

ALASKA LEGISLATURE COMMITTEE FILES 1979-1980 86/2  
1203 FCC HR 947

1 nance providing for reapportionment. The borough assembly shall submit  
2 an ordinance adopted under this subsection to the voters at a regular  
3 election or special election held within 60 days of the date of adoption  
4 of the reapportionment ordinance.

5 (e) If at the end of the time period provided under (d) of this  
6 section an ordinance providing for reapportionment has not been approved  
7 by the voters, the commissioner of community and regional affairs shall  
8 provide for the reapportionment of the borough assembly in accordance  
9 with the standards of AS 29.23.021 by preparing an order of reapportion-  
10 ment and delivering the order to the borough mayor.

11 Sec. 29.23.029. JUDICIAL REVIEW AND RELIEF. (a) The commissioner  
12 of community and regional affairs may request the superior court to  
13 enforce a reapportionment order issued under AS 29.23.027(e).

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

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

17 (2) a determination by the borough assembly under AS 29.23.-  
18 025(c) that the standards of AS 29.23.021 do not require change in  
19 apportionment;

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

22 (4) a reapportionment order of the commissioner of community  
23 and regional affairs made under AS 29.23.027(c);

24 (5) a reapportionment ordinance approved by the voters under  
25 AS 29.23.027(d); and

26 (6) a reapportionment order of the commissioner of community  
27 and regional affairs made under AS 29.23.027(e).

28 Sec. 29.23.031. EFFECTIVE DATE OF APPORTIONMENT. (a) A change in  
29 assembly apportionment or composition under AS 29.23.025 or 29.23.027 is

1 effective beginning with the first regular election for members of the  
2 assembly which is held more than 60 days after the later of:

3 (1) approval of a reapportionment ordinance by the voters  
4 under AS 29.23.025(a), 29.23.025(e), or 29.23.027(d); or

5 (2) the delivery to the mayor of a reapportionment order of  
6 the commissioner of community and regional affairs under AS 29.23.027(e).

7 (b) The provisions of (a) of this section do not apply to a  
8 borough in which a change in assembly composition or apportionment is  
9 subject to review and approval or determination of nonobjection by the  
10 Attorney General of the United States under the Voting Rights Act of  
11 1965, as amended, (42 U.S.C. 1971 - 1974). A change in assembly com-  
12 position or apportionment subject to review under the Voting Rights Act  
13 of 1965, as amended, is effective beginning with the first regular  
14 election for members of the assembly which is held more than 60 days  
15 after

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

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

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

25 Sec. 29.23.033. APPLICABILITY OF APPORTIONMENT PROVISIONS. The  
26 provisions of AS 29.23.025 - 29.23.031 do not apply

27 (1) to a unified municipality incorporated under AS 29.68.-  
28 240 - 29.68.440;

29 (2) to a home rule borough if the borough, by charter,

1 provides for reapportionment of the borough assembly.

2 \* Sec. 11. AS 29.23.040 is amended to read:

3       Sec. 29.23.040. REGULAR TERM OF OFFICE (a) Assemblymen are  
 4 selected for three-year terms and until their successors are selected  
 5 and have qualified, unless different terms not exceeding four years are  
 6 prescribed by borough charter or ordinance. Except when otherwise re-  
 7 quired by a change of composition or apportionment, if the term of an  
 8 assemblyman is changed by charter or ordinance, the term of an assembly  
 9 man holding office at the time the change takes effect is not affected  
 10 by that change.

11       (b) The regular term of office begins on the first Monday follow-  
 12 ing certification of the election, unless a different date is prescribed  
 13 by borough charter or ordinance. [THE CURRENT TERM OF INCUMBENT AS-  
 14 . EMBLYMEN MAY NOT BE ALTERED UNDER THIS SECTION.]

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

16 \* Sec. 12. AS 29.68.350(a)(2) is repealed and re-enacted to read:

17       (2) provisions for

18               (A) the establishment of service areas, and

19               (B) the establishment of districts or sections for the  
 20 election of members of the legislative body of the unified municipi-  
 21 pality, if election of members of the legislative body is not  
 22 areawide, and procedures by which to reapportion the election  
 23 districts or sections;

24 \* Sec. 13. AS 29.23.025(f) and (g) are repealed.

25 \* Sec. 14. Sections 1 - 10, 12, and 13 of this Act take effect January 1,  
26 1981.

27 \* Sec. 15. Sections 11, 14, and 15 of this Act take effect immediately in  
28 accordance with AS 01.10.070(c).

There is some confusion as to whether this is to be "temporary" or "permanent" law, so . . . . .

As "temporary" law, applicable only to exempt only pre-1980 census apportionments:

\* Sec. 15. EXEMPTION FROM REQUIREMENTS. (a) If a borough assembly has been reapportioned after December 31, 1979, the borough assembly is not required to submit to the voters of the borough one or more proposed forms of representation as required by AS 28.23.023(b).

