

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 86/2

1275 SCRA SB 180 (#4 - #7)

1275

TITLE 29 - MUNICIPAL CODE REVISIONS
SUGGESTIONS FOR ADDITIONS OR CHANGES TO

Ch. 45 - MUNICIPAL TAXATION
Ch. 46 - SPECIAL ASSESSMENTS
Ch. 55 - MUNICIPAL PROGRAMS
Ch. 60 - STATE PROGRAMS

29.45.050 (Peter Hallgren, Sitka)

Figure of \$10,000 refer to taxes or value?

29.45.050 (Department of Community & Regional Affairs)

As a tax on personal property is relatively difficult to administer and collect, and because many municipalities have the option to exclude personal property from taxation under the provisions of AS 29.53.025(c), why not extend the option to all municipalities.

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As I read this proposed section, home rule municipalities would not be able to levy more than a six percent sales tax. The limitation on rate does not currently apply to home rule municipalities but would under the proposed section. Quite frankly, I do not recall the discussion which led to the inclusion of home rule municipalities under this limitation. Advancing years I guess. There is no reference to this subsection in the home rule laundry list in HB 170.

I also note that your commentary on the changes does not mention the addition of this limitation to home rule municipalities. I wonder if you could set me straight on what was intended for this subsection. The same question would apply to the sales tax section on cities.

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Two errors in SB 180 have been brought to my attention by Mr. Gerald L. Sharp, Attorney for the City and Borough of Juneau. During the editing process the phrase "home rule or" was inadvertently added to Sec. 29.45.650(a) (existing AS 29.53.415) and to Sec. 29.45.700 (existing AS 29.53.440, 450), making these sections apparently applicable to home rule as well as general law municipalities. There was no intention on the part of the Title 29 Revision Committee to limit the amount of sales tax which a home rule municipality may levy to 6 percent, and there was no intention to limit the power of a home rule city to levy sales and use taxes. While the list of home rule limitations contained in Sec. 29.10.110 does not include either Sec. 29.45.650 or Sec. 29.53.415 (with the exception of subsection (d), limiting the amount of interest which may be charged on sales taxes), the inclusion of the language "home rule or" in Sec. 29.45.650(a) and Sec. 29.45.700 ought to be deleted so that it is clear that home rule power is not limited by these sections.

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OTHER TITLES

TITLE 44

44.07.110(11) (Joe Burch, DNR)

Page 186 - line 1 - should be record.

TITLE 14 (Joyce Rasler, Wrangell)

Those sections in Title 14, Education, which pertain to home rule municipalities should be enumerated in home rule limitations under Sec. 29.10.110, or a chapter dealing with those sections in Title 14 should be added to Title 29.

ADDITIONAL SUGGESTION FOR CHAPTER 35 (Tam Cook)

In addition, I have discovered a potential area of confusion which was never considered during the revision of Title 29. Currently, AS 29.48.035 (10) provides for regulation of "alcoholic beverages as provided by AS 04.15.070." AS 04.15.070 was repealed in 1980 and replaced with AS 04.21.010 providing for only limited forms of regulation of the use and sale of alcoholic beverages, but, because the reference to the new section was not included in Title 29 it is unclear whether AS 29.48.035(10) grants powers of regulation in addition to those granted under Title 4. Also, AS 29.48.010(7) grants municipalities the general power to tax, but AS 04.21.010(c) specifically limits the power to tax alcoholic beverages.

A Senate letter of intent indicates that it was the purpose of AS 04.21.010 to limit municipal powers otherwise apparently granted in Title 29:

The purpose of this section is to describe with particularity the regulatory and taxing powers granted municipalities in regard to alcoholic beverages by Title 29 (see AS 29.48.010(7) and AS 29.48.035). Authorization is provided for municipalities to adopt ordinances "necessary to the orderly conduct of the business of selling alcoholic beverages" but the ordinances must be consistent with this title and regulations. Moreover, subsection (b) (sic) limits the circumstances in which taxes may be levied on alcoholic beverages inventories and sales. (1980 Senate Journal Supplement No. 23 adopted as a letter of intent by the Senate in 1980.

While SB 180 no longer contains a specific grant of power to regulate the use and sale of alcoholic beverages, that power may be implied to exist as a power "not otherwise prohibited by Alaska statute" because AS 04.21.010 is a grant rather than a limitation of regulatory power. If it is the intention of the committee that municipalities regulate in this area only pursuant to AS 04.21.010, a cross-reference to that section would be appropriate to include in Sec. 29.35.200, Sec. 29.35.210, Sec. 29.35.250 and Sec. 29.35.260. A cross-reference should also be included in Sec. 29.35.170 so that it is clear that the power to tax is subject to the limitation imposed under AS 04.21.010(c). I also note that AS 04.21.010 specifically applies to unified municipalities, and, presumably, to other home rule municipalities as a limitation on the power to regulate and to tax in this area. (AS 04.21.080(11)) It might be helpful to users of Title 29 if reference to this limitation were to appear there as well as in Title 4.

29.35.200, .210, .250, .260, .170 (Tam Cook)

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29.35.210(a) (Tam Cook)

A paragraph was omitted from Sec. 29.35.210(a): "(9) tax, spend and regulate for the purpose of promoting economic development." A second class borough would be authorized to exercise this power on a nonareawide basis. No similar provision currently exists in Title 29.

29.35.250, .260 (Dept. of Community and Regional Affairs)

This provision seems to give general law cities a power which is equivalent to the authority to adopt and modify a home rule charter by ordinance. As the State Constitution provides that the adoption and modification of a charter shall be by referendum, the propriety of these sections is questioned. Additionally, the subject provisions would allow a second class city in the unorganized borough to exercise the power of education.

29.35.260(c) (Tam Cook)

Incorrectly refers to AS 29.35.180, when it should refer to AS 29.35.190.

29.40.010 (Leo Rhode, Mayor of Homer)

(HB 170 or SB 180) has language which greatly improves the latitude in which this exchange may transpire i.e., "the City must first consent by ordinance to the delegation." Currently Title 29 allows no prerequisite affirmation by the City.

29.40.140 (Joe Burch, Div. of Technical Services, Dept. of Natural Resources)

Line 16: "recorded" should be changed to "filed."

29.40.150 (Richard Hallgren)

Vacating a street - returning the property to the original owner. If the property has been sold in the interim, they charge fair market value rather than giving property away free. Refers back to Sec. 29.10.110 - paragraph (34).

in (b) → 29.40.170 (Joe Burch)

"City or borough" should be changed to read "municipality" Line 6: "recorded" should be changed to "filed."

Line 8: "record" should be changed to "file."

29.40.180 (Jim Kohler, City Manager of Yakutat)

State compliance with local subdivision regulations. Item that is going to be more than a sleeper, as well as elimination of third class boroughs.

29.35.020 (JoAnne Shanley, Seward City Clerk)

Regarding the control of watersheds outside a municipality's boundaries:

"Before this power may be exercised within the boundaries of another municipality, the approval of the other municipality must be given by ordinance."

A request had been made that some wording should be added similar to "such approval cannot be unreasonably withheld"; or, better still, "such approval cannot be withheld unless the other municipality is attempting to control the watershed."

A case in point is Homer. The city is trying to protect its watersheds located outside the city limits but within the boundaries of the Kenai Peninsula Borough. The Borough has refused to allow Homer to proceed with their plans but also refuses to take any action to protect the watershed.

29.35.170 (Richard Hallgren, Sitka Borough Mayor)

Page 77 - 29.35.170 - wishing to tie in all of this as mandatory in home rule municipalities. As it relates to 29.45.

29.35.190 and 29.10.110 (Dept. of Community & Regional Affairs)

It would seem an oversight that unified municipalities, home rule boroughs and home rule cities in the unorganized borough are not subject to such provisions. If the apparent oversight is remedied, 29.40.150(c) should be stricken and a new section 29.40.190 should be added stating that AS 29.40.010 - 29.40.190 apply to home rule and general law municipalities.

TITLE 29 COMMITTEE MARK-UP
Comments from Steven H. Morrissett
Attorney for the Matanuska-Susitna Borough

The Matanuska-Susitna Borough was probably the only Alaskan municipality to both declare itself malapportioned and change its form of government (from 5 to 7 members) in 1981. AS 29.23.023 and .025, adopted in 1980 are conflicting and create confusion in attempting to follow the statutory process. The following revisions are proposed to correct the conflicts for HB 170:

29.20.070. Delete subsection (d). It conflicts with subsection (b) of AS 29.20.080, which requires an ordinance adopting a plan or plans before submitting it to the voters.

29.20.080. Subsections (b), (d) and (e) appear redundant in part. The following amendments are suggested:

Sec. 29.20.080. ASSEMBLY RECOMPOSITION AND REAPPORTIONMENT

(a) Not later than two months after the official report of a federal decennial census, the assembly shall determine and declare by resolution whether the existing apportionment of the assembly meets the standards of AS 29.20.060.

(b) At other times the assembly may review on its own initiative whether the existing reapportionment of the assembly meets the standards of AS 29.20.060.

(c) [leave as is]

(d) The assembly shall provide, by ordinance, for a change in the existing apportionment of the assembly whenever it determines that the apportionment does not meet the standards of AS 29.20.060. At the same time the assembly may, by ordinance, provide for a change of composition of the assembly. Any change must be submitted to the voters for approval. If the assembly submits to the voters a form of representation which includes election of assembly members under AS 29.20.070(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

Title 29 Committee Mark-up Comments from Steven H. Morrisett, Attorney for
Matanuska-Susitna Borough

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representation. If the assembly determines that its existing apportionment meets the standards of AS 29.20.060, it may submit the existing apportionment as a proposed plan of apportionment of assembly seats which corresponds to a form of representation which is proposed. Any change must be approved by a majority of the voters voting on the question, except that if more than one alternative is presented, the alternative receiving the most votes over 40% of the total votes cast shall be adopted.

(e) The assembly shall adopt an ordinance and submit the proposition to the voters within six months from the date on which it determines that the apportionment does not meet the standards of AS 29.20.060. If, at the end of the six-month time period, an ordinance providing for reapportionment has not been approved by the voters, the commissioner shall provide for the reapportionment in accordance with the standards of AS 29.20.060 by preparing an order of reapportionment and delivering the order to the borough mayor.

Changes are suggested in Section 29.45.400, relating to the tax foreclosure redemption periods. The present language would never require tax payments to be brought current. Proposed:

Sec. 29.45.400. REDEMPTION PERIOD.

Properties transferred to the municipality are held by the municipality for at least one year. During the redemption period a party having an interest in the property may redeem it by paying the lien amount including all taxes due plus penalties, interest, and costs, including all costs incurred under AS 29.45.440(a). Property redeemed is subject to all taxes, assessments, liens, and claims as though it had continued in private ownership.

TITLE 29 LEGISLATIVE COMMITTEE

We have reviewed chapter 29.40 of SB 180 and offer the following points:

(1) Under the section by section analysis, 29.40.040 states that AS 29.33.090(e) allowing a business licensed by the ABC board before the adoption of the zoning ordinance to continue to operate, has been eliminated.

In this sole instance, it appears zoning grandfather rights are being denied to one specific type of business by administrative state law decision. Does that not violate equal protection under the law? Are there funds to purchase the non conforming business or are we talking adverse condemnation?

(2) 29.40.040. Eliminated "contract zoning". What was the problem or rationale behind this change? Is contract zoning subject to abuse? Did it seem to eliminate or circumvent comprehensive planning or create "spot zoning"?

