeals the ordinance or
19 resolution before the election, the petition shall be void
20 and the referred measure shall not be placed before the
21 voters.

22 (d) If a majority of those voting favor the repeal
23 of the referred measure, it is repealed; otherwise, it
24 remains in effect or, if suspended under section (b), it
25 shall become effective upon certification of the election
26 results by the assembly or council. *leave immediate effective date*

27 (The ability to suspend an ordinance or resolution
which had taken effect if a referendum petition was filed

1 within 30 days of the passage of the ordinance or resolution
2 has been deleted to avoid the apparent ability of a part of
3 the voters to be able to exercise a temporary repeal of the
4 measure. The reference to amending a charter by initiative
or referendum was deleted as it 's already covered under
AS 29.13.080. This also requires submission of the question
to the areawide voters for reasons outlined above.)

5 29.30.180 Effect. (a) The assembly or council may
6 not, within two years of its effective date, repeal an
7 ordinance or resolution adopted through the initiative
8 process nor may it amend such an ordinance or resolution in
9 a way to substantially modify or negate the effect of the
10 successful initiative.

11 (b) If an ordinance or resolution against which a
12 referendum is directed has been repealed by the assembly
13 or council after a petition has been filed but before the
14 referendum election, or if an ordinance or resolution is
15 repealed by the voters in a referendum election, the council
16 or assembly may not enact substantially similar legislation
17 for a period of one year after the repeal. A measure which
18 is repealed in a referendum election shall be repealed
19 effective upon the certification of the election results by
20 the assembly or council.

21 (c) An unsuccessful initiative or referendum
22 precludes the filing of a new application for the same or
23 substantially the same purpose sooner than six months after
24 the initiative or referendum election results are certified
25 by the assembly or council.

26 (Minor changes to make dates more certain and
27 to accommodate the petition application process.)

* * * * *

Follow Ted's suggestion

(c) If at least 7 nominations for qualified charter commission candidates are not received on or before the date fixed pursuant to this section, the petition or resolution calling for a charter commission shall be deemed void, and an election shall not be held.

city - ~~was appointed~~ ~~appointment~~ ~~to~~ write in problems

- 6. AS 29.13.050(a) - Municipal charters shall provide [THE] procedures for initiative and referendum.
- 7. AS 29.13.100 - delete the following items from the list of statutes as indicated:

[(4) AS 29.23.250(a) (ELECTION AND TERM OF MAYOR)]

[(8) AS 29.28.010, 29.28.020(g) - 28.25.030 (MUNICIPAL ELECTIONS)]

← [(17) AS 29.48.040 [-29.48.100] (utilities) ← leave on list

[(20) AS 29.48.210 (EXPENDITURE OF BOROUGH REVENUE)]

- 8. AS 29.18.205 - add (j):

(j) Any other provision f sections 201-213 of this chapter notwithstanding, a municipality which is unable to satisfy its entitlement because of a shortage of vacant, unreserved and unappropriated general grant land suitable for residential, commercial or industrial purposes may fulfill its remaining entitlement by selection of any other state land which is otherwise vacant, unappropriated or unreserved.

Proposed by [unclear] 11/13/02

deals with municipality with paper entitlement is no ~~entitlement~~ to fill it. (For average \$ which no compensation provided)

21.28030 Does apply to some rule



Matanuska-Susitna Borough

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BOROUGH ATTORNEY'S OFFICE

October 14, 1980

To: Members of AS 29 Technical Committee

Dear Member:

Enclosed please find drafts of AS 42 and 23 relating to planning, platting, and land use regulations and municipal officers and employees.

I would appreciate and welcome your comments on these drafts before or during the next meeting of the Technical Committee, scheduled for October 20, 1980.

Cordially,

A handwritten signature in cursive script, appearing to read "Allan E. Tesche".

Allan E. Tesche
Borough Attorney

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Enclosure

Section

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

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

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

[adapted from AS 29.33.070]

(Alternate section suggested by Joanne Shannley)

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

[adapted from AS 29.33.070]

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

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

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

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

[adapted from AS 29.33.080]

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

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

[adapted from AS 29.33.085]

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

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

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

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

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

(5) Measures defining and regulating public nuisances.

[adapted from AS 29.33.090]

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

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

[adapted from AS 29.33.110 and .120]

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

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

(c) Appeals are heard on the record established by the administrative agency, and the court may affirm, reverse, wholly or partly, the decision

appealed from. Issues in proceedings under this section have preference over all other civil actions and proceedings.

[adapted from AS 29.33.130]

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

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

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

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

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

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

[adapted from AS 29.33.150]

Sec. 29.42.080. Application to state and political subdivisions. All subdivisions of land made by the state, its agencies, instrumentalities and political subdivisions are subject to the provisions of this chapter and AS

29.42.080 -- 29.42.170, or home rule ordinances or regulations governing subdivisions, and shall comply with ordinances and other local regulations adopted under this chapter and AS 29.42.080 -- 29.42.170, or under home rule authority, in the same manner and to the same extent as subdivisions made by private landowners.

[AS 40.15.200]

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

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

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

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

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

(b) In other cases the platting authority may waive the preparation, submission for approval, and recording of a plat, if the transaction involved does not fall within the general intent of 29.42.080 -- 29.42.170 of this chapter and AS 40.15 if it is not made for the purpose of, or in connection with, a present or projected subdivision development which constitutes an isolated transaction and no dedication of a street, alley, thoroughfare, park or other public area is involved or required.

[AS 29.33.170]

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

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

[AS 29.33.160]

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

[AS 29.33.180]

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

[AS 29.33.200]

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

[AS 29.33.210]

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

[AS 29.33.220]

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

[AS 29.33.240]

Sec. 29.42.160. Title to vacated area. (a) The title to the street or other public area vacated on a plat attaches to the lot or lands bordering on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

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

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

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

[AS 29.33.240]

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

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

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

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

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

[new]

Chapter 23. Municipal Officers and Employees.

Article

1. Municipal legislative bodies
2. Municipal executive.
3. Chief administrative officers.
4. Municipal departments and employees.
5. Municipal boards and commissions.
6. Miscellaneous provisions.

Article 1. Municipal Legislative Bodies

Section

10. General legislative power
15. Assembly composition and apportionment
20. Composition and form of representation
25. Assembly recomposition and reapportionment
30. Apportionment appeals
35. Judicial review and relief
40. Effective date of apportionment
45. Applicability of apportionment provisions
50. City councils - composition and form of representation
55. Qualifications
60. Term of office
65. Procedures of municipal legislative bodies
70. Vacancies
75. Filling a vacancy

Sec. 29.23.010. General legislative power. The legislative power of a Borough is vested in the assembly, and of a city, in the council.

[AS 29.23.021]

Sec. 29.23.015. Assembly composition and apportionment. (a) Assembly composition and apportionment shall be consistent with the equal representation standards of the Constitution of the United States.

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

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

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

[AS 29.23.015]

Sec. 29.23.020. Composition and form of representation. (a) The borough assembly shall provide for its composition and for the form of its representation.

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

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

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

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

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

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

(c) A form of borough assembly representation which includes election of borough assembly members under (b)(2) or (b)(3) of this section shall be

submitted to the voters of the borough with a plan of apportionment as required by AS 29.23.025(a).

(d) The borough assembly shall, within 30 days of certification of the results of the election held on a proposed form of representation under this section, adopt an ordinance providing for its composition and the form of assembly representation, and, if applicable, the apportionment of assembly seats which corresponds to the proposed form of representation which receives the most votes at the election.

(e) This section does not apply

(1) to a unified municipality incorporated under AS 29.60.240 - 29.68.440;

(2) to a home rule borough if the borough charter contains procedures for changing assembly composition and form of representation.
[AS 29.23.021]

Sec. 29.23.025. Assembly recomposition and reapportionment. (a) Not later than two months after the official report of a federal decennial census, the borough assembly shall determine and declare by resolution whether the existing apportionment of the borough assembly meets the standards of AS 29.23.015. If the borough assembly submits to the voters a form of representation which includes election of borough assembly members under AS 29.23.020(b)(2) or (b)(3), the assembly shall submit with the proposition a proposed plan of apportionment which corresponds to the form of representation proposed. The assembly shall describe the plan of apportionment in the ballot proposition, and may present the plan in any manner which it believes accurately describes the apportionment which is proposed under the form of representation. If the borough assembly determines that its existing apportionment meets the standards of AS 29.23.015, the

assembly may include the existing apportionment as a proposed plan of apportionment of assembly seats which corresponds to a form of representation which is proposed.

(b) The Borough assembly shall provide, by ordinance, for a change in an existing apportionment of the borough assembly whenever it determines that the apportionment does not meet the standards of AS 29.23.015. At the same time, the borough assembly may, by ordinance, change the composition of the assembly.

(c) If a petition signed by not less than 50 registered voters who are residents of the borough requests the borough assembly to determine whether the existing apportionment meets the standards for apportionment in AS 29.23.015, and the petition contains evidence that the existing apportionment does not meet those standards, the assembly may make the determination requested. The borough assembly shall make a determination required by this subsection within two months of receipt of a petition which meets the requirements of this subsection.

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

(e) Within six months of a determination by the borough assembly under (b) or (c) of this section that the current apportionment does not meet the standards of AS 29.23.015, the borough assembly shall adopt an ordinance providing for reapportionment, and submit the ordinance to the voters. If, at the end of the six month time period, an ordinance providing for reapportionment has not been approved by the voters, the commissioner of the Department of Community and Regional Affairs shall provide for the reapportionment in accordance with the standards of AS 29.23.015 by preparing an order of reapportionment and delivering the order to the borough mayor.

[AS 29.23.025]

Sec. 29.23.030. Apportionment appeals. (a) A reapportionment ordinance approved by the voters, or a decision of the borough assembly that the standards of AS 29.23.015 do not require a change in apportionment, may be appealed to the commissioner of the Department of Community and Regional Affairs. Fifty registered voters who are residents of the borough may submit a petition to the commissioner of the Department of Community and Regional Affairs requesting the commissioner to determine whether the proposed reapportionment ordinance approved by the voters meets the standards of AS 29.23.015, or whether a decision of the borough assembly that the standards of AS 29.23.015 do not require a change of apportionment is correct. If the petition asks the commissioner of the Department of Community and Regional Affairs to review an ordinance approved by the voters under AS 29.23.025(e), the petition shall be delivered to the commissioner not later than 20 days after certification of the election. If the petition asks the commissioner of the Department of Community and Regional Affairs to review a decision of the borough assembly under AS 29.23.025(c), the petition shall be delivered to the commissioner within 20 days of the decision of the borough assembly.

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

(c) If the commissioner of the Department of Community and Regional Affairs determines that the proposed reapportionment ordinance approved by the voters does not meet the standards of AS 29.23.015, or if he determines that the decision of the borough assembly that the standards of AS 29.23.015 do not require a change of reapportionment is not correct, the

commissioner shall, by order, direct the borough assembly to prepare a reapportionment ordinance which meets the standards of AS 29.23.021 and submit the ordinance to the voters.

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

(e) If at the end of the time period provided under (d) of this section an ordinance providing for reapportionment has not been approved by the voters, the commissioner of the Department of Community and Regional Affairs shall provide for the reapportionment of the borough assembly in accordance with the standards of AS 29.23.015 by preparing an order of reapportionment and delivering the order to the borough mayor.

[AS 29.23.027]

Sec. 29.23.035. Judicial review and relief. (a) The commissioner of the Department of Community and Regional Affairs may request the superior court to enforce a reapportionment order issued under AS 29.23.030(e).

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

(1) a plan of reapportionment approved by the voters under AS 29.23.025(a);

(2) a determination by the borough assembly under AS 29.23.025(c) that the standards of AS 29.23.015 do not require a change in apportionment;

(3) a reapportionment ordinance approved by the voters under AS 29.23.025(d);

(4) a reapportionment order of the commissioner of the Department of Community and Regional Affairs made under AS 29.23.030(c);

(5) a reapportionment ordinance approved by the voters under AS 29.23.030(d); and

(b) a reapportionment order of the commissioner of the Department of Community and Regional Affairs made under AS 29.23.030(e).

[AS 29.23.029]

Sec. 29.23.040. Effective date of apportionment. (a) A change in assembly apportionment or composition under AS 29.23.025 or 29.23.030 is effective beginning with the first regular election for members of the assembly which is held more than 60 days after the later of:

(1) approval of a reapportionment ordinance by the voters under AS 29.23.025(a), 29.23.025(e), or 29.23.050(d); or

(2) the delivery to the mayor of a reapportionment order of the commission of the Department of Community and Regional Affairs under AS 29.23.027(e).

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

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

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

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

[AS 29.23.031]

Sec. 29.33.045. Applicability of apportionment provisions. The provisions of S 29.23.025 - 29.33.035 do not apply;

(1) to a unified municipality incorporated under AS 29.68.240 - 29.68.440;

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

[AS 29.23.033]

Sec. 29.23.050. City councils--composition and form of representation. Each first class city has a council of six members elected by the voters at large. Each second class city has a council of seven members elected by the voters at large. The council of a first or second class city may by ordinance provide for election of members other than on an at-large basis for all members.

[AS 29.23.200]

A borough voter is eligible to

Sec. 29.23.055. Qualifications. (a) A person registered to vote within the borough is eligible to be an assemblyman and a person registered to vote within a city is eligible to be a member of the council. An assemblyman or council member who ceases to be a qualified borough or city voter respectively forfeits that office.

(b) The assembly and council by ordinance may establish durational residency requirements for their members not to exceed ~~one year~~ ^{3 years}.

(c) An assemblyman or council member elected from or selected to represent an area less than the borough or city area at large and who becomes a resident of another area within the municipality, may continue to serve until the next regular election unless the assembly or council by ordinance provides otherwise.

[AS 29.23.050, 29.23.200(b) and (c)]

(d) City & borough may establish district residency requirements.

Sec. 29.23.060. Term of office. (a) Assemblymen and members of the council are selected for three year terms and until their successors have qualified, unless different terms are prescribed by ~~charter~~ or ordinance.

(b) Except when otherwise required by a change in composition or reapportionment, if the term of an ^{members of assembly or council} assemblyman or member of a council is changed by charter or ordinance, the term of that official holding office at the time such change becomes effective is not affected by that change.

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

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

[AS 29.23.040, 29.23.200(b)]

delete from 29.13.100

But look in references to charter &

over from general law to home rule

4 year maximum debated to provide flexibility. Put back in

Sec. 29.23.065. Procedures of municipal legislative bodies. (a) The borough assembly ~~and city council~~ shall elect from among their ⁶⁵ members a presiding officer and a deputy presiding officer to serve at the pleasure of the members, except that in a borough which has adopted the manager form of government under AS 29.23.115 - .155, ^{and in a city} the mayor serves as presiding officer. If the prsiding officer is not present or disqualifies himself, the deputy presiding officer shall preside.

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

(c) Meetings of all municipal legislative bodies shall be public as provided in AS 44.62.310. The assembly and council shall provide reasonable opportunity for the public to be heard at regular and special meetings. This ^{sub} section applies to home rule and general law municipalities.

(d) A majority of the total membership authorized by law shall constitute a quorum. Members disqualifid by law from voting on particular questions may nevertheless be considered present for purposes of constituting a quorum. In the absence of a quorum, any number of members may recess or adjourn the meeting to a later date.

(e) Actions of the body are adopted by a majority of ^{members} ~~votes~~ authorized ^{by law} on the question. All members present shall vote on every question unless

Public meetings statute
Quorum for meeting

by law ~~or charter~~ they are required to abstain from voting on any particular question. The final vote on every ordinance, resolution or substantive motion shall be recorded "yes" or "no", except that if the vote is unanimous, it is necessary only to so state.

(f) Municipal legislative bodies shall maintain a journal of their official proceedings which, as a public record, shall be available to the public.

(g) Municipal legislative bodies may, consistent with law or charter, determine by ordinance their own rules of procedure and order of business.

[AS 29.23.060, 29.23.210, 29.23.580]

Sec. 29.23.070. Vacancies. (a) ~~An elected municipal office is vacated~~ ^{The assembly shall provide by ordinance the name in which a vacancy occurs in any elected office may} ~~under the following conditions and upon the declaration of vacancy by the assembly or council.~~ ^{Unless otherwise provided by ordinance} the assembly or council shall declare an elective office vacant when the person elected

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

(2) is physically absent from the municipality for a 90-day period, unless excused by the assembly or council;

(3) resigns and his resignation is accepted;

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

~~(5) is removed from office;~~

(6) ^{to council/board members only} misses three consecutive regular meetings unless excused;

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

(8) is convicted of a felony or misdemeanor described in AS 15.56 as a corrupt practice and two thirds of the members concur in expulsion of the member for commission of a corrupt practice.

~~(b) Upon occurrence of any of the grounds stated in (a) of this section for expulsion of a member, the assembly or council shall take action authorized in this section at its next regular meeting or as soon thereafter as practical.~~

[AS 29.23.570, 29.23.060, 29.23.130, 29.23.210]

Sec. 29.23.075. Filling a vacancy. ~~(a) Unless otherwise provided by ordinance, a vacancy on the assembly or council shall be filled as provided in (b) of this section.~~

(b) If a vacancy occurs on the assembly or council, the remaining members shall appoint a qualified person to fill the vacancy within 30 days. The person appointed shall serve until the next regular election, at which time a successor shall be elected to serve the balance of the term. If less than 30 days remain in a term when a vacancy occurs, the vacancy shall not be filled. If, however, at any time the membership is reduced to fewer than a quorum, the remaining members shall, within 7 days appoint a number of qualified persons to constitute a quorum.

[AS 29.23.080, 29.23.220]

Article 2. Municipal Executive

Section

- 80. Executive power
- 85. Election and term of the mayor
- 90. Qualifications for the office of mayor
- 95. Duties and responsibilities of the mayor
- 100. Veto
- 105. Executive absence
- 110. Vacancy in the office of mayor

Sec. 29.23.080. Executive power. (a) The executive power within a borough or city is vested in a mayor elected by the voters or the governing body as provided in this article.

leave in
↓

(b) The mayor, as executive shall act as ceremonial head of government, ~~execute official documents upon authorization from the governing body~~ and is responsible for those additional duties and functions prescribed by law ^{ordinance} or charter.

[AS 29.23.130, 29.23.140]

Put 4 year
limit back in
↓

Sec. 29.23.085. Election and term of the mayor. (a) The mayor of a ~~home rule municipality, borough of any class,~~ and first class city is elected at large by the voters. The mayor of a second class city is elected by and from the council.

(b) A mayor shall serve a term of 3 years unless by ordinance a different term ~~not to exceed 4 years~~ ^{year in} is provided, except that the current term of an incumbent mayor may not be altered. The mayor's regular term commences on the first Monday following certification of his election. The council of a second class city shall meet on the first Monday after certification of the regular election and elect a mayor who takes office immediately.

[AS 29.23.130, 29.23.250]

Sec. 29.23.090. Qualifications for office of mayor. (a) A voter of a ~~home rule municipality, borough of any class,~~ or first class city is eligible to hold the office of mayor. A member of a city council for a second class city is eligible to hold the office of mayor for that city.

(b) Residency requirements for the office of mayor not exceeding ~~one~~ ^{one} year may be prescribed by ordinance.

[AS 29.23.130, 29.23.250]

Sec. 29.23.095. Duties and responsibilities of the mayor. (a) If a city or borough has not adopted the manager form of government, the administrative power is vested in the mayor and the mayor has the same functions as those of manager under Sec. .155 of this chapter.

~~(b) The mayor shall preside over meetings of the council or assembly of a municipality which has adopted the manager form of government.~~

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

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

[AS 29.23.130, 29.23.260, 29.23.160]

Sec. 29.23.100. Veto. (a) Except as provided by (b) and (c) below, the mayor may veto any ordinance, resolution, motion, or other action of the governing body of the borough or city, and reduce appropriation items.

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

(c) The veto does not extend to:

(1) appropriation items in school budget ordinances;

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

(3) adoption or repeal of the manager form of government under Sec. 29.23.115 - .150 of this chapter; or

~~(4) motions relating solely to the internal legislative functions of the assembly or council.~~

(d) The veto must be ^{submitted before the next regular meeting} submitted to the assembly or council before its next regular meeting and must be accompanied by a written explanation of

the reasons for that action. A veto may be overridden only by vote of two thirds of the authorized membership of the assembly or council, taken within 21 ^{or the next meeting whichever is later} days following exercise of the veto.

[AS 29.23.170, 29.23.260, 29.23.270]

leave as is 29.23.150
Sec. 29.23.105. Executive absence. (In the temporary absence or disability of the mayor,) the governing body of a borough or city shall by resolution, designate a person to serve as acting mayor.