(b) The provisions of (a) of this section do not apply to a borough assembly which was reapportioned after December 31, 1979, from providing for another reapportionment under AS 29.23.025(b) or (c) if evidence is presented under AS 29.23.025(b) or (c) that the reapportionment, as completed, does not meet the standards of AS 29.23.021, as amended by secs. 3 and 4 of this Act

As "permanent" law applicable to provide exemptions for reapportionments which are done preceding any federal census:

Redraft AS 29.23.023(e), page 3, by adding a new paragraph to read:

(3) to the assembly of a general law borough which has been reapportioned under AS 29.23.025 during the 18 months preceding ~~report of~~ a federal census report.

contain the signatures of 25 percent of those voting in the last general election. Sup. Ct. Op. No. 1231 (File No. 2624), 544 P.2d 1024 (1976).  
 Area Dispatch, Inc. v. City of Anchorage.

## Article 2. Home Rule Limitations.

### Section

#### 100. Limitation of home rule powers

Sec. 29.13.100. Limitation of home rule powers. Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise than as provided. They supersede existing and prohibit future home rule enactments which provide otherwise:

(3) [Effective until January 1, 1981] AS 29.23.020 — 29.23.050 (borough assembly representation)

[Effective January 1, 1981] AS 29.23.021; 29.23.025 — 29.23.050 (composition and apportionment of borough assembly; borough assembly recomposition and reapportionment; assembly representation)

(22) AS 29.53.010 — 29.53.400 (borough and city property taxes)

(34) AS 29.33.050, AS 29.41.010(a), AS 14.12.020(a) (responsibility for education on military reservations)

(35) AS 29.58.345 — 29.58.350 (bonded debt for school construction)

(36) AS 29.63.065 (exemption from special assessment)

(37) AS 29.33.090(d) (zoning of state land for homesite entry)

(38) AS 29.48.130(a)(12) (municipal exemption on contractor bond requirements)

(39) AS 29.33.150(b) (applicability of local platting regulations to state land in a municipality)

(am § 2 ch 32 SLA 1973; am § 13 ch 53 SLA 1973; am § 2 ch 137 SLA 1975; am § 2 ch 114 SLA 1975; am § 3 ch 218 SLA 1976; am § 4 ch 142 SLA 1977; am § 1 ch 20 SLA 1978; am § 2 ch 81 SLA 1978; am § 2 ch 83 SLA 1979; am § 1 ch 85 SLA 1979)

#### Effect of amendments.

The first 1973 amendment added paragraph (3).

The second 1973 amendment deleted "city representation and vote on" preceding "borough assembly" and added "representation" to the end of paragraph (3).

The 1974 amendment added paragraph (22).

The 1975 amendment added paragraph (34).

The 1976 amendment substituted "AS 29.53.345" for "AS 29.53.340" at the beginning of paragraph (22).

The 1977 amendment added paragraph (37).

The first 1978 amendment rewrote paragraph (22), which formerly read "AS 29.53.010 — 29.53.350, 29.53.400 (borough and city property tax)."

The second 1978 amendment added paragraph (38).

The first 1979 amendment, effective January 1, 1981, rewrote paragraph (3).

The second 1979 amendment, effective July 1, 1979, added paragraph (39).

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

Legislative committee report. — For report on ch 83, SLA 1973 (CSHB 382), see 1973 House Journal, pp. 791, 806.

Senate CS for HB 947

Section 1. AS 29.13.100(3) is repealed and re-enacted to read:

(3) AS 29.23.021 (borough assembly composition and apportionment), and AS 29.23.040 - 29.23.050 (borough assembly members)

Article 2. Procedures.

Section	Section
50. Petition	100. [Repealed]
70. Investigation	110. Incorporation election
80. Report and hearing	120. Election of initial officers
90. Decision on municipal incorporation	

\* Sec. 2. AS 29.18.050(4) is amended to read:

(4) composition and apportionment of the assembly or council  
1. BUT THE NUMBER OF MEMBERS OF A BOROUGH ASSEMBLY MAY NOT EXCEED 11;

Sec. 29.18.050. Petition. Municipal incorporation is proposed by filing a petition with the Department of Community and Regional Affairs. The petition shall include the following information about the proposed municipality:

- (1) class;
- (2) name;
- (3) boundaries;
- (4) [Effective until January 1, 1981] composition and apportionment of the assembly or council;  
[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;
- (5) for a first class borough, a designation of areawide powers to be exercised;
- (6) for a second class borough, a designation of areawide and nonareawide powers to be exercised;
- (7) maps, documents, and other information required by the Department of Community and Regional Affairs;
- (8) for first class city incorporation, the signatures and residential address of 50 permanent resident voters or of 15 per cent of the permanent resident voters within the proposed municipality, whichever is greater, based on the number who voted in the area in the last general election;
- (9) for second class city incorporation, the signature and residential address of 25 permanent resident voters or of 15 per cent of the permanent resident voters within the proposed municipality, whichever is greater, based on the number who voted in the area in the last general election;
- (10) for borough incorporation, the signature and residential address of 15 per cent of the permanent resident voters in each first class city and 15 per cent of voters in the area outside first class cities based on the number who voted in the respective areas in the last general election;
- (11) for a city, a designation of the powers proposed by the petitioner to be exercised;
- (12) a proposed operating budget for the municipality projecting source of income and items of expenditure through the first full fiscal year of operation. (§ 2 ch 118 SLA 1972; am § 9 ch 200 SLA 1972; am § 2 ch 212 SLA 1976; am § 7 ch 83 SLA 1979)

reapportionment of the borough assembly or is effected as required or proposed under AS 29.23.020, AS 29.23.021 — 29.23.025, added by sec. 1 of ch. 83, SLA 1979.