29.40.170. Remedies - This section doubles the violation misdemeanor from \$500 to \$1000 but solely for the misconduct of selling lots before properly platted and recorded!

Why was the same penalty not afforded to other land use regulatory penalties such as zoning, building?

29.40.120 - Notice of hearing - Discusses re-plat petition and requires notice to applicants as well as affected property owners not signing petition.

Define affected?

(a) only those within actual limits of change?

(b) within (300 foot) radius of external boundary of change?

NEEDS TO BE CLARIFIED

(3) 29.40.100 - Short Plat (b) - SB 180

States the assembly may provide for an administrative official to review and approve short plats (NO PLATTING BOARD ACTION STATED OR IMPLIED.)

However, the next section - 29.40.110 - states recorded plats cannot be altered except by platting authority!

The intent of allowing an administrative official to, under certain circumstances, act as a platting authority either needs to be included in the definition of platting authority or amended under 110 to provide for that exemption.



THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

October 30, 1981

Joint Senate and House Community
and Regional Affairs Committees
Pouch B
Juneau, Alaska 99811

Subject: Title 29 Revisions (SB 180/HB 170)

Ladies and Gentlemen:

Please consider the following comments and suggestions in your markup of the subject bills.

Page 73, lines 9 and 10. I suggest deleting the phrase "in accordance with" and substituting therefor the phrase "under the procedures set out in". Presently there is some question as to whether some of the substantive restrictions in AS 09.55.250 through 460 apply to municipalities or whether the reference in Title 29 was meant solely for the purpose of procedural matters. It is my understanding that when this section was adopted in the 1972 revision it was intended that only the procedural aspects of AS 09.55.250 through 460 were meant to apply. The proposed change would help clarify that intent.

Page 77, line 7. I think you could delete the phrase "except unified municipalities" without losing anything. This subsection, by its very nature, applies only to cities within a borough. There are no cities within a unified municipality and therefore there does not appear to be any need to include the exception.

Page 77, line 9. For consistencies sake, you might consider adding "or unified municipality" after the word "borough".

Page 77, line 25. I question the use of the word "may" in this line. The second sentence of this section makes collection by the borough of city taxes mandatory. What is the purpose of stating in the first sentence that the borough may collect taxes levied within its boundaries? It would appear that the permissive collection of taxes applies only to those taxes which are levied by the borough itself. But, if the borough does not want to collect borough taxes it doesn't levy them. I suggest the word "may" should be changed to "shall" unless there is some specific purpose which I am overlooking.

Page 77, line 29. I suggest the word "municipalities" be changed to "boroughs and cities". This section deals with the relationship

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of cities inside a borough and is inapplicable to unified municipalities; therefore the term "municipalities" which includes unified municipalities should not be used.

Page 78, lines 2 through 4. I question the placement of this section under an article entitled "Mandatory Areawide Powers." This does not strike me as a power which is either mandatory or areawide. Special assessment districts are almost always established on a less than areawide basis. The use of the word "may" in the first line of this section is also contrary to any idea that the power is a mandatory power. If this section attempts to deal with a specific problem (for example, who assesses, levies and collects special assessments within a city created special assessment district of a city within a borough) then I suggest this section be redrafted to deal with the specific problem. I don't know what this section adds that is not already in Chapter 46.

Page 80, lines 15 and 16. As section 29.35.260 applies only to cities, the language in subsection (d) should be made consistent with that application. The phrase "municipalities, except unified municipalities" should be changed to "cities" so that it does not appear that we are trying to apply this section to boroughs.

Page 83, line 1. Add "or part of a city" after the word "city" to insure that the option is available for the creation of a service area which includes only a part of a city.

Page 86, lines 9 through 12. This section authorizes a permit system for the purpose of encouraging or discouraging certain activities. I suggest this section should be amended to include after the word "to" the word "prevent,". This would make it clear that a permit system could be used for more than mere encouragement or discouragement of uses.

Page 89, lines 5 and 6. I suggest the phrase "all lots or tracts created" be replaced by the phrase "any lots within". It appears that the existing language could be read to allow one to use the short plat procedure as long as at least one lot had physical and legal access even though the rest did not.

Page 91, lines 9 through 11. First, as a matter of drafting style, I had thought that where a section or subsections of Title 29 were made applicable to home rule municipalities, the section setting forth that applicability would be the last subsection in the section rather than one in the middle, as here. Also, it seems a little peculiar to state that the applicability section itself applies to

home rule municipalities. That is, what is the sense of saying in subsection (c) that (c) itself applies to home rule municipalities when the only purpose of subsection (c) is to state that certain other sections apply? Wouldn't it be simpler and more to the point just to state that "the provisions of (a) and (b) of this section apply to home rule. . .". As to the substance, there is no reason for (b) to apply to unified municipalities. Subsection (b) deals with cities within a borough. If a unified municipality wants to permit the vacation of streets acquired for legal consideration without having the abutting property owners pay fair market value, the unified municipality ought to be given that option. On the other hand, there is justification for making this section applicable to boroughs so that a borough platting authority cannot vacate such a city street without compensation going to the city.

Page 93, following line 10. It may be helpful to add a new subsection (3) indicating that boroughs may also levy a service area property tax for functions which are limited to the service area. The word "non-areawide" is defined as including all the area outside cities. A service area is generally something less than the entire area outside cities and the addition of this specific authority may avoid questions in the future.

Page 98, beginning at line 5. I think section 29.45.040 should be moved to some other section of the code as it does not in any way affect the authority or the procedures used by municipalities to levy and collect taxes. AS 29.10.110(35) purports to make this a limitation on home rule municipalities yet neither home rule nor general law municipalities have any duties under this section nor does this section act as a restriction on any municipality.

Page 99, line 27. I believe that the need for the clause "excluding personal property from taxation" should be deleted as it gives rise to the implication that personal property could not otherwise be exempted by a borough. While this may be the case under the present Title 29, it appears that this has been changed by proposed section 29.45.010(c) (page 93 at line 14). This subsection refers to levying a tax on "real property, personal property, or both." The clear implication of this subsection is that a borough may, in effect, exempt personal property by levying its tax only on real property. This is a change from existing law. Leaving the reference to a personal property tax exemption on page 99 at line 27 implies that a borough may not fail to levy a tax on personal property unless it has exempted personal property by adopting such an exemption which a city within the borough has previously adopted.

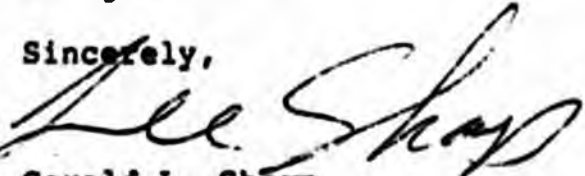
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Page Five

taxes, a sales tax lien should come in behind liens for property taxes and special assessments and ahead of judgment liens. The last sentence of this section should be changed to read, "When recorded, a lien authorized under this section is superior to all other liens except those for property taxes and special assessments."

Page 122, line 23. This section (29.45.660) requires that any borough levying and collecting a sales tax must provide sales tax equivalency notices for state grants. This means that a borough which levies both a property tax and a sales tax must give equivalency notices for each. The existing statute makes the requirements for the giving of sales tax equivalency notices applicable only to those cities which levy only a sales tax. I believe that the deletion of the word "only" may have been an oversight. In any event, the word "only" should be inserted after the word "a" in line 23. Otherwise, municipalities which levy both a sales tax and a property tax will be giving notices to its citizens which indicate that for every dollar of the subject grants received, the taxpayer has received a dollar of property tax relief and a dollar of sales tax relief.

Page 123, lines 14 through 22. Subsection (a) has been changed from the existing language to establish a procedure whereby the assembly approves the new sales tax or new rate by ordinance, but the ordinance does not take effect until ratified by a majority of the voters. This makes the first sentence of subsection (b) superfluous. Leaving this particular sentence in the statute creates confusion as it indicates that the assembly must then adopt another ordinance doing essentially what it has already done in subsection (a). I believe the entire subsection (b) can and should be eliminated. The last sentence, while in existing law, appears to give the seller the option of extending credit to his buyers for the payment of the tax. Thus, the municipality does not make the decision as to whether someone should be permitted to pay the sales tax on credit, the seller makes that decision. If a municipality wishes to establish that option, it should be permitted to do so but it should not be forced to accept the credit worthiness evaluation of the merchant who is collecting the tax.

Sincerely,


Gerald L. Sharp
City-Borough Attorney

GLS:jr

(11)

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TITLE 44

44.07.110(11) (Joe Burch, DNR)

Page 186 - line 1 - should be record.

TITLE 14 (Joyce Rasler, Wrangell)

Those sections in Title 14, Education, which pertain to home rule municipalities should be enumerated in home rule limitations under Sec. 29.10.110, or a chapter dealing with those sections in Title 14 should be added to Title 29.

ADDITIONAL SUGGESTION FOR CHAPTER 35 (Tam Cook)

In addition, I have discovered a potential area of confusion which was never considered during the revision of Title 29. Currently, AS 29.48.035 (10) provides for regulation of "alcoholic beverages as provided by AS 04.15.070." AS 04.15.070 was repealed in 1980 and replaced with AS 04.21.010 providing for only limited forms of regulation of the use and sale of alcoholic beverages, but, because the reference to the new section was not included in Title 29 it is unclear whether AS 29.48.035(10) grants powers of regulation in addition to those granted under Title 4. Also, AS 29.48.010(7) grants municipalities the general power to tax, but AS 04.21.010(c) specifically limits the power to tax alcoholic beverages.

A Senate letter of intent indicates that it was the purpose of AS 04.21.010 to limit municipal powers otherwise apparently granted in Title 29:

The purpose of this section is to describe with particularity the regulatory and taxing powers granted municipalities in regard to alcoholic beverages by Title 29 (see AS 29.48.010(7) and AS 29.48.035). Authorisation is provided for municipalities to adopt ordinances "necessary to the orderly conduct of the business of selling alcoholic beverages" but the ordinances must be consistent with this title and regulations. Moreover, subsection (b) (sic) limits the circumstances in which taxes may be levied on alcoholic beverages inventories and sales. (1980 Senate Journal Supplement No. 23 adopted as a letter of intent by the Senate in 1980)

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Supplement No. 23 adopted as a letter of intent by the Senate in 1980.

While SB 180 no longer contains a specific grant of power to regulate the use and sale of alcoholic beverages, that power may be implied to exist as a power "not otherwise prohibited by Alaska statute" because AS 04.21.010 is a grant rather than a limitation of regulatory power. If it is the intention of the committee that municipalities regulate in this area only pursuant to AS 04.21.010, a cross-reference to that section would be appropriate to include in Sec. 29.35.200, Sec. 29.35.210, Sec. 29.35.250 and Sec. 29.35.260. A cross-reference should also be included in Sec. 29.35.170 so that it is clear that the power to tax is subject to the limitation imposed under AS 04.21.010(c). I also note that AS 04.21.010 specifically applies to unified municipalities, and, presumably, to other home rule municipalities as a limitation on the power to regulate and to tax in this area.

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Additional Suggestion for Chapter 35
See Town

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Chapter 45

29.45.050

Richard Hallgren (SITKA)

~~29.45.050~~ - Figure of \$10,000 refer to taxes or value?

29.45.050

QCRi

~~29.45.050~~ As a tax on personal property is relatively difficult to administer and collect, and because many municipalities have the option to exclude personal property from taxation under the provisions of AS 29.53.025(c), why not extend the option to all municipalities.