[AS 29.23.150]

*mayor designate except 2nd class cities
delete as is by approval requirement*
Sec. 29.23.110. Vacancy in the office of mayor. (a) The office of mayor may become vacant as provided in .070 of this chapter. *except by 2/3 votes*

(b) Except as provided in (c) below, a vacancy in the office of mayor occurring ^{6 months before} ~~within six months~~ of a regular election shall be filled by the assembly or council. The person appointed shall, serve until the next regular election and until a successor is elected and has qualified. If a member of the assembly or council is chosen, he shall resign his seat. If a vacancy occurs more than six months before a regular election, the assembly shall call a special election to fill the expired term.

(c) In a second class city, the office of mayor is filled by and from the council.

[AS 29.23.180, 29.23.280]

Article 3. Chief Administrative Officers

Section

- 115. Application
- 120. Petition
- 125. Election
- 130. Adoption
- 135. Appointment
- 140. Term
- 145. Appointment of temporary or new manager
- 150. Repeal
- 155. Powers and duties of the manager
- 160. Intergovernmental appointments

Sec. 29.23.115. Application. A municipality may adopt a manager plan of government.

[AS 29.23.410]

Sec. 29.23.120. Petition. Adoption of a manager plan may be initiated either by petition or upon motion of the assembly or council. A petition for the adoption of a manager plan is submitted to the assembly or council. The petition must be signed by a number of municipal voters equal to the following per cent of the votes cast at the preceding regular municipal election:

(1) 25 per cent when the municipality has fewer than 7,500 persons;

(2) 15 per cent when the municipality has 7,500 persons or more.

[AS 29.23.420]

Sec. 29.23.125. Election. Upon receipt of the petition or upon its motion, the assembly or council shall provide by ordinance or resolution for a vote on the question at the next regular or special election. Notice of the election shall be published at least 30 days before the election.

[AS 29.23.430]

Sec. 29.23.130. Adoption. (a) If the manager plan is approved, the assembly or council shall, within 60 days, adopt the plan by ordinance or resolution.

(b) The assembly or council shall notify the Department of Community and Regional Affairs of the adoption of the manager plan.

[AS 29.23.440]

Sec. 29.23.135. Appointment. The assembly or council shall appoint a manager by a majority vote of its membership. He is chosen solely on the basis of his executive and administrative qualifications and receives the compensation set by the assembly or council. An elected municipal official may not be appointed manager of the municipality sooner than one year after leaving office, except that, by a vote of three-fourths of its authorized membership, the assembly or council may at any time appoint one of its members or other elected municipal officials as manager.

[AS 29.23.450]

Sec. 29.23.140. Term. Subject to the contract of employment, the manager holds office at the pleasure of the assembly or council.

[AS 29.23.460]

Sec. 29.23.145. Appointment of temporary or new manager. In the absence or disability of the manager, the assembly or council shall appoint a temporary manager. If the office become vacant, the assembly or council shall appoint a new manager.

[AS 29.23.470]

Sec. 29.23.150. Repeal. A municipality may repeal the manager plan in the same manner used for its adoption. At its first meeting after repeal, the assembly or council shall enact provisions for the reorganization of the municipal executive and chief administrator.

[AS 29.23.480]

Sec. 29.23.155. Powers and duties of the manager. As chief administrative officer the manager shall:

(1) appoint, supervise, and discipline all municipal employees except those who are appointed and supervised directly by the governing body;

(2) supervise the enforcement of municipal law and carry out the directives of the governing body;

(3) prepare and submit an annual budget and capital improvement program for consideration by the governing body and execute the budget and capital improvement program as adopted;

(4) make such monthly financial reports and such other periodic reports on municipal finances and operations as the governing body may direct;

(5) exercise care and custody over all real and personal property of the borough except as provided otherwise in AS 29.33.050; and

(6) perform other powers and duties provided by law or by action of the governing body.

[AS 29.23.140, 29.23.290]

Sec. 29.23.160. Intergovernment appointments. A borough adopting a manager plan may, by agreement with a city, enter into a contract providing for the manager of a city located within the borough to serve also as borough manager. A city adopting a manager plan, may by agreement with a borough, enter into a contract providing for the manager of a borough

within which the city is located to serve also as city manager. Appointment and service of the manager shall be as otherwise provided for managers in §§ 115-155 of this chapter. Nothing in this subsection affects the authority of the assembly or council to provide for other dual office-holding if the dual offices held are compatible or otherwise to appoint officers and employees in accordance with law.

[AS 29.23.130(e)]

Article 4. Municipal Departments and Employees

Section

- 165. Appointment of Officers
- 170. Municipal Attorney
- 175. Municipal Clerk
- 180. Municipal Treasurer
- 185. Departments
- 190. Personnel system

Sec. 29.33.165. Appointment of Officers. The municipal clerk, attorney, treasurer, and police chief are appointed by the chief administrative officer unless otherwise provided by ordinance. Officers described in this section serve at the pleasure of their appointing authority and, if appointed by the chief administrative officer must be confirmed by the governing body.

[AS 29.23.360]

Sec. 29.23.170. Municipal attorney. The municipal attorney is the legal advisor of the council or assembly, the school board, and the other officers of the municipality. He represents the municipality as attorney in civil and criminal proceedings. The school board has the right to hire independent counsel when in its judgment independent counsel is needed.

[AS 29.23.370]

Sec. 29.23.175. Municipal clerk. (a) The municipal clerk shall

(1) give notice of the time and place of meetings to the assembly or the council and to the public;

(2) attend meetings and keep the journal;

(3) arrange publication of notices, ordinances, and resolutions;

(4) maintain and make available for public inspection an indexed file including the municipal ordinances, resolutions, rules, regulations, and codes;

(5) attest deeds and other documents;

(6) perform other duties specified in this title or prescribed by the chief executive or by the governing body.

(b) The assembly or council may combine the office of clerk with that of treasurer. If the offices are combined, the clerk shall, as required of the treasurer, give his bond to the municipality for the faithful performance of his duties as clerk-treasurer.

[AS 29.23.380]

Sec. 29.23.180. Municipal treasurer. (a) The treasurer is the custodian of all municipal funds. He shall keep an itemized account of money received and disbursed. He shall pay money on vouchers drawn against appropriations.

(b) The treasurer shall give bond to the municipality in a sum which the assembly or council directs.

[AS 29.23.390]

Sec. 29.23.185. Departments. (a) The governing body of a municipality may establish departments and distribute functions among them.

(b) Each department is administered by a department head. With the consent of the governing body, the mayor may serve as head of one or more departments or a single administrator may serve as head of two or more departments.

[AS 29.23.070]

Sec. 29.23.190. Personnel system. (a) Except as provided by (b) below, all appointments and promotions of municipal officers and employees are made on the basis of merit. The assembly or council may provide for a personnel system.

(b) By ordinance the governing body may designate executive positions filled by persons who serve at the pleasure of their appointing authority and which are wholly or partially exempt from the classified service.

[AS 29.23.550]

Article 5. Municipal Boards and Commissions

Section

195. School Boards

200. Other Boards and Commissions

Sec. 29.23.195. School boards. Each borough and city school district has a school board. Members are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance, for three-year terms and until their successors take office. All board members are elected at large, but school zones for the election of borough school boards may be established, altered, or abolished as provided by § 100 of this chapter.

[AS 29.23.310]

Sec. 29.23.200. Other boards and commissions. (a) The assembly or council of a municipality may, by ordinance, establish such advisory, administrative, technical, or quasi judicial boards and commissions it deems necessary.

(b) Members of boards and commissions, except for the Board of Adjustment and assembly members serving on the Board of Equalization are appointed by the mayor and confirmed by the assembly or council.

[new]

Article 6. Miscellaneous Provisions

Section

- 205. Salaries of elected officials
- 210. Prohibitions
- 215. Conflict of Interest
- 220. Reports

Sec. 29.23.205. Salaries of elected officers. The assembly or council shall fix by ordinance the salaries of elected officers. The salary of the mayor may not be reduced during his term of office. An elected officer may not receive any other compensation for service to the municipality. Per diem payments or reimbursements for expenses are not compensation under this section.

[AS 29.23.530]

Sec. 29.23.210. Prohibitions. (a) No person may be appointed to or removed from municipal office or in any way favored or discriminated against with respect to a municipal position because of his race, color, sex, creed, national origin or, unless otherwise contrary to law, because of his political opinions or affiliations.

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

(c) No state employee or school district employee may be denied the right to serve as an elected municipal official because of his employment by the state or a school district unless specifically prohibited by charter or ordinance of a municipality, adopted at a special or general election. However, no school district employee may serve on a school district board in the school district where he is employed. Provisions of this section do not apply to term of office in effect on August 24, 1976.

(d) For purposes of this section a school district employee is not a municipal employee.

[AS 29.23.540]

Sec. 29.23.215. Conflict of interests. Each home rule and general law municipality shall adopt a conflict-of-interests 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. If a home rule or general law municipality fails to adopt such a conflict-of-interests ordinance within 90 days from September 10, 1972, the conflict-of-interests provision of this section is automatically applicable to and binding upon that municipality.

[AS 29.23.555]

Sec. 29.23.220. Reports. (a) Home rule and general law municipalities shall file with the Department of Community and Regional Affairs:

- (1) maps and descriptions of all annexed or excluded territory;
- (2) a copy of the annual audit or in the case of second class cities an audit or statement of annual income and expenditures;

(3) tax assessment and tax levy figures as requested;

(4) reports relating to long-term debt as provided in AS 44.19

.205.

(5) a copy of the current annual budget of the municipality;

(6) a summary of the optional property tax exemptions authorized in the municipality, together with the municipality's estimate of the revenues lost to it by operation of each of the exemptions.

(b) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.88 and state aid for miscellaneous municipal services under AS 29.89. The Department of Community and Regional Affairs shall withhold annual allocations under those chapters in the event of noncompliance until such time as the report requirements are met.

[AS 29.23.555]

OFFICE OF THE MUNICIPAL ATTORNEY

KETCHIKAN GATEWAY BOROUGH

AND

CITY OF KETCHIKAN

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(907) 225-3111, EX. 327

November 4, 1980

John Messenger, Esq.
Preston, Thorgrimson, Ellis
and Holman
420 L Street, Suite 404
Anchorage, Alaska 99501

Re: Title 29 Review - Proposed Revisions
to Chapter 53 "Municipal Assessment
and Taxation"

Dear John.

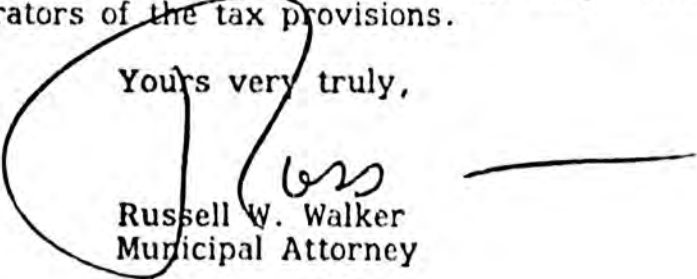
In furtherance of our discussion this date, please find enclosed herewith the following:

- (1) Draft of proposed revisions to existing chapter 53 (Assessments). Comments to each section indicate the purpose of each proposed change.
- (2) Copy of mark-up of chapter 53 prepared by the Alaska Association of Assessing Officers.
- (3) Tamara Cock's rewrite under date October 2, 1980, of the required exemptions provisions of existing section 29.53.020.

I would appreciate any observations or comments you may have regarding these proposed or other amendments to chapter 53.

As we also discussed, the major remaining area which I intend to address is the area relating to corrections, cancellations and refund of taxes which I believe will solve many problems currently confronting assessors and administrators of the tax provisions.

Yours very truly,


Russell W. Walker
Municipal Attorney

Enclosures

Sec. 29.45.030. Required exemptions. (a) The following property is exempt from general taxation:

(1) municipal, state or federally owned property, except that private leaseholds, contracts or other interest in the property shall be taxable to the extent of those interests;

(2) household furniture of the head of a family or a household [not exceeding \$500 in value];

(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes;

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

(5) money on deposit;

(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (e) of this section.

(7) real property to the extent and subject to the conditions provided in (j) of this section.

(b) "Property used exclusively for religious purposes" includes the following property owned by a religious organization:

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

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

(3) lots supporting and adjacent to a structure or residence mentioned in (1) or (2) of this subsection which are necessary to convenient use;

(4) lots required by local ordinance for parking near a structure defined in (2) of this subsection.

(c) Property described in (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital or educational groups [for classroom space]. If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space.

(e) The real property owned and occupied as a permanent place of abode by a resident 65 years of age or over is exempt from taxation of the assessed value of the real property. Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor is appealable under AS 44.62.560-44.62.570.

(f) No exemption may be granted under (e) of this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 of the assessment year for which the exemption is sought, but during the same year the governing body of the municipality for good cause shown may waive the claimant's failure to make timely application for the exemption for that year and authorize the assessor to accept the application as if timely filed. The claimant must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If a claimant whose failure to file by January 15 of the assessment year has been waived as provided in this subsection and the application for exemption is approved, the amount of tax which the claimant may have already paid for the assessment year with respect to the property exempted shall be refunded to him. The assessor may at any time require proof in the form he considers necessary of the right and amount of an exemption claimed under this section.

(g) The state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of (e) of this section. However, reimbursement will be made to a borough or city for revenue lost to it only to the extent that the loss exceeds an exemption which was granted by the borough or city, or which upon proper application by an individual would have been granted by the borough or city, under sec. 25(a) of this chapter.

(h) Except as provided in (g) of this section, nothing in (e)-(i) of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in sec. 25 of this chapter.

(i) In (e)-(i) of this section the term "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes.

(j) Two percent of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under AS 19.70.081, in operating condition, and incorporated as a fixture or part of the structure. The exemption granted by this subsection is limited to

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

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

Formerly: AS 19.53.020

Comments: Based on Alaska Association of Assessing Officers (AAAO) recommendation:

(1) Para. (a)(2): deletes \$500 limit on exemption of household furniture;

(2) Para. (c): clarifies that "exclusively for classroom space" limitations on rental income under (c) only applies to rental use by an "educational group" and does not preclude the exemption when the income is derived from use by nonprofit religious, charitable, or hospital groups.

(3) Para. (f): clarifies filing of a claim for exemption is a requirement for only the senior citizen exemption under (e), and not for the other exemptions addressed in the section.

Sec. 29.45.050. Optional exemptions and exclusions.

(a) Municipalities may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at a regular or special election. An exclusion or exemption authorized by this section may not exceed \$10,000 for any one residence.

(b) Municipalities may by ordinance

(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage; a tax based upon a tonnage valuation shall not exceed \$5 a year for a boat or vessel of less than five net tons and shall not exceed \$15 a year for a boat or vessel of more than five net tons;

(2) classify and exempt from taxation

(A) All or any portion of the household goods and furnishings in actual use by the owner thereof in equipping and outfitting his or her residence or place of abode and not for sale or commercial use, and all personal effects held by any person for his or her exclusive use and benefit and not for sale or commercial use. "Personal effects" shall be construed to mean and include such tangible property as usually and ordinarily attends the person such as wearing apparel, jewelry, toilet articles, and the like [the household furniture over \$500 in value and the effects of the head of a family or a householder]; and

(B) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental of such property does not exceed the actual cost to the owner of the use by the renter; and

Formerly: AS 29.53.025

Comments: modifies and expands existing (a)(2)(A) relating to optional exemption of household furniture and effects. Based upon recommendation of AAAO since assessors currently do not include household furnishings and personal effects of family members.

Sec. 29.45.060. Mining claims. The assessed value of an unimproved unpatented mining claim which is not producing, and a nonproducing patented mining claim upon which the improvements originally required for patent have become useless and valueless through depreciation, removal or otherwise, is exempt [fixed at \$200 for each 20 acres or fraction of 20 acres]. If the surface ground of a claim has a separate and independent value for nonmining uses, the real and personal property is assessed at its full and true value.

Formerly: AS 29.53.030

Comments: Deletes \$200 valuation figure. AAAO recommends deletion since administrative costs exceed taxes to be realized in carrying property at \$200 figure on roll.

Sec. 29.45.100. Tax limitations.

(a) No municipality may levy and tax for any purpose in excess of three percent of the assessed valuation of property within the municipality in any one year.

(b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding \$1,500 [\$1,000] a year for each person residing within their boundaries or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding \$1,500 [\$1,000] a year for each person residing within their boundaries or (2) upon value which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

Formerly: AS 29.53.050

Comments: Technical change requested by AAAO to conform with provisions of AS 29.53.045 (SLA 80)

Sec. 29.45.120. Full and true value.

(a) The assessor shall value [assess] property at its full and true value as of January 1 of the assessment year, except as provided in this section and sections 60 [30], 70 [35] and 240 [160] of this chapter. The full and true value is the estimated price which the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

(b) Assessment of business inventories may be based on the average monthly method of assessment rather than the value existing on January 1. The method used to assess business inventories shall be prescribed by the borough assembly.

(c) In case of cessation of business during the tax year, the assembly may provide for reassessment of business inventories using the average monthly method of assessment for the tax year rather than the value existing on January 1 of the tax year, and for reduction and refund of taxes. In enacting an ordinance authorized by this section, the assembly may prescribe procedures, restrictions, and conditions of assessing or reassessing business inventories and of remitting or refunding taxes.

Formerly: AS 29.53.060

Comments: Requested by AAAO

Sec. 29.45.180. Assessment notice.

(a) The assessor shall give every person named in the assessment roll a notice of assessment, showing the assessed value of his property. On each notice is printed a brief summary of the dates when taxes are payable, delinquent and subject to penalty and interest. [and the dates when the board of equalization will sit.]

(b) Sufficient assessment notice is given if mailed by first class mail 30 days before the equalization hearings. If the address is not known to the assessor, the notice may be addressed to the person at the post office nearest the property. Notice is effective on the date of mailing.

Formerly: AS 29.53.110

Deletes requirement that assessor include in the assessment notice the date the board of equalization will meet since many times assessors at that time do not know the dates at the time the notices are mailed. Based on the recommendation of AAAO.

Sec. 29.45.210. Board of Equalization. The assembly sits as a board of equalization for the purpose of hearing any appeal from determinations of the borough assessor, however, may delegate this authority to one or more boards appointed by it for that purpose. An appointed board may be composed of not less than three (3) persons, who may be members of the assembly, private individuals, or a combination thereof. [The board of equalization shall consist of at least that number of members of the assembly over and above the number required for a quorum to transact business.] The board is governed in its proceedings by such procedures consistent with general rules of administrative law and the laws governing equalization proceedings as may be adopted by ordinance, including but not limited to quorum and voting requirements. The assembly shall by ordinance establish the qualifications for membership and adopt rules of conduct of the board.

Formerly: AS 29.53.135

Comments: Change would clarify authority to establish boards of equalization composed of other than assembly members and by ordinance to establish qualifications. Deletion required to allow appointment of boards of three members or more which number may be less than number required for quorum of assembly.

Sec. 29.45.220. Hearing.

(a) If an appellant fails to appear, the board of equalization may proceed with the hearing in his absence.

(b) The appellant bears the burden of proof.

(c) The only grounds for adjustment is proof of unequal, excessive or improper valuation based on facts which are stated in a valid written appeal timely filed and [or] proved at the hearing.

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

(e) The assessor shall enter the changes and certify the final assessment roll by June 1 except as to supplementary assessments.

(f) [an] The appellant and the assessor may appeal the board's action to the superior court as provided by rules of court applicable to appeals from the decisions of administrative agencies. Appeals are heard on and limited to the record established at the hearing before the board of equalization. [for, and is entitled to, trial de novo of the board's action. Either party to the appeal may demand a jury trial].

Formerly: AS 29.53.140

Comments:

(1) Para. (c): Based on recommendation of AAAO, substitutes and for or to assure must set forth factual grounds in written appeal and prove at hearing;

(2) para. (e): Based on recommendation of AAAO, clarifies that there may be further proceedings after June 1 in event there are supplementary assessments per former section 29.53.150;

(3) para. (f): deletes provisions regarding trial de novo and jury trial and limits scope of review to substantial evidence rule and clarifies confusion created by Winegardner v. Greater Anchorage Area Borough (534 P.2d 541)

Sec. 29.45.230. Supplementary assessment rolls. The assessor shall include property omitted from the assessment roll on a supplementary roll, using the procedures set out in this chapter for the original roll. Any supplementary roll must be finalized and certified on or before September 1 of the assessment year.

Formerly: AS 29.53.150

Comments: Recommended by AAAO. State assessor requires for his purposes all proceedings to be completed not later than September 1, including any supplemental assessments.

Sec. 29.45.440. Expiration.