Sec. 29.23.021. Assembly composition and apportionment [Effective January 1, 1981]. (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 the voters. If the borough is already incorporated, the assembly shall be composed and apportioned in a manner that is consistent with AS 29.23.023 and prescribed by charter or ordinance.

(c) An assembly may not provide for weighted voting. (§ 1 ch 83 SLA 1979)

Effective date. — Section 27, ch. 83, SLA 1979, makes this section effective January 1, 1981.

Editor's note. — Section 26, ch. 83, SLA 1979, effective June 2, 1979, provides: "Notwithstanding AS 29.23.010, amended by sec. 1 of ch. 83, SLA 1979, the terms of office of borough assemblymen elected or appointed to dual borough assembly-city council seats are not affected by the amendment made to AS 29.23.010 in sec. 4 of ch. 83, SLA 1979 until reapportionment

of the borough assembly is required or proposed under AS 29.23.020, repealed by sec. 21 [24] of ch. 83, SLA 1979, or is effected as required or proposed under AS 29.23.021 — 29.23.025, added by sec. 1 of ch. 83, SLA 1979."

Statute superseded home-rule enactments. — See Roderick v. Sullivan, Sup. Ct. Op. No. 1099 (File No. 2243), 528 P.2d 440 (1974), decided under former AS 29.23.020.

Sec. 29.23.023. Composition and representation requirements for general law boroughs [Effective January 1, 1981]. (a) The borough assembly shall provide for its composition and for the form of its representation. Not later than July 31, 1981, and thereafter within four months after the report of a federal decennial census, the assembly shall propose and submit to the voters at a regular election or special election called for the purpose, alternative forms of representation by which members are

- (1) elected at large by all qualified voters of the borough;
- (2) elected at large by all qualified voters of the borough, but required to live within an election district or zone established by the borough for election of assembly members, with each district or zone being of substantially equal population; or
- (3) elected by and from election districts or zones established by the borough for the election of borough assembly members.

(b) The proposals set out in (a) of this section shall be submitted to the voters. The vote on the proposals submitted to the voters shall be tabulated in two separate classifications. One classification shall consist of all votes cast in the first class and home rule cities in the borough.

\* Sec. 3. AS 29.23.021(b) is amended to read:

(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 the 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 [AS 29.23.023] and prescribed by charter or ordinance.

\* Sec. 4. AS 29.23.021 is amended by adding a new subsection to read:

(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.

\* Sec. 14. AS 29.23.023 is repealed.

\* Sec. 5. AS 29.23.025(a) is amended to read:

(a) Within two [NOT LATER THAN JULY 31, 1981, AND THEREAFTER WITHIN FOUR] months after the official report of a federal decennial census, the borough assembly shall determine and declare by resolution if the existing apportionment of the assembly meets the applicable standards of AS 29.23.021 [AS 29.23.021 - 29.23.023].

\* Sec. 6. AS 29.23.025(b) is amended to read:

(b) If the existing apportionment of the borough assembly does not meet the applicable standards of AS 29.23.021 [AS 29.23.021 - 29.23.023], the assembly shall provide by ordinance for its reapportionment. At the same time, the borough assembly may, by ordinance, change the composition of the assembly.

\* Sec. 7. AS 29.23.025(c) is amended to read:

(c) In addition to providing for apportionment at the times required under (b) of this section, the borough assembly shall provide by ordinance for its reapportionment and may provide, by ordinance, for a change in its composition whenever it determines, on the basis of federal census reports or other reliable population data, that the existing apportionment does not meet the standards for apportionment in AS 29.23.021. If a petition signed by not less than 50 registered [BOROUGH] voters who are residents of the borough requests the borough assembly to determine whether the existing apportionment meets the standards for apportionment in AS 29.23.021, and the petition contains evidence that the existing apportionment does not meet those standards, the assembly may [SHALL] make the determination requested. The borough assembly shall make a determination when required by this subsection within two months of its receipt of a petition which meets the requirements of this subsection.

The other classification shall consist of all votes cast in the remaining area of the borough. The borough assembly shall, within three months of the certification of the results of the election adopt an ordinance providing for its composition and the form of representation which conforms to the form of representation receiving a plurality of the votes in each classification at that election.

(c) A member of the assembly of a general law borough may not be elected or appointed by and from council of a city in the borough. (S 1 ch 83 SLA 1979)

Effective date. — Section 27, ch. 83, SLA 1979 makes this section effective January 1, 1981.