29.45.160 Joe Burch DNR

Page 107 - lines 22-26 - This reads as if the record owner should provide a copy to the Assessor. See AS 29.53.100(b) as now written. 29.45.160

29.45.320 Joyce RASLER / WRANGLER

Sec. 29.45.320 Real Property Tax Collections (a) and Sec. 29.45.330 Foreclosure List (a) (1) are in conflict. Wrangell's ordinance provides for enforcement of delinquent real property tax liens, however, not annually. The number of delinquent accounts would not justify annual foreclosure in many municipalities. It is recommended that Sec. 29.45.330 (a) (1) be amended by adding "unless otherwise provided by ordinance" to be consistent and save unnecessary foreclosure proceedings.

29.45.460 Joyce RASLER / WRANGLER

Sec. 29.45.460 Disposition and Sale of Foreclosed Property (c): a home-~~less~~ municipality is not required to hold hearings on an ordinance. This section should be amended to provide for notice to the former record owner prior to introduction of an ordinance.

Rasler / WRANGLER

Sec. 29.45.470 Repurchase by Record Owner (a): 29.45.250 provides for fifteen percent interest on delinquent taxes. It is inconsistent to charge eight percent following judgement and fifteen percent prior to judgement. In addition, AS 09.30.070 provides for interest on judgments. This subsection also provides for delinquent taxes assessed and levied as though it continued in private ownership. This should include delinquent taxes assessed and levied, plus penalty and interest.

Richard Hallgren / SITKA

Page 119 Sec. 29.45.470 Relating to foreclosing on property for taxes. Should be a date where the right of the original property owner to repurchase ceases.

480
29.45 ~~560~~

Page 2
TAM COOK
~~BERA~~

(~~4x~~ Sec. 29.45.480) was omitted from this bill. Under existing law, that provision is AS 29.53.380 (proceeds of tax sale):

29.45.560

✓ DCRA

29.45.560 P120, 127 - It would seem that the provisions should include 29.45.080, 29.45.240(b) and 29.45.450.

29.45.650(a)

Lee Sharp (Juneau)

While discussing the applicability of AS 29.53.415(a) to home rule municipalities with an attorney for the gas line, he pointed out that in the proposed municipal code (HB 170) the counterpart of that section now includes reference to home rule municipalities. See proposed AS 29.45.650(a).

As I read this proposed section, home rule municipalities would not be able to levy more than a six percent sales tax. The limitation on rate does not currently apply to home rule municipalities but would under the proposed section. Quite frankly, I do not recall the discussion which lead to the inclusion of home rule municipalities under this limitation. Advancing years I guess. There is no reference to this subsection in the home rule laundry list in HB 170.

I also note that your commentary on the changes does not mention the addition of this limitation to home rule municipalities. I wonder if you could set me straight on what was intended for this subsection. The same question would apply to the sales tax section on cities.

29.45.650(a) and 29.45.700

TAM COOK

Two errors in SB 180 have been brought to my attention by Mr. Gerald L. Sharp, Attorney for the City and Borough of Juneau. During the editing process the phrase "home rule or" was inadvertently added to Sec. 29.45.650(a) (existing AS 29.53.415) and to Sec. 29.45.700 (existing AS 29.53.440 450), making those sections apparently applicable to home rule as well as general law municipalities. There was no intention on the part of the Title 29 Revision Committee to limit the amount of sales tax which a home rule municipality may levy to 6 percent, and there was no intention to limit the power of a home rule city to levy sales and use taxes. While the list of home rule limitations contained in Sec. 29.-10.110 does not include either Sec. 29.45.650 or Sec. 29.53.415 (with the exception of subsection (d), limiting the amount of interest which may be charged on sales taxes), the inclusion of the language "home rule or" in Sec. 29.45.650(a) and Sec. 29.-45.700 ought to be deleted so that it is clear that home rule power is not limited by these sections.

Chapter 46

29.46.160

Joyce Rosler / WRANGLE

Sec. 29.46.160 Assessment Roll: (b) there is apparently language missing from this subsection. Real property is assessed to the record owner as shown in the records of the district recorder, who shall at least monthly provide a copy of each recorded change of ownership. The record owner does not provide the information.

Chapter 60

29.60.010

D CRA

29.60.812 P143, L8 - Substitute "(0.001)" for "(0.1)" or "(0.1%)".

~~29.60.010~~ P143, L9 - Add "per capita" between "the" and "property".

* include

29.60.020

D CRA

~~29.60.020~~ P144, L11 - Substitute "Census" for "Censis".

OTHER Titles

Title 44

44.07.110 (11) Ja Burch DNR

Page 186 - line 1 - should be record.

~~29.46.160~~

Title 14

RASLER WRANGLE

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PROPOSED AMENDMENT TO SEC. 29.26.290 INCORPORATING PROVISIONS OF
AS 15.45.610 AND REQUIRING SUPPLEMENTAL SIGNATURES TO BE FILED
WITHIN 10 DAYS. (Re: (15) of memo dated 10/15/81)

Sec. 29.26.290. FILING PETITION. (a) The copies of a recall petition shall be assembled and filed as a single instrument. No petition may be filed within 180 days of the termination of the term of office of the official sought to be recalled.

(b) Within 10 days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient and, if the petition is insufficient, shall identify the insufficiency and notify the sponsors by certified mail. A petition which is insufficient shall be rejected and filed as a public record, unless it is supplemented under (c) of this section.

(c) A petition may be supplemented with additional signatures obtained and filed within 10 days after the date on which the petition is rejected if

(1) The petition contains an adequate number of signatures counting both valid and invalid signatures; and

(2) the supplementary petition is filed before 180 days of the termination of the term of office of the official sought to be recalled.

(d) Within 10 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.

Page 68, line 19:

Delete "35" and insert "25"

Page 68, line 24:

Delete "35" and insert "25"

(Note: if this proposal is accepted, Sec. 29.26.150 should be redrafted to use similar language, but with no substantive changes)

PROPOSED AMENDMENT TO SEC. 29.26.350 TO AVOID CONFLICTS WITH SEC. 29.20.180
(Re: (19) of memo dated 10/15/81)

Sec. 29.26.350. SUCCESSORS. (a) If an official is recalled from the governing body, his office is filled in accordance with AS 29.26.180. If all members of the governing body are recalled, the governor shall appoint three qualified persons to the governing body. The appointees shall appoint additional members to fill remaining vacancies in accordance with AS 29.20.180.

(b) If a member of the school board is recalled, his office is filled in accordance with AS 14.12.070. If all members are recalled from a school board, the governor shall appoint three qualified persons to the school board. The appointees shall appoint additional members to fill remaining vacancies in accordance with AS 14.12.070.

(c) If an official other than a member of the school board or governing body is recalled, a successor shall be elected to fill the unexpired portion of the term. The election shall be held not more than 60 days from the date the recall election is certified, except that if a regular election occurs within 75 days after certification the successor shall be chosen at that election.

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

**PROPOSED AMENDMENT TO SEC. 29.45.050 ALLOWING A MUNICIPALITY TO EXEMPT
CLASSES OF PERSONAL PROPERTY. (Re: (27) of memo dated 11/16/81)**

Page 99, following line 22 insert:

**"(3) classify personal property for the purposes of taxation and
exempt particular classifications of personal property from taxation."**

**PROPOSED AMENDMENT TO SEC. 29.45.090 ALLOWING A MUNICIPALITY TO TAX CLASSES
OF PERSONAL PROPERTY AT DIFFERENT RATES. (Re: (27) of memo dated
11/16/81)**

Page 94, line 3:

After "the" insert "average"

Page 104, line 15:

After "All" insert "real"

Page 104, line 17:

**After "year." insert "A municipality may by ordinance classify
personal property upon which a tax is levied and tax particular
classifications of personal property at different rates."**

Page 111, line 21:

Delete "rate" and insert "rates"

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Delete "rate" and insert "rates"

**PROPOSED AMENDMENT TO SEC. 29.35.250 INCORPORATING PROVISIONS OF
AS 29.48.035(b). (Re: suggestion by Lee Sharp)**

Sec. 29.35.250. CITIES INSIDE BOROUGHS. (a) A city inside a home rule or general law borough may exercise any power not otherwise prohibited by law. On adoption of a borough ordinance to provide for areawide exercise of a power, no city may exercise the power, unless the borough ordinance provides otherwise or the borough by subsequent ordinance ceases to exercise the power.

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

Page 30, after line 24 insert:

'(32) (cities inside boroughs)''

Renumber accordingly

PROPOSED AMENDMENT REQUIRING REIMBURSEMENT OF STATE AID FOR CONSTRUCTION
IF A FACILITY CEASES TO BE OPERATED AS A NONPROFIT HEALTH FACILITY
OR HOSPITAL. (Re: memo by Palmer McCarter dated 11/13/81)

Sec. 29.60.235. REIMBURSEMENT OF STATE AID. To qualify for state assistance under AS 29.60.230, the municipality or other sponsor shall agree, if the hospital or health facility ceases to operate as a nonprofit hospital or health facility within 20 years after construction of the project is completed, to pay the state an amount of money equal to

(1) the fair market value of the hospital or health facility at the time it ceases to operate as a nonprofit hospital or health facility;

(2) multiplied by the amount of state assistance received under AS 29.60.230; and

(3) divided by the total project cost.

Page 153, line 27:

After "hospital" insert "that is owned or operated or both by a municipality, nonprofit corporation, or other nonprofit sponsor"

This is for consistency

**PROPOSED AMENDMENT TO SEC. 29.26.290 INCORPORATING PROVISIONS OF
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(1) the fair market value of the hospital or health facility at the time it ceases to operate as a nonprofit hospital or health facility;

(2) multiplied by the amount of state assistance received under AS 29.60.230; and

(3) divided by the total project cost.

Page 153, line 27:

After "hospital" insert "that is owned or operated or both by a municipality, nonprofit corporation, or other nonprofit sponsor"

AS 29.18.204(c) (amended by sec. 1, ch. 113, SLA 1981) (See Sec. 29.65.030)

(c) Land may be selected or nominated for selection by a municipality to satisfy a general grant land entitlement under AS 29.18.201 and 29.18.202 at any time before October 1, 1980. However, if a municipal selection or nomination or a part of a municipal selection or nomination is rejected by the director, the municipality may, not later than 90 days after receipt of the director's rejection, select additional state land as necessary to satisfy its entitlement.

AS 29.33.150(b) (amended by sec. 2, ch. 113, SLA 1981) (See Sec. 29.40.180)

(b) The regulations adopted under (a) of this section apply to subdivision plats of undeveloped state land for disposal under AS 38.05 or AS 38.08 filed with the platting board. The [, EXCEPT THAT THE] platting board may not disapprove the subdivision plat on the basis of [OR ADOPT] regulations which require [THE STATE TO CONSTRUCT ACCESS ROADS OR] capital improvements on or to state land included in the subdivision plat. Regulations adopted after the platting board is notified by the commissioner of natural resources of a proposed sale of subdivided state land under AS 38.05 or AS 38.08 do not apply to the state land in the proposed sale.

(See Sec. 29.40.180)

AS 29.33.150(c) - (g) (added by sec. 3, ch. 113, SLA 1981)

(c) The platting board must approve and sign the subdivision plat within 60 days of its receipt from the commissioner of natural resources unless the platting board

(1) determines that the plat does not comply with subdivision regulations other than those requiring capital improvements to state land; and

(2) notifies the commissioner of each determination of non-compliance within the 60-day period established in this subsection.

