

ALASKA LEGISLATURE COMMITTEE FILES 1901-1902

1276 SCRA SB 180 (#7, #8) 1270

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 is sold 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"

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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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#2 Cook ✓

A M E N D M E N T

TO: CSSB 180(C&amp;RA)

By Ferguson

CSHB 170(C&amp;RA)

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3 Page 104, line 28, after "residing" insert:

4 "or working at an isolated job site"

5  
6 Page 105, line 6:

7 Delete "residents of" and insert "persons residing or working at a  
8 remote job site in"

9  
10 Page 105, line 13:

11 Delete "population" and insert "number of persons residing in a muni-  
12 cipality"

13  
14 Page 105, line 16:

15 Delete "the" and insert "shall include permanent residents and military  
16 personnel or employees of a military reservation located in the muni-  
17 cipality. For purposes of this section, the number of persons working  
18 at an isolated job site in a municipality shall be determined by the  
19 commissioner of community and regional affairs based on information  
20 supplied by employers of persons at isolated job sites. The"

21  
22 Page 105, line 17:

23 Delete "its population" and insert "the number of persons residing or  
24 working at a remote job site in the municipality"

Page 145, line 24:

Delete "(a)"

1 Page 145, line 25, after "shall" insert:

2 "include permanent residents, military personnel or employees of a  
3 military reservation located in the taxing unit, and persons working at  
4 an isolated job site in the taxing unit. Population shall"

5  
6 Page 145, line 28, after "reliable" insert:

7 "and by information supplied by employers of persons at isolated job  
8 sites"

9  
10 Page 145, line 29:

11 Delete all material

12  
13 Page 146, line 1:

14 Delete all material

15  
16 Page 152, line 26, after "shall" insert:

17 "include permanent residents, military personnel or employees of a  
18 military reservation, and persons working at an isolated job site.  
19 Population shall"

20  
21 Page 152, line 29:

22 Delete "or"

Page 153, line 1, after "payrolls" insert:

","and information supplied by employers of persons at isolated job sites"

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A M E N D M E N T

TO: CSSB 180(C&RA)  
CSHB 170(C&RA)

By Ferguson

1  
2 Page 160, line 1:

3 Delete "1980" and insert "1982"  
4

5 Page 167, lines 17 - 29:

6 Delete all material  
7

8 Page 168, lines 1 - 13:

9 Delete all material  
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11 Renumber remaining chapter sections accordingly.  
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1 (1) "health facility"

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

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

9 (C) excludes a facility operated or wholly supported by  
10 the state or the federal government;

11 (2) "hospital" means a licensed hospital determined by the  
12 Department of Health and Social Services to be a general hospital; the  
13 term excludes a facility operated or wholly supported by the state or  
14 the federal government."

15 \* Sec. 17. AS 29 is amended by adding a new chapter to read:

16 CHAPTER 65. GENERAL GRANT LAND.

17 Sec. 29.65.010. DETERMINATION OF ENTITLEMENT OF BOROUGHES AND  
18 UNIFIED MUNICIPALITIES. The general grant land entitlement of each of  
19 the municipalities in this section is the amount set out opposite each:

- 20 (1) Municipality of Anchorage - 44,893 acres;  
21 (2) City and Borough of Juneau - 19,584 acres;  
22 (3) City and Borough of Sitka - 10,500 acres;  
23 (4) Bristol Bay Borough - 2,898 acres;  
24 (5) Fairbanks North Star Borough - 112,000 acres;  
25 (6) Haines Borough - 2,800 acres;  
26 (7) Kenai Peninsula Borough - 155,780 acres;  
27 (8) Ketchikan Gateway Borough - 11,593 acres;  
28 (9) Kodiak Island Borough - 56,500 acres;  
29 (10) Matanuska-Susitna Borough - 355,210 acres;

(11) North Slope Borough - 89,850 acres.