(a) At least 30 days before the expiration of the redemption period the clerk shall publish a redemption period expiration notice. The notice shall contain the date of judgment, the date of expiration or the period of redemption and a warning to the effect that all properties ordered sold under the judgment, unless redeemed, shall be deeded to the borough or city immediately in expiration of the period of redemption and that every right or interest of any person in the properties will be forfeited forever to the borough or city. The notice is published once a week for four consecutive weeks in a newspaper of general circulation distributed within the borough. If there is no newspaper of general circulation distributed within the borough, the notice is posted in three public places for at least four consecutive weeks. The clerk shall send a copy of the published notice by certified mail to each record owner of property against which a judgment of foreclosure has been taken and, if the assessed value of the property is more than \$100,000 [\$10,000], to all holders of mortgages or other liens of record on the property. The notice shall be mailed within five days of the first publication. The mailing shall be sufficient if mailed to the property owner and to the holder of a mortgage or recorded lien at the last address of record. The right of redemption shall expire 30 days after the date of the first publication notice.

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

Formerly: AS 29.53.350

Comments: Based on recommendation of AAAO; raises assessed value of property which triggers duty of clerk to advise holders of security of judgment of foreclosure.

Article 1. Regular and Special Elections

<u>New Sec. No.</u>	<u>Old Sec. No.</u>	<u>Sec. Title</u>
29.30.010	29.28.010	Administration
29.30.020	29.28.015	Nominations
29.30.030	29.28.020	Election dates
29.30.040	29.28.030	Voter qualifications
29.30.050	29.28.040	Majority elections
29.30.060	29.28.050	Election contest and appeal

Article 2. Initiative and Referendum

29.30.090	29.28.060	Reservation of powers
29.30.100	29.28.062	Petition <u>filing</u>
29.30.110	29.28.062	Contents of petition
29.30.120	29.28.070	Required signatures
29.30.130	NEW SEC.	<u>Petition circulation and certification</u>
29.30.140	29.28.073	<u>Petition--Sufficient, Insufficient, Supplemental</u>
29.30.150	29.28.075	Protest
29.30.160	29.28.077	New petition
29.30.170	29.28.080	Presentation of initiative
29.30.180	29.28.090	Presentation of referendum
	29.28.110	Effect (reworded and moved to 30.180)
29.30.190	29.28.110(b)	<u>Unsuccessful initiatives or referendums</u>
29.30.200	29.28.090(c)	<u>Municipal charter amendment</u>

Article 3. Recall

29.30.210	29.28.130	<u>Scope of Recall</u>
29.30.220	29.28.140	<u>Grounds for recall</u>
29.30.230	29.28.150	<u>Contents of petition</u>
29.30.240	NEW SEC.	<u>Petition circulation and certification</u>
29.30.250	29.28.160	<u>Petition--Sufficient, Insufficient, Supplemental</u>
	29.28.170	
29.30.260	NEW SEC.	<u>Protest</u>
29.30.270	29.28.180	New petition
29.30.280	29.28.190	Submission
29.30.290	29.28.200	<u>Recall election</u>
29.30.300	29.28.210	Form of recall ballots
29.30.310	29.28.220	Election procedure
29.30.320	29.28.230	Majority required
29.30.330	29.28.240	Effect
29.30.340	NEW SEC.	<u>Certification of election results</u>
29.30.350	29.28.250	<u>Election or appointment of successor</u>

29.28 ELECTIONS

Article 1. Regular and Special Elections

Sec. 29.28.010. Administration. ok

(a) The borough assembly or city council shall prescribe the general rules for conducting municipal elections and [APPOINT AT LEAST THREE JUDGES FOR EACH POLLING PLACE.] shall appoint election boards, composed of at least three judges, for each precinct. The judges shall, to the extent possible, be appointed from among the qualified voters of each of the precincts for which they are appointed. [See AK 15.10.120] [The municipality may not alter voter qualification requirements of this title.]

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

Attempted to clarify election board appointment and referenced '80 revised AK 15.10.120 for consistency. Deleted "The municipality may not alter . . ." because issue is addressed at Sec. 29.28.030.

29.28 ELECTIONS

OK

Sec. 29.28.015. Nominations.

(a) The assembly or council shall provide by ordinance the procedure for the nomination of elected officers by [PROVIDING FOR] declaration of candidacy, or petition requiring the signatures of not more than 10 [VOTERS] ~~qualified electors~~ ^{qualified voters}, or both.

(b) A person may be nominated for and occupy more than one office, but he may not serve simultaneously as borough mayor and as a member of the borough assembly or as mayor and as a member of the council of a first class city.

Lee Sharp suggests that it should be left to local option as to whether the mayor in a manager-type municipality should be permitted to be a member of the legislative body so long as he does not have the veto power. If the Committee supports this suggestion, (b) should be amended.

29.30.030

29.28 ELECTIONS

Sec. 29.28.020. Election dates.

rewrite
but no change

(a) [THE DATE OF A] Regular municipal elections [IS THE] shall be held
on the first Tuesday of October annually [, OR ON A DATE OF ELECTION] or at
an interval of years as provided by ordinance.

(b) The assembly or council may call a special election upon at least
20 days' notice.

29.28 ELECTIONS

Sec. 29.28.030 Voter qualification.

(a) A person may vote at any election who meets the requirements of AS 15.05.010 - .040, who is registered to vote in State elections and is not disqualified under Article V of the State Constitution, who has been registered to vote in the a ~~resident~~ of the municipality for 30 days immediately preceding the election, and ~~who is registered in the precinct in which he presents himself to vote~~ whose name appears on the official registration list for the precinct in which he presents himself to vote. (See AS 15.07.010 - '80)

(b) Voter registration by the municipality may not be required, and a municipality may not alter voter qualification requirements. ~~except that a voter vote in the precinct in which he~~

(c) This section applies to home rule and general law municipalities. ~~which he~~ require a person ~~is registered.~~ to be a resident of the ~~municipality~~ election district or service area in which he votes.

Incorporates Municipal League recommendation.

Does apply to
Home Rule

29.28 ELECTIONS

← Limit to assembly, council, mayor, school board

Alternate A

Sec. 29.28.040 Majority elections

(a) An assembly or council may by ordinance provide the requirement for a runoff election if no one candidate receives in excess of 40 percent of the votes cast for a respective office.

(b) An assembly or council may by ordinance require a majority vote for the election of officials. A runoff election or other means of obtaining a majority may be used.

This amendment would require municipalities to enact an ordinance providing for runoffs; otherwise, all municipalities would be exempt from this present requirement

A municipality may provide by ordinance for run-off elections for the offices of assembly, council, mayor, school bd.
Alternate B

(a) If in a municipal election no candidate receives in excess of 40 percent of the votes cast for his respective office, the assembly or council shall hold a runoff election between the two candidates receiving the greatest number of votes for the office. The runoff election shall be held within three weeks from the date of certification of the election for which the runoff is required and notice of the runoff election shall be published at least five days prior to the election date. An assembly or council may by ordinance exempt its elections from the requirements of this section.

(b) An assembly or council may by ordinance require a majority vote for the election of officials. A runoff election or other means of obtaining a majority may be used.

Sec. 29.28.040 cont'd
Alternate B

This amendment would allow municipalities to enact an ordinance which would exempt them from the runoff requirement. The change to three weeks (from two weeks) for the date of the runoff allows the additional time necessary so cities within boroughs can coordinate their runoffs and hold them at the same time.

Sec. 29.28.040 Majority elections

Alternate C

(a) If in a municipal election no candidate receives in excess of 40 percent of the votes cast for his respective office, the assembly or council shall hold a runoff election between the two candidates receiving the greatest number of votes for the office. The runoff election shall be held within three weeks from the date of certification of the election for which the runoff is required and notice of the runoff election shall be published at least five days prior to the election date. A municipality may exempt itself from the requirement of this section if a majority of the voters voting on the question at any regular election or a special municipality-wide election called for that purpose, vote to exempt its municipal elections from the requirements of this section.

(b) An assembly or council may by ordinance require a majority vote for the election of officials. A runoff election or other means of obtaining a majority may be used.

This amendment would allow municipalities to exempt itself from the runoff requirement by means of voter ratification. Incorporates Municipal League recommendation.

AS 29.28 ELECTIONS

Sec. 29.28.050 Election contest and appeal.

UNCHANGED

§ 29.28.050

ALASKA STATUTES

§ 29.28.062

Sec. 29.28.050. Election contest and appeal. (a) The assembly or council may provide by ordinance the time and procedure for the contest of an election.

(b) Unless otherwise provided by ordinance, an election may be contested only upon the filing, before or at the time of the first canvass of ballots by the assembly or council, by a person qualified to vote in the municipality of his written affidavit specifying with particularity the grounds for the contest or invalidity of the election.

(c) Unless otherwise provided by ordinance, the assembly or council shall declare the election results at the first meeting to canvass the election and record the results in the minutes of that meeting.

(d) The contestant shall pay all costs and expenses incurred in a recount of an election demanded by the contestant if the recount fails to reverse any result of the election or the difference between the winning and a losing vote on the result contested is more than two per cent.

(e) No person may appeal or seek judicial review of a city or borough election for any cause or reason unless the person is qualified to vote in the municipality, has exhausted his administrative remedies before the assembly or council and has commenced, within 10 days after the assembly or council has finally declared the election results, an action in the superior court in the judicial district in which the municipality is located. If no such action is commenced within the 10-day period, the election and election results shall be conclusive, final and valid in all respects. (§ 2 ch 118 SLA 1972)

'80 addition

(f) Notwithstanding the provisions of (e) of this section, the expulsion of a member of a borough assembly under AS 29.23.060 (c), of a member of a city council under AS 29.23.210(b), of a borough mayor under AS 29.23.130(f), or of a city mayor under AS 29.23.255 is final and is not subject to judicial review.

29.28 ELECTIONS

Article 2. Initiative and Referendum.

Sec. 29.28.060. Reservation of powers.

Unchanged

Sec. 29.28.060. Reservation of powers. The powers of initiative and referendum are reserved to the residents of municipalities except the powers do not extend to matters restricted by § 7, art. XI, of the state constitution. (§ 2 ch 118 SLA 1972)

Borough voters may use an initiative to acquire an areawide power for transfer. 1965 Op. Att'y Gen., No. 6. a borough which cities refuse to

Sec. 29.28.062 Petition filing.

Unchanged

Sec. 29.28.062. Petition. A petition for initiative or referendum is filed with the municipal clerk and an initiative petition must be filed not less than 90 days before the next regular election. (§ 2 ch 118 SLA 1972)

Sec. 29.28.065 Contents of petition.

Unchanged

Sec. 29.28.065. Contents of petition. A petition for an initiative or referendum shall

- (1) embrace only a single comprehensive subject;
- (2) set out fully the ordinance or resolution sought by the petition;
- (3) state upon the petition, when circulated, the date of first circulation of the petition;
- (4) contain the statement, when circulated, that the signatures on the petition must be secured within 90 days from the date of the first circulation;
- (5) have the required signatures, dates of signatures and resident addresses of the signers. (§ 2 ch 118 SLA 1972)

29.28 ELECTIONS

Sec. 29.28.070. Required signatures.

(a) The necessary signatures on a petition shall be secured within 90 days from the date of the first circulation of the petition. The petition shall be signed in ink or indelible pencil.

(b) Every municipal initiative or referendum petition [FOR EITHER THE INITIATIVE OR REFERENDUM IN THE GOVERNMENT OF A MUNICIPALITY] shall be signed by a number of qualified voters residing within the territorial limits of the municipality, or, if the act sought to be initiated or referred pertains exclusively to the area outside cities, to a service area, or to a district, by a number of qualified voters residing within the respective area [OUTSIDE CITIES OR WITHIN THE SERVICE AREA, AS THE CASE MAY BE, EQUAL TO THE FOLLOWING] equal to 25/30 percent of the total number of votes cast at the last [GENERAL] regular election preceding the date of first circulation of the petition[IN THE CITY OR BOROUGH OR BOROUGH AREA CONCERNED OR SPECIAL ELECTION CALLED FOR THE PURPOSE OF ELECTING CITY OR BOROUGH OFFICERS:] in the respective area concerned.

- (1) 25 PERCENT, WHEN A CITY OR BOROUGH HAS FEWER THAN 7,500 PERSONS, OR
- (2) 15 PERCENT, WHEN A CITY OR BOROUGH AS 7,500 PERSONS OR MORE.]

(c) When signing a petition each voter shall write or print after his signature the date of signing the petition and his resident and mailing address.

(d) Illegible signatures unless accompanied by a legible printed name may be rejected by the municipal clerk.

(e) A petition signer may withdraw his signature upon written application to the clerk within seven days after the petition has been filed with the clerk.

Amendment does not address Richard Garnett III's concern regarding service area petitions. *In (b) Municipal League supports 30 percent, Clerks support 25 percent.

29.28 ELECTIONS

NEW SECTION

Sec. 29.28.071 Petition circulation and certification.

(a) Petitions shall be circulated only by a sponsor and only in person. If more than one sponsor is circulating copies of a petition, one spokesman shall be appointed by the sponsors for purposes of receiving notification of petition sufficiency, and the clerk shall receive written notice of the spokesman's name and mailing address.

(b) Before being filed, each petition shall be certified by an affidavit by the sponsor who personally circulated the petition. The affidavit shall state:

- (1) the person signing the affidavit was the only circulator of the petition;
- (2) the signatures were made in his actual presence; and
- (3) to the best of his knowledge, the signatures are those of the persons whose names they purport to be.

Has the effect of requiring a witness to the signatures on a petition; conforms to State law.

29.28 ELECTIONS

Sec. 29.28.073. Petition--Sufficient, Insufficient, Supplemental.

(a) Within 10 days from the date of filing, the municipal clerk shall certify the petition as to its sufficiency and shall so notify the sponsor or spokesman.

(b) The clerk shall notify the sponsor or spokesman that the petition is insufficient if he determines that the petition does not meet the requirements as set forth in this article.

(c) Upon receipt of notice that the filing of the petition was improper, the sponsor/s may amend and correct the petition by circulating and filing a corrected or supplementary petition within 10 days of the date that notice was given if 90 days from the petition's first circulation have not yet expired.

(d) Within 10 days from the date of filing of a corrected or supplementary petition, the municipal clerk shall recertify the petition. If the petition is still insufficient, the petition shall be rejected and filed as a public record and the sponsor or spokesman shall be so notified.

(e) For the purposes of this article, all notices required of the clerk to be given to the sponsor or spokesman shall be by certified mail.

29.28 ELECTIONS

Sec. 29.28.075. Protest

Unchanged

Sec. 29.28.075. Protest. If the municipal clerk certifies the petition is insufficient, a signer of the petition may file a protest with the municipal executive within seven days after the certification and the municipal executive shall present the protest at the next regular meeting to the assembly or council which shall hear and decide the protest. (§ 2 ch 118 SLA 1972)

Sec. 29.28.077. New petition

Unchanged

Sec. 29.28.077. New petition. Failure to secure sufficient signatures does not preclude the filing of a new initiative or referendum petition. However, a new petition may not be filed sooner than six months after a petition is rejected. (§ 2 ch 118 SLA 1972)

29.28 ELECTIONS

Sec. 29.28.080. Presentation of initiative.

(a) When a petition seeks enactment of an ordinance or resolution within the powers of the assembly or council, excepting powers of an administrative nature and not otherwise restricted by §60 of this chapter, the clerk shall present it to the assembly or council at its next regular meeting following [AFTER] certification. The assembly or council may reject the petition if the subject matter of the initiative [OR REFERENDUM] is within the restrictions of §60 of this chapter or is determined to be of an administrative nature.

(b) Unless the petition is granted within 30 days of its submission to the assembly or council, the clerk shall, with the assistance of the municipal attorney, prepare an ordinance or resolution to implement the petition and shall submit it to the voters at the next regular election. The ordinance or resolution shall be published in full in the notice of election but may be summarized on the ballot to indicate clearly the proposal submitted.

(c) If a majority of those qualified electors voting favor the proposal, it becomes effective [WHEN THE ELECTION RESULTS ARE OFFICIALLY DECLARED] 30 days following certification of the election results, is not subject to veto, and may not be repealed within two years of its effective date. It may be amended at any time.

(d) The assembly or council may at any time not less than 10 days from the date of election adopt an ordinance or resolution to implement the petition. In that event an election shall not be held. The adopted resolution or ordinance *is not subject to veto(?)* may not be repealed within two years of its effective date. It may be amended at any time.

29.28 ELECTIONS

Sec. 29.28.090 Presentation of referendum.

(a) When a petition seeks a referendum vote on an ordinance or resolution, excepting legislation determined to be of an administrative nature, the clerk shall submit the ordinance or resolution to the voters of the municipality at the next regular or special election. If no regular or special election [OCCURS] is scheduled to occur within 75 days of the filing of a sufficient petition with the clerk, the assembly or council shall schedule and hold a special election within 75 days of filing. If the clerk determines that the subject of the petition is of an administrative nature, he shall present the petition to the assembly or council at its next regular meeting following certification of the petition. The assembly or council may reject the petition if the subject matter is determined to be of an administrative nature.

(b) If a sufficient petition for referendum is filed within 30 days after final passage of the ordinance, or before the effective date of the ordinance, [THE ORDINANCE AGAINST WHICH THE PETITION IS FILED SHALL BE SUSPENDED PENDING THE REFERENDUM ON THE ORDINANCE. DURING THE PERIOD OF SUSPENSION] the assembly or council may [NOT ENACT AN ORDINANCE SUBSTANTIALLY SIMILAR TO THE SUSPENDED ORDINANCE BUT MAY] repeal the [SUSPENDED] ordinance. If an ordinance against which a referendum is directed has been repealed by the assembly or council after a petition has been filed but before the referendum, the council or assembly may not enact substantially similar legislation for a period of [ONE YEAR] two years after repeal.

(c) If a majority of those voting favor the referendum legislation, it remains in effect. If a majority rejects the legislation, it is repealed and becomes void 30 days after certification of the election results, and the assembly or council may not, within two years, act in any way to modify or negate the effect of a successful [INITIATIVE OR] referendum.

29.28 ELECTIONS

Sec. 29.28.090 cont'd

29.30.170
(explanatory notes)

(a) incorporates recommendations of Lee Sharp and Richard Garnett III and Wolf v. Alaska State Housing Authority re: legislation of an administrative nature

(b) reflects ruling in Walters v. Cease (referred to in State Constitution XI § 6) re: suspension of legislation

(c) conforms to State Constitution XI § 6 re: when legislation becomes void

DRAFT

29.30.180 → .18_
(new title) (new section)

29.28 ELECTIONS

Sec. 29.28.110 Effect

Deleted - (a) reworded and moved to 29.28.090

Sec. 29.28.110 Unsuccessful initiatives or referendums (NEW TITLE)

(a) An unsuccessful initiative or referendum precludes the filing of a new petition for the same purpose sooner than six months after voter disapproval of the initiative or referendum.

this is previous Sec. 29.28.110 (b)

Sec. 29.28.120 Municipal charter amendment (NEW SECTION)

(a) A municipal charter may be amended as provided in the charter or by initiative and referendum as provided in Article 2 of this chapter.

this is a portion of previous Sec. 29.28.090 (c)

29.28 ELECTIONS

Article 3. Recall.

Sec. 29.28.130 Scope of Recall (NEW TITLE)

(a) All [AN] elected officials [OF A HOME RULE OR GENERAL LAW MUNICIPALITY MAY BE RECALLED] are subject to recall [BY THE VOTERS] after [HE HAS SERVED] having served six months in office.

Sec. 29.28.140 Grounds for recall (NEW TITLE)

The grounds for recall are misconduct in office, incompetence, failure to perform prescribed duties and to uphold the laws and ordinances of the municipality, and corruption.

Alternate: Delete 29.28.140, 29.28.150 (2) + 29.28.210 (1)
B No grounds

Alternate: Leave in 29.28.140 but provide for
C more stringent petition requirements if
official is subject to recall w/out
grounds being specified.

29.28 ELECTIONS

Sec. 29.28.150 ^{Contents of} Petition.

(a) A petition seeking the recall of [ONE OR MORE] an elected municipal official[S] is filed with the municipal clerk. The petition shall contain:

(1) the name and office of the person to be recalled;

(2) a statement of the grounds for recall stated with particularity as to specific instances, limited to 200 words;

(3) the signatures, [AND] resident addresses and mailing addresses and date of signing of [A NUMBER OF VOTERS AS PRESCRIBED IN §70(b) OF THIS CHAPTER FOR INITIATIVE AND REFERENDUM] a number of qualified voters residing within the territorial limits of the area from which the elected official was elected equal to 25/30? percent of the total number of votes cast at the last regular election preceding the date of first circulation of the petition.

(4) a statement of the date of first circulation of the petition and a statement that the signatures on the petition must be secured within 60 days from the date of the first circulation.

(b) If more than one elected municipal officer is being considered for recall simultaneously, a separate petition shall be filed for each official.

(c) A petition for recall must be filed with the clerk within 60 days after the date of the earliest signature on the petition.

Yes we (d) No recall petition shall be filed within ^{6 mo.} 90 days of the termination of the term of office of the public official who is the subject of the recall petition.