(d) The commissioner of natural resources may withdraw the subdivision plat and amend it in response to the determination of non-compliance by the platting board under (c) of this section. The platting board shall respond within 30 days to the amendment or response from the commissioner of natural resources.

(e) Notwithstanding any other provision of law, the provisions of (b) - (f) of this section apply to all disposals of land under AS 38.05 or AS 38.08.

(f) Nothing in this section relieves the Department of Natural Resources of its obligation to provide legal access to the subdivision.

(g) As used in this section, "capital improvements" includes but is not limited to access roads, other physical improvements, and their design and engineering.

AS 29.48.020(8) (added by sec. 12, ch. 38, SLA 1981) (See Sec. 29.35.210(a))

(8) provide for the acquisition and construction of local service roads and trails under AS 19.30.111 - 19.30.251.

AS 29.48.020(9) (added by sec. 1, ch. 107, SLA 1981)

(9) establish an emergency communications center under AS 29.73.080.

AS 29.73.080 (added by sec. 2, ch. 107, SLA 1981) (New Section)

Sec. 29.73.080. EMERGENCY SERVICES COMMUNICATIONS CENTERS. (a)

A municipality may establish an emergency services communications center with one or more other municipalities and one or more state, federal, or private agencies that provide emergency service communications to the same geographic area. An emergency services communications center established under this section may be organized and operated as a public nonprofit corporation under AS 10.20.

(b) An emergency services communications center under this section may be governed by a board of directors. A member of a board of directors of an emergency services communications center serves without compensation but is entitled to per diem and travel expenses. If an emergency services communications center is organized as a nonprofit corporation, a member of its board of directors may not be employed by the nonprofit corporation.

(c) An emergency services communications center may assess the feasibility and desirability of providing emergency services communications for the geographic area in which it is located through one central office. An emergency services communications center may

(1) combine or coordinate the existing emergency services communications programs of the participating municipalities and agencies;

(2) operate a dispatch center to receive all requests for emergency services and dispatch those services;

(3) study the need for improvement in the timely delivery of

emergency services to residents of the participating municipalities;

(4) hold public hearings to obtain information concerning the timely delivery of emergency services;

(5) apply for and accept federal, state, municipal, and private money, property, or assistance for use in providing the timely delivery of emergency services;

(6) enter into contracts to carry out the provisions of this chapter;

(7) employ personnel necessary to carry out the provisions of this chapter.

(d) In this section

(1) "emergency services" means services provided by law enforcement agencies, fire departments, ambulance services, and other organizations that are intended to respond to emergency situations of imminent danger to life or property;

(2) "state agency" means a department, division, or office in the executive branch of state government.

AS 29.89.030(a)(1) (amended by sec. 1, ch. 103, SLA 1981) (See Sec. 29.60.120)

(1) to a municipality which has the power to provide hospital facilities and services and which exercises that power, \$1,000 per bed for each bed actually used for patient care, limited to the number of beds provided for in the construction design of the hospital, or \$250,000 [\$75,000] a hospital for those hospitals with 10 or more beds, or \$50,000 [\$25,000] a hospital for those hospitals with less than 10

beds, as the municipality may elect; money received under this paragraph may be used only for hospitals and shall be apportioned among qualifying hospitals as the municipality determines;

AS 29.89.030(a)(3) (amended by sec. 2, ch. 103, SLA 1981) (See Sec. 29.60.120)

(3) to a municipality in which a health facility is operated, \$2,000 [\$1,000] per bed for each bed actually used for patient care, limited to the number of beds provided for in the construction design of the health facility, or \$8,000 [\$4,000] per health facility as the municipality determines.

AS 29.90.010 (amended by sec. 3, ch. 103, SLA 1981) (See Sec. 29.60.230)

Sec. 29.90.010. STATE AID FOR HOSPITAL AND HEALTH FACILITY CONSTRUCTION. If construction of a hospital began after January 1, 1968, or if construction of a health facility began after January 1, and before July 1, 1980, and state matching aid for construction approved for payment to the municipality or other hospital or health facility sponsor constitutes less than 25 percent of the total project cost, the department shall pay to the municipality or other hospital or health facility sponsor each fiscal year \$2,500 a bed for the maximum number of beds provided for in the construction design of the hospital or health facility or five percent of the total project cost, whichever is greater. State aid provided for in this section shall continue until the municipality or other hospital or health facility sponsor has received an amount which, combined with state matching money for construc-

tion of the hospital or health facility, equals 25 percent of the total project cost. Money received for construction may not be used for any other purpose.

AS 29.90.020 (amended by sec. 4, ch. 103, SLA 1981) (See Sec. 29.60.240)

Sec. 29.90.020. HOSPITAL AND HEALTH FACILITY CONSTRUCTION ASSISTANCE ACCOUNT. The hospital and health facility construction assistance account is established. Money to carry out the provisions of this chapter shall be allocated by the department to the account in accordance with AS 29.95.010. If amounts in the account are insufficient to pay each recipient's share authorized under this chapter, the amounts which are available shall be distributed pro rata among eligible recipients.

AS 29.90.030(4) (added by sec. 5, ch. 103, SLA 1981) (See Sec. 29.60.250)

(4) "health facility"

(A) means a facility that is licensed, when required, by the state under AS 18.20.010 - 18.20.130 and that is owned or operated or both by a municipality or by a nonprofit corporation or other nonprofit sponsor;

(B) includes a public health center, maternity home, community mental health center, facility for the mentally or physically handicapped, nursing home, or convalescent center;

(C) excludes a facility operated or wholly supported by the state or the federal government.



Alaska State Legislature

House of Representatives

Committee on

Community & Regional Affairs

Pouch V
State Capital
Juneau, Alaska 99811

Official Business

To: Billy Berrier, Director
Division of Legal Services

Date: September 22, 1981.

From: Linda Otey, Committee Aide
House CRA Committee J.D.

David Dye, Committee Aide
Senate CRA Committee

The following pages list the revised detailed changes that were adopted by the House CRA Committee during the meetings regarding the Title 29 Revision, HB 170 & SB 180. These same changes were also considered by the Senate CRA Committee but were not officially adopted. Senator Gilman, Chairman, and Senator Sturzelewski were in attendance during the meetings and agreed to support the changes and recommend their adoption to the absent committee members.

The Division of Legal Services has been directed to draft the necessary language to follow through with the intent of the committees. These changes will be drafted in the form of amendments and will be approved by both committees at a later date.

Revisions to HB 170 & SB 180:

1. Page 1, Line 11:

Delete "division of lands" and insert "Department of Natural Resources".

2. Chapter 04 was deferred until a later date.

3. Page 6, Line 8:

Delete "hearing" and insert "informational meeting". Legal Services was requested to draft language for a 'public notice' requirement.

4. Page 12, Article 2:

Title Change, delete "Exclusion" and insert "Detachment", also, make same change wherever necessary throughout Article.

5. Page 12, Article 2:

Legal Services requested to draft appropriate language which clarifies the Local Boundary Commission's power to alter boundaries from those presented in a petition and provide for formal process of appeal.

6. Page 13, Line 6:

Legal Services requested to check citation, AS 44.19.260.

7. Page 13, (new section)

Legal Services requested to add language for alteration authority and formal process for appeal using similar language as that in 29.05.100.

8. Page 16, Line 14:

Article 4 - Legal Services requested to draft language to clear up ambiguity as to whether or not a vote to form a charter commission is also a vote to unify.

9. Page 22, Line 13:

Delete "by radio and television" and insert suitable 'public notice' language (Legal Services request).

10. Page 23, Line 2:

Legal Services requested to draft language to require certification of election to the Commissioner of the Dept. of CRA in order that a certificate of reclassification may be issued.

Revisions to HB 170 & SB 180

11. Page 26, Line 11:

Legal Services requested to draft language under the proposed 29.06.470 section to allow for formal appeal procedures.

12. Page 29, Line 25:

Legal Services requested to check the citations listed under subsection (7) of 29.10.110.

13. Page 30, between lines 12 & 13:

Renumber and insert subsection "AS 29.25.060 (Resolutions)".

14. Page 30, Line 26

Delete (c) and insert (b).

15. Page 37, Line 20:

After the word representation insert "adopted by the voters", or similar language with same intent (Legal Services request).

16. Page 42, Line 14:

Legal Services draft language to reflect that the term of the governing body members may not be limited.

17. Page 44, Line 17:

Delete all of subsection (g).

18. Page 45, Line 23:

Article 3. Title Change, Delete "BOROUGH" and insert "Municipal".

19. Page 46, Line 20:

After the word "of", insert "consecutive".

20. Page 46, Line 21:

Legal Services requested to draft language at the end of the sentence to state that the term a mayor may serve can only be limited by an ordinance ratified by the voters.

21. Page 55, Line 16:

Delete "Chapters" and insert "sections".



Alaska State Legislature

House of Representatives

Committee on

Community & Regional Affairs

Fourth V
State Capitol
Juneau, Alaska 99811

Official Business

MEMORANDUM

TO: Billy Barrier, Director
Division of Legal Services

Date: 10/15/81

FROM: Linda Otey, Committee Aide
House CRA Committee *LO*

Bob Berry, Committee Aide
Senate CRA Committee *B.B.*

The following pages list the revised detailed changes that were adopted by the House CRA Committee during the October Joint CRA Committee meeting in Anchorage regarding HB 170 and SB 180. These same changes were also considered by the Senate CRA Committee but were not officially adopted. Senator Gilman, Chairman, and Senator Sturgelewski were in attendance during the meetings and agreed to support the changes and recommend their adoption to the absent committee members.

The Division of Legal Services has been requested to draft the necessary language to follow through with the intent of the committees. There were also a few questions raised by committee members that were left unanswered. It is the desire of the committees that you address these issues at the next joint committee meeting in November.

As before, these changes will be drafted in the form of amendments and will be approved by both committees at a later date.

1. Page 56, Line 1: 29.25.010:

Delete "except" and add "and".

Question: Is it correct that this section does not apply to home rule municipalities unless otherwise stated in subsections?

2. Page 58, Line 26: 29.25.060:

Insert this section on Page 30, Home Rule Limitations, and renumber accordingly.

3. Page 59, Line 6: 29.25.070

Delete "city and borough" and insert "municipality".

4. Page 60, Line 23 (b): 29.26.050:

Question: Does this intent cover district residency? (Committees Intent)

5. Page 61, Line 4: 29.26.060:

... ~~Subsection (b).~~

6. Page 62, Line 3: 29.26.070:

Delete "city and borough" and insert "municipality".

7. Page 62, Line 11: 29.26.100:

Delete (b) and insert at the end of the Article as new section; renumber accordingly. .

8. Page 62, Line 29: 29.26.120

Delete entire section (per. Tam Cook)

9. Page 63, Line 10: 29.26.130:

Delete the semi-colon and add "as submitted by the sponsors."

10. Page 64, Sec. 29.26.150:

Legal Services to draft language to require notification to sponsor by certified mail before 10 day period begins. (add new subsection?)

11. Page 66, Line 18: 29.26.200

After the word "repealed" add "or amended".

12. Page 66, Line 20, 29.26.200:

Delete sentence after the word "filed."

13. Page 66, 29.26.200

Add new subsection after (c) to include change from page 62, Line 11, addition to Home Rule Limitations for the entire Article 2.

14. Page 67, Line 2: 29.26.240:

Legal Services to rewrite section 240 using 15.45.490 for consistency.

15. Page 68, Lines 19-21: 29.26.280:

Question: Legal Services prepare to address details of HB 170 as it could be amended to reflect details of 15.45.610 - Filing of Petition. The intent of both committees here is that municipal officials be subject to the same recall statutes as that of state officials.