Sec. 29.65.020. DETERMINATION OF ENTITLEMENT FOR CITIES. The general grant land entitlement of a city formerly eligible to receive general grant land under the provisions of AS 29.18.190 and 29.18.200 is 10 percent of the maximum total acreage of vacant, unappropriated, unreserved land in the boundaries of each city at any time between the initial date of eligibility under former AS 29.18.190 and 29.18.200 and July 1, 1978. Within six months after July 1, 1978, the director shall determine the entitlement for each city eligible to receive general grant land under this section and certify that entitlement to the city.

Sec. 29.65.030. DETERMINATION OF ENTITLEMENT FOR NEWLY INCORPORATED MUNICIPALITIES. (a) The general grant land entitlement of a municipality incorporated after July 1, 1978, is 10 percent of the total acreage of vacant, unappropriated, unreserved land within the boundaries of the municipality on the date of its incorporation.

(b) Within six months after the date of incorporation of a municipality that is incorporated after July 1, 1978, the director shall determine the entitlement of each municipality eligible to receive general grant land under (a) of this section and certify the entitlement to the municipality.

Sec. 29.65.040. STATUS OF ENTITLEMENTS. (a) After July 1, 1978, general grant land entitlements provided in AS 29.65.010 and 29.65.020 are vested property rights that must be fulfilled as provided in AS 29.65.050 or 29.65.080.

(b) General grant land entitlements provided by AS 29.65.030 are property rights that vest on the date of incorporation of the municipality. The entitlement must be fulfilled as provided in AS 29.65.050.

(c) Land may be selected or nominated for selection by a municipality to satisfy a general grant land entitlement under AS 29.65.010 and

1 29.65.020 at any time before October 1, 1980. However, if a municipal  
2 selection or nomination or a part of a municipal selection or nomination  
3 is rejected by the director, the municipality may, not later than 90  
4 days after receipt of the director's rejection, select additional state  
5 land as necessary to satisfy its entitlement.

6 (d) Land may be selected by a municipality to satisfy a general  
7 grant land entitlement under AS 29.65.030 at any time within one year  
8 after the director certifies the entitlement to the municipality.

9 (e) The time limitations imposed by (c) and (d) of this section  
10 for exercising a vested general grant land entitlement do not apply to

11 (1) the portion of an entitlement that cannot be satisfied by  
12 that date because of a shortage of land suitable for residential, commer-  
13 cial, and industrial purposes that is vacant, unappropriated, unreserved  
14 land;

15 (2) payments for land deficiency under AS 29.65.080;

16 (3) the portion of an entitlement that cannot be satisfied  
17 because the land selected by a municipality has been selected by a party  
18 entitled to select land owned by the United States or the state; or

19 (4) the portion of an entitlement that cannot be satisfied  
20 because the land nominated for selection by the municipality is not  
21 tentatively approved for patent to the state.

22 Sec. 29.65.050. FULFILLMENT OF LAND ENTITLEMENTS. (a) The acreage  
23 of each municipality's land selections for which patent has been issued  
24 before July 1, 1978, shall be credited toward fulfillment of the entitle-  
25 ment of that municipality.

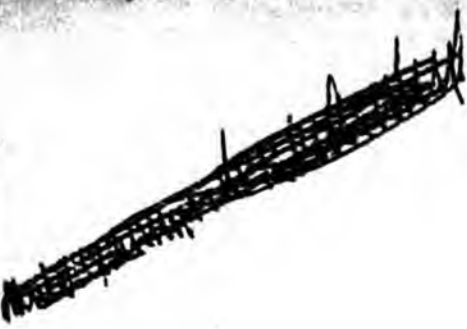
26 (b) All approved selections under former AS 29.18.190 and 29.-  
27 18.200 for which patent has not been issued to a municipality on July 1,  
28 1978, shall be reviewed by the director within nine months after July 1,  
29 1978. Any approved selection of land that was vacant, unappropriated,

1 05.315 or (b) of this section.

2 (b) Where state land is the most logical location for demonstrated  
3 municipal expansion for nonpublic settlement and development purposes,  
4 and when an exchange of land under AS 29.65.090 is not possible or is  
5 not in the public interest, it is the policy of the state to sell or  
6 lease the land at public auction. The state may contract with a muni-  
7 cipality to act as its agent in an auction of state land under appli-  
8 cable statutes. When a municipality acts as the agent of the state in  
9 an auction, the municipality may retain from the proceeds of the auction  
10 the expenses that the director determines to be necessary and reason-  
11 able.