29.30.235 (new section)
+.240

29.28 ELECTIONS

Sec. 29.28.155 Petition circulation and certification (NEW SECTION)

(a) Recall petitions are subject to the requirements for initiative and referendum petition circulation and certification as prescribed in AS 29.28.071.

Sec. 29.28.160 Petition--Sufficient, Insufficient, Supplemental (NEW TITLE)

160 + 170
of

(a) Within 10 days from the date of filing, the municipal clerk shall certify the petition as to its sufficiency and shall so notify the sponsor or spokesman. Until the petition is accepted as sufficient, a petition signer may withdraw his signature upon written application to the clerk.

(b) The clerk shall notify the sponsor or spokesman that the petition is insufficient if he determines that the petition does not meet the requirements as set forth in this article.

(c) If a petition is rejected because of insufficient signatures, it may be supplemented by additional signatures within 10 days after the date of rejection if 60 days from the petition's first circulation have not yet expired. Within 10 days after the supplementary filing, the clerk shall recertify the petition as to its sufficiency and so notify the sponsor or spokesman. If the petition is still insufficient it shall be rejected and filed as a public record.

(d) A petition found insufficient for any reason other than the lack of sufficient signatures shall be rejected and filed as a public record.

(e) For the purposes of this article, all notices required of the clerk to be given to the sponsor or spokesman shall be by certified mail.

(Also includes provisions of previously numbered Sec. 29.28.170 - Supplemental Petition.)

29.28 ELECTIONS

29.30, 255 (new section)
4.260 → .280

Sec. 29.28.170 Protest. (NEW SECTION)

(same as protest provisions for initiative and referendum)

If the municipal clerk certifies the petition is insufficient, a signer of the petition may file a protest with the municipal executive within seven days after the certification and the municipal executive shall present the protest at the next regular meeting of the assembly or council, which shall hear and decide the protest.

SEc. 29.28.180 New Petition

Unchanged.

Sec. 29.28.180. New petition. Failure to secure sufficient signatures does not preclude the filing of a new recall petition. However, a new petition may not be filed sooner than six months after a petition is rejected. (§ 2 ch 118 SLA 1972)

Sec. 29.28.190 Submission.

If a recall petition is sufficient, the clerk shall [IMMEDIATELY] submit it to the assembly or council at its next regular meeting.

Sec. 29.28.200 Recall election

(a) If a regular election occurs within 75 days of submission of a sufficient petition, the assembly or council shall submit the recall at that election.

(b) If no regular election will occur within 75 days, the assembly or council shall hold a special election within 75 days of submission.

(c) If a vacancy occurs in the office after a recall petition is filed, the petition shall not be submitted to the voters and such vacancy is filled as a vacancy caused by any other reason is filled. The resigning official who was the subject of the recall petition shall not be eligible for appointment to the vacant position.

should
this be
separate
section?

29.28 ELECTIONS

Sec. 29.28.210 Form of recall ballots

Unchanged

Sec. 29.28.210. Form of recall ballots. A recall ballot contains:

- (1) the grounds as stated in the recall petition;
- (2) the officer's statement of 200 words or less, if the statement is filed with the clerk for publication and public inspection within 20 days before the election;
- (3) the following question: "Shall (name of person) be recalled from the office of (office)? Yes [] No []". (§ 2 ch 118 SLA 1972)

Sec. 29.28.220 Election procedure

Unchanged

Sec. 29.28.220. Election procedure. Procedures for conducting a recall election are those of a regular election. (§ 2 ch 118 SLA 1972)

Sec. 29.28.230. Majority ~~election~~ *required*

Unchanged

Sec. 29.28.230. Majority required. A majority vote on the question is required to recall an officer. (§ 2 ch 118 SLA 1972)

Sec. 29.28.240. Effect

Unchanged

Sec. 29.28.240. Effect. If an incumbent is not recalled at the recall election, a petition to recall the same incumbent may not be filed sooner than six months after the recall election. (§ 2 ch 118 SLA 1972)

29.30.325 (new order)
+ 330

29.28 ELECTIONS

Sec. 29.28.245 Certification of election results (NEW SECTION)

If a majority of the votes cast on the question of recall favor the removal of the official, the assembly or council shall so certify and the office becomes vacant the day following certification.

Sec. 29.28.250 Election or appointment of Successor

(a) If the voters recall an officer, the remaining council or assembly members shall appoint a successor to serve until an election shall be held.

The clerk shall conduct an election for a successor to fill the unexpired term of the recalled official, which election shall be held at least 10 but not more than 45 days from the date of the recall election. However, if a regular or special election occurs within 75 days of the recall election, the successor to the recalled official shall be chosen at that regular or special election. The procedures and requirements for the regular election for the office from which the incumbent is recalled apply to the election conducted under this section.

(b) If the voters recall a number of officials which has the effect of leaving the legislative body with less than a quorum, the remaining council or assembly members shall have the emergency power to appoint successors to serve until an election shall be held.

(c) If the voters recall an entire legislative body, the *executive officer?* shall have the power to appoint successors to serve until an election shall be held.

(d) If no candidates file to have their names placed on the ballot to replace the recalled officer, the remaining council or assembly members shall appoint a successor to serve for the unexpired term of the recalled official. If an entire legislative body has been recalled and no candidates

29.28 ELECTIONS

29.28.250 cont'd

file for the vacancies, the ^{executive?} ~~officer~~ shall have the power to appoint successors to serve for the unexpired terms of the recalled officials.

(e) All appointed successors shall have the qualifications and meet the requirements established for election to the position to which appointed and shall not be one of the officials recalled.

It's difficult to address all the "what ifs"; I'm sure I missed some!

50

Article 1. Special Assessments

Section	Section
10. Assessment and proposal	60. Payment
15. Procedure	65. Exemption
20. Decision and notice	70. Reassessment
25. Record owner	75. Allowable costs
30. Objections and revision	80. Objection and appeal
40. Assessment roll	83. Interim financing
50. Hearing and settlement	85. Special assessment bonds

SEC. 29.63.010. ASSESSMENT AND PROPOSAL. The assembly or council may assess against the property of a governmental unit and private real property benefited all or a portion of the cost of acquiring, installing, making or constructing (OR IMPROVING) capital improvements. The state shall pay an assessment levied, except as otherwise provided by law and subject to its right of protest under § 15(a)(8) of this chapter. If a governmental unit other than the state benefited by an improvement (ASSESSMENT) 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 assembly or council of the owners of one-half in value of the property to be benefited or
- (2) the assembly or council.

SEC. 29.63.015. PROCEDURE. (a) The assembly or council may prescribe by ordinance the complete procedure relating to creating special assessment districts, making local improvements, levying and collecting assessments and financing of the improvements (SPECIAL ASSESSMENT PROCEDURE FOR LOCAL IMPROVEMENTS), including and subject to the following:

- (1) a (THE) 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 assembly or council 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 (LEGAL OWNER OF) record owner of real property within the special assessment district;

(7) a resolution or ordinance confirming the special assessment roll for the local improvement;

(8) if protests as to the necessity of a local improvement are made by owners of property which will bear 50 per cent or more of the estimated cost of the improvement, the assembly or council may not proceed with the improvement until the objections have been reduced to less than 50 per cent, except upon approval of not fewer than three-fourth of the assembly or council.

(b) To the extent that (IF) the assembly or council does not prescribe a procedure for special assessments as permitted by this section, the assembly or council shall comply with the special assessment procedures set out in §§ 20-70 of this chapter.

SEC. 29.63.020. Creation of District (DECISION AND NOTICE). (a) When an improvement proposal has been filed with the municipal clerk and presented to the assembly or council, the assembly or council shall find by resolution or ordinance whether (1) the improvement requested (REQUEST) is necessary and should be made, and (2) if by petition, the request has sufficient and proper petitioners. The findings of the assembly or council are conclusive.

(b) If the assembly or council approves (PASSES A RESOLUTION APPROVING) an improvement proposal with the necessary findings, it shall develop a proposed improvement plan including the cost estimate and the percentage of the improvement plan cost to be assessed against the property benefited. This plan is to be filed with the municipal clerk.

(c) The assembly or council shall set a time for public hearing on and the period for filing objections to the improvement plan. The assembly or council shall publish a notice of

the hearing and of the period during which objections may be filed at least once a week for four consecutive weeks in a newspaper of general circulation if distributed within the municipality and shall send notice by mail to every record owner of property within the special assessment district.

SEC. 29.63.025. RECORD OWNER. The person in whose name property is listed on the municipal property tax roll as owner is conclusively presumed to be the legal owner of record. If the owner is unknown, the assessment roll may designate (BE MADE AGAINST) "unknown owner."

SEC. 29.63.030. OBJECTIONS AND REVISION. (a) Objections to the improvement plan may be filed during a period of not less than 30 (NOR MORE THAN 60) days (AFTER PUBLICATION OF NOTICE ON A DATE) specified by the assembly or council. The assembly or council may by resolution or ordinance approve the plan and order (PROCEED WITH) the improvement subject to the limitation of (b) of this section (IF THE OWNERS OF ONE-HALF IN VALUE OF THE PROPERTY TO BE BENEFITED DO NOT OBJECT IN WRITING).

(b) If objections are made in writing during the period set for objections by the owners of property bearing one-half of the estimated cost of the improvement, the assembly or council may not proceed with the improvement unless it revises the plan to meet the objections and the objections are reduced to less than 50 per cent. A revised plan shall be approved and adopted as an original plan in accordance with (20(b) and (c) of this chapter.

SEC. 29.63.040. ASSESSMENT ROLL. (a) At any time after project approval, the assembly or council shall assess the authorized percentage of the cost against property within the district (TRACTS) in proportion to benefit received. (ASSESSMENTS MAY NOT EXCEED ACTUAL COSTS.)

(b) The special assessment roll shall contain (CONTAINS) property descriptions, names of record owners (OF RECORD) and assessment amounts.

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

SEC. 29.63.050. HEARING AND SETTLEMENT. After the public hearing, the assembly or council shall correct errors and any inequalities in the roll, provided that, if any assessment is raised, a new hearing shall be set and notice mailed as for the original assessment roll and further provided that objections shall be limited to record owners of property on which the assessment was raised. When the roll is corrected, it shall be confirmed by resolution or ordinance of the assembly or council. (THE CLERK SHALL SO CERTIFY.)

SEC. 29.63.060. PAYMENT. (a) The assembly or council shall fix times of payment, rate of interest on the unpaid balance of the assessment, and if possible in installments penalties and interest on (DELINQUENCY OF) delinquent payments. PAYMENT MAY NOT BE REQUIRED SOONER THAN 60 DAYS AFTER ASSESSMENT. Payment may be in one sum or by installments, but the total assessment (A SUM OR INSTALLMENT) may not exceed 25 per cent of the assessed value of the property affected. If payment is to be in one sum, payment may not be required sooner than 60 days after mailing of the assessment statement. If payment is to be by installment, the entire assessment may be prepaid without interest or penalty within 30 days after mailing of the assessment statement; and thereafter may be prepaid in whole or in part with interest to the next installment payment date. Penalty and interest on delinquent payments are the same as for real property taxes and are in addition to interest on the unpaid balance of the assessment if payable in installments.

(b) Within 30 days after fixing the time of payment, the municipal clerk shall mail a statement to the owner of record of each property assessed. The statement designates the property,

the assessment amount, method of payment, rate of interest on the unpaid balance of the assessment if payable in installments, the time of delinquency, and penalties on delinquent payments.

(c) Within five days after the statements are mailed, the clerk shall publish notice that the statements have been mailed.

(d) Assessments are liens upon the property assessed and are prior and paramount to all liens except municipal tax liens. They may be enforced as provided in AS 29.53.200 - 29.53.390 for enforcement of property tax liens.

SEC. 29.63.065. EXEMPTION. (a) The real property owned and occupied by a resident 65 years of age or over, or the spouse, widow, widower, or minor heir of the original applicant, on which is located only his permanent abode which is a single-family residence, is exempt from (1) special sewer assessments levied by a home rule or general law municipality after September 2, 1975 and (2) special water assessments levied by a home rule or general law municipality after September 2, 1975. Only one exemption may be granted with respect to the same property, and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the municipality determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the municipality is appealable under AS 44.62.560 - 44.62.570.

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

(1) the claimant must file the initial application during the period of time between the date the assessment roll is confirmed (CERTIFIED) and the time of payment fixed by the assembly

or council. Within one year of the date the assessment roll is confirmed (CERTIFIED) the assembly or council for good cause shown may waive the claimant's failure to make timely initial application for the exemption and authorize the assessor to accept the application as if timely filed.

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

(3) if an application is filed within the required time under this subsection and is approved by the assembly or council, the exemption shall be allowed in accordance with the provisions of this section. If a waiver under this subsection is granted and the application for exemption approved, the amount of any assessment, penalty or interest which the claimant may have already paid on the assessment shall be refunded to him. The municipality may at any time require proof in the form considered necessary of the right and amount of an exemption claimed under this section.

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

(1) upon sale or other transfer of the property except to a spouse, widow, widower, or minor heir; however, if the property

is transferred to a minor heir the lien becomes due and payable on the date the minor heir reaches the age of 25 years; or

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

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

(d) In this section

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

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

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

SEC. 29.63.070. REASSESSMENT. (a) The assembly or council shall within one year correct any deficiency in a special assessment found by a court.

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

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

(d) The reassessment becomes a charge upon the property notwithstanding failure to comply with any provision of the assessment procedure.

SEC. 29.63.075. ALLOWABLE COSTS. Whenever special assessment district is created, there shall be included in the cost and expense of the district.

(1) all of the cost of making the local improvement;

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

(3) the cost of all advertising, mailing, and publishing of all notices;

(4) interest on interim financing;

(5) the cost of legal services and any other expenses incurred for district or in the formation of the district, or in connection with making the improvement and in the financing the improvement, including the issuance of any bonds;

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

SEC. 29.63.080. OBJECTION AND APPEAL. (a) The regularity or validity of an assessment may not be contested by a person who did not file with the municipal clerk a written objection to the assessment roll before its confirmation.

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

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

SEC. 29.63.083. INTERIM FINANCING. (a) The assembly or council may provide by resolution or ordinance for the issuance of warrants in payment of the costs and expenses of any local improvement project, payable out of the special assessments for such improvement. The warrants shall bear interest at a rate or rates as authorized by the resolution or ordinance and shall be redeemed either in cash or by bonds for the same project.

(b) All warrants issued against any assessments shall be claims and liens against those assessments prior and superior to any right, lien or claim of any surety upon the bond given to the borough or city by or for the contract to secure the performance of its contract or to secure the payment of persons

who have performed work thereon, furnished materials therefor, or furnished provisions and supplies for the carrying on of the work.

(c) The municipal treasurer may accept warrants against special assessments upon conditions as the assembly or council may prescribe in payment of

(1) assessments against which the warrants were issued in due order of priority;

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

(3) certificates of purchase in cases where property of delinquents has been sold under execution or at tax sale for failure to pay the assessments.

SEC. 29.63.085. SPECIAL ASSESSMENT BONDS. (a) The assembly or council may by ordinance authorize the issuance and sale of special assessment bonds to pay all or part of the cost of an improvement in a special assessment district. The principal and interest of bonds issued shall be payable solely from the levy of special assessments against the property to be benefited. The assessments shall constitute a sinking fund for the payment of principal and interest on the bonds. The property benefited may be pledged by the assembly or council to secure a payment.

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

(c) Before the assembly or council may issue special assessment bonds, it shall establish a guarantee fund and appropriate to the fund annually a sum adequate to cover any deficiency in meeting payments of principal and interest of bonds issued by reason of nonpayment of assessments when due. Money received

from actions taken against property for nonpayment of assessments shall be credited to the guarantee fund. (INTEREST ON THE GUARANTEE FUNDS SHALL BE A COST OF THE IMPROVEMENT DISTRICT.)

CHAPTER 58. MUNICIPAL DEBT.

ARTICLE

1. Revenue Anticipation Notes (§§ 29.58.010--29.58.060)
2. Bond Anticipation Notes (§§ 29.58.070--29.58.140)
3. General Obligation Bonds (§§ 29.58.150--29.58.180)
4. Revenue Bonds (§§ 29.58.200--29.58.230)
5. Refunding Bonds (§§ 29.58.240--29.58.280)
6. Miscellaneous Provisions (§§ 29.58.300--29.58.350)

ARTICLE 1. REVENUE ANTICIPATION NOTES.

SECTION	SECTION
10. Borrowing in anticipation of revenue	40. Issuance of notes in anticipation of state, federal grants
20. Issuance of notes	50. Priority of repayment
30. [REPEALED]	60. Sale of notes

SEC. 29.58.010. BORROWING IN ANTICIPATION OF REVENUE. A municipality of the state which is authorized to incur indebtedness may borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues for that year but all debt so contracted shall be paid before the end of the next fiscal year. Revenue anticipation notes may be issued as evidence of the borrowing.

SEC. 29.58.020. ISSUANCE OF NOTES. The governing body of a municipality may, by ordinance or resolution, authorize the issuance of revenue anticipation notes and prescribe the form and details of the notes and the manner of their execution. The governing body of the municipality may delegate to its chief fiscal officer the power to issue the notes from time to time under the terms and conditions of the ordinance or resolution which provides for the manner of their sale.

SEC. 29.58.030. LIMITATION ON ISSUANCE OF NOTES. The aggregate amount of revenue anticipation notes at any time outstanding may not exceed 50 percent of the amount of revenues estimated to be collected in the fiscal year in which the notes are issued, less the amount of estimated revenues actually collected in the fiscal year before the issuance of the notes.

SEC. 29.58.040. ISSUANCE OF NOTES IN ANTICIPATION OF STATE, FEDERAL GRANTS. (a) The governing body of a municipality, upon adoption of a long-range capital improvement budget by ordinance or resolution, may by resolution provide for revenue anticipation notes in an amount not to exceed the total amount of any state or federal grants finally committed for these projects. The notes mature no later than the end of the next fiscal year. The notes may be for single or multiple projects outlined in the adopted capital improvement budget.

(b) If the state or federal grants for capital improvement projects have not been paid to the municipality before maturity of the notes issued in anticipation of the receipt of the revenue, the governing body of the municipality may issue new notes in order to meet payment of the notes then maturing or may renew the outstanding revenue anticipation notes. New notes issued or renewals of outstanding revenue anticipation notes shall mature not later than the end of the next fiscal year.

SEC. 29.58.050. PRIORITY OF REPAYMENT. The payment of the principal and interest on the revenue anticipation notes shall be payable from revenues, and their payment additionally shall be secured by a pledge of the full faith, credit and unlimited taxing power of the municipality issuing them.

SEC. 29.58.060. SALE OF NOTES. The municipality may sell revenue anticipation notes in the manner and at the price it determines, at either public or private sale.

ARTICLE 2. BOND ANTICIPATION NOTES.

SECTION	SECTION
70. Bond anticipation borrowing	110. Security
80. Issuance of notes	120. Limitation
90. Issuance of new notes	130. Use of proceeds
100. Repayment of notes	140. Sale of notes

SEC. 29.58.070. BOND ANTICIPATION BORROWING. A municipality may borrow money in anticipation of the sale of general obligation and revenue bonds if

(1) the general obligation bonds to be sold have been authorized by the assembly or council and ratified by a majority vote at a regular or special election;

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

SEC. 29.58.080. ISSUANCE OF NOTES. The assembly or council shall issue negotiable or nonnegotiable notes for the amounts borrowed with a maturity date not to exceed one year from the date of issue. All notes and the interest on them are payable at fixed places on or before a fixed time, from the proceeds of the sale of bonds in anticipation of which the original note or notes were issued unless the bonds have not been sold by the maturity date of the notes.

SEC. 29.58.090. ISSUANCE OF NEW NOTES. If the sale of the bonds has not occurred before the maturity of the notes issued in anticipation of the sale, the assembly or council shall issue new notes in order to meet payment of the notes then maturing or shall renew the outstanding bond anticipation notes. New notes issued or renewals of outstanding bond anticipation notes shall bear a maturity date not to exceed one year from the date of issue. Notes, new notes, and renewals of notes shall not be outstanding for a total elapsed time of more than three years.

SEC. 29.58.100. REPAYMENT OF NOTES. Every note is payable from the proceeds of the sale of bonds which the notes anticipated or from the proceeds of the sale of new bond anticipation notes.

SEC. 29.58.110. SECURITY. (a) Notwithstanding any other provisions of this chapter as to payment of notes, notes issued in anticipation of the sale of general obligation bonds and the interest on them are secured by the full faith, credit, taxing power and resources of the municipality. The municipality may levy ad valorem taxes for payment without limitation of rate or amount.

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

SEC. 29.58.120. LIMITATION. The total amount of notes issued and outstanding shall at no time exceed the total amount of bonds authorized to be issued.

SEC. 29.58.130. USE OF PROCEEDS. The proceeds from the sale of notes shall be used only for the purposes for which the proceeds from the sale of bonds may be used or to meet payment of outstanding bond anticipation notes.