★
See Legal
Services
Proposed
Amendment

16. Page 69, Line 2: 29.26.290:

Use similar language as used in 29.26.150 regarding notification to sponsors by certified mail.

17. Page 69, Lines 14-16:

Legal Services to draft language requiring that petition be submitted at the next regular meeting or a special meeting called for the purpose of accepting the petition.

18. Page 70, Line 17:

Legal Services to draft language for (c) indicating reference for consistency of 14.12.070.

19. Page 70, Line 29: 29.26.350:

Question: Is subsection (e) in conflict with 29.20.180-regular vs. special elections?

20. Page 71, Line 15:

Delete "city and borough" and insert "municipalities"

10/15/81

21. Page 72, Line 8 (9): 29.35.010:

Request legal opinion regarding this subsection (9).
Is this language an additional 'grant of power' to expend
money for "facilities and services"?

22. Page 72, Line 9: 29.35.010:

Delete "city and borough" and insert "municipality".



Alaska State Legislature

SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

465-4934
465-3824

JUNEAU, ALASKA

Pouch V
State Capitol
Juneau, Alaska 99811

11/16/81

MEMORANDUM

TO: Billy Berrier, Director
Division of Legal Services

FROM: Linda Otey, Committee Aide
House CRA Committee

Bob Berry, Committee Aide
Senate CRA Committee

The following pages list the revised detailed changes that were suggested by both the House and Senate Community & Regional Affairs Committees during the November meetings in Anchorage regarding HB 170 and SB 180.

The Division of Legal Services has been requested to draft the necessary language to follow through with the intent of the Committees. There were also a few questions raised by committee members that were left unanswered. It is the desire of the Committees that you address these issues at the next Joint Committee meeting in December.

The December meeting will hopefully conclude the revisions to both HB 170 and SB 180. It is the intent of the Chairman of the Committees, to be prepared to adopt any amendments to these bills, in the final language, at this time.

(*)represents review and recommendations requested

Joint CRA Committee Meeting
November 5, 6, & 7, 1981
HB 170 & SB 180

1. Page 73, Line 9:

After 'of' insert a. Delete "authorized" and "in accordance with" and insert under the procedures set out in....

Legal Services to research question; Do utilities have a separate eminent domain power?

2. Page 76, Line 5:

Delete "by the mayor"

3. Page 77, Line 7:

Delete "except unified municipalities"

4. Page 77, Line 25

Delete "may"

5. Page 77, line 26:

After 'taxes' insert which are

6. Page 78, Line 2-4

Delete section 35.180.

7. Page 78, Line 7

Add section 29.35.190 to Home Rule limitations. Ask Legal Service if this is applicable.

8. Page 79, Line 9:

Delete subsection (8) and replace with:
(8)tax, spend and regulate for the purpose of promoting economic development.

9. Page 80, Line 9: Subsection (b):

Legal Services to draft language to insure that 2nd class cities are not school districts.

Page 2
Joint CRA Meeting
HB 170 & SB 180 Revisions

10. Page 80, Line 14:
Incorrect citation, Delete 29.35.180 and insert 29.35.190.
11. Page 80, Line 15:
(d) - Delete "municipalities, except unified municipalities" and insert cities.
12. Page 81, Line 11 & 12:
Legal Services to draft language in new subsection (c) with intent of 29.38.040 of existing law relating to public hearings.
13. Page 84, Line 21:
After "assembly may" add by ordinance.
14. Page 85, Line 10: Subsection (1):
Delete "prepare" and insert review.
15. Page 85, Line 13: Subsection (1):
Delete "prepare" and insert review.
16. Page 86, AS 29.40.050:
Legal Services to review (a) beginning with "The assembly shall provide.....", bottom of page.
17. Page 89, Line 5:
Delete "all lots" and insert any lot.
18. Page 89, Line 6:
Delete "tracts" and insert tract. Delete "created" and insert within.
19. Page 89, Line 11:
Delete "and", insert or.
20. Page 89, Line 17: AS 29.40.110:
Legal Services to draft language to be consistent with 29.40.100 (b).

31. Page 110, Line 2:

Delete "and amount of taxes".

32. Page 110, Line 25:

Legal Services to draft language permitting a graduated penalty (increment system).

33. Page 110, Line 27:

After "percent" insert unless a different rate is set by ordinance.

34. Page 113, AS 29.45.320 & 29.45.330:

Legal Services to review possible conflict of sections. There appears to be no option in .330 to provide otherwise by ordinance.

35. Page 119, Line 9:

After "time" insert within 10 years and

36. Page 119, Line 13:

Delete "of eight" and insert not to exceed 15

37. Page 119, Line 21:

Included omitted section 29.45.480 (29.53.380 of current law.)

38. Page 120, Line 24:

Legal Services to review effect of possible addition of 29.45.080 and 29.45.450 - and 29.45.240 (b).

39. Page 121, Line 25:

Delete "a home rule or".

40. Page 122, Line 20:

Delete last sentence and insert when recorded, a lien authorized under this section is superior to all other liens except those for property taxes and special assessments.

41. Page 122, Line 23:

After "collects" insert only.

42. Page 123, Line 18:

Delete subsection (b).

Page 5
Joint CPA Meeting
HB 170 & SB 18: Revisions

- * 43. Page 124, Line 16:
Legal Services to review 29.46.010
- 44. Page 143, Line 8:
Delete "(0:1)"
- 45. Page 143, Line 9:
After "the" insert per capita.
- 46. Page 144, Line 11:
"Census" is spelled incorrectly.
- 47. Page 148, Line 12 and
Page 150, Sec. 29.60.140:
Legal Services to delete and rewrite with intent of language
of SB 168 (Dept. CRA suggestion).
- 48. Page 168, Line 17,
Page 168, Line 25
Page 169, Line 3
Delete subsections (b). Request Legal Services to draft
replacement language if necessary.
- 49. Page 170, Line 11:
Legal Service to review definition of "(17) published".

A M E N D M E N T S

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

TO: SB 180 and HB 170

- 1 Page 28, lines 12 - 19:
- 2 Delete all material
- 3 Page 30, line 14, after "AS 29.26.100":
- 4 Insert "- 29.26.205"
- 5 Page 56, line 1:
- 6 Delete "except" and insert "including"
- 7 Page 59, line 6:
- 8 Delete "city or borough" and insert "municipality"
- 9 Page 61, lines 4 - 5:
- 10 Delete all material
- 11 Page 61, line 6:
- 12 Delete "(c)" and insert "(b)"
- 13 Page 62, line 3:
- 14 Delete "city or borough" and insert "municipality"
- 15 Page 62, line 7:
- 16 Delete "(a)"
- 17 Page 62, lines 11 - 12:
- 18 Delete all material
- 19 Page 62, line 29:
- 20 Delete all material
- 21 Page 63, lines 1 - 2:
- 22 Delete all material
- 23 Page 63, line 10, after "referred":
- 24 Insert "as submitted by the sponsors"
- 25 Page 64, line 21, after "shall":
- 26 Delete all material and insert:
- 27 "(1) certify on the petition whether it is sufficient, and
- 28 (2) if the petition is insufficient, identify the insuff-
- 29 ficiency and notify the sponsors by certified mail."

1 Page 64, line 22:
2 Delete all material

3 Page 66, line 18, after "repealed":
4 Insert "or amended"

5 Page 66, lines 20 - 21:
6 Delete "The ordinance or resolution may be amended at any time."

7 Page 66, following line 29:
8 Insert:
9 "Sec. 29.26.205. APPLICATION. AS 29.26.100 - 29.26.205 apply to
10 home rule and general law municipalities."

11 Page 67, line 4:
12 Delete "six months" and insert "the first 120 days"

13 Page 69, line 5, after "shall":
14 Delete all material and insert:
15 "(1) certify on the petition whether it is sufficient, and,
16 (2) if the petition is insufficient, identify the insuf-
17 ficiency and notify the sponsors by certified mail."

18 Page 69, line 18:
19 Delete "immediately"

20 Page 69, line 18, after "body":
21 Insert "at the next regular meeting or at a special meeting called for
22 the purpose before the next regular meeting"

23 Page 70, line 26, after "vacancies":
24 Insert "in accordance with AS 14.12.070"

25 Page 71, line 15:
26 Delete "cities and boroughs" and insert "municipalities"

27 Page 72, line 9:
28 Delete "city and borough" and insert "municipality"

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A M E N D M E N T S

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

TO: SB 180 and HB 170

- 1 Page 1, line 11:
- 2 Delete "division of lands" and insert "Department of Natural Resources"
- 3 Page 6, line 8:
- 4 Delete "hearing" and insert "informational meeting"
- 5 Page 6, line 9, after "incorporation.":
- 6 Insert "The department shall publish notice of the meeting."
- 7 Page 12, line 26:
- 8 Delete "EXCLUSION" and insert "DETACHMENT"
- 9 Page 12, line 28, after "It":
- 10 Insert "may reject the proposed change, accept the proposed change, or
- 11 alter the boundaries and accept the proposal as altered. A Local Bound-
- 12 ary Commission decision under this subsection may be appealed under the
- 13 Administrative Procedure Act (AS 44.62)."
- 14 Page 12, line 29, before "may":
- 15 Insert "(b) The Local Boundary Commission"
- 16 Page 12, line 29:
- 17 Delete "proposed changes" and insert "a proposed municipal boundary
- 18 change"
- 19 Page 13, line 5:
- 20 Delete "(b)" and insert "(c)"
- 21 Page 13, line 6:
- 22 Delete "AS 44.19.260" and insert "AS 44.47.560"
- 23 Page 13, line 7:
- 24 Delete "exclusion" and insert "detachment"
- 25 Page 13, line 11:
- 26 Delete "exclusion" and insert "detachment"
- 27 Page 13, line 12:
- 28 Delete "excluded" and insert "detached"

- 1 Page 13, line 18:
- 2 Delete "(c)" and insert "(d)"
- 3 Page 13, line 18, after "(a)":
- 4 Insert "and (b)"
- 5 Page 19, lines 3 - 5:
- 6 Delete "the home rule or general law borough and all cities within it
7 shall unite to form a single unit of home rule government" and insert "a
8 charter commission shall be formed to prepare a proposed unification
9 charter"
- 10 Page 19, lines 7 - 8:
- 11 Delete "on the question of unification"
- 12 Page 19, line 10:
- 13 Delete "unification" and insert "formation of a charter commission"
- 14 Page 19, line 13:
- 15 Delete "UNIFICATION" and insert "FORMATION OF CHARTER COMMISSION"
- 16 Page 19, line 14:
- 17 Delete "unification" and insert "the question of formation of a charter
18 commission"
- 19 Page 19, lines 18 - 19:
- 20 Delete "unification" and insert "the formation of a charter commission"
- 21 Page 19, line 20:
- 22 Delete "unification" and insert "the formation of the commission"
- 23 Page 19, line 21:
- 24 Delete "unification" and insert "formation of a charter commission"
- 25 Page 22, line 13:
- 26 Delete "publish" and insert "have"
- 27 Delete "by radio and television"
- 28 Page 22, lines 14 - 16:
- 29 Delete "in a manner intended to apprise the entire borough population of

1 the existence of the proposed charter" and insert "published"
2 Page 23, line 2, after "is ratified,"
3 Insert "election results shall be certified to the commissioner and"
4 Page 26, line 11, after "DECISION.":
5 Insert "(a)"
6 Page 26, following line 14: Insert:
7 "(b) A Local Boundary Commission decision under this section may
8 be appealed under the Administrative Procedure Act (AS 44.62)."
9 Page 29, line 25:
10 Delete "AS 29.10.010 - 29.10.115 (home rule municipalities)" and insert
11 "AS 29.10.080 (charter amendment)"
12 Page 30, line 5:
13 Delete all material and renumber following paragraphs accordingly.
14 Page 30, following line 11: Insert:
15 "(19) AS 29.25.060 (resolutions)"
16 Page 30, line 26:
17 Delete "AS 29.35.330(c)" and insert "AS 29.35.330(b)"
18 Page 37, line 17:
19 Delete "on a proposed form of representation"
20 Page 37, lines 18 - 20:
21 Delete "its composition and the form of assembly representation, and, if
22 applicable, the apportionment of assembly seats which corresponds to the
23 proposed form of representation which received the most votes at the
24 election" and insert:
25 "(1) composition of the assembly;
26 (2) the form of assembly representation which received the
27 majority of the votes; and
28 (3) if applicable, the apportionment of assembly seats in
29 accordance with the form of assembly representation which received the

1 majority of the votes"

2 Page 42, following line 18: Insert:

3 "A limit may not be placed on the number of terms that a voter may serve
4 on the governing body."