12 (c) Nothing in this chapter limits or impairs the authority of the  
13 director to transfer land to municipalities, without limit or considera-  
14 tion, for public purposes in accordance with AS 38.05.315. If there is  
15 a remaining entitlement of the municipality, land transferred under  
16 AS 38.05.315 shall be credited toward fulfillment of the entitlement.

17 **Sec. 29.65.110. ELECTION OF BENEFITS.** (a) A municipality that on  
18 July 1, 1978, is engaged in litigation, or that becomes engaged in  
19 litigation, regarding a claim to state land under former AS 29.18.190  
20 and 29.18.200 shall elect either to obtain the benefits provided in this  
21 chapter or to pursue the litigation and waive any claim to entitlement  
22 under this chapter. An election shall be made by filing a motion for  
23 dismissal with prejudice in the court in which the litigation is pending.  
24 If the claim involves a municipality identified in AS 29.65.010, the  
25 municipality shall file its motion for dismissal within 60 days after  
26 July 1, 1978. If a claim involves a city eligible to receive an entitle-  
27 ment under AS 29.65.020 the city shall file its motion for dismissal  
28 within 60 days after receiving the certificate of entitlement provided  
29 by the director under AS 29.65.020. Failure of the municipality to file



1 a motion for dismissal during the time period provided in this subsection  
2 is considered a waiver of entitlement under this chapter.

3 (b) A municipality that was eligible to file land selections under  
4 former AS 29.18.190 and 29.18.200 and that does not enter into litigation  
5 over a claim to rights under those sections before the expiration of the  
6 time period within which it could make an election under (a) of this  
7 section is considered to have elected to receive benefits under this  
8 chapter and to have waived any claim that might have been raised under  
9 former AS 29.18.190 and 29.18.200.

10 (c) The provisions of this chapter do not affect the rights of a  
11 party to litigation regarding the former AS 29.18.190, 29.18.200 or  
12 29.18.420 maintained by a municipality that has elected not to obtain  
13 the benefits provided by this chapter.

14 Sec. 29.65.120. ADMINISTRATIVE. The commissioner of natural  
15 resources may adopt regulations in accordance with the Administrative  
16 Procedure Act (AS 44.62) necessary to carry out the purposes of this  
17 chapter.

18 Sec. 29.65.130. DEFINITIONS. In this chapter, unless the context  
19 otherwise requires,

20 (1) "approved selection" means a municipal land selection  
21 that has been approved in writing by the director for transfer by patent  
22 to a municipality;

23 (2) "director" means the director of the division of lands,  
24 Department of Natural Resources, or his designee;

25 (3) "general grant land" means land patented or tentatively  
26 approved to the state from the United States under sec. 6(a) or (b) of  
27 the Alaska Statehood Act;

28 (4) "mental health land" means land granted under Title II,  
29 sec. 202 of P.L. 84-830, as amended before or after July 1, 1978;

#1 Cook

A M E N D M E N T

TO: CSSB 180(C&RA)

By Ferguson

CSHB 170(C&RA)

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Page 160, line 1:

Delete "1980" and insert "1982"

Page 167, lines 17 - 19:

Delete all material

Page 168, lines 1 - 13:

Delete all material

Renumber remaining chapter sections accordingly.



## 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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and Regional Affairs Committees  
October 30, 1981  
Page Two

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.

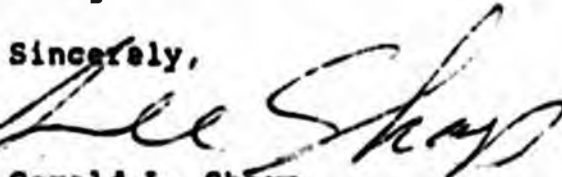
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and Regional Affairs Committees  
October 30, 1981  
Page Five

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 a other 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

## AMENDMENT ANALYSIS

CSSB 180 (C&RA)

### AMENDMENT #1 Land Selection Amendments

Page 160, line 1; allows municipalities more time to select state lands.