Editor's note. — Section 26, ch. 83, SLA 1979, effective June 2, 1979, provides: "Notwithstanding AS 29.23.040, amended by sec. 4 of ch. 83, SLA 1979, the terms of office of borough assembly elected or appointed to dual borough assembly-city

council seats are not affected by the amendment made to AS 29.23.040 in sec. 4 of ch. 83, SLA 1979 until reapportionment of the borough assembly is required or proposed under AS 29.23.020, repealed by sec. 21 [24] of ch. 83, SLA 1979, or is effected as required or proposed under AS 29.23.021 — 29.23.025, added by sec. 1 of ch. 83, SLA 1979."

Sec. 29.23.025. Assembly recomposition and reapportionment [Effective January 1, 1981]. (a) Not later than July 31, 1981, and thereafter within four months after the official report of a federal decennial census, the assembly shall determine and declare by resolution if the existing apportionment of the assembly meets the applicable standards of AS 29.23.021 — 29.23.023.

(b) If the existing apportionment of the assembly does not meet the applicable standards of AS 29.23.021 — 29.23.023, the assembly shall provide by ordinance for its reapportionment. At the same time, the assembly may change the composition of the assembly.

(c) In addition to providing for apportionment at the times required under (b) of this section, the borough assembly shall provide by ordinance for its reapportionment and may provide for a change in its composition whenever it determines, on the basis of federal census reports or other reliable population data, that the existing apportionment does not meet the standards for apportionment in AS 29.23.021. If a petition signed by not less than 50 borough voters requests the assembly to determine whether the existing apportionment meets the standards for apportionment in AS 29.23.021, and the petition contains evidence that the existing apportionment does not meet those standards, the assembly shall make the determination requested.

(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 four months of a determination by the assembly that the current apportionment does not meet the standards of AS 29.23.021 — 29.23.025, the assembly shall adopt an ordinance providing for

see next page

reapportionment, and submit the ordinance to the voters. If, at the end of the four month time period, an ordinance providing for reapportionment has not been approved, the Department of Community and Regional Affairs shall provide for the reapportionment in accordance with the standards of AS 29.23.021 — 29.23.023.

(f) A reapportionment ordinance, or a determination of the borough assembly that applicable standards do not require adoption of a change in apportionment, is subject to judicial review.

(g) A change in assembly apportionment or composition under this section is effective beginning with the first regular election for members of the assembly which follows approval of a reapportionment ordinance.

(S. 1 ch 83 SLA 1979)

Sec. 8. AS 29.23.025(e) is amended to read:

(e) Within six [FOUR] months of a determination by the borough assembly that the current apportionment does not meet the standards of AS 29.23.021 [AS 29.23.021 - 29.23.025], 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 [FOUR-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 29.23.021 [AS 29.23.021 - 29.23.023] by preparing an order of reapportionment and delivering the order to the borough mayor.

Sec. 9. AS 29.23.025(f) is repealed and re-enacted to read:

(f) A reapportionment ordinance approved by the voters, or a determination of the borough assembly that the standards of AS 29.23.021 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 community and regional affairs requesting the commissioner to determine whether the proposed reapportionment ordinance

approved by the voters meets the standards of AS 29.23.021, or whether a determination of the borough assembly that the standards of AS 29.23.021 do not require a change of apportionment is correct. If the petition asks the commissioner of community and regional affairs to review an ordinance approved by the voters under (e) of this section, 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 community and regional affairs to review a determination of the borough assembly under (c) of this section, the petition shall be delivered to the commissioner within 20 days of the determination of the borough assembly. The commissioner of community and regional affairs shall review the petition and may make the determination requested. The commissioner of community and regional affairs shall provide copies of his decision to the persons petitioning for appeal and to borough officials not later than 60 days after he receives the petition.

Sec. 10. AS 29.23.025(g) is amended to read:

(g) A change in assembly apportionment or composition under this section is effective beginning with the first regular election for members of the assembly which is held more than 60 days after the latest of the following:

(1) approval of the reapportionment ordinance by the voters under (e) of this section;

(2) the delivery to the mayor of the reapportionment order of the commissioner of community and regional affairs under (e) of this section; or

(3) a final determination of the commissioner of community and regional affairs of an appeal under (f) of this section approving a revised [FOLLOWS APPROVAL OF A] reapportionment ordinance.

\* Sec. 11. AS 29.23.025 is amended by adding new subsections to read:

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

(1) a reapportionment order of the commissioner of community and regional affairs made under (e) of this section; and

(2) a decision of the commissioner of community and regional affairs on an appeal made under (f) of this section.

(i) The provisions of this section apply to

(1) a home rule and a general law borough;

(2) a unified municipality incorporated under AS 29.68.240 - 29.68.440 before the effective date of this section, unless

(A) election of members of the assembly of a unified municipality occurs at large; or

(B) the commissioner of community and regional affairs

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determines, not later than February 1, 1981, that the charter of the unified municipality contains procedures by which to apportion election districts or sections.