5 Page 44, lines 17 - 18:

6 Delete all material

7 Page 45, line 23:

8 Delete "BOROUGH" and insert "MUNICIPAL"

9 Page 46, line 21, after "serve":

10 Insert "except by ordinance ratified by the voters. The governing body
11 may not limit the number of consecutive terms a mayor may serve except
12 by ordinance ratified by the voters"

13 Page 55, line 16:

14 Delete "chapters" and insert "sections"

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A M E N D M E N T S

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

TO: SB 180 and HB 170

- 1 Page 28, lines 12 - 19:
2 Delete all material
- 3 Page 30, line 14, after "AS 29.26.100":
4 Insert "- 29.26.205"
- 5 Page 56, line 1:
6 Delete "except" and insert "including"
- 7 Page 59, line 6:
8 Delete "city or borough" and insert "municipality"
- 9 Page 61, lines 4 - 5:
10 Delete all material
- 11 Page 61, line 6:
12 Delete "(c)" and insert "(b)"
- 13 Page 62, line 3:
14 Delete "city or borough" and insert "municipality"
- 15 Page 62, line 7:
16 Delete "(a)"
- 17 Page 62, lines 11 - 12:
18 Delete all material
- 19 Page 62, line 29:
20 Delete all material
- 21 Page 63, lines 1 - 2:
22 Delete all material
- 23 Page 63, line 10, after "referred":
24 Insert "as submitted by the sponsors"
- 25 Page 64, line 21, after "shall":
26 Delete all material and insert:
27 "(1) certify on the petition whether it is sufficient, and
28 (2) if the petition is insufficient, identify the insuff-
29 ficiency and notify the sponsors by certified mail."

1 Page 64, line 22:

2 Delete all material

3 Page 66, line 18, after "repealed":

4 Insert "or amended"

5 Page 66, lines 20 - 21:

6 Delete "The ordinance or resolution may be amended at any time."

7 Page 66, following line 29:

8 Insert:

9 "Sec. 29.26.205. APPLICATION. AS 29.26.100 - 29.26.205 apply to
10 home rule and general law municipalities."

11 Page 67, line 4:

12 Delete "six months" and insert "the first 120 days"

13 Page 69, line 5, after "shall":

14 Delete all material and insert:

15 "(1) certify on the petition whether it is sufficient; and.

16 (2) if the petition is insufficient, identify the insuf-
17 ficiency and notify the sponsors by certified mail."

18 Page 69, line 18:

19 Delete "immediately"

20 Page 69, line 18, after "body":

21 Insert "at the next regular meeting or at a special meeting called for
22 the purpose before the next regular meeting"

23 Page 70, line 26, after "vacancies":

24 Insert "in accordance with AS 14.12.070"

25 Page 71, line 15:

26 Delete "cities and boroughs" and insert "municipalities"

27 Page 72, line 9:

28 Delete "city and borough" and insert "municipality"

29

A M E N D M E N T S

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

TO: SB 180 and HB 170

- 1 Page 30, following line 24:
- 2 Insert
- 3 "(32) AS 29.35.190 (land use regulation)"
- 4 Renumber following paragraphs accordingly.
- 5 Page 31, lines 8 - 10:
- 6 Delete all material
- 7 Page 73, line 9:
- 8 Delete "an authorized" and insert "a"
- 9 Page 73, lines 9 - 10:
- 10 Delete "in accordance with" and insert "under the procedures established
- 11 in"
- 12 Page 76, line 5:
- 13 Delete "by the mayor"
- 14 Page 77, line 7:
- 15 Delete ", except unified municipalities"
- 16 Page 77, line 25:
- 17 Delete "may"
- 18 Page 77, line 26:
- 19 After "taxes" insert "that are"
- 20 Page 78, lines 2 - 4:
- 21 Delete all material
- 22 Page 78, line 5, after "REGULATIONS":
- 23 Insert "(a)"
- 24 Page 78, line 5:
- 25 Delete "first or second class"
- 26 Page 78, following line 7:
- 27 Insert
- 28 "(b) This section applies to home rule and general law municipali-
- 29 ties."

1 Page 79, line 9:

2 Delete "receive and expend grants for a public purpose" and insert
3 "provide for economic development"

4 Page 80, line 11, following "boroughs.":

5 Insert "A second class city is not a school district."

6 Page 80, line 14:

7 Delete "AS 29.35.180" and insert "AS 29.35.190"

8 Page 80, lines 15 - 16:

9 Delete "municipalities, except unified municipalities" and insert
10 "cities"

11 Page 81, line 6:

12 Delete "assembly" and insert "borough clerk"

13 Page 81, lines 8 - 11:

14 Delete all material and insert:

15 "(b) The borough clerk shall certify whether a petition filed
16 under (a) of this section contains the required number of signatures.

17 (c) Within 30 days after a petition is certified as containing the
18 required number of signatures or the assembly proposes the acquisition
19 of a power, at least one public hearing shall be held in the borough on
20 the question. The assembly shall then evaluate the ability of the
21 borough to exercise the power and make its findings public. Within 60
22 days after its findings have been made public, the assembly shall order
23 an election on the question."

24 Page 84, line 21, following "may":

25 Insert "by ordinance"

26 Page 85, line 10:

27 Delete "prepare" and insert "review"

28 Page 85, line 13:

29 Delete "prepare" and insert "review"

- 1 Page 89, line 5:
2 Delete "all lots" and insert "a lot"
- 3 Page 89, line 6:
4 Delete "tracts" and insert "tract"
- 5 Page 89, line 11:
6 Delete "and" and insert "or"
- 7 Page 89, line 15, following "plats":
8 Delete ", and" and insert "and alterations to short plats. The
9 assembly"
- 10 Page 89, line 17:
11 Delete "A" and insert "Except as provided in AS 29.40.100(b), a"
- 12 Page 90, line 16:
13 Delete "recorded" and insert "filed"
- 14 Page 92, line 6:
15 Delete "recorded and insert "filed"
- 16 Page 92, line 8:
17 Delete "record" and insert "file"
- 18 Page 92, line 27:
19 Delete "AND POLITICAL SUBDIVISIONS"
- 20 Page 92, lines 28 - 29:
21 Delete all material and insert:
22 "This chapter applies to subdivision plats of undeveloped state land for
23 disposal under AS 38.05 or AS 38.08, except that the platting authority
24 may not disapprove the subdivision plat on the basis of requirements for
25 capital improvements on or to state land included in the subdivision
26 plat. Requirements for subdivision plats adopted after the platting
27 authority is notified by the commissioner of natural resources of a
28 proposed sale of subdivided state land under AS 38.05 or AS 38.08 do not
29 apply to the state land in the proposed sale."

1 Page 93, line 1:

2 Delete all material

3 Page 93, line 8:

4 Delete "and"

5 Page 93, line 10:

6 Delete the period and insert a semi-colon

7 Page 93, following line 10:

8 Insert

9 "(3) a property tax in a service area for functions limited to
10 the service area."

11 Page 95, line 27:

12 Delete "(a)" and insert "(a)(3) and (4)"

13 Page 99, line 5, following "exceed":

14 Insert "the assessed value of"

15 Page 107, line 22:

16 Delete "who" and insert ". The district recorder"

17 Page 110, line 2:

18 Delete "and amount of taxes"

19 Page 111, line 27:

20 Delete "at the rate of" and insert "not to exceed"

21 Page 112, line 2, following "forms.":

22 Insert "A penalty under this section may be imposed under a formula that
23 increases the amount of the penalty as the length of time increases
24 during which payment is delinquent or assessment forms are not returned."

25 Page 119, line 9:

26 Delete "at any time" and insert "within 10 years and"

27 Page 119, line 13:

28 Delete "at the rate of eight" and insert "not to exceed 15"

29

1 Page 119, following line 20:

2 Insert

3 "Sec. 29.45.480. PROCEEDS OF TAX SALE. (a) Upon sale of fore-
4 closed real or personal property the borough or city shall divide the
5 proceeds less cost of collection, between the borough and the city
6 having unpaid taxes against the property. The division is in proportion
7 to the respective municipal taxes against the property at the time of
8 foreclosure.

9 (b) The former record owner of tax-foreclosed real property which
10 has been held by a municipality for less than 10 years after the close
11 of the redemption period and never designated for a public purpose which

12 ld at a tax-foreclosure sale is entitled to the portion of the
13 proceeds of the sale which exceeds the amount sufficient to satisfy
14 unpaid taxes, delinquent taxes assessed and levied as if the property
15 had continued in private ownership, penalty, interest and costs of
16 property sold, including costs incurred under AS 29.53.350(a). If the
17 proceeds of the sale of tax-foreclosed property exceed the total of
18 unpaid and delinquent taxes, penalty, interest, and costs, the borough
19 or city shall provide the former owner of the property written notice
20 advising of the amount of the excess and the manner in which a claim for
21 the balance of the proceeds may be submitted. Notice is sufficient
22 under this subsection if mailed to the former owner at his last address
23 of record. Upon presentation of a proper claim, the municipality shall
24 remit the excess to the former record owner. A claim for the excess
25 filed after six months of the date of sale is forever barred."

26 Page 121, lines 25 - 26:

27 Delete "home rule or general law"
28
29

1 Page 122, lines 20 - 21:

2 Delete "A lien established under this section has the force, priority,
3 and duration of a judgment lien." and insert "When recorded, a lien
4 authorized under this section has priority over other liens except those
5 for property taxes and special assessments."

6 Page 122, line 23:

7 Following "collects" insert "only"

8 Page 123, line 14:

9 Delete "(a)"

10 Page 123, lines 18 - 22:

11 Delete all material

12 Page 143, line 8:

13 Delete "(0.1)"

14 Page 143, line 9, following "the":

15 Insert "per capita".....

16 Page 148, line 12:

17 Delete "a Native village government" and insert "an unincorporated
18 community"

19 Page 150, line 27:

20 Delete "NATIVE VILLAGE GOVERNMENTS" and insert "UNINCORPORATED COMMUNI-
21 TIES"

22 Page 150, lines 28 - 29:

23 Delete "a Native village government for a village which is not incor-
24 porated as a city under this title" and insert "an unincorporated com-
25 munity"

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1 Page 151, line 1:

2 Delete "Native village government" and insert "unincorporated community"

3 Page 151, line 1, following "means":

4 Insert "a place in the unorganized borough not incorporated as a city
5 and in which 25 or more persons reside within two miles of each other."