Page 167, lines 17-29; this would allow a municipality to select state land even though they may have a lawsuit pending against the state.

Page 168, lines 1-13; continuation of deleting this section.

### AMENDMENT #2 Tax and Revenue Sharing Amendments

Page 104, line 28; this would allow industrial sites to be included in the census counts for the purposes of levying and collecting oil & gas taxes.

Page 105, line 6; same as amendment on Page 104, line 28.

Page 105, line 13; clarifies the interpretation to determine a population count for purposes of levying oil & gas taxes.

Page 105, line 16; same as amendment on Page 105, line 13.

Page 105, line 17; " " " " " " " "

Page 145, line 24; "a" is deleted because you are rewriting the section into one rather than two parts.

Page 145, line 25; this would include both industrial site and military reservations population counts for the purposes of revenue sharing.

Page 145, line 29; this has been incorporated into the rewritten section above.

Page 146, line 1; this has been incorporated into the rewritten section above.

Page 152, line 29; "or" is a grammatical change because the section is being rewritten.

Page 153, line 1; would allow for persons working at isolated job sites to be included in the population counts for revenue sharing purposes.

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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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"

Page 111, line 21:

Delete "rate" and insert "rates"

Page 120, line 29:

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 BOROUGHES. (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<sup>~</sup> 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"

of land eligible for an agricultural tax deferment. It has been suggested that greenhouses be included in this section and the State Assessor's Office supports their inclusion. Legal Services has draft language prepared.

29.71.040(16) (3) In the past, the committees have been concerned over the definition of "publish" as it is currently used in Title 29. Legal Services has prepared alternate draft language which the committees may wish to consider.

**THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE**

**FISCAL NOTE**

**I. REQUEST**

Bill/Resolution No. CS SB 180/ CS HB 170  
 Title "An Act relating to municipal government"  
 Requested by Community and Regional Affairs Committee Date January 22, 1982

**II. FISCAL DETAIL**

Agency Affected Department of Community and Regional Affairs  
 Program Category Affected Community Development  
 BRU, Program, Or Subprogram(s) Affected Local Government Assistance  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

**EXPENDITURES (Thousands of Dollars)**

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, BTC.						
<b>TOTAL</b>		-0-	-0-	-0-	-0-	-0-

**FUNDING (Thousands of Dollars)**

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

**POSITIONS**

FULL TIME		-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

**III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)**

This bill, which substantially amends and restructures Title 29 of the Alaska Statutes, will not create any noticeable need for increases in administrative or grant program funding.

**IV. DATE** January 22, 1982 **PREPARED BY** Doug Griffin *Doug Griffin*

**Original:** Legislative Finance **AGENCY** C & RA/Local Gov't Assistance  
**cc:** Budget and Management **PHONE** 465-4736

**Prime Sponsor (First Legislator Named)**  
 33-001 (Rev. 12/81)

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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09/02/81