SEC. 29.58.140. SALE OF NOTES. Notes issued under this chapter shall be sold by the municipality in the manner and at a price it determines, at either public or private sale, but no note may be sold for less than par and accrued interest.

ARTICLE 3. GENERAL OBLIGATION BONDS.

SECTION	SECTION
150. General obligation bonds	170. Form and terms of sale
160. Vote and notice of existing indebtedness required	180. Payment

SEC. 29.58.150. GENERAL OBLIGATION BONDS. A municipality may acquire, construct, improve and equip capital improvements and issue negotiable or nonnegotiable general obligation bonds for these purposes.

SEC. 29.58.160. VOTE AND NOTICE OF EXISTING INDEBTEDNESS REQUIRED.

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

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

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

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

(3) the total assessed valuation within the municipality.

SEC. 29.58.170. FORM AND TERMS OF SALE. The assembly or council shall fix the date of the bonds, denominations, maturities, rate of interest, place and manner of payment, redemption terms, registration privileges, manner of execution, and signatures required. If an officer whose signature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature is valid as if he had remained in office until delivery.

SEC. 29.58.180. PAYMENT. (a) The full faith and credit of a municipality are pledged for the payment of principal and interest on general obligation bonds. The municipality may levy ad valorem taxes for payment without limitation of rate or amount to pay or secure the payment of the principal and interest on bonds, regardless of whether the bonds are in default or in danger of default.

(b) General obligation bonds issued for acquiring, constructing, improving and equipping a municipally-owned utility or other

revenue-generating enterprise may be additionally secured by a pledge of the revenue derived from operation. Bonds so secured are not subject to a debt limitation imposed by a borough or city home rule charter.

ARTICLE 4. REVENUE BONDS.

SECTION

- 200. Revenue bonds
- 210. Forms and terms
- 220. Payment
- 230. Operation of AS 37.10.085

SEC. 29.58.200. REVENUE BONDS. (a) A municipality may acquire, construct, improve and equip capital improvements to be operated upon a revenue-producing basis, and bonds for these purposes are payable solely from [UNPLEDGED] revenue of the public facilities for which the bonds are issued or from revenue of other public revenue-producing facilities Revenue bonds shall not be payable from taxes or from the general funds of the municipality.

(b) A municipality may issue its revenue bonds to finance the purchase of residential mortgage loans. The revenue bonds issued under this subsection are payable solely from the principal and interest of the mortgage loans and from any other amounts pledged by the municipality, except the pledge of revenues derived from taxes. Revenue bonds issued under this subsection do not constitute a general obligation of the municipality.

(c) A municipality may also issue revenue bonds for any lawful purpose. The bonds are payable from any amounts pledged by the municipality except taxes and do not constitute general obligations of the municipality.

SEC. 29.58.210. FORMS AND TERMS. The assembly or council shall fix the date of the bonds, denominations, maturities, rate or rates of interest, place and manner of payment, redemption terms, registration privileges, manner of execution, signatures required, and other details of the bonds. If an officer whose signature appears on the bonds or coupons ceases to be an officer before

delivery of the bonds, his signature is valid as if he had remained in office until delivery.

SEC. 29.58.220. PAYMENT. Bonds issued under AS 29.58.200-- 29.58.220 or the proceedings of the assembly or council authorizing their issuance may contain the covenants which the assembly or council considers advisable concerning

(1) the rates or fees to be charged for services rendered by the public facilities, the revenue of which is pledged to the payment of the bonds, or the terms and conditions of any other amounts collected which are pledged to the payment of the bonds;

(2) the deposit and use of the revenue of the public facilities or of other amounts collected which are pledged to the payment of the bonds;

(3) the issuance of additional bonds payable from revenue of the public facilities or of other amounts collected which are pledged to the payment of the bonds;

(4) the rights of the bondholders in case of default in the payment of the principal or interest on the bonds, including the appointment of a receiver to operate the public facilities;

(5) other covenants as the assembly or council determines.

SEC. 29.58.230. OPERATION OF AS 37.10.085. The prohibitions of AS 37.10.085 shall not apply to the issuance of revenue bonds or the use of proceeds from revenue bonds by a home rule or general law municipality.

ARTICLE 5. REFUNDING BONDS.

SECTION

240. Authorization
250. Effect of bonds
260. No election required

SECTION

270. Payment of refunding bonds
280. Sale

SEC. 29.58.240. AUTHORIZATION. If a municipality has outstanding general obligation or revenue bonds and the assembly or council determines that it would be financially advantageous to refund the bonds, the assembly or council may provide by ordinance

for the issuance of general obligation or revenue refunding bonds.

SEC. 29.58.250. EFFECT OF BONDS. The refunding bonds may take up and refund all or any part of outstanding bonds at or before their maturity or redemption date. The assembly or council may include various series and issues of bonds in a single issue of refunding bonds.

SEC. 29.58.260. NO ELECTION REQUIRED. No election is required to authorize the issuance and sale of refunding bonds. Their issuance may be authorized and all proceedings with reference to them prescribed by ordinance of the assembly or council. However, when it is desirable to use general obligation bonds to refund a revenue bond issue, the governing body shall call an election on the question.

SEC. 29.58.270. PAYMENT OF REFUNDING BONDS. General obligation refunding bonds are payable according to § 180 of this chapter. Revenue refunding bonds are payable according to § 220 of this chapter.

SEC. 29.58.280. SALE. General obligation or revenue refunding bonds may, in the discretion of the assembly or council, be exchanged at par for the bonds being refunded, or may be sold at public or private sale for an amount not less than par and accrued interest. They may be issued and delivered at any time before the date of maturity or redemption of the refunded bonds.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

SECTION	SECTION
300. Public sale	320. Redemption before maturity
310. Interest rate	340. Borough indebtedness
315. Bond attorneys, bond and financial consultants	345. Bonded indebtedness
	350. Bond Guaranty Fund

SEC. 29.58.300. PUBLIC SALE. The municipality shall sell all bonds at a public or private sale as provided by ordinance. No general obligation bonds may be sold at less than par value.

ALTERNATE SEC. 29.58.300. PUBLIC SALE. The municipality shall sell all bonds at a public or private sale as provided by ordinance (NO BONDS MAY BE SOLD AT LESS THAN PAR VALUE).

SEC. 29.58.310. INTEREST RATE. No municipal bond or note may bear an interest rate exceeding the contract usury rate of interest provided by law.

SEC. 29.58.315. BOND ATTORNEYS, BOND AND FINANCIAL CONSULTANTS. The governing body or its designee of a home rule or general law municipality shall be the sole contracting authority for bond attorneys, bond consultants and financial consultants engaged in long-range financial planning of the municipality which leads to sale of bonds.

SEC. 29.58.320. REDEMPTION BEFORE MATURITY. A bond or note may be made subject to redemption before maturity as stated in the authorization or in the bond or note.

SEC. 29.58.340. BOROUGH INDEBTEDNESS. (a) Boroughs may incur indebtedness

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

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

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

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

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

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

SEC. 29.58.345. BONDED INDEBTEDNESS FOR SCHOOL CONSTRUCTION. A home rule city levying property taxes for schools, upon furnishing proof satisfactory to the Department of Education and the Department of Community and Regional Affairs of the needs for school facilities which, if provided, will require the city to exceed limits on authorizing or issuing bonds which may be established by charter, may exceed the limits to the extent necessary to pay costs of school construction. In this section "costs of school construction" means costs as defined in AS 43.18.100(g)(2).

SEC. 29.58.350. BOND GUARANTEE FUND. (a) To guarantee payment by the state of the principal and interest of bonds issued under the enabling authority of § 345 of this chapter, there is in the Department of Community and Regional Affairs a special fund called the local school bond guarantee fund in which there shall be deposited all money appropriated by the legislature for the purpose of the fund and other money which may be made available for the purpose of the fund from any other source. Money in the

fund shall be held and applied solely to further guarantee and provide an additional pledge of payment of all bonds issued under the provisions of § 345 of this chapter. Money shall not be withdrawn from the fund if a withdrawal would reduce the amount in the fund to an amount equal to less than the "maximum debt service reserve" (as defined in this section), except for payment of interest then due and payable on bonds and the principal of bonds then maturing and payable and for the retirement of bonds in accordance with the terms of a contract between the municipality and its bondholders and for the payments on account of which interest or principal or retirement of bonds other money is not then available in accordance with the terms of the contract. In this section "maximum debt service reserve" means, as of any date of computation, the largest amount of money required by the terms of all contracts between municipalities and their bondholders as to bonds issued under § 345 of this chapter to be raised in any succeeding calendar year for the payment of interest on and maturing principal of outstanding bonds and payments required by the terms of the contracts to sinking funds established for the payment or redemption of the bonds, all calculated on the assumption that bonds will cease to be outstanding after the date of the computation by reason of the payment of bonds at their respective maturities and the payments of the required money to sinking funds and the application of the money in accordance with the terms of the contracts to the retirement of bonds.

(b) Money in the guarantee fund at any time in excess of the maximum debt service reserve, whether by reason of investment or otherwise, may be withdrawn by the department and transferred to the general fund.

(c) Money at any time in the guarantee fund may be invested in any direct obligation of, or obligations as to which principal and interest is guaranteed by, the United States, the state or a political subdivision.

(d) For purposes of valuation, investments in the guarantee fund shall be valued at the lowest of the par value, cost to the authority, or market value of the investments. Valuation on any particular date shall include the amount of interest then earned or accrued to that date on any money or investments in the fund.

(e) Other provisions of this section notwithstanding, no bonds may be issued carrying the guarantee provided in this section unless there is in the guarantee fund the maximum debt service reserve for all bonds then issued and outstanding and the bonds about to be issued, but nothing prevents or precludes a municipality from satisfying the foregoing requirement by depositing so much of the proceeds of the bonds about to be issued, upon their issuance, as is needed to achieve the maximum debt service reserve.

(f) In order to assure the maintenance of the maximum debt service reserve in the guarantee fund, there is authorized to be appropriated annually and paid to the authority for deposit in the fund, the sum, if any, that is certified by the commissioner of community and regional affairs to the governor as necessary to restore the fund to an amount equal to the maximum debt service reserve. The chairman shall annually, before December 2, deliver to the governor his certificate stating the sum, if any, required to restore the fund to that amount, and the sum so certified is authorized to be appropriated and paid to the fund during the then current state fiscal year.

(g) Nothing in this section may be considered to cause bonds, payment of which is guaranteed from money in the fund established under this section, to be in any way a debt or liability of the state or any political subdivision of the state other than the political subdivision issuing the bonds, and the bonds, whether or not payable from the maximum debt service reserve created and established under this section, shall not create or constitute an indebtedness, liability or obligation of the state or be or constitute a pledge of the faith and credit of the state.

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

1. Are unified municipalities home rule or general law? This needs to be clarified. *They are boroughs - probably should not be spelled out of course they are home rule (29.68.240)*
2. We recommend that AS 29.08.050 Transition be repealed as out of date. *yes*
3. We recommend that the statute concerning REAAs be expanded to include procedures for integrating REAAs into newly organized boroughs.
4. AS 29.18.180. Organization Grants. The dollar amounts of the organizational grants are inadequate. We recommend the amount be tripled.
5. AS 29.68.290 Nomination of charter commission candidates. Should a legislative body be authorized to make appointments to the charter commission in case of vacancies on the commission because of a failure to elect enough people?
6. AS 29.68.440. Powers of a unified municipality. What is a unified municipality? *A borough*
7. Should the percentage requirements for signatures on petitions be lowered?
8. AS 29.68.500 Methods of dissolution. The section regarding the methods of dissolution are confusing, in that the two methods outlined involve substantially the same processes. *No - 29.68.500 recognizes case law interpreting sec 12 & Art X which override if Commission chooses - see Fairview PUD's Resolution 36892540 and Odean v*
9. AS 29.13.050 Initiative and Referendum. This section *Pullington* should be clarified so that Home Rule municipalities are not bound by the procedures set out in the statute. *why not - appears they should be by charter not ordinance. Charter could incorporate general law by reference*

10. We need a more precise way of dealing with inconsistencies between Home Rule and state enactments. *No*

11. AS 29.13.100 Limitation of home rule powers. This "laundry list" of limitations on Home Rule needs to be reviewed. Should there be cross-referencing to the home rule provisions in other statutes? *No - the question of the extent of home rule other than for Title 29 could be very restrictive as to expenses to be allowed. Detail search and decision of inter statutes not possible.*

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

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

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

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

16. AS 29.23.021 Assembly composition and apportionment. We feel there should be a greater delineation between composition and reapportionment. *Not understood*

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

18. AS 29.48.130 (a) This should be amended to make possible budget transfers and supplemental appropriations by resolution instead ordinance. *Budget transfer possible. Appropriation by ordinance is long standing practice and setting it by allowing supplemental by resolution can make budget process meaningless. Any municipality should be able to handle problems.*

19. What should mayoral veto powers encompass? *Ordinance*

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

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

OK but will cost money for

TITLE 29 REVISION COMMISSION
Policy Advisory Group Meeting

Minutes of September 29 & 30, 1980

The second meeting of the Policy Advisory Group of the Title 29 Revision Commission was held September 29, 1980 in Courtroom K of the Alaska Court System Building, 303 K Street, Anchorage, Alaska. The meeting was called to order by Senator Arliss Sturgulewski, Chairman, at 9:00 a.m.

Present as members of the Policy Group were: Senator Arliss Sturgulewski, Representative Charles H. Parr, Ronald Larson, Russell W. Walker, Marilyn Dimmick, Donna Sherby, Jonathan Solomon, James Kohler, Ted Berns, and Dennis Sheldon representing Terry Cook. Ex-Officio members present were Ginny Chitwood and Phil Smith. Richard Garnett, III was there as a member of the Technical Committee. Ted Berns and Russell Walker are members of both the Policy Group and the Technical Group. Present from the staff of Legal Services were Jack Chenowith and Tamara Cook.

There to make presentations to the Policy Group were C. Demming Cowles, Deputy Commissioner of the Department of Environmental Conservation; David Dye, Planner for the Department of Community and Regional Affairs; Dr. Fred McGinnis, Deputy Commissioner of the Department of Health and Social Services; Stephanie Scott, representing the Haines Borough Assembly; and Mike Walleri representing Tanana Chiefs, Inc.

Guests and members of the public attending were: Stuart Bowdoin, Bristol Bay Borough; Gary Bradford, Bristol Bay Borough, Glen Svendsen, Administrative Assistant, Senate Community and Regional Affairs Committee; Cris Fowler, AOGA Regulatory Reform Committee; Ray Menninger from Haines; Jim Bennett, researcher for AVCP (Calista Corporation); Ellen Greenburg, and Emily Larson.

After the meeting was called to order and guests introduced themselves, Commissioner Cowles began the presentations. He spoke regarding the functions of the Department of Environmental Conservation which could be locally done and raised policy questions about whether state or local government should be in charge of the following functions:

1. Water system and sewage disposal inspections.
2. Subdivision review of on-site sanitation capabilities.
3. Basic sanitation inspections of restaurants, hotels, etc.

4. Clean up of small oil spills.

5. The issuing of oily waste burn permits and surface oiling permits.

6. Litter control.

7. Vehicular emissions control.

Changes to Title 29 would have to be made to allow for delegation of these powers. Commissioner Cowles suggested that the statutes could make it optional for small communities to assume these powers and provide for state reimbursement, because money for communities to perform these services is a problem.

Stephanie Scott representing the Haines Borough Assembly spoke next. The borough of Haines would like a clarification of the powers of third class boroughs. She reported that the Borough Chairman had the following recommendations to make:

1. Rewrite 29.48.260(e) to relieve procedural requirements under Libby vs. Dillingham.

2. Include inventories as optional exemptions from personal property taxation.

Ms. Scott stated there would be teleconference facilities available in Haines December 1, and there was a great deal of local interest in participating in a teleconference with the Policy Group.

David Dye, Planner III for the Department of Community and Regional Affairs made these recommendations from his division:

1. The law should be amended to allow municipal land exchanges with individuals. Municipal expansion land in some cases is located too far from the community to be used for municipal expansion. The definition of "municipal purpose" should be clarified.

2. Subsection (c) of 29.48.260 sets out two procedural requirements for land disposal. Mr. Dye recommends that lottery be added as an equitable way of disposing of land which is not based on wealth.

3. The provision for voter ratification of disposal of land valued at more than \$25,000.00 should be changed to reflect current land values. A more realistic figure would be 50,000.00 to 100,000.00 dollars.

*lottery as
less than fair
market value
some
reservations*

4. Subsection (d) of 29.48.260 exempts lands derived from the state from procedural requirements. C&RA suggests that exemption turn on the purpose of disposal, not the source of the land.

5. Under ANCSA, people who have occupied land after December 18, 1971 do not receive title to that land. C&RA would like a preference right for occupiers of land after that date to allow them to purchase land without having to bid.

6. Mr. Dye would like a definition of "official map".

7. The wording of AS 29.23.090 should be changed to substitute "land use regulation" for "zoning".

8. C&RA suggests that rather than a platting waiver provision, the section include a "short plat" provision to allow for additional platting requirements if the land were subsequently re-subdivided.

9. AS 29.33.070(b)(2) allows boroughs to delegate planning and zoning to cities. The Department of Community and Regional Affairs believes in consistent area-wide planning and wants only the delegation of enforcement and administration of planning.

10. The sections regarding Development Cities should be deleted.

Mike Walleri of Tanana Chiefs, Inc. spoke regarding municipal lands disposal and the need for preference to occupiers of land regarding purchasing rights. This should, however, be subject to the municipality's sanction of the use of the land. Mr. Walleri recommends a waiver of the requirements for land payments to the municipality, or that the state assist buyers in paying for the land. Tanana Chiefs would support a lottery system if the preference rights and waiver of payments to municipalities were included. Mr. Walleri spoke in favor of integrating traditional native governments into the municipal system, possibly through recognition by the state of the status of native governments as local state governments.

Dr. Fred McGinnis of the Department of Health and Social services told us that his department recommends the delegation of health powers to municipalities. If municipalities were to take over the providing of services, the DHSS would still receive federal funding, would disburse the funds, would audit programs, supervise, and be responsible to the federal government for the administration of the programs. He emphasized that these powers should be optional rather than mandatory, and that in the absence of local government being able to take over the function of health services, a local contractor could provide them.

Doubtful - don't like this way because the local government handling has a bad record

*quality rights? how much
into a trust
sales
no - one has
around enough
real per floor*

*sub? 29.23.090
doubtful - zoning
has fine meaning*

*If we do this we get into the more than 2 lot fight
again.*

*Sound idea - do we want to get the heart of the borough - why not
going again.*

Open policy

*unconventional
see p 6.3
Walleri*

After the presentations, the committee considered Old Business. Phil Smith gave a report on the conclusions of the Information Dissemination Committee. Their recommendations are: take advantage of scheduled meetings and conventions being held by interested groups; put inserts in newsletters; buy space in newspapers; and use the teleconference network. Mr. Smith reported that the Alaska Federation of Natives Convention will be making a room available for us at the Sheraton. Chairman Sturgulewski said a member of each group should be available to attend the AFN Convention. She also directed the Department of Community and Regional Affairs to prepare an article on the Title 29 revision project for newsletters.

Ted Berns gave a report from the Technical Committee. He explained the draft index of Title 29, saying the reorganization had been done by subject matter. Mr. Berns told the Policy Group that the Technical Group was now ready to start drafting and the group had broken up into smaller groups to work on specific changes.

Chairman Sturgulewski said the Policy Group would like justification of all drafted changes in the form of memos pointing out the pluses and minuses of each change.

Ted Berns suggested that the Policy Group go through the index section by section and determine policy questions.

The Policy Group reviewed the index until recessing at 4:30.

The meeting was called to order 30 September 1980 at 9:00 a.m. by Chairman Sturgulewski. With the exception of Bob Lohr sitting in for Phil Smith, the same members were present. Guests were: Bob Walker of Exxon; Cris Fowler of the AOGA Regulatory Reform Committee; David Dye from the Department of Community and Regional Affairs; Stephanie Scott, Ray Menninger, and Vivian Menninger from the Haines Borough; Glen Svendsen, Administrative Assistant to the Senate Community and Regional Affairs Committee; and Mike Walleri, Tanana Chiefs, Inc.

The Policy Group continued their review of the Title 29 index and the Technical Group was directed to make recommendations regarding the following:

1. AS 29.13.100. Review and make recommendations as to the limitations of home rule powers. *Carful - this is probably the reason the court dropped the local activity rule*
2. Edit the whole of Title 29 so that definitions are consistent. *Yes*
3. List those procedures which can be handled by ordinances. *What does this mean?*

4. Prepare drafts to change prohibitions on powers.

5. Draft changes to the statute regarding initiative and referendum. *which way - give popular (don't let them "out") or establish changes of who judges*

6. Draft provisions for emergency situations arising from the lack of a quorum.

7. Redraft statute enabling budget actions to take place other than by ordinance. (Enable an individual municipality to set it's own limits) *Port understand*

8. Make recommendations regarding whether first class boroughs should be eliminated and consider the impact of this step. *I feel this option should remain open.*

9. Find out whether second class boroughs would still be able to implement a similar program if the statute about the Involvement of Young People in Local Government were to be deleted.