6 Page 151, lines 2 - 7:

7 Delete all material

8 Page 168, line 15:

9 Delete "(a)"

10 Page 168, lines 17 - 18:

11 Delete all material

12 Page 168, line 19:

13 Delete "(a)"

14 Page 168, lines 25 - 26:

15 Delete all material

16 Page 168, line 27:

17 Delete "(a)"

18 Page 169, lines 3 - 4:

19 Delete all material

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MEMORANDUM

State of Alaska

TO: Hon. Lee McAnerney, Commissioner DATE: September 2, 1981
Dept of Community & Regional Affairs
FILE NO: J-66-829-81

ATTN: Palmer McCarter, Director
Div. of Local Gov't Asst TELEPHONE NO: 465-3600

FROM: WILSON L. CONDON SUBJECT: State financial aid
ATTORNEY GENERAL to benefit unincor-
porated communities

By: *L. Davis*
Laura L. Davis
Assistant Attorney General

By your memoranda of May 17 and June 12, 1981, you have asked us to address a number of questions related to state financial assistance to benefit unincorporated communities. First, as to your authority to distribute money to unincorporated villages under AS 29.89.050, we believe that statute to be unconstitutional if read literally to restrict aid to Native villages. We also believe that the statute may be construed in a constitutional manner by severing the words "Native" and "government" and the definition of "Native village government." Second, with regard to state financial aid to unincorporated communities in general, we will discuss the relevant constitutional principles which apply to the questions you have raised.

AS 29.89 provides for annual revenue sharing with municipalities (for roads, AS 29.89.020), operators of health facilities and hospitals (AS 29.89.030), volunteer fire departments in the unorganized borough (AS 29.89.040), and Native village governments (AS 29.89.050). As discussed in our memorandum of April 27, 1981, aid to Native village governments raises serious issues under (1) article IX, section 6 of the Alaska Constitution which prohibits expenditure of public money unless the expenditure is for a public purpose; (2) article I, section 1, which accords equal protection to all persons; and, (3) article X, section 2, which provides for the exercise of local governmental powers only by cities and boroughs which are incorporated under state law.

We stated that the public purpose requirement was satisfied if the money were used for public benefit, and not for the private benefit of a racially exclusive group. We also indicated that a local organization could receive and spend state money for the benefit of a community without becoming a de facto unit of local government. As to equal protection, we stated that the distribution of state money to a racially exclusive organization did not deny equal protection to persons who are not members of the organization, if benefits provided with the funds were made available to the public at large.

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However, as we noted, the payment of state money under AS 29.89.050 only to those unincorporated communities which are identified as Native villages does exclude from participation a number of similarly situated communities which are not Native villages. The first inquiry necessary to determine if a statute is valid under Alaska's equal protection test is whether the statute has a legitimate purpose. State v. Erickson, 574 P.2d 1 (Alaska 1978).

Of the three possible purposes for AS 29.89.050 which we have identified, the only legitimate one is to provide public services to residents of unincorporated communities. */ If the statutory purpose were illegitimate under the Alaska Constitution, the statute would be unenforceable. There is a heavy presumption in favor of the constitutionality of any statute. SUTHERLAND STATUTORY CONSTRUCTION § 45.11.

Assuming that the legislature intended by AS 29.89.-050 to provide public services to the residents of unincorpo-

*/ A purpose to benefit Native villages solely because of the racial ancestry of their inhabitants would not be legitimate in the absence of a special motivation such as compensation for loss of aboriginal property rights. No such special motivation appears to be present here. A purpose to encourage the Native villages to assume the responsibilities of local governmental units would be in conflict with article X, section 2, of the constitution, and thus will not be inferred, despite the use of the term "Native village government."

We note that the Act which added AS 29.89 stated no purpose for that chapter, but did state a purpose for adding the general revenue sharing chapter, AS 29.88, as follows:

It is the purpose of sec. 2 of this Act to

(1) improve the revenue raising and distribution system for the benefit of residents of home rule and general law municipalities by providing for more equitable allocation of financial resources among municipalities to improve their fiscal capacities; and

(2) assure that no municipality suffers impoverishment of necessary public services, relative to other municipalities, because of the chance location of taxable wealth in the state.

September 2, 1981

rated communities, the means chosen are only loosely suited to that purpose because of the existence in the state of a substantial number of unincorporated communities whose residents would not be benefitted by the literal language of AS 29.89.050. Since the distinction is based upon the racial ancestry of the communities, we might conclude that the statute is unconstitutional despite its legitimate purpose. However, we note that the Alaska Supreme Court has held that a statute which denied equal protection by limiting its application to members of one sex (prohibiting prostitution by females) could be construed as constitutional by severing the offending restrictive language, and thereby expanding application of the statute to all persons. Plas v. State, 598 P.2d 966 (Alaska 1979).

The interpretation of AS 29.89.050 presents an analogous problem. The effect of severing the offending restriction to "Native" village "governments," and deleting the definition of that term, is to expand the group of eligible communities to include all "villages." */ Although this interpretation alters the literal wording of the statute significantly and is, therefore, not to be implemented hastily, State v. Campbell, 536 P.2d 105 (Alaska 1975), it does avoid the alternative interpretation that the statute is unconstitutional and void. The law strongly favors the construction of statutes to be consistent with constitutional requirements. State v. Sundberg, 611 P.2d 44 (Alaska 1980); Summers v. Anchorage, 589 P.2d 863 (Alaska 1979). According to Sutherland:

It has even been said that "a strained construction is not only permissible, but desirable if it is the only construction that will save constitutionality."

SUTHERLAND STATUTORY CONSTRUCTION § 45.11 - r 34 (footnote omitted). We believe that the interpretation of AS 29.89.050 to authorize grants of state money to all villages is the only interpretation consistent with our constitution.

According to your estimates, the dilution of revenue sharing funds caused by including other unincorporated communities under AS 29.89.050 will not cause significant diminution in the fund allotments. Further, this interpretation

*/ A parallel deletion of "Native" and "government" from AS 29.89.010(b) is also necessary.

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is consistent with the subsequent action of the legislature in providing for grants to all unincorporated communities. 1981 Alaska Sess. L., ch. 60, § 2. We believe that under the circumstances, the Alaska courts would uphold an administrative interpretation of AS 29.89.050 to permit revenue sharing to all villages in the state, regardless of their racial composition or ancestry.

A question arises as to the meaning of "village" under AS 29.89.050, in the absence of the language limiting it to a Native village organized under federal law. Generally, a village is any discrete and identifiable place where a group of people reside in close proximity, intend to remain in the place indefinitely, and carry on ordinary human social and economic activities as a community. Wyandotte Sav. Bank v. Eveland, 78 N.W.2d 62, 617, 347 Mich. 33; Union Sav. Bank of Patchogue v. Saxon, 335 F.2d 718, 721 (D.C. Cir. 1964). Your administrative regulations interpreting and implementing chapter 60, SLA 1981 should provide appropriate guidelines for both that Act and for AS 29.89.050.

Your memorandum of May 17 asked a number of questions regarding your assistance to local governments and to communities in the unorganized borough. Generally, the three constitutional principles discussed above should guide your conduct. You must administer money under your control in order to ensure that it is spent to achieve a public purpose. This requires active supervision of all grants and contracts, especially those transferring money to an organization other than a municipal government. Village and regional Native corporations are not incorporated as cities or boroughs and are not considered to be local governments under state law.

The equal protection provision requires that you administer your programs in order to provide similar treatment for people or organizations which are similarly situated, unless there is a very strong reason for treating them differently. The distinction between a municipality and an unincorporated village is created by the Alaska Constitution. This different treatment of municipalities is justified because of their status and duties as governmental entities. For example, the state may make general revenue sharing grants to municipalities, to be used at the discretion of the municipal government. The public purpose requirement is met by the operation of state law and the Alaska Constitution controlling the activities of municipal governments. The state may not make general revenue sharing grants to non-governmental entities. In administering the grants to villages under AS 29.89 and to unincorporated communities under chapter 60,

Palmer McCarter, Director
C&RA - Local Gov't Assistance

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SLA 1981, you must ensure that the money is spent to achieve a public purpose.

The local government article of the Alaska Constitution (article X) provides for the exercise of local government powers by cities and boroughs and for the provision of services by multi-purpose service areas. In administering services in the organized borough, the state may contract with any entity capable of providing the needed service, as long as the contractor is actively supervised by the state, and not permitted to become de facto, a local government.

You are not absolutely prohibited by the constitution from contracting for the delivery of services by profit-making corporations or by Native organizations which may have sovereign status, if the services are necessary and no other capable and responsible contractor is available. However, it would be inconsistent with your duties as an administrator of public funds, to contract with these organizations if another more responsible and capable contractor is available. An entity which may be immune from contract enforcement because of its sovereign status should be considered less responsible to accept a state grant than any corporate entity.

We will defer your request for an authoritative statement of the powers of tribal governments for the time being, and hope that these general guidelines are adequate to resolve your immediate problems.

LLD/pjg

AS 29.18.204(c) (amended by sec. 1, ch. 113, SLA 1981) (See Sec. 29.65.030)

(c) Land may be selected or nominated for selection by a municipality to satisfy a general grant land entitlement under AS 29.18.201 and 29.18.202 at any time before October 1, 1980. However, if a municipal selection or nomination or a part of a municipal selection or nomination is rejected by the director, the municipality may, not later than 90 days after receipt of the director's rejection, select additional state land as necessary to satisfy its entitlement.

AS 29.33.150(b) (amended by sec. 2, ch. 113, SLA 1981) (See Sec. 29.40.180)

(b) The regulations adopted under (a) of this section apply to subdivision plats of undeveloped state land for disposal under AS 38.05 or AS 38.08 filed with the platting board. The [, EXCEPT THAT THE] platting board may not disapprove the subdivision plat on the basis of [OR ADOPT] regulations which require [THE STATE TO CONSTRUCT ACCESS ROADS OR] capital improvements on or to state land included in the subdivision plat. Regulations adopted after the platting board is notified by the commissioner of natural resources of a proposed sale of subdivided state land under AS 38.05 or AS 38.08 do not apply to the state land in the proposed sale.

(See Sec. 29.40.180)

AS 29.33.150(c) - (g) (added by sec. 3, ch. 113, SLA 1981)

(c) The platting board must approve and sign the subdivision plat within 60 days of its receipt from the commissioner of natural resources unless the platting board

(1) determines that the plat does not comply with subdivision regulations other than those requiring capital improvements to state land; and

(2) notifies the commissioner of each determination of non-compliance within the 60-day period established in this subsection.

(d) The commissioner of natural resources may withdraw the subdivision plat and amend it in response to the determination of non-compliance by the platting board under (c) of this section. The platting board shall respond within 30 days to the amendment or response from the commissioner of natural resources.

(e) Notwithstanding any other provision of law, the provisions of (b) - (f) of this section apply to all disposals of land under AS 38.05 or AS 38.08.

(f) Nothing in this section relieves the Department of Natural Resources of its obligation to provide legal access to the subdivision.

(g) As used in this section, "capital improvements" includes but is not limited to access roads, other physical improvements, and their design and engineering.

AS 29.48.020(8) (added by sec. 12, ch. 38, SLA 1981) (See Sec. 29.35.210(a))

(8) provide for the acquisition and construction of local service roads and trails under AS 19.30.111 - 19.30.251.