STATUTE REFERENCES-CURRENT SESSION ONLY

R01-LBH-3081

PAGE 0044

STATUTE	ACTION	NUMBER	ABBREVIATED TITLE	SPONSOR	REQUESTOR	CURRENT STATUS
29.73.080	ADDED	HB 317	RE/EMERGENCY SVCS COMMUNICATIONS	MALONE	CHAPTER 0107	SLA 81
	REFERENCE	HB 317	RE/EMERGENCY SVCS COMMUNICATIONS	MALONE	CHAPTER 0107	SLA 81
29.88.015	REFERENCE	SB 25	RE/ENERGY PROJECTS/PRGMS OF AK POWER AUTH; ED	KERTTULA	CHAPTER 0118	SLA 81
29.88.035	REFERENCE	SB 125	SUPPL APPROP/DEPT C&RA/REVENUE/FIN ASSIST/MUNIS; ED	DANKWORTH	CHAPTER 0006	SLA 81
29.89.030	AMENDED	HB 131	INCREASE STATE AID-HEALTH FAC & HOSPITALS; ED	HAUGEN	CHAPTER 0103	SLA 81
29.89.050	REFERENCE	SB 125	SUPPL APPROP/DEPT C&RA/REVENUE/FIN ASSIST/MUNIS; ED	DANKWORTH	CHAPTER 0006	SLA 81
29.89.080	REFERENCE	SB 125	SUPPL APPROP/DEPT C&RA/REVENUE/FIN ASSIST/MUNIS; ED	DANKWORTH	CHAPTER 0006	SLA 81
29.90.010	AMENDED	HB 131	INCREASE STATE AID-HEALTH FAC & HOSPITALS; ED	HAUGEN	CHAPTER 0103	SLA 81
29.90.020	AMENDED	HB 131	INCREASE STATE AID-HEALTH FAC & HOSPITALS; ED	HAUGEN	CHAPTER 0103	SLA 81
	REFERENCE	SB 125	SUPPL APPROP/DEPT C&RA/REVENUE/FIN ASSIST/MUNIS; ED	DANKWORTH	CHAPTER 0006	SLA 81
29.90.030	ADDED	HB 131	INCREASE STATE AID-HEALTH FAC & HOSPITALS; ED	HAUGEN	CHAPTER 0103	SLA 81
29.95.010	REFERENCE	HB 131	INCREASE STATE AID-HEALTH FAC & HOSPITALS; ED	HAUGEN	CHAPTER 0103	SLA 81
33.15.050	AMENDED	HB 434	RE/MERGE/AK P-LINE CMSN/AK PUB UTIL CMSN; ED	RULES	GOVERNOR	CHAPTER 0110 SLA 81
33.15.010	REFERENCE	HB 510	CONTINUE EXISTENCE/STATE BOARD OF PAROLE; ED	CLOCKSIN	CHAPTER 0022	SLA 81
33.15.060	ADDED	HB 510	CONTINUE EXISTENCE/STATE BOARD OF PAROLE; ED	CLOCKSIN	CHAPTER 0022	SLA 81
33.35.010	ADDED	SB 115	RE/AGREEMENT ON DETAINERS; ED	RULES	CHAPTER 0039	SLA 81
	REFERENCE	SB 115	RE/AGREEMENT ON DETAINERS; ED	RULES	CHAPTER 0039	SLA 81
33.35.020	ADDED	SB 115	RE/AGREEMENT ON DETAINERS; ED	RULES	CHAPTER 0039	SLA 81
33.35.030	ADDED	SB 115	RE/AGREEMENT ON DETAINERS; ED	RULES	CHAPTER 0039	SLA 81
33.35.040	ADDED	SB 115	RE/AGREEMENT ON DETAINERS; ED	RULES	CHAPTER 0039	SLA 81
34.10.010	REFERENCE	HB 31	RE/STATE/MUNICIPAL LAND; ED	FREEMAN	CHAPTER 0113	SLA 81
34.10.020	REFERENCE	HB 31	RE/STATE/MUNICIPAL LAND; ED	FREEMAN	CHAPTER 0113	SLA 81
34.10.030	REFERENCE	HB 31	RE/STATE/MUNICIPAL LAND; ED	FREEMAN	CHAPTER 0113	SLA 81
34.10.040	REFERENCE	HB 31	RE/STATE/MUNICIPAL LAND; ED	FREEMAN	CHAPTER 0113	SLA 81
34.10.050	REFERENCE	HB 31	RE/STATE/MUNICIPAL LAND; ED	FREEMAN	CHAPTER 0113	SLA 81
34.10.060	REFERENCE	HB 31	RE/STATE/MUNICIPAL LAND; ED	FREEMAN	CHAPTER 0113	SLA 81

Session laws to date - SLA 1981

A M E N D M E N T

#1

TO: CS FOR SENATE BILL NO. 180 (C&RA)  
CS FOR HOUSE BILL NO. 170 (C&RA)

1  
2 Page 10. lines 1 - 29, after "Sec. 29.05.180.":

3 Delete all material and insert

4 "ORGANIZATION GRANTS. (a) For the purpose of defraying the cost of  
5 transition to borough or city government and in order to provide for  
6 development and interim governmental operations, each first class  
7 borough, second class borough, and city incorporated after July 1, 1982,  
8 or, in the case of a second class city, incorporated or reclassified  
9 after July 1, 1982, is entitled to an organization grant equal to \$10  
10 for every voter who voted in the incorporation election. However, each  
11 incorporated first or second class borough and each first class city  
12 incorporated or established by reclassification outside an organized  
13 borough is entitled to at least \$25,000.