**Sec. 29.23.040. Regular term of office.** Assemblymen are selected for three-year terms and until their successors are selected and have qualified, unless different terms not exceeding four years are prescribed by borough charter or ordinance. The regular term of office begins on the first Monday following certification of the election. The current term of incumbent assemblymen may not be altered under this section. This section applies to home rule and general law boroughs. (§ 2 ch 118 SLA 1972; am § 13 ch 118 SLA 1972; am § 4 ch 83 SLA 1979)

**Effect of amendment.**

The 1979 amendment, effective June 2, 1979, rewrote the second sentence.

Editor's note. — Section 26, ch. 83, SLA 1979, effective June 2, 1979, provides that the terms of borough assemblymen elected or appointed to dual borough assembly city

council seats are not effected by the amendment made to AS 29.23.040 by sec. 4, ch. 83, SLA 1979 until reapportionment of the assembly is required or proposed under AS 29.23.020 or under AS 29.23.021 — 29.23.025.

~~Sec. 12.~~ AS 29.23.040 is amended to read:

**Sec. 29.23.040. REGULAR TERM OF OFFICE.** (a) Assemblymen are selected for three-year terms and until their successors are selected and have qualified, unless different terms not exceeding four years are prescribed by borough charter or ordinance. Except when otherwise required by a change of apportionment under AS 29.23.025, if the term of an assemblyman is changed by charter or ordinance, the term of an assemblyman holding office at the time the change takes effect is not affected by that change.

(b) The regular term of office begins on the first Monday following certification of the election, unless a different date is prescribed by borough charter or ordinance. [THE CURRENT TERM OF INCUMBENT ASSEMBLYMEN MAY NOT BE ALTERED UNDER THIS SECTION.]

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

... fees, and other expenses incurred by the charter commission are a debt of the borough and shall be paid upon proper certification. (§ 2 ch 118 SLA 1972)

**Sec. 29.68.350. Charter preparation.** (a) A charter commission established under this chapter shall prepare, adopt and submit a proposed home rule charter for the area to be unified to the voters for approval or rejection at a regular or special borough election called by the borough assembly held within 60 days of the date of publication and posting of the proposed charter as required in § 380 of this chapter. The charter shall include among its provisions:

(1) provisions for adjustment of existing bonded indebtedness and other obligations in a manner which will reserve a fair and equitable burden of taxation for debt service, subject to § 410 of this chapter;

(2) provision for the establishment of

(A) service areas;

(B) sections, if desired; and

(C) reapportionment of the sections, if established;

(3) provision for nonpartisan government; and provision for the selection, organization, authority and responsibilities of the governing body and its executive and administrator;

(4) the transfer or other disposition of property and other rights, claims, assets and franchises of the local government to be unified under the charter;

(5) provision for exercise of the rights of initiative and referendum as required by AS 29.13.050;

(6) a method of amending the charter;

(7) the date on which the charter, if approved at the charter election required by § 390 of this chapter, is effective;

(8) designation of the new municipality's official name, subject to the provisions of (b) of this section;

(9) other charter provisions which the charter commission elects to include and which may be included in a home rule charter under this chapter and the state constitution.

(b) The area to be unified shall be known as a borough or a city or by some other designation consistent with existing law. (§ 2 ch 118 SLA 1972; am § 6 ch 147 SLA 1972)

**Effect of amendment.** — The 1972 1972, deleted the language following amendment, effective September 10, "existing law" in subsection (b).

**Sec. 29.68.360. Public hearings.** Both before and after drafting the proposed charter, the charter commission shall hold a public hearing in each area of the borough represented on the borough assembly. Other public hearings may be held by the charter com-

\* Sec. 13. AS 29.68.350(a)(2) is repealed and re-enacted to read:

(2) provisions for

(A) the establishment of service areas; and

(B) the establishment of districts or sections for the election of members of the borough assembly, if election of borough assembly members is not areawide, and procedures by which to reapportion the election districts or sections;

\* Sec. 15. Sections 1 - 11, 13, and 14 of this Act take effect January 1, 1981.

\* Sec. 16. Sections 12, 15 and 16 of this Act take effect immediately in accordance with AS 01.10.070(c).

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH - STATE CAPITOL  
JUNEAU, ALASKA 99801  
907-465-0800


MEMORANDUM

May 9, 1980

SUBJECT: SCS CSHB 947, sectional analysis  
(Work Order Number 8564)

TO: Senator Arliss Sturgulewski  
Chairman, Senate Community and Regional  
Affairs Committee

FROM: John B. Chenoweth  
Legislative Counsel



This bill

- (1) changes substantially requirements of law applicable to the composition and apportionment of the assemblies of boroughs; and
- (2) alters requirements relating to the term of office of a member of a borough assembly.

Note: In sections 1 - 3 of Ch. 83, SLA 1970, the first session of the Eleventh Legislature made substantial changes in the law relating to the composition and apportionment of borough assemblies. These changes are due to become effective on January 1, 1981. The changes, generally include

- (1) general provisions and standards applicable to the composition and apportionment of all boroughs, set out at AS 29.23.021;
- (2) composition and representation requirements for general law boroughs (that is, exclusive of home rule boroughs and unified municipalities), set out at AS 29.23.023; and

(3) recomposition and reapportionment procedures applicable to all boroughs, set out at AS 29.23.025.