Chairman Sturgulewski directed that the Local Boundary Commission and Alan Tesche be invited to make a presentation in defense of retaining the statutes regarding Development Cities.

Probably not constitutional but not certain

Ron Larson moved the Policy Group retain the 3-year residency requirement for candidates for municipal office. The motion was seconded, Jim Kohler raised a point of order. The motion carried.

Marilyn Dimmick moved that the wording of the grounds for recall be deleted. The motion was seconded. Ron Larson moved to table the motion. Larson's motion failed. Ted Berns moved to postpone the motion until the next meeting. The motion for postponement passed.

Bob Lohr of RuralCAP was directed to come back with specific recommendations for the Technical Group regarding small communities and their problems.

The meeting was adjourned at 4:00 p.m.

Respectfully submitted,

Melissa Aber Fouse

Melissa Aber Fouse
Secretary

CHAPTER 15. BOUNDARY CHANGES BY LOCAL ACTION

Article

- 1. Annexation to Municipalities
- 2. Detachment from Municipalities

ARTICLE 1. ANNEXATION TO MUNICIPALITIES

Section

- 10. Initiation of request for boundary change
- 20. Form and contents of petition
- 30. Exhibits
- 40. Annexation of territory of another municipality
- 50. Filing of petition
- 60. Sufficiency
- 70. Review by Local Boundary Commission
- 80. Election
- 90. Notice of election
- 100. Conduct of election
- 110. Form of ballot
- 120. Canvassing of election
- 130. Effective date of annexation
- 140. Annexation without election
- 150. Annexation of municipally-owned property
- 160. Timeliness

19 AAC 15.010. INITIATION OF REQUEST FOR BOUNDARY CHANGE. (a) A request for an annexation under secs. 10-160 of this chapter may be initiated by a petition signed by at least ten percent of the currently registered voters residing within the territory proposed to be annexed, or by a petition of the municipality seeking annexation.

(b) The person or entity initiating the petition shall be designated petitioner. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.020. FORM AND CONTENTS OF PETITION. (a) The petition shall be addressed to the Department of Community and Regional Affairs and shall bear a caption which clearly identifies the nature of the boundary change and

the municipality whose boundary is to be changed.

(b) The petition shall contain:

(1) the name, residence address, and mailing address of each petitioner;

(2) the name and mailing address of the attorney or other representative designated by the petitioner(s) to receive service, notice and all other correspondence relating to the proceedings in behalf of the petitioner(s);

(3) a legal description of the territory affected by the proposed boundary change;

(4) the estimated number of residents within the territory proposed to be annexed;

(5) the quantity of land contained within the territory proposed to be annexed;

(6) the assessed or estimated value of all real and personal property within the territory proposed to be annexed;

(7) the rate or rates at which real and personal property are taxed within the municipality to which annexation is proposed;

(8) the rate or rates of any sales or use tax levied by and/or collected within the municipality to which annexation is proposed;

(9) the amount of and a full explanation of any outstanding bonded indebtedness for which the territory proposed to be annexed is wholly or partially responsible;

(10) the population and area of the annexing municipality. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.65.010(b)
AS 44.19.260(a)(2)

19 AAC 15.030. EXHIBITS. There shall be appended to the petition the following exhibits:

(1) a map or maps showing the boundaries of the territory proposed for annexation; and

(2) an affidavit indicating the source from which the information contained in the petition and exhibits was acquired, and stating that an estimation of the population was made, specifying the dates when the estimate was made and circumstances indicating its accuracy. If an official census has been made of the territory by the federal, state or municipal government within two years of the petition, a copy of that census may be appended to the petition in lieu of the census affidavit. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.040. ANNEXATION OF TERRITORY OF ANOTHER MUNICIPALITY.

(a) If a petition seeks annexation to a borough, of territory that is part of another city, the assembly or council of the municipality to which annexation is sought shall transmit, together with those documents required in secs. 20 and 30 of this chapter, a description of all municipally-owned improvements or assets relating to services that will be undertaken by it, and an enumeration of all debts or obligations relating to said improvements or assets. Before undertaking review, the department shall require the following to be filed:

(1) a petition for detachment from the municipality from which the subject territory is to be excluded;

(2) an agreement between the municipalities apportioning and distributing between them the debt attributable to those improvements and assets within the territory proposed to be annexed, which method of apportionment or distribution shall be in a form acceptable to the department.

(b) If a petition seeks annexation to a city of territory that is part of an organized borough, the council of the city to which annexation is sought shall transmit, together with those documents required in secs. 20 and 30 of this chapter, a description of all improvements and assets of the borough relating to services that will be undertaken by it, and an enumeration of all debts or obligations relating to said improvements or assets. Before undertaking review, the department shall require to be filed

an agreement between the city and borough apportioning and distributing between them the assets and debts attributable to the territory to be annexed. If such agreement is not forthcoming, the city council may submit in lieu thereof a proposal governing such distribution. Unless the distribution is governed by an agreement between the municipalities, the Local Boundary Commission shall specify the method of distribution. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.050. FILING OF PETITION. A petition initiated by 10 percent of the registered voters in the area to be annexed shall be filed with the assembly or council of the municipality. If the assembly or council desires to proceed with the annexation of the territory that is the subject of the petition, it shall adopt a resolution of intention to annex which shall specifically incorporate the terms and provisions of the petition. One copy of the resolution, together with the petition, exhibits, and all related materials, shall be served upon the Department of Community and Regional Affairs. A petition initiated by the municipality shall be forwarded, along with other required material, directly to the department. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.060. SUFFICIENCY. Within 30 days of receipt of the petition, exhibits, and all supporting data required by secs. 20-40 of this chapter, the department shall determine whether the documents are sufficient, the department shall refer the file to the Local Boundary Commission, together with such report or recommendations as it desires. A deficient petition shall be returned to the petitioners for correction, and notice of return transmitted to the assembly or council of the municipality. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.070. REVIEW BY LOCAL BOUNDARY COMMISSION. (a) The Local Boundary Commission shall review the petition, all exhibits thereto, the resolution, and other pertinent data. Such review shall be limited to the following factors:

(1) whether the annexation would be inimical to the interests of the State or any municipality other than the municipality to which annexation of the territory is sought;

(2) whether the territory proposed for annexation is grossly disproportionate in size to the population residing therein, provided, however, that this provision shall not prohibit an annexation merely because the area to be annexed consists of or contains uninhabited territory.

(b) If the Local Boundary Commission determines that the petition is defective under the provisions of subsection (a) (1) or (2), it shall return the petition to the petitioner(s) together with such comments or observations as may be appropriate and conducive to resubmission of the proposal.

(c) If the Local Boundary Commission accepts the petition, resolution, and related material, it may so notify the assembly or council of the municipality, and direct that an election be conducted on the proposal.

(d) A decision of the Local Boundary Commission shall be rendered within 30 days of report of the petition by the department. The commission may act by telephone or mail. In no event shall non-compliance with the time limit established herein for commission action affect the validity of an election or annexation.

(e) Notwithstanding any other provision of this chapter, if the Local Boundary Commission prior to a decision to submit the annexation to an election under sec. 80 of this chapter determines that a proposed annexation is of compelling public importance it may require that the petition be acted upon pursuant to chapters .05 and .10 of this title. If such determination is made, the Local Boundary Commission shall schedule public hearings

within 45 days, and shall notify the municipality of its determination. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.080. ELECTION. The assembly or council shall submit the proposition to the voters in the area proposed to be annexed in accordance with applicable provisions of the election code of the municipality, but in any event, the election shall be held not less than 60 or more than 90 days after notification by the Local Boundary Commission that the petition has been accepted. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.090. NOTICE OF ELECTION. The assembly or council shall give notice of the election by publication of notice in a newspaper of general circulation in the territory proposed to be annexed once each week for a period of three successive weeks before the election, and by posting notice in three public places in the municipality within the territory proposed to be annexed during the same period. Posting of the notices and initial publication of the notice in the newspaper shall be at least four weeks before the date of the election. The notice shall state:

(1) the proposition to be submitted;

(2) the boundaries of the territory to be annexed; and

(3) any provision or agreement governing distribution of debt or assets required under 19 AAC 15.040. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.100. CONDUCT OF ELECTION. Except as otherwise provided in this chapter, the assembly or council of the municipality to which annexation of the territory is sought shall conduct the election in the manner prescribed by its election code. The municipality seeking

annexation shall pay all election costs. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.110. FORM OF BALLOT. The assembly or council shall place upon the ballot the following proposition: "Shall the following described territory be annexed to the City/Town/Council of? Yes or No." If the proposal is subject to 19 AAC 15.040, the ballot shall also disclose the method of distributing debt and assets in a form acceptable to the department. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.120. CANVASSING OF ELECTION. The assembly or council shall meet within 10 days of the election and canvass the vote cast. The assembly or council shall issue a certificate showing the number of votes cast in favor of annexation and the number of votes cast against annexation. The certificate, together with all ballots cast, shall immediately be filed with the clerk of the municipality and a copy forwarded to the department. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.130. EFFECTIVE DATE OF ANNEXATION. An annexation shall be effective upon the filing of the certificate required by 19 AAC 15.120 to the effect that a majority of the votes cast were in favor of the annexation. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.140. ANNEXATION WITHOUT ELECTION. (a) Notwithstanding the provisions of secs. 80-120 of this chapter, an area adjoining the municipality may be annexed by ordinance if all property owners and registered

voters within the area petition the assembly or council for annexation.

(b) The assembly or council seeking to annex territory under this section shall forward to the department a certified statement of the municipal clerk that the petition received has been signed by all current registered voters and property owners.

(c) In its review, the department shall determine from information available to it whether the requisite signatures have been obtained. The department shall notify the assembly or council whether the petition is in accordance with this section, and if it is in accordance with this section, the annexation is effective upon such notification.

(d) For the purposes of this section the term "property owners" means all persons or entities necessary to convey fee title to the property in question but does not include mortgagees or trustees or beneficiaries under deeds of trust. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.150. ANNEXATION OF MUNICIPALLY OWNED PROPERTY. (a) Notwithstanding other provisions of this chapter, municipally owned property adjoining the municipality may be annexed by ordinance without voter approval.

(b) Within five days of adoption of an ordinance annexing territory pursuant to (a) of this section, one certified copy of the ordinance, giving the date of adoption, shall be filed with the Department of Community and Regional Affairs. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.160. TIMELINESS. No area subject to a petition under this chapter which was defeated in an election may be included in the area covered by a subsequent petition under

this chapter filed within one year after the original petition. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

ARTICLE 2. DETACHMENT FROM MUNICIPALITIES

Section

- 170. Initiation of request for boundary change
- 180. Form and contents of petition
- 190. Exhibits
- 200. Detachment of territory from a city within an organized borough
- 210. Filing of petition
- 220. Sufficiency
- 230. Review by Local Boundary Commission
- 240. Election
- 260. Conduct of election
- 270. Form of ballot
- 280. Canvassing of election
- 290. Effective date of detachment
- 300. Timeliness

19 AAC 15.170. INITIATION OF REQUEST FOR BOUNDARY CHANGE. (a) A request for a detachment under secs. 170-300 of this chapter may be initiated by a petition signed by at least 10 percent of the currently registered voters residing within the territory proposed to be detached, or by petition of the municipality seeking detachment.

(b) The person or entity initiating the petition shall be designated petitioner. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.180. FORM AND CONTENTS OF PETITION. (a) The petition shall be addressed to the Department of Community and Regional Affairs and shall bear a caption which clearly identifies the nature of the boundary change and the municipality whose boundary is to be changed.

(b) The petition shall contain

(1) the name, residence address, and mailing address of each petitioner;

(2) the name and mailing address of the attorney or other representative designated by the petitioner(s) to receive service, notice and all other correspondence relating to the proceedings in behalf of the petitioner(s);

(3) a legal description of the territory affected by the proposed boundary change;

(4) the estimated number of residents within the territory proposed to be detached,

(5) the quantity of land contained within the territory proposed to be detached;

(6) the assessed or estimated value of all real and personal property within the territory proposed to be detached;

(7) the rate or rates at which real and personal property are taxed within the municipality from which detachment is proposed;

(8) the rate or rates of any sales or use tax levied by and/or collected within the municipality from which detachment is proposed;

(9) the amount of and a full explanation of any outstanding bonded indebtedness for which the territory proposed to be detached is wholly or partially responsible;

(10) the population and area of the detaching municipality. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.190. EXHIBITS. There shall be appended to the petition the following exhibits:

(1) a map or maps showing the boundaries of the territory proposed for detachment; and

(2) an affidavit indicating the source from which the information contained in the petition and exhibits was acquired, and stating that an estimation of the population was made, specifying the dates when the estimate was made

and circumstances indicating its accuracy. If an official census has been made of the territory by the federal, state or municipal government within two years of the petition, a copy of that census may be appended to the petition in lieu of the census affidavit. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.200. DETACHMENT OF TERRITORY FROM A CITY WITHIN AN ORGANIZED BOROUGH. If a petition seeks detachment from a city of territory that is part of an organized borough, the council of the city from which detachment is sought shall transmit, together with those documents required in secs. 180-190 of this chapter, a description of all improvements and assets of the city relating to services that are being furnished by it within the territory proposed for detachment, and an enumeration of all debts or obligations relating to said improvements or assets. Before undertaking review, the department shall require to be filed an agreement between the city and organized borough apportioning and distributing between them the assets and debts attributable to the territory to be detached. If such agreement is not forthcoming, the city council may submit in lieu thereof a proposal governing such distribution. Unless the distribution is governed by an agreement between the municipalities, the Local Boundary Commission shall specify the method of distribution. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.210. FILING OF PETITION. A petition initiated by 10 percent of the registered voters in the area to be detached shall be filed with the assembly or council of the municipality. If the assembly or council desires to proceed with the detachment of the territory that is the subject of the petition, it shall adopt a resolution of intention to detach which shall specifically incorporate the terms and provisions of the petition. One copy of the resolution, together with the petition, exhibits, and all related materials, shall be served upon the Department of Community and Regional

Affairs. A petition initiated by the municipality shall be forwarded, along with the other required materials, directly to the department. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.220. SUFFICIENCY. Within 30 days of receipt of the petition, exhibits, and all supporting data required by secs. 180-210 of this chapter, the department shall determine whether the documents are sufficient as to form and contain the required information. If the documents are found to be sufficient, the department shall refer the file to the Local Boundary Commission, together with such report or recommendation as it desires. A deficient petition shall be returned to the petitioners for corrections, and notice of return transmitted to the assembly or council of the municipality. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.230. REVIEW BY LOCAL BOUNDARY COMMISSION. (a) The Local Boundary Commission shall review the petition, all exhibits thereto, the resolution and other pertinent data. Such review shall be limited to the following factors:

(1) whether the detachment would be inimical to the interests of the state or any municipality other than the municipality from which detachment of the territory is sought;

(2) whether the territory proposed for detachment is grossly disproportionate in size to the population residing therein, provided, however, that this provision shall not prohibit a detachment merely because the area to be detached consists of or contains uninhabited territory.

(b) If the Local Boundary Commission determines that the petition is defective under the provisions of subsections (a) (1) or (2), it shall return the petition to the petitioner(s) together with such comments or observations as

may be appropriate and conducive to resubmission of the proposal.

(c) If the Local Boundary Commission accepts the petition, ordinance, and related material, it may so notify the assembly or council of the municipality, and direct that an election be conducted on the proposal.

(d) A decision of the Local Boundary Commission shall be rendered within 30 days of report of the petition by the department. The commission may act by telephone or mail. In no event shall non-compliance with the time limit established herein for commission action affect the validity of an election or detachment.

(e) Notwithstanding any other provision of this chapter, if the Local Boundary Commission determines that a proposed detachment is of substantial public importance, it may require that the petition be acted upon pursuant to Chapters .05 and .10 of this title. If such determination is made, the Local Boundary Commission shall schedule public hearings within 45 days, and shall notify the municipality of its determination. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.240. ELECTION. The assembly or council shall submit the proposition to the voters in the area proposed to be detached in accordance with applicable provisions of the election code of the municipality, but in any event, the election shall be held not less than 60 nor more than 90 days after notification by the Local Boundary Commission that the petition has been accepted. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.260. CONDUCT OF ELECTION. Except as otherwise provided in this chapter, the assembly or council of the municipality from which detachment of the territory is sought shall conduct the election in the manner prescribed by its election code. The municipality seeking

detachment shall pay all election costs. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.270. FORM OF BALLOT. The assembly or council shall place upon the ballot the following proposition: "Shall the following described territory be detached from the City/Borough of? Yes or No." If the proposal is subject to 19 AAC 15.200, the ballot shall also disclose the method of distributing debt and assets in a form acceptable to the department. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.280. CANVASSING OF ELECTION. The assembly or council shall meet within 10 days of the election and canvass the vote cast. The assembly or council shall issue a certificate showing the number of votes cast in favor of detachment and the number of votes cast against detachment. The certificate, together with all ballots cast, shall immediately be filed with the clerk of the municipality and a copy forwarded to the department. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.290. EFFECTIVE DATE OF DETACHMENT. A detachment shall be effective upon the filing of the certificate required by 19 AAC 15.120 to the effect that a majority of the votes cast were in favor of detachment. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.300. TIMELINESS. No area subject to a petition under this chapter which was defeated in an election may be included in the area covered by a subsequent petition under

this chapter filed within one year after the original petition. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

CHAPTER 20. MISCELLANEOUS PROVISIONS

Section

- 10. Severability of parts of regulations
- 20. General provisions
- 30. Definitions

19 AAC 20.010. SEVERABILITY OF PARTS OF REGULATIONS. The sections, paragraphs, sentences, clauses and phrases of these regulations are severable, and if any phrase, clause, sentence, paragraph, or section of these regulations shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect the remaining phrases, clauses, sentences, paragraphs, and sections of these regulations. (Eff. 10/13/72, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 44.19.260(a)(2)

19 AAC 20.020. GENERAL PROVISIONS. (a) Nothing in this chapter may be construed to require the commission to approve a boundary change which the commission determines not to be in the best interest of sound local government.

(b) The enumeration in this chapter of standards or factors for consideration may not be construed as exclusive of other factors which, in the view of the commission, are relevant to the decision in question.

(c) Before incorporation of a borough located wholly or partially within an existing borough or of a city located wholly or partially within an existing city may become effective, the commission must submit the proposed incorporation to the legislature in the manner provided for in boundary changes. In addition, the commission may condition such an incorporation on approval by a majority of the voters of the existing borough or city. (Eff. 10/13/72, Reg. 43)

Authority: Art. X, Sec. 12
State Constitution
AS 44.19.260(a)(2)

19 AAC 20.030. DEFINITIONS.

(1) "annexation" means an alteration of municipal boundaries which adds territory.

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

Sec. 29.12.160 (29.68.110). ORDINANCES. No change

NOTE: (1) substantive change in eliminating AS 29.68.030. The Local Boundary Commission has not adopted any regulation under (1), so there is only one way to initiate merger or consolidation.

(2) substantive change in AS 29.68.040(a) of the number of signatures required to petition from 25 percent to 15 percent, which matches percentages required for petition for other boundary alterations or for formation of municipality. Why should this be different? Residents are protected because they vote on the question.

(3) technical change in AS 29.68.090(d) to add procedural requirements and eliminate cross-reference to AS 29.10.120 for ease of use of this section.

ARTICLE 3. MERGER AND CONSOLIDATION

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

- (1) the name and class of each municipality;
- (2) the name and class of the proposed municipality;
- (3) the proposed composition and apportionment of the assembly or council;
- (4) maps, documents, and other information required by the department;
- (5) the signature and resident address of 15 per cent of the permanent resident voters in each municipality based on the number who voted in the last regular election.

Sec. 29.12.100 (29.68.050, 070). REVIEW AND INVESTIGATION.

(a) The department shall review a petition for merger or consolidation and return a deficient petition for correction.

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

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

Sec. 29.12.110 (29.68.070, 080). HEARING AND DECISION.

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

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

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

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

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

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

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

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

Sec. 29.12.150 (29.68.100). ASSETS AND LIABILITIES.

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

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

Sec. 29.12.160 (29.68.110). ORDINANCES. No change

add a line →
NOTE: (1) substantive change in eliminating AS 29.68.030. The Local Boundary Commission has not adopted any regulation under (1), so there is only one way to initiate merger or consolidation.

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municipality. Why should this be different? Residents are protected because they vote on the question.