14 (b) Within 30 days after the date of incorporation of a first  
15 class borough, second class borough, or city after July 1, 1982, the  
16 Department of Community and Regional Affairs shall determine the number  
17 of voters in the municipality who voted in the incorporation election.

18 (c) Within 30 days after the completion of its findings, or as  
19 soon after that as money is appropriated to it for the purpose, the  
20 Department of Community and Regional Affairs shall transmit to the  
21 municipality the total amount of money to which the municipality is  
22 entitled under this section.

23 (d) This section does not apply to a borough incorporated by  
24 consolidation or to a unified municipality."

25  
26 Page 11, lines 1 - 27:

27 Delete all material.  
28  
29

#2 Cook

A M E N D M E N T

TO: CSSB 180(C&amp;RA)

CSHB 170(C&amp;RA)

1  
2  
3 Page 94, line 19:

4 After "real property" delete "," and insert "and"

5 After "personal property" delete ", or both"

6  
7 Page 94, line 22:

8 Delete "real or personal"

9 Delete ", or both,"

10  
11 Page 100, line 27:

12 After "AS 38.05.069(c)", change the period to a semi-colon.

13  
14 Page 100, after line 27, insert:

15 "(3) exempt personal property from taxation."

16  
17 Page 123, line 5:

18 Delete "real and personal"

A M E N D M E N T

1 TO: CSHB 170(C&RA)

2 CSSB 180(C&RA)

3 Page 1, line 24:

4 Delete "four" and insert "five"

5  
6 Page 1, after line 26, insert:

7 "(3) third class boroughs;"

8  
9 Renumber following paragraphs accordingly.

10  
11 Page 2, after line 27, insert:

12 "(g) A third class borough may reclassify as a first or second  
13 class borough in the manner provided by AS 29.35.320 - 29.35.330 for the  
14 addition of an areawide power by a borough, except the petition or  
15 proposal requests reclassification instead of requesting addition of a  
16 power.

17 (h) At the time of voting on reclassification of a third class  
18 borough to second class or first class status, voters shall vote also on  
19 whether the borough shall on reclassification retain a combined assembly  
20 and school board or elect a separate assembly and board as otherwise  
21 provided for first and second class boroughs. If the majority of votes  
22 cast on the question favors retention of the combined assembly and  
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board, the assembly serving at the time of the reclassification election continues to serve as the assembly and board on voter approval of reclassification and until terms of assemblymen expire as provided before reclassification. If a separate board and assembly are approved at the reclassification election, a school board shall be elected in conformity with AS 14.12.030 - 14.12.100 at the next regular election, if it occurs within 90 days of the date of the reclassification election, or otherwise at a special election within 90 days of the date of the reclassification election. Expiration dates of terms of school board members elected at a special election must coincide with the date of the regular election. Until a board is elected and qualified, the assembly continues to serve as the board."

Page 2, lines 28 and 29:

Delete all material.

Page 3, lines 1 - 18:

Delete all material.

Page 4, line 19, after "law" insert:

"first or second class"

Page 5, line 18, after "a" insert:

"first or second class"

Page 14, line 3:

Delete "METHODS OF"

After "CONSOLIDATION." insert:

1 "(a) Two or more municipalities may merge or consolidate to form  
2 a single municipality, except a third class borough may not be formed  
3 through merger or consolidation.

4 (b)"

5  
6 Page 25, line 15, after "AS 29.05":

7 Delete ", " and insert "or former AS 29.18.030 for a third class borough,"