SCS CSHB 947 alters many of the provisions adopted last year.

\*

A principal change in this bill is the repeal of AS 29.-23.023 [\* Sec. 14] and the retention of some of the key provisions of that repealed section elsewhere.

\* Sec. 3 of this bill deletes a reference to AS 29.23.023, appearing in AS 29.23.021. If adopted, the assembly of a borough or unified municipality would be required to conform to standards of composition and apportionment applicable under the Constitution of the United States (popularly referred to as "equal protection"). Additionally, if adopted, the assembly of a borough could not provide for weighted voting, and, by the inclusion of the material in \* Sec. 4 of the bill, could not include members appointed from city councils of cities in the borough (i.e. no "institutional representation").

\* Sec. 4 "saves" a provision, now AS 29.23.023(c), and imposes it as a standard applicable to all boroughs and unified municipalities.

\* Sec. 5 shortens, from four to two months, the period in which, after the report of census information, a borough is obliged to determine whether it meets existing apportionment standards under AS 29.23.021. (Last year, when AS 29.23.023 was enacted, it was understood that an official report of the 1980 census would be issued about April 1, 1981, and four months were allowed to boroughs to make the determination required.) Elsewhere in the section, the term "borough" is added to assembly, as clarification, and the reference to AS 29.23.023, repealed in sec. 14 of the bill, is corrected.

\* Sec. 6: The operative provision is the inclusion of the words "by ordinance" to clarify how the borough shall provide for changes in composition as well as apportionment. Other changes in the section are for consistency.

\* Sec. 7: The changes in AS 29.23.025(c) make more specific the requirements which are imposed on persons who wish to challenge a determination of the borough assembly concerning apportionment. "50 registered voters who are residents of the borough" is substituted for "50 borough voters" so that local elections officials may be able to determine with certainty whether a petition request is presented by bona fide residents of the borough. Additionally, when a determination is requested, the assembly is given two months to make that determination.

\* Sec. 8 increases to six months (from four) the period of time in which the assembly, having ruled that it is malapportioned under the applicable standards, must (1) adopt a reapportionment ordinance and (2) submit it to the voters for approval. If no ordinance has been approved by the voters at the end of six months after a determination of the assembly that it is malapportioned, the commissioner of the Department of Community and Regional Affairs is given responsibility to impose a reapportionment plan. The plan is to be presented as an order of the commissioner delivered to the assembly for implementation.

\* Sec. 9 establishes a plan for an advisory determination by the commissioner of community and regional affairs that an assembly is malapportioned or that an ordinance presenting a new apportionment plan, even after ratification by the voters, does not meet constitutional or statutory requirements. The provision has no legal effect as to any other procedures bearing upon changes of composition or apportionment, and appears to be available only for its local political effect.

By \* Sec. 10, your committee clarifies which municipal election it is in which an apportionment or composition change becomes applicable.

New subsections of AS 29.23.025, added in \* Section 11, indicate when voters may seek judicial review of a reapportionment ordinance or order, or an apportionment determination (whether of the borough assembly or of the commissioner of community and regional affairs), and delay implementation of an apportionment change or composition change if the change is subject to review and approval (or determination of nonobjection) by the United States Department of Justice under the 1965 Voting Rights Act, as

amended. Your committee inserted language in subsection (j), added by section 11, to indicate that the provisions of AS 29.23.025 applied to boroughs - home rule and general law -- eliminating, by implication (but not specifically), applicability of AS 29.23.025 to unified municipalities.

Related changes involving composition and apportionment of borough assemblies appear in \* sections 1, 2, and 13: In section 1, the provisions of AS 29.23.021 (relating to standards of composition and apportionment and manner of voting) are made binding on home rule governments, including home rule boroughs and unified municipalities. By section 2, a requirement that the assembly of a newly-incorporated borough not exceed 11 members is removed. Section 13 rewrites a requirement imposed on unified municipalities to require that their charter contain, when applicable, procedures for reapportionment (necessary because unified municipalities are impliedly exempted from the reapportionment procedures of AS 29.23.025).

Because, generally, the statutory sections which \* Sections 1 - 11 and \* Sections 13 and 14 replace are not due to take effect until January 1, 1981, the effective date of these changes is delayed to that date. [\* Sec. 15]

\*Sec. 12, the remnant of the original House bill, makes further changes (in addition to those enacted last year at section 4, Ch. 83, SLA 1979) relative to the term of office of a borough assembly member. The principal operative amendment is the underscored language at page 5, lines 24 and 25, by which an exception to the date mandated for the start of the term of office of a borough assembly member may be made by a borough by charter or ordinance. The additional change -- the inclusion of new language in subsection (a) and the deletion of the second sentence of subsection (b) -- represents an attempt to make it clear that, except when required by a change in apportionment, the term of office of a member of a borough assembly may not be altered by action of the assembly, thus precluding foreshortening or extension of terms. AS 29.23.040 is binding on home rule governments by AS 29.13.100(1), re-enacted in sec. 1 of this bill. This change is given immediate effect in order to avoid problems which may arise in certain home rule municipalities having charter provisions contrary to the law as it currently reads immediately following the October, 1980, regular municipal elections. [\* Sec. 16]