(3) technical change in AS 29.68.090(d) to add procedural requirements and eliminate cross-reference to AS 29.18.120 for ~~each~~
case of use of this section.

ARTICLE 3. MERGER AND CONSOLIDATION

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

- (1) the name and class of each municipality;
- (2) the name and class of the proposed municipality;
- (3) the proposed composition and apportionment of the assembly or council;
- (4) maps, documents, and other information required by the department;
- (5) the signature and resident address of 15 percent of the permanent resident voters in each municipality based on the number who voted in the last regular election.

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

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

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

^{Sec.} AS 29. HEARING/AND/DECISION/ 12.110 (29.68.070, .080). HEARING AND DECISION. (a) Prior to making a decision regarding a petition for merger or consolidation, the Local Boundary Commission shall hold at least one public hearing in each of the municipalities included in the petition, unless officials of the municipalities agree to a single hearing.

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

boundaries or the composition and apportionment of the assembly or council can be altered to meet the standards, it may change the proposal and accept the petition.

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

(d) A decision by the Local Boundary Commission under this section may be appealed under the Administrative Procedure Act (aAS 14.62).

Sec. 29.12.1⁴20 (29.68.090). ELECTION. (a) Within 30 days after notification of acceptance of a merger or consolidation petition, the lieutenant governor shall order an election within the area to be included in the ^{proposed} ~~new~~ municipality to be held not less than 30 nor more than 90 days after the order.

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

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

(d) The lieutenant governor shall certify the election results. If merger or consolidation is approved, ~~he shall, within 10 days, set a date for election of officers of the new municipality under AS 29.09.120 (29.12.120)~~

for officers of he shall, within 10 days, order an election/~~in~~ the new municipality to be held not less than 30 nor more than 90 days after the order. The election order must specify the dates during which nomination petitions for election of officers may be filed. The merger or consolidation becomes effective upon election of municipal officers.

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

(b) When two or more municipalities consolidate, the newly

incorporated municipality succeeds to the rights, powers, duties, assets and liabilities of the consolidated municipalities.

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

- Note: (1) substantive change in eliminating AS 29.68.030. The Local Boundary Commission has not adopted any regulation under (1), so there is only one way to initiate merger or consolidation.
- (2) substantive change in AS 29.68.040(a) of the number of signatures required to petition from 25% to 15%, which matches percentages required for other boundary alterations or for formation of a municipality. *petition for*
(Residents are protected because they vote on the question
Why should this be different? ↑
- (3) *technical* ~~substantive~~ change in AS 29.68.090(d) to add ~~"The election order must specify the dates during which nomination petitions for election of officers may be filed."~~ This fills a procedural gap and conforms to procedure set out for the election of initial officers in a newly formed municipality, *add procedural requirements and eliminate cross-reference to 29.18.120 for ease of use of this section*

ARTICLE 2. ANNEXATION AND EXCLUSION.

Sec. 29.12.040 (29.68.010). MUNICIPAL BOUNDARY CHANGE.

(a) The Local Boundary Commission may consider and adopt by regulation a change of municipal boundary. A decision to alter a municipal boundary may be appealed under the Administrative Procedure Act (AS 44.62).

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

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

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

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

(c) A boundary change effected under (a) of this section prevails over a change initiated by local action, without regard to priority in time.

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

NOTE: substantive revision of 29.68.010(a) in view of the suggestion by City of St. Mary's and to avoid possible difficulties presented by the A.L.I.V.E. decision regarding the use of resolution to overturn agency action.

ARTICLE 2. ANNEXATION AND EXCLUSION.

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

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

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

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

(c) A boundary change effected under (a) of this section prevails over a change initiated by local action, without regard to priority in time.

Sec. 29.12.040 (29.68.020). ANNEXATION OF A MILITARY RESERVATION. A military reservation may be annexed to a municipality in the manner prescribed by AS 29.12.040

(29.68.010). If a city within a borough annexes a military reservation, the area encompassing the reservation is automatically annexed to the borough.

↗ NOTE: substantive revision of 29.68.010(a) in view of *the* suggestion by City of St. Mary's and to avoid possible difficulties presented by the A.L.I.V.E. decision regarding *the* use of resolution to overturn agency action.

Extra line

ARTICLE 2. ANNEXATION AND EXCLUSION.

29.12.040
Sec. (29.68.010). MUNICIPAL BOUNDARY CHANGE. (a) The Local Boundary Commission may consider and adopt by regulation any ~~local/government/~~ change of municipal boundaries. A decision to alter ^a municipal boundaries may be appealed under the Administrative Procedure Act (AS 44.62).

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

(1) ~~a regulation requiring that~~ a proposed annexation or exclusion be approved by a majority ~~vote~~ of the voters voting on the question residing within the area proposed to be annexed or excluded;

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

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

(c) A boundary change effected under (a) of this section prevails over a change initiated by local action, without regard to priority in time.

29.12.050
Sec. (29.68.020). ANNEXATION OF A MILITARY RESERVATION. A military reservation may be annexed to a municipality in the manner prescribed by AS ^{29.12.040} (29.68.010). If a city within a borough annexes a military reservation, ^{is} the area encompassing the reservation/automatically annexed to the borough.

Note: substantive revision of 29.68.010(a) in view of suggestion by City of St. Mary's and to avoid possible difficulties presented by the A.D.E. decision regarding use of resolution to overturn agency action.

CHAPTER 12. ALTERATION OF A MUNICIPALITY

Article 1. Change of Municipal Name

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

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

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

add an extra line

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

CHAPTER 12. ALTERATION OF A MUNICIPALITY

29.12.010 ARTICLE 1. CHANGE OF MUNICIPAL NAME

Sec. 29.73.050 CHANGE OF NAME. (a) The name of a municipality

may be changed by ordinance which is ratified by ^amajority of voters at regular or special election and filed with the office of the lieutenant governor. Upon receipt of a ratified ordinance, the lieutenant governor shall issue an order to the municipality changing its name in compliance with the ordinance. A name change shall become effective within 45 days of receipt of the ordinance on a date fixed in the order. A copy of the order shall be sent to the department.

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

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

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

ARTICLE 2. PROCEDURES

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

(1) class;

(2) name;

(3) boundaries;

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

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

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

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

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

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

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

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

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

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

(3) for a second class city, the signature and resident address of 25 permanent resident voters in the area of the proposed city or of 15 percent of the permanent resident voters in the area of the proposed city, whichever is greater, based on the number who voted in the last general election.

Sec. 29.09.070 (29.18.060, 070). REVIEW AND INVESTIGATION.

(a) The department shall review a petition for municipal incorporation and return a deficient petition for correction.

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

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

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

Sec. 29.09.080 (29.18.080, 090). HEARING AND DECISION.

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

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

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

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

Sec. 29.09.110 (29.18.110). INCORPORATION ELECTION.

(a) Within 30 days after notification of acceptance of an ~~incorporation~~ ^{incorporation} petition, the lieutenant governor shall order an election in the proposed municipality to be held not less than 30 nor more than 90 days after the order. The election order must specify the dates during which nomination petitions for election of initial officers may be filed. If the voters

approve incorporation, initial officers are elected in the same election.

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

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

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

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

Sec. 29.09.120 (29.18.120). ELECTION OF INITIAL OFFICERS.

(a) A nomination for an initial officer is made by petition in the form prescribed by the lieutenant governor and containing:

(1) the name and address of the nominee;

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

(3) to nominate an elected officer, the signature and resident address of 50 voters in the area of the proposed municipality or in the area from which the

officer is to be elected under the composition and apportionment set out in the incorporation petition;

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

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

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

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

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

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

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

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

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

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

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

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

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

Give extra line →
NOTE: (1) ~~substantive~~ change in 29.18.070 to eliminate public hearing by ^{the} department since one is held by Local Boundary Commission and ^{the} issue ^{is} decided by election.

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

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

(add to last page)

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

(4) 29.17.130 needs to be re-drafted.

⑤

ARTICLE 2. PROCEDURES

Sec. 29.18.050. PETITION. ~~Municipal incorporation is proposed by filing a petition with the Department of Community and Regional Affairs which includes~~

29.09.060 (a)
Sec. 29.18.050. PETITION. /Municipal incorporation is proposed by filing with the ~~Department of Community and Regional Affairs~~ ^{department} a petition containing the following information about the proposed municipality:

(1) class;
(2) name;
(3) boundaries
(4) maps, documents, and other information required by the ~~Department of Community and Regional Affairs~~ ^{department};

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

(6) ~~[EFFECTIVE UNTIL JANUARY 1, 1981]~~ composition and apportionment of the assembly or council;

~~(7) [EFFECTIVE JANUARY 1, 1981] composition and apportionment of the assembly or council, but the number of members of a borough assembly may not exceed 11.~~

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

(1) ^{with} the signature and resident address of 15 percent of the permanent resident voters ~~within the~~ ^{of} each first class city located ~~in the area of the proposed borough and 15 percent of the voters in the area/outside/first/class/cities/~~ ^{located with} in the area of the proposed borough but outside of a first class city ^{based on the number who voted in the last general election.}

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

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

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

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

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

(3) for a second class city, the signature and resident address of 25 permanent resident voters in the area of the proposed city or of 15 percent of the permanent resident voters in the area of the proposed city, whichever is greater, based on the number who voted in the last general election.

29.09.070 (170) AND INVESTIGATION. (a)
Sec. (29.18.060) REVIEW/A The department shall review ^a each petition for municipal incorporation and return ^a deficient petition for correction. ~~and completion~~

Sec. 29.18.070. INVESTIGATION. (b) If a petition ~~for municipal incorporation~~ contains the required information and number of signatures, the department shall investigate the proposal. ~~At least one public hearing shall be held in the area proposed for incorporation.~~

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

29.09.080 (170) HEARINGS AND DECISION. (a) (d) After investigation of a proposal ~~for municipal incorporation~~, the department shall report its findings and recommendations to the Local Boundary Commission. Prior to making a decision regarding ~~the proposal~~, the Local Boundary Commission shall ~~an incorporation petition~~

hold at least one public hearing in the area proposed to be incorporated.

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

(c) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance.
(d) A decision by the Local Boundary Commission under this section

may be appealed under the Administrative Procedure Act (AS 14.62).

Sec. ^{JA.09.110} (29.18.110). INCORPORATION ELECTION. (a) Within 30 days after notification ~~by the Local Boundary Commission~~ of acceptance of an incorporation petition, the lieutenant governor shall order an election in the proposed municipality to be held not less than 30 noré more than 90 days after the order. [^]If the voters approve incorporation, initial officers are elected in the same election. The election order must specify the dates during which nomination petitions for election of initial officers may be filed.

If incorporation is rejected ~~by the voters~~, no officers are elected.

An Alaska

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

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

(d) In an election for incorporation of a second class borough, ^{proposed nonareawide} each ~~power to be exercised outside cities only~~ shall be placed separately on the ballot. ~~Adoption of a nonareawide power requires~~ A majority vote ~~and the vote is limited to voters residing outside a city~~ is required ^{for adoption of a nonareawide power.}

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

29.09.120
Sec. (29.18.120). ELECTION OF INITIAL OFFICERS. (a) ^A/nomination for

an initial officer is made by petition in the form prescribed by the lieutenant governor and containing:

- (1) the name and address of the nominee;
- (2) a statement by the nominee that he is qualified for the office he seeks;
- (3) to nominate an elected officer, the signature and resident address of 50 voters in the area of the proposed municipality or in the area from which the officer is to be elected under the composition and apportionment set out in the incorporation petition;
- (4) to nominate an officer of a second class city, the signature and resident address of 10 voters in the area of the proposed city.

→ (b) A person may file for and occupy more than one office, but may not serve simultaneously as ⁽¹⁾ borough mayor and ~~as~~ a member of the assembly, ⁽²⁾ or as city mayor and ~~as~~ a member of the council of a home rule city; ~~or first class city.~~ ^{(3) city mayor and a member of the council of a first class city.}

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

(c) // The // Lieute

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

29.09.130
Sec. (29.18.130). INTEGRATION OF SPECIAL DISTRICTS AND SERVICE AREAS.

(Consider addressing the integration of REAA's under this section, per Lee Sharp's suggestion.)

29.09.140
Sec. (29.18.140). TRANSITION. (a) ~~The~~ ^A power ~~and~~ ^{or} duties exercised by

a city or service area which ¹⁵ ~~are~~ succeeded to by a newly incorporated borough continues to be exercised by the city or service area until assumed by the borough. A ¹⁵ powers ~~and~~ duties exercised by a service area which ~~are~~ ^{is} succeeded to by a newly incorporated city continues to be exercised by the service area until assumed by the city. A newly incorporated municipality shall assume all authorized powers and duties within two years of incorporation. ^{AN} Ordinances, rules, resolutions, procedures, and orders in effect before assumption of a power or duty by a newly incorporated municipality remain in effect until superseded by the municipality.

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

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

29.09-150
Sec. 1 (29.18.150). CHALLENGE OF LEGALITY. A challenge to the formation of a municipality must be made within six months of the date of its incorporation.

- Notes:
- (1) substantive change in 29.18.070 to eliminate public hearing by department since one is held by local Boundary Commission and issue decided by election. (to provide for local flexibility)
 - (2) Substantive change in 29.18.120 (c) "unless provided otherwise by the incorporation petition."
 - (3) Substantive change in 29.18.140 intended to address confusion over whether a newly created municipality may succeed a previously incorporated municipality.
 - (4) 29.18.130 needs to be re-drafted.

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

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

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

(2) proposal of the council.

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

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

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

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

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

Sec. 29.06.060 (New). RECLASSIFICATION OF A THRID CLASS BOROUGH. (a) A third class borough may be reclassified as a first or second class borough in the manner provided by AS 29.36.110 - 29.36¹³⁰ (29.33.270 - 29.33.290) for the addition of a power by a first or second class borough, except the petition or proposal shall request reclassification.

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

a special election held within 90 days of the re-classification election. Expiration of the term of a member of the board elected at a special election shall coincide with the date of the regular election. Until a school board is elected and qualified, the assembly continues to serve as the board.

Sec. 29.08.050. TRANSITION. (Repeal)

~~Sec. 29.08.040. RECLASSIFICATION OF A SECOND CLASS CITY. (a) A second class city may be reclassified as a first class city by holding an election on the question if the Department of Community and Regional Affairs determines that the population of the city has reached 400 permanent residents.~~

ARTICLE 2. RECLASSIFICATION OF A SECOND CLASS CITY, A SECOND CLASS BOROUGH, A THIRD CLASS BOROUGH
89.06.040

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

- filed with the council and
- (1) petition/signed by a number of voters equal to at least 15 per cent of the votes cast in the city at the preceding regular election; or
- (2) proposal of the council.

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

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

(d) The council shall certify the election results to the ~~Department of Community and Regional Affairs~~ ^{department}. If the majority vote is favorable, the city ^{is} ~~shall be~~ reclassified to first class status 30 days after certification of the results.

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

except the petition or proposal shall request reclassification, rather than the addition of a power.

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

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

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

Sec. 29.08.050. TRANSITION. (Repeal)

SUGGESTED DRAFTING CHANGES TO TITLE 29 - Cook, 17 Sep 80

Article New.

Eminent Domain (in II)

Sec. New.

Eminent Domain and Declaration of Taking.

A home rule or general law municipality may exercise the [POWERS] power 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. Before exercising the power, a second class city must comply with additional requirements under AS 29.73.020.

Sec. 29.73.020. (in III) Eminent domain in a second class city.
(IN THE CASE OF A SECOND CLASS CITY, BEFORE] Before exercising the power of eminent domain and declaration of taking, the council of a second class city shall request the Department of Community and Regional Affairs for permission to exercise the power[.] and the council may not exercise the power [OF EMINENT DOMAIN OR DECLARATION OF TAKING] without [THE] formal approval. [OF THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS.]
The exercise of the power of eminent domain or declaration of taking shall be by ordinance which shall be submitted to the [QUALIFIED] voters at the next [REGULARLY SCHEDULED GENERAL] regular election or special election called for that purpose. A majority [OF THE QUALIFIED VOTERS VOTING ON THE QUESTION] vote is required for approval of the ordinance.

SUGGESTED DRAFTING CHANGES TO TITLE 29 - Cook, 16 Sep 80

Chapter New School Boards
[ARTICLE 5. SCHOOL BOARDS]

Sec. New. School Boards. Each borough and city school district has a school board.

Sec. 29.23.310. Election in cities, first and second class boroughs. [EACH BOROUGH AND CITY SCHOOL DISTRICT HAS A SCHOOL BOARD.] Members of the school board in city, first and second class borough school districts are elected at the regular election [HELD ANNUALLY ON THE FIRST TUESDAY OF OCTOBER, UNLESS A DIFFERENT ELECTION DATE OR INTERVAL OF YEARS IS PROVIDED BY ORDINANCE,] for three-year terms and until their successors take office. All board members are elected at large, but school zones for the election of borough school boards may be established, altered, or abolished [AS PROVIDED BY SEC. 100 OF THIS CHAPTER].

Sec. 29.41.020 Assembly to serve as school board for third class boroughs. The borough assembly is the school board for third class boroughs. The borough ^{mayor} executive is the [PRESIDING OFFICER OF THE BOROUGH ASSEMBLY AND] president of the school board. While acting as president of the school board he [THE BOROUGH EXECUTIVE] has all the powers of a borough executive except for the veto power.

*Note submitted to Policy group
based upon re-organization
drafted by [unclear] which
was submitted by [unclear]*

SUGGESTED DRAFTING CHANGES TO TITLE 29 - Cook, 17 Sep 80

Sec. 29.53.020. REQUIRED EXEMPTIONS. (a) The following property is exempt from general taxation:

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

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

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

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

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

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

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

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

(5) money on deposit;

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

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

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

(b) Property described in (a) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups for classroom space.

(c) Property exempted from execution under the Code of Civil Procedure (AS 09) is not exempt from taxes levied and collected by municipalities.

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

(e) Real property which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption under (a)(7) of this section may not be exempted. The determination of the assessor is appealable under AS 44.62.560 - 44.62.570. The state shall reimburse a borough or city for the

real property tax revenues lost to it by the operation of (a)(7) of this section. However, the reimbursement will be made only to the extent that revenue lost exceeds an exemption which was granted by the borough or city or which, upon application, would have been granted under AS 29.53.025(a).

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

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

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

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

Not sent

STATE OF ALASKA
THE LEGISLATURE

POUCH # STATE CAPITOL
JUNEAU ALASKA 99801
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

September 25, 1980

SUBJECT: Proposed drafting change
TO: Advisory Policy Committee -
Title 29 Revision
FROM: Tamara Brandt Cook
Legislative Counsel

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

AS 29.53.020(e) currently contains the language

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

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

In addition, I have deleted the subsection currently appearing as (h).

Except as provided in (g) of this section, nothing in (e) - (i) of this section effect similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinances as provided section 25 of this chapter.

I have omitted this subsection because it appears to be superfluous.

Lastly, I would like to draw your attention to the current subsection (c)

Property described (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital or education groups for classroom space. (Emphasis added).

If the policy behind allowing a tax exemption for property used by nonprofit organizations is to encourage people to rent their property to those organizations, why limit the use which can be made of the property by the nonprofit organizations? I would recommend that the Committee consider either (1) not allowing an exemption for property from which income is derived at all; or (2) eliminating the language "for classroom space".

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

TBC:ljb

Enclosure

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

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

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

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

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

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

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

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

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

(5) money on deposit;

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

(7) the real property owned and occupied as a permanent place of abode by a resident 65 years of age or older, including a mobile home whether classified as real or personal property for municipal tax purposes; and

(8) a structure containing a fire protection system approved under AS 18.70.081, in operating condition, and incorporated as a fixture or part of the structure.

(b) Property described in (a) of this section from which income is derived is exempt only if that income is

solely from use of the property by a nonprofit religious, charitable, hospital, or educational group for classroom space.

(c) Property exempted from execution under the Code of Civil Procedure (AS 09) is not exempt from municipal taxes.

(d) An exemption may not be granted except upon written application on a form prescribed by the state assessor for use by local assessors. A claimant must file the application no later than January 15th of the assessment year for which the exemption is sought, but during that year the governing body of the municipality for good cause may waive the claimant's failure to make timely application for the exemption and authorize the assessor to accept the application. If an application is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If failure to file by January 15th of the assessment year is waived and the application is approved, the amount of tax which a claimant may have already paid for the assessment year for property exempted shall be refunded. The assessor may require proof at any time of the right to and amount of an exemption claimed. A claimant must file a separate application for each assessment year in which an exemption is sought.

(e) Real property which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption under (a)(7) of this section may not be exempted.

The determination of the assessor is appealable under AS 44.62.560 - 44.62.570. The state shall reimburse a borough or city for the real property tax revenues lost to it by the operation of (a)(7) of this section. However, reimbursement will be made only to the extent that revenue lost exceeds an exemption which was granted by the borough or city or which, upon application, would have been granted under AS 29.53.025(a).