AS 29.48.020(9) (added by sec. 1, ch. 107, SLA 1981)

(9) establish an emergency communications center under AS 29.73.080.

AS 29.73.080 (added by sec. 2, ch. 107, SLA 1981) (New Section) .

Sec. 29.73.080. EMERGENCY SERVICES COMMUNICATIONS CENTERS. (a) A municipality may establish an emergency services communications center with one or more other municipalities and one or more state, federal, or private agencies that provide emergency service communications to the same geographic area. An emergency services communications center established under this section may be organized and operated as a public nonprofit corporation under AS 10.20.

(b) An emergency services communications center under this section may be governed by a board of directors. A member of a board of directors of an emergency services communications center serves without compensation but is entitled to per diem and travel expenses. If an emergency services communications center is organized as a nonprofit corporation, a member of its board of directors may not be employed by the nonprofit corporation.

(c) An emergency services communications center may assess the feasibility and desirability of providing emergency services communications for the geographic area in which it is located through one central office. An emergency services communications center may

- (1) combine or coordinate the existing emergency services communications programs of the participating municipalities and agencies;
- (2) operate a dispatch center to receive all requests for emergency services and dispatch those services;
- (3) study the need for improvement in the timely delivery of

emergency services to residents of the participating municipalities;

(4) hold public hearings to obtain information concerning the timely delivery of emergency services;

(5) apply for and accept federal, state, municipal, and private money, property, or assistance for use in providing the timely delivery of emergency services;

(6) enter into contracts to carry out the provisions of this chapter;

(7) employ personnel necessary to carry out the provisions of this chapter.

(d) In this section

(1) "emergency services" means services provided by law enforcement agencies, fire departments, ambulance services, and other organizations that are intended to respond to emergency situations of imminent danger to life or property;

(2) "state agency" means a department, division, or office in the executive branch of state government.

AS 29.89.030(a)(1) (amended by sec. 1, ch. 103, SLA 1981) (See Sec. 29.60.120)

(1) to a municipality which has the power to provide hospital facilities and services and which exercises that power, \$1,000 per bed for each bed actually used for patient care, limited to the number of beds provided for in the construction design of the hospital, or \$250,000 [\$75,000] a hospital for those hospitals with 10 or more beds, or \$50,000 [\$25,000] a hospital for those hospitals with less than 10

beds, as the municipality may elect; money received under this paragraph may be used only for hospitals and shall be apportioned among qualifying hospitals as the municipality determines;

AS 29.89.030(a)(3) (amended by sec. 2, ch. 103, SLA 1981) (See Sec. 29.60.120)

(3) to a municipality in which a health facility is operated, \$2,000 [\$1,000] per bed for each bed actually used for patient care, limited to the number of beds provided for in the construction design of the health facility, or \$8,000 [\$4,000] per health facility as the municipality determines.

AS 29.90.010 (amended by sec. 3, ch. 103, SLA 1981) (See Sec. 29.60.230)

Sec. 29.90.010. STATE AID FOR HOSPITAL AND HEALTH FACILITY CONSTRUCTION. If construction of a hospital began after January 1, 1968, or if construction of a health facility began after January 1, and before July 1, 1980, and state matching aid for construction approved for payment to the municipality or other hospital or health facility sponsor constitutes less than 25 percent of the total project cost, the department shall pay to the municipality or other hospital or health facility sponsor each fiscal year \$2,500 a bed for the maximum number of beds provided for in the construction design of the hospital or health facility or five percent of the total project cost, whichever is greater. State aid provided for in this section shall continue until the municipality or other hospital or health facility sponsor has received an amount which, combined with state matching money for construc-

tion of the hospital or health facility, equals 25 percent of the total project cost. Money received for construction may not be used for any other purpose.

AS 29.90.020 (amended by sec. 4, ch. 103, SLA 1981) (See Sec. 29.60.240)

Sec. 29.90.020. HOSPITAL AND HEALTH FACILITY CONSTRUCTION ASSISTANCE ACCOUNT. The hospital and health facility construction assistance account is established. Money to carry out the provisions of this chapter shall be allocated by the department to the account in accordance with AS 29.95. 10. If amounts in the account are insufficient to pay each recipient's share authorized under this chapter, the amounts which are available shall be distributed pro rata among eligible recipients.

AS 29.90.030(4) (added by sec. 5, ch. 103, SLA 1981) (See Sec. 29.60.250)

(4) "health facility"

(A) means a facility that is licensed, when required, by the state under AS 18.20.010 - 18.20.130 and that is owned or operated or both by a municipality or by a nonprofit corporation or other nonprofit sponsor;

(B) includes a public health center, maternity home, community mental health center, facility for the mentally or physically handicapped, nursing home, or convalescent center;

(C) excludes a facility operated or wholly supported by the state or the federal government.

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AGENDA

FOR 1981 SENATE AND HOUSE C&RA INTERIM HEARINGS

September 11, 12th. 8:00 A.M., Conference Room, Legislative Information Office, 1024 W. 6th, Anchorage

Senate Bill 180:

- Ch. 03 - THE UNORGANIZED BOROUGH
- Ch. 04 - CLASSIFICATION OF MUNICIPALITIES
- Ch. 05 - INCORPORATION
- Ch. 06 - ALTERATION OF MUNICIPALITIES
- Ch. 10 - HOME RULE MUNICIPALITIES
- Ch. 14 - CAPITAL CITY
- Ch. 20 - MUNICIPAL OFFICERS AND EMPLOYEES
- Ch. 25 - MUNICIPAL ENACTMENTS
- Ch. 26 - ELECTIONS

October 9, 10. 8:00 A.M., Conference Room, Legislative Information Office, 1024 W. 6th, Anchorage

Senate Bill 180:

- Ch. 35 - MUNICIPAL POWERS AND DUTIES
- Ch. 40 - PLANNING, PLATTING, AND LAND USE REGULATIONS
- Ch. 47 - MUNICIPAL DEBT
- Ch. 65 - GENERAL LAND GRANT
- Ch. 71 - GENERAL PROVISIONS

November 5, 6, 7. 8:00 A.M., Anchorage Sheraton Hotel, meeting room to be announced (in conjunction with the Alaska Municipal League Convention)

Senate Bill 180:

- Ch. 45 - MUNICIPAL TAXATION
- Ch. 46 - SPECIAL ASSESSMENTS
- Ch. 55 - MUNICIPAL PROGRAMS
- Ch. 60 - STATE PROGRAMS

December 4, 5. 8:00 A.M., Conference Room, Legislative Information Office, 1024 W. 6th, Anchorage

1. Any unfinished SB 180 business
2. Other legislation affecting the unorganized borough

A M E N D M E N T

TO: CSSB 180 (C&RA)

Page 85, Line 1:

After "city." delete the remainder of the section.

Insert: "If a city in a borough consents by ordinance, the assembly may by ordinance reassume any power or duty previously delegated under this section."

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A M E N D M E N T S

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

TO: SB 180 and HB 170

- 1 Page 30, following line 24:
2 Insert
3 "(32) AS 29.35.190 (land use regulation)"
4 Renumber following paragraphs accordingly.
- 5 Page 31, lines 8 - 10:
6 Delete all material
- 7 Page 73, line 9:
8 Delete "an authorized" and insert "a"
- 9 Page 73, lines 9 - 10:
10 Delete "in accordance with" and insert "under the procedures established
11 in"
- 12 Page 76, line 5:
13 Delete "by the mayor"
- 14 Page 77, line 7:
15 Delete ", except unified municipalities"
- 16 Page 77, line 25:
17 Delete "may"
- 18 Page 77, line 26:
19 After "taxes" insert "that are"
- 20 Page 78, lines 2 - 4:
21 Delete all material
- 22 Page 78, line 5, after "REGULATION.":
23 Insert "(a)"
- 24 Page 78, line 5:
25 Delete "first or second class"
- 26 Page 78, following line 7:
27 Insert
28 "(b) This section applies to home rule and general law municipali-
29 ties."

1 Page 79, line 9:

2 Delete "receive and expend grants for a public purpose" and insert
3 "provide for economic development"

4 Page 80, line 11, following "boroughs.":

5 Insert "A second class city is not a school district."

6 Page 80, line 14:

7 Delete "AS 29.35.180" and insert "AS 29.35.190"

8 Page 80, lines 15 - 16:

9 Delete "municipalities, except unified municipalities" and insert
10 "cities"

11 Page 81, line 6:

12 Delete "assembly" and insert "borough clerk"

13 Page 81, lines 8 - 11:

14 Delete all material and insert:

15 "(b) The borough clerk shall certify whether a petition filed
16 under (a) of this section contains the required number of signatures.

17 (c) Within 30 days after a petition is certified as containing the
18 required number of signatures or the assembly proposes the acquisition
19 of a power, at least one public hearing shall be held in the borough on
20 the question. The assembly shall then evaluate the ability of the
21 borough to exercise the power and make its findings public. Within 60
22 days after its findings have been made public, the assembly shall order
23 an election on the question."

24 Page 84, line 21, following "may":

25 Insert "by ordinance"

26 Page 85, line 10:

27 Delete "prep re" and insert "review"

28 Page 85, line 13:

29 Delete "prepare" and insert "review"

1 Page 89, line 5:

2 Delete "all lots" and insert "a lot"

3 Page 89, line 6:

4 Delete "tracts" and insert "tract"

5 Page 89, line 11:

6 Delete "and" and insert "or"

7 Page 89, line 15, following "plats":

8 Delete ", and" and insert "and alterations to short plats. The
9 assembly"

10 Page 89, line 17:

11 Delete "A" and insert "Except as provided in AS 29.40.100(b), a"

12 Page 90, line 16:

13 Delete "recorded" and insert "filed"

14 Page 92, line 6:

15 Delete "recorded and insert "filed"

16 Page 92, line 8:

17 Delete "re rd" and insert "file"

18 Page 92, line 27:

19 Delete "AND POLITICAL SUBDIVISIONS"

20 Page 92, lines 28 - 29:

21 Delete all material and insert:

22 "This chapter applies to subdivision plats of undeveloped state land for
23 disposal under AS 38.05 or AS 38.08, except that the platting authority
24 may not disapprove the subdivision plat on the basis of requirements for
25 capital improvements on or to state land included in a subdivision
26 plat. Requirements for subdivision plats adopted after the platting
27 authority is notified by the commissioner of natural resources of a
28 proposed sale of subdivided state land under AS 38.05 or AS 38.08 do not
29 apply to the state land in the proposed sale."

1 Page 93, line 1:
2 Delete all material
3 Page 93, line 8:
4 Delete "and"
5 Page 93, line 10:
6 Delete the period and insert a semi-colon
7 Page 93, following line 10:
8 insert
9 "(3) a property tax in a service area for functions limited to
10 the service area."
11 Page 93, line 27:
12 Delete "(a)" and insert "(a)(3) and (4)"
13 Page 99, line 5, following "exceed":
14 Insert "the assessed value of"
15 Page 107, line 22:
16 Delete "who" and insert ". The district recorder"
17 Page 110, line 2:
18 Delete "and amount of taxes"
19 Page 111, line 27:
20 Delete "at the rate of" and insert "not to exceed"
21 Page 112, line 2, following "forms.":
22 Insert "A penalty under this section may be imposed under a formula that
23 increases the amount of the penalty as the length of time increases
24 during which payment is delinquent or assessment forms are not returned."
25 Page 119, line 9:
26 Delete "at any time" and insert "within 10 years and"
27 Page 119, line 13:
28 Delete "at the rate of eight" and insert "not to exceed 15"
29