Senator Arliss Sturgulewski

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May 9, 1980

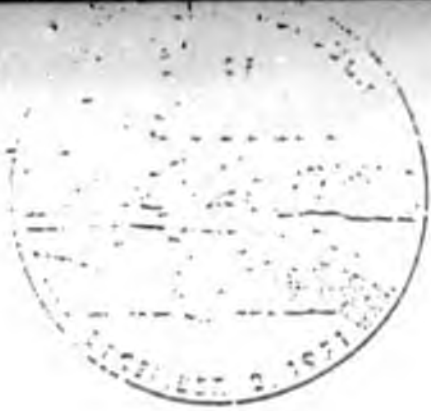
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JBC:ljb



# City and Borough of Sitka

P.O. BOX 79 · SITKA, ALASKA · 99835

February 25, 1980

Representative Richard Eliason  
Pouch V  
Juneau, Alaska 99811

Dear Representative Eliason:

It has recently been brought to our attention by Assembly member, Roberley Potter, that A.S. 29.23.023 was enacted last year. Unless amended, this statute will have many unintended effects on Sitka. Chief among these effects would be to cost the municipality money and to hold both the Assembly and the State Legislature up to ridicule.

29.23.023 (which applies to Home Rule Municipalities) provides that by July 31, 1981, all municipalities must hold an election and present to the voters various local apportionment schemes for Assembly representation.

In Sitka, since unification in 1971, all Assembly members have been elected at large; however, this law would require the City to spend a fair amount of time and money coming up with proposed election districts (containing equal populations) and to have a vote on the whole mess.

It seems obvious to me, at least, that the real purpose of the statute is to force various municipalities around the State which do have election districts to review them and to also give the citizens the right to vote for area-wide representation.

I don't believe that places already having area-wide representation were really intended to be covered by this Statute.

The Statute should be amended to allow for such an exemption or we're all going to have fun explaining why we are going through such an expensive waste of time in Sitka.

Could you please investigate this situation and consider sponsoring legislation to exempt municipalities like Sitka which already provide area-wide Assembly representation?

February 25, 1980

I wish to also point out a further minor problem. A.S. 29.23.080 (c) as amended last year (and applicable to Home Rule Municipalities) has the term of office of new Assembly men begin "... on the first Monday following Certification of the Election."

There are two problems with this in Sitka, First: The former practice in Sitka has been for the election to be certified at the next regular Assembly meeting following the election. Following certification, the new members are sworn in and take their seats. Under this new procedure, we would have to call a Special meeting the Monday following certification merely to swear in new members.

Second: The Mayor (while having no special powers in Sitka) may continue to be sworn into office at the meeting where the election is certified since the Legislative enactments covering the beginning of Mayors' terms are not made applicable to Home Rule Municipalities. That's also going to look real funny to the voters if we swear in a new Mayor at one meeting but have to wait until the next Monday to swear in the rest of the new Assembly members.

I wish that your colleagues would someday quit poking the Legislative stick in the eye of the Home Rule Municipality and stop creating problems where none existed before.

I realize that my comments would have been more helpful if they had been made prior to passage of these Statutes, however, I am sure none of us realized the potential problems at that time.

If I can be of any aid to you, please let me know.

Sincerely,

*Peter S. Hallgren*  
Peter S. Hallgren  
Municipal Attorney

cc: Senator Pete Meland

New Section 5 (re-number remaining sections accordingly)

Sec. 5. AS 29.23.023 (b) is repealed and reenacted to read:

(b) one or more of the proposals set out in ~~section~~ (a) of this section shall be submitted to the voters at the next regular election.

SCSCSHB 947 - ASSEMBLY APPORTIONMENT & REAPPORTIONMENT

BACKGROUND & SUMMARY

Last session the House attached a complicated assembly apportionment and re-apportionment bill to a Senate passed municipal code cleanup bill and adopted a floor amendment that made the prescribed process virtually impossible to implement. Because it was very late in the session with no time for a free conference committee and because the effective date of the bill wasn't until January 1, 1981, the Senate decided to accept the House version and amend it this session to make the reapportionment procedures workable. Senate CS for CSHB 947 sets out assembly apportionment standards in AS 29.23.021, revises and simplifies the reapportionment procedures in AS 29.23.025, and repeals AS 29.23.03 which contains the most onerous provisions of the bill (SB 137) that passed last year.

\* \* \* \* \*

PROBLEMS WITH AS 29.23.023, ENACTED LAST YEAR

SCSCSHB 947 repeals AS 29.23.023 which provided:

Special Election on Form of Representation. Required special election following decennial census asking borough residents if they want their assembly members elected at large, elected at large but required to live in a district, or elected by and from districts. Boroughs must go to the expense of a special election whether or not there is any dissatisfaction with the current form of representation, and whether or not the assembly is malapportioned. This provision is not necessary because there already exists in law the initiative procedures which may be used by borough residents to change their form of representation.