(f) The exemption granted by (a)(8) of this section is limited to:

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1st of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1981.

Donna
SUGGESTED DRAFTING CHANGES TO TITLE 29 - Cook, 17 Sep 80

Sec. 29.53.020. REQUIRED EXEMPTIONS. (a) The following property is exempt from ^{the property} general taxation:

(1) municipal, state, or federal property, except that a private leasehold, contract, or other interest in the property is taxable to the extent of the interest;

(2) property used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes including the following property owned by a religious organization:

INSENT → (A) a structure, its fixtures and furniture used solely for public worship, charitable purposes, religious administrative offices, religious education, or a nonprofit hospital;

(B) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization;

(C) a lot supporting and adjacent to a structure set out in (A) or (B) of this paragraph which is necessary to use of the structure;

(D) a lot required by ordinance for parking near a structure set in (A) of this paragraph;

(3) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of the organization;

(4) household furniture of the head of a family or householder not exceeding \$500 in value;

(5) money on deposit;

(6) inventories located within a foreign trade zone established under AS 45.77.010, before those inventories are cleared by the United States Customs Service and admitted into domestic commerce.

(7) ~~subject to (e) of this section,~~ ^{3, 11} real property owned and occupied as a permanent place of abode by a resident 65 years of age or older, including a mobile home whether classified as real or personal property for municipal tax purposes;

~~Suggested Bill Changes - Book 17, 201, 21~~

(8) subject to (f) of this section, a structure containing a fire protection system approved under AS 18.70.081, in operating condition, and incorporated as a fixture or part of the structure.

(b) Property described in (a) of this section from which income is derived is exempt only if that income is solely from use of the property by ^a nonprofit religious, charitable, hospital, or educational group^s for classroom space.

(c) Property exempted from execution under the Code of Civil Procedure (AS 09) is not exempt from ^{municipal} taxes levied and collected by municipalities.

(d) An exemption may not be granted except upon written application on a form prescribed by the state assessor for use by local assessors. A claimant must file the application no later than January 15 of the assessment year for which the exemption is sought, but during that year the governing body of the municipality for good cause may waive the claimant's failure to make timely application for the exemption and authorize the assessor to accept the application. If an application is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If failure to file by January 15 of the assessment year is waived and the application is approved, the amount of tax which a claimant may have already paid for the assessment year for property exempted shall be refunded. The assessor may require proof at any time of the right to and amount of an exemption claimed. A claimant must file a separate application for each assessment year in which an exemption is sought.

(e) Real property which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption under (a)(7) of this section may not be exempted. The determination of the assessor is appealable under AS 44.62.560 - 44.62.570. The state shall reimburse a borough or city for the

real property tax revenues lost to it by the operation of (a)(7) of this section. However, the reimbursement will be made only to the extent that revenue lost exceeds an exemption which was granted by the borough or city or which, upon application, would have been granted under AS 29.53.025(a).

(f) The exemption granted by (a)(8) of this section is limited to:

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1 of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1981.

*Note: Suggestive language in (a)(8) -
1) Amend the following language in (a)(8):
"for classroom space." to not allow an exemption for empty rooms.
Reasoning: if a person had spent money on a room or building for a purpose, it is not fair to allow an exemption for it if the income reports from nonprofit groups to encourage people to use their money to support groups, who must be able to make it at least partially by the groups to classroom space only?*

Sam

① I'm not sure how much you can change present law -

but I substituted "property tax" for "general taxation" at beginning of this section - to tie back to AS 29.53.010. I do not feel too strongly about this.

②

~~29.53.010(b) as a direct copy for present law. But it doesn't make sense. It reads as,~~

② Do you read (b) as applying only to classroom space? I do.

I like
your
reorging all.

I don't think you need the intro to (7). But I don't feel strongly about this. It's simply a matter of opinion.

Don
9/23

Tam -

on p. 1, lines 23-24

"to convenient use" - I'm
not sure what that means

In (e), I deleted
the paragraphs because
they didn't refer back
to a lead-in of some
kind. (1) ~~They~~ ⁽²⁾ seemed more
like subsections but
then (3) didn't fit.

Please review the attached
draft of your bill and
return it to the revisor's
basket. Remember to indi-
cate the date of return
either in the status book
or on the CS card, as
appropriate.

Due Monday

12-0065
Cook
9/17/80

Proposed

1 IN THE HOUSE

BY MILLER

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to property exempted from taxation."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 29.53.020 is repealed and re-enacted to read:

9 ↓ Sec. 29.53.020. REQUIRED EXEMPTIONS. (a) The following property
10 is exempt ~~or partly exempt~~ from general taxation:

11 (1) municipal, state, or federal property, except that a
12 private leasehold, contract, or other interest in the property is tax-
13 able to the extent of the interest;

14 (2) property used exclusively for nonprofit religious, chari-
15 table, cemetery, hospital, or educational purposes including the follow-
16 ing property owned by a religious organization:

17 (A) a structure, its fixtures and furniture used solely
18 for public worship, charitable purposes, religious administrative
19 offices, religious education, or a nonprofit hospital;

20 (B) the residence of a bishop, pastor, priest, rabbi,
21 minister or religious order of a recognized religious organization;

22 (C) a lot supporting and adjacent to a structure set out
23 in (A) or (B) of this paragraph which is necessary to convenient
24 use;

25 (D) a lot required by ordinance for parking near a
26 structure set out in (A) of this paragraph;

27 (3) property of a nonbusiness organization composed entirely
28 of persons with 90 days or more of active service in the armed forces of
29 the United States whose conditions of service and separation were other

1 than dishonorable, or the property of the auxiliary of the organization;

2 (4) household furniture of the head of a family or house-
3 holder not exceeding \$500 in value;

4 (5) money on deposit;

5 (6) real property owned and occupied as a permanent place of
6 abode under (e) of this section;

7 (7) a structure containing a fire protection system under (f)
8 of this section;

9 (8) inventories located within a foreign trade zone estab-
10 lished under AS 45.77.010, before those inventories are cleared by the
11 United States Customs Service and admitted into domestic commerce.

12 (b) Property described in (a) of this section from which income is
13 derived is exempt only if that income is solely from use of the property
14 by nonprofit religious, charitable, hospital, or educational groups for
15 classroom space.

16 (c) Property exempted from execution under the Code of Civil
17 Procedure (AS 09) is not exempt from taxes levied and collected by
18 municipalities.

19 (d) An exemption may not be granted except upon written appli-
20 cation on a form prescribed by the state assessor for use by local
21 assessors. A claimant must file the application no later than
22 January 15 of the assessment year for which the exemption is sought, but
23 during that year the governing body of the municipality for good cause
24 may waive the claimant's failure to make timely application for the
25 exemption and authorize the assessor to accept the application. If an
26 application is approved by the assessor, he shall allow an exemption in
27 accordance with the provisions of this section. If failure to file by
28 January 15 of the assessment year is waived and the application is
29 approved, the amount of tax which a claimant may have already paid for

1 the assessment year for property exempted shall be refunded. The
2 assessor may require proof at any time of the right to and amount of an
3 exemption claimed. A claimant must file a separate application for each
4 assessment year in which an exemption is sought.

5 (e) ~~The real property owned and occupied as a permanent place of~~
6 ~~abode by a resident is exempt from taxation of the assessed value of the~~
7 ~~property.~~ Real property which the assessor determines, after notice and
8 hearing to the parties concerned, has been conveyed to the applicant
9 primarily for the purpose of obtaining the exemption ^{under (1)(D) of this subsection} may not be exempted,
10 ~~under this subsection.~~ The determination of the assessor is appealable
11 under AS 44.62.560 - 44.62.570. The state shall reimburse a borough or
12 city for the real property tax revenues lost to it by the operation of
13 ~~this subsection.~~ However, the reimbursement will be made only to the
14 extent that revenue lost exceeds an exemption which was granted by the
15 borough or city ^{or} which, upon application, would have been granted
16 under AS 29.53.025(a). In ~~this subsection,~~ "real property" includes a
17 mobile home, whether classified as real or personal property for municipi-
18 pal tax purposes.

19 (f) Two percent of the assessed value of a structure is exempt
20 from taxation if the structure contains a fire protection system
21 approved under AS 18.70.081, in operating condition, and incorporated as
22 a fixture or part of the structure. The exemption granted by this
23 subsection is limited to

24 (1) an amount equal to two percent of the value of the struc-
25 ture based on the assessment for 1981, if the fire protection system is
26 a fixture of the structure on January 1, 1981; or

27 (2) an amount equal to two percent of the value of the struc-
28 ture based on the assessment as of January 1 of the year immediately
29 following the installation of the fire protection system if the fire

1 protection system becomes a fixture of the structure after January 1,
2 1981.

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(B) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization;

(C) ^{a lot} ~~real property~~ supporting and adjacent to a structure set out in (A) or (B) of this ~~sub~~paragraph which is necessary to convenient use;

(D) ^{a lot} ~~real property~~ required by ordinance for parking near a structure set out in (A) of this ~~sub~~paragraph;

(3) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the ~~auxiliary~~ auxiliary of the organization;

(4) household furniture of the head of a family ^{or householders} not exceeding \$500 in value;

(5) money on deposit;

(6) real property ^{together with improvements} owned and occupied as a permanent place of abode under ~~(4)~~ (4) of this section;

(7) a structure containing a fire protection system under ~~(4)~~ (4) of this section;

(8) inventories located within ^a foreign trade zone established under AS 45.77.010, before those inventories are cleared by the United States Customs Service and admitted into domestic commerce.

(b) Property described in (a) ~~of~~ this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups for classroom space.

(c) Property exempted from execution under the Code of Civil Procedure (AS 09) is not exempt from taxes levied and collected by municipalities.

^{INSERT #1}
(~~4~~) The real property ~~together with improvements~~ owned and occupied as a permanent place of abode by a resident is exempt from taxation of the assessed value of the property. ~~No real property~~ ^{may not} be exempted under

this subsection ^{which the assessor determines} which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor

^{INSERT #2}
is appealable under AS 44.62.560 - 44.62.570. ⁴³⁰ In this subsection ~~the~~ term "real property" includes ^a mobile home, whether classified as real or personal property for municipal tax purposes.

INSERT

(d) ^{an} No exemption may, ^{not} be granted except upon written application on

a form prescribed by the state assessor for use by local assessors. ~~The~~ ^A claimant must file the application no later than January 15 of the assessment year for which the exemption is sought, but during that year the governing body of the municipality for good cause ~~shown~~ may waive the claimant's failure to make timely application for the exemption and authorize the assessor ^{to} accept the application. The claimant must file a separate application for each assessment year in which the exemption is sought.

IF

If an application is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. ~~If a claimant whose~~ failure to file by January 15 of the assessment year ~~has been~~ ^{is} waived and ~~the~~ application is approved, the amount of tax which ~~the~~ ^a claimant may have already paid for the assessment year for property exempted shall be refunded. The assessor may require proof at any time in the form he considers necessary of the right and amount of an exemption claimed. ~~The~~ ^A claimant must file a separate application for each assessment year in which an exemption is sought.

INSERT

~~The~~ state shall reimburse a borough or city for the real property tax revenues lost to it by the operation of ~~this~~ ^{sub} of this section. However, the reimbursement will be made only to the extent that revenue lost exceeds an exemption which was granted by the borough or city, or which, upon application, would have been granted ~~by the borough or city~~ under AS 29.53.025(a)

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(f) ~~Two~~ Two percent of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under AS 18.70.081, in operating condition, and incorporated as a fixture or part of the structure. The exemption granted by this subsection is limited to

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1 of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1981.

Chapter 53. Municipal Assessment and Taxation.

Article 1. Municipal Property Tax.

Sec. 29.53.010. General property tax. Home rule and general law boroughs may levy (1) an areawide property tax for areawide functions, and (2) a property tax limited to the area outside cities for functions limited to the area outside cities. A property tax if levied must be assessed, levied and collected on real and personal property as provided in this chapter. (§ 2 ch 118 SLA 1972)

Taxation of personal property of resident located outside city. — See *Town of Fairbanks v. Independent Meat Mkt.*, 4 Alaska 147 (1910).

The North Slope Borough is a viable legal entity with powers to tax as provided to boroughs by this section. *Arco Pipe Line Co. v. North Slope Borough*, Superior Court, 4th Jud. Dist., C.A. No. 73-236 and C.A. Nos. 73-294 to 73-306 (1973).

Sec. 29.53.020. Required exemptions. (a) The following property is exempt from general taxation:

(1) municipal, state or federally owned property, except that private leaseholds, contracts or other interest in the property shall be taxable to the extent of those interests;

(2) household furniture of the head of a family or a household not exceeding \$500 in value;

(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes;

(4) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of such organization;

(5) money on deposit;

(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (c) of this section.

(b) "Property used exclusively for religious purposes" includes the following property owned by a religious organization:

(1) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization;

(2) a structure, its furniture and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education or a nonprofit hospital;

(3) lots supporting and adjacent to a structure or residence mentioned in (1) or (2) of this subsection which are necessary to convenient use;

(4) lots required by local ordinance for parking near a structure defined in (2) of this subsection.

(c) Property described in (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups for classroom space.

(d) Laws exempting certain property from execution under the Code of Civil Procedure (AS 09) do not exempt the property from taxes levied and collected by municipalities.

(e) The real property owned and occupied as a permanent place of abode by a resident 65 years of age or over is exempt from taxation of the assessed value of the real property. Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor is appealable under AS 44.62.460 — 44.62.570.

(f) No exemption may be granted except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 of the assessment year for which the exemption is sought, but during the same year the governing body of the municipality for good cause shown may waive the claimant's failure to make timely application for the exemption for that year and authorize the assessor to accept the application as if timely filed. The claimant must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If a claimant whose failure to file by January 15 of the assessment year has been waived as provided in this subsection and the application for exemption is approved, the amount of tax which the claimant may have already paid for the assessment year with respect to the property exempted shall be refunded to him. The assessor may at any time require proof in the form he considers necessary of the right and amount of an exemption claimed under this section.

(g) The state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of (e) of this section. However, reimbursement will be made to a borough or city for revenue lost to it only to the extent that the loss exceeds an exemption which was granted by the borough or city, or which upon proper application by an individual would have been granted by the borough or city, under § 25(a) of this chapter.

(h) Except as provided in (g) of this section, nothing in (e)—(i) of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from

granting similar exemptions by ordinance as provided in § 26 of this chapter.

(am §§ 1, 2 ch 60 SLA 1973; am § 1 ch 65 SLA 1975; am § 1 ch 191 SLA 1976; am § 1 ch 217 SLA 1976; am §§ 1, 2 ch 229 SLA 1976; am § 1 ch 97 SLA 1977)

(i) In (e)—(h) of this section the term "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes. (§ 2 ch 118 SLA 1972)

History of section. — See *City of Anchorage v. Chugach Elec. Ass'n*, 17 Alaska 481, 252 P.2d 412 (9th Cir. 1958).

This section was enacted pursuant to Alaska Const., art. IX, § 4. *Hanna v. North Pac. Union Conference Ass'n of Seventh Day Adventists*, Sup. Ct. Op. No. 591 (File No. 1080), 462 P.2d 432 (1969).

Intent of constitutional convention. — The constitutional convention intended that only so much of the property used for religious purposes as

was being used to produce income should be taxable, that such other parts should be exempt, and that a proration between taxable and non-taxable parts should be made. 1962 Op. Atty. Gen., No. 16.

Purpose. — The purpose of this section is to encourage the establishment of privately supported nonprofit educational institutions; the motivation for their establishment is largely irrelevant. *McKee v. Evans*, Sup. Ct. Op. No. 740 (File No. 1382), 490 P.2d 1226 (1971).

It should be noted that, in addition to favoring a simplified organization for Title 29, there seemed to be considerable initial support for increasing local government autonomy. One of the Policy Group's next tasks will probably be a section-by-section analysis of the present statutes to determine which laws might either be eliminated or placed in a "directory" category to be used at the option of municipalities.

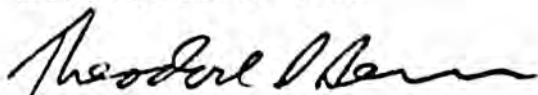
The Policy Group is tentatively looking at a second meeting on or about September 22nd. At this time, it is hoped that the technical group, together with staff, will have prepared an outline of a proposed new organization showing all of the present statutes organized into the three or four categories described above. Additionally, I know many of you submitted specific written comments on the present statutes, and I suggest that we explore a division of labor to begin preparing specific recommended statutory changes for consideration by the Policy Group.

Since time is uncomfortably short, I would like to propose an initial meeting for 9:00 a.m., Monday, September 8, 1980, at the Legislative Information Office, 1024 W. 6th Avenue, Anchorage. At this meeting, the committee would attempt to respond to the requests of the Policy Group and to discuss its future role in the review of Title 29. Hopefully, everyone will be able to consider in advance of September 8, a proposed reorganization along the lines described above and begin our individual grouping of present statutes. Recognizing all of our busy schedules, I am hopeful that a one day meeting on the 8th will be sufficient. However, if necessary, you may wish to allow for some time on your calendar for the morning of the 9th.

It is my understanding that travel and per diem expenses will be reimbursed. Please contact Ms. Tamara Cook, Legislative Counsel, 465-4996 for details. I look forward to seeing you in Anchorage. Please feel free to contact my office at 264-4236 with any questions.

Sincerely,

DEPARTMENT OF LAW



Theodore D. Berns
Municipal Attorney

TDB:gml

cc: Ms. Tamara Cook
Bill Berrier

**Municipality
of
Anchorage**



POUCH 6-850
ANCHORAGE, ALASKA 99502
(907) 264-4545

GEORGE M. SULLIVAN,
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

September 2, 1980

Title 29 - Technical Review Committee

Re: Organizational Meeting

It is my understanding that you have agreed to serve on a technical review committee to assist in a comprehensive review of AS Title 29. (Municipal Government). A Policy Review Group has been appointed by the Legislature to review Title 29 and report on any recommended revisions. The Technical Committee has been asked to assist the Policy Group in recommending changes and reorganizing the present body of statutes. As a member of the Policy Group, I have been asked to act as liason with the Technical Committee. I would therefore like to propose an organizational meeting and to pass along some preliminary requests made by the Policy Group at its initial meeting on August 27th and 28th in Anchorage.

One of the first points of consensus reached by the Policy Group was a feeling that the present Title 29 is confusing and badly organized. The Policy Group therefore requested the Technical Committee to explore the feasibility of a new organization for Title 29. Under the proposed organization, the present statute would be organized into roughly three or four categories according to their applicability. Category I would be those provisions applicable to and binding upon all municipal governments, including home rule municipalities. Category II would then contain statutory material constituting additional limitations or prescriptions for various classes of cities or boroughs. Category III would seek to address the needs of many smaller communities by containing directory administrative and legislative provisions. Such provisions would apply to local governments unless a municipality, by ordinance, rejected coverage in order to adopt its own local procedures. Probably, a Category IV containing miscellaneous and general matter would also be necessary.

TO:
Debbie Behr, Special Assistant
Office of the Commissioner

DATE:
August 15, 1980

FILE NO:

TELEPHONE NO: 465-3082

SUBJECT:
Comments on Amendments
to State Statutes
re: Local Government

FROM:

V. L. Iverson, Director
Division of Administrative Services

The subject of local control by political subdivisions over selected DHSS programs does appear to be proper for consideration by the special legislative committee on revision of the State Municipal Code.

I'm sure you are aware that it is essential to distinctly separate statutorily delegated local government control of DHSS programs from contractual arrangements with private, non-profit entities to implement DHSS programs. The latter system presents numerous legal problems with respect to at least those programs that are partially Federally funded. As we all know, on the other hand, many States for many years have successfully operated their health and social services programs through statutory delegation of powers to local political subdivisions.

Re: call Debbie Behr.

would like issue raised of giving local control of health programs to local gov. by allowing DHSS to have statutory authority to delegate implementation of programs to the local gov.

Alan Korhonen

29.900

Bin Iverson

TO: The Honorable Lee McAnerney
Commissioner
Department of Community
& Regional Affairs

DATE: August 14, 1980

FILE NO:

TELEPHONE NO:

FROM: Ernst W. Mueller
Commissioner
Department of Environmental
Conservation

SUBJECT: Designation of "Village"

Thank you for your letter of August 13 concerning the use of the term "City" rather than "Village" for small rural incorporated communities. A term I find even more offensive is the word "bush" as a substitute for "rural."

I fear, however, that "village" may be with us a long time. AS 46.07.080(2) reads:

"'village' means an unincorporated community which has between 25 and 600 people residing within a two-mile radius, or a second class city." (Emphasis added)

We have tried to encourage the Legislature to revise this language; perhaps we can ask them to replace "village" with a term such as "eligible rural community."

cc: Tim Bergin

RECEIVED
AUG 15 1980
DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.