Dual Plurality Tabulation. Results of above election must be tabulated both inside and outside cities; the assembly must devise a reapportionment plan which "conforms to the form of representation receiving a plurality of the votes in each classification at that election." Nowhere in the law does it say what happens if the people inside the cities vote one way and the people outside vote another.

Short Time Limit. AS 29.23.023 allows only four months for the assembly to devise a reapportionment plan, adopt an ordinance, and get that ordinance ratified by borough voters. Because of the amount of time needed for legal notices for adoption of ordinances and elections, assemblies would have very little time to come up with a reapportionment plan.

\* \* \* \* \*

HIGHLIGHTS OF SENATE CS for CSHB 947

Apportionment Standards. AS 29.23.021, as revised by SCSCSHB 947, sets out standards for assembly apportionment:

- 1.-consistent with equal representation standards of US Constitution;
- 2.-apportionment set out in incorporation petition approved by voters;
- 3.-no weighted voting;
- 4.-no institutional representation (city council may not appoint one or more of its members to serve on borough assembly).

Reapportionment Procedure. AS 29.23.025, as revised by SCSCSHB 947, sets out procedures for assembly reapportionment:

- 1.-assembly determine if malapportioned within 2 months of census report;
- 2.-if malapportioned, assembly has 6 months to adopt by ordinance a reapportionment plan that must be ratified by voters;
- 3.-if no plan approved within 6 months, C&RA Commissioner provides reapportionment (similar provision in current law);
- 4.-allows reapportionment at times other than following a census;
- 5.-provides for advisory review by C&RA Commissioner and for judicial review;
- 6.-specifies election at which reapportionment plan goes into effect.

AS 29.23.025 is applicable to boroughs but not to unified municipalities. Another part of SCSCSHB 947 clarifies that unified municipalities must provide for reapportionment in their charters.

# Alaska MUNICIPAL League

TELEPHONES  
907 586-1325  
586-6526

204 N FRANKLIN ST  
JUNEAU ALASKA 99801

5/6/80

## Sectional Analysis - Senate CS for HB 947

- Sec. 1. Makes AS 29.23.021 applicable to home rule municipalities.
- Sec. 2. Deletes requirement that the number of members of a borough assembly may not exceed 11.
- Sec. 3. Deletes reference to AS 29.23.023, which is repealed by Sec. 14 of this bill.
- Sec. 4. Prohibits institutional representation.
- Sec. 5. Requires assembly to determine if malapportioned; changes time limit from 4 months to 2 months; deletes reference to AS 29.23.023.
- Sec. 6. Deletes reference to AS 29.23.023; requires changes in apportionment or composition to be made by ordinance - AS 29.23.025(d) requires voter approval of apportionment and composition ordinances.
- Sec. 7. Clarifies wording and requires borough assembly to make a determination if malapportioned if petitioned by 50 registered voters who are residents of the borough.
- Sec. 8. Lengthens time limit from 4 months to 6 months to adopt a reapportionment ordinance and clarifies wording about Dept. of C&RA providing for reapportionment.
- Sec. 9. New section which provides review by the C&RA Commissioner if petitioned by 50 registered voters who are residents of the borough.
- Sec. 10. Technical change in effective date of reapportionment plans.
- Sec. 11. Provides for judicial review; makes section applicable to home rule and general law boroughs and to unified municipalities whose assemblies are not elected at large or whose charter does not contain reapportionment provisions.
- Sec. 12. Permits reapportionment to change the regular term of office of an assemblyman; permits charter or ordinance to change when the regular term of office begins.
- Sec. 13. Clarifies that charters for unified municipalities must contain provisions for reapportionment procedures.
- Sec. 14. Repeals AS 29.23.023, which would require special elections on forms of representation, dual-plurality to implement, and extremely tight time limits.
- Sec. 15 & 16. Effective date sections.

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## SCS CSHB 947 - Assembly Apportionment and Reapportionment

The borough assembly apportionment and reapportionment provisions of SCS CSHB 947 basically go back to what was in Title 29 prior to the complicated amendments that were adopted last session. In addition, this bill contains three improvements to the prior law:

1. -deletes the dual majority provision, which required assembly adopted reapportionment ordinances to be ratified by the voters inside and outside cities;

2. -clarifies that weighted voting is not permissible; and;

3. -clarifies that institutional representation is prohibited, per an attorney general's opinion.

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Last session the House attached a complicated assembly apportionment and re-apportionment bill to a Senate passed municipal code cleanup bill and adopted a floor amendment that made the prescribed process virtually impossible to implement. Because it was very late in the session with no time for a free conference committee and because the effective date of the bill wasn't until January 1, 1981, the Senate decided to accept the House version and amend it this session to make the reapportionment procedures workable. Senate CS for CSHB 947 sets out assembly apportionment standards in AS 29.23.021, revises and simplifies the reapportionment procedures in AS 29.23.025, and repeals AS 29.23.023 which contains the most onerous provisions of the bill (SB 137) that passed last year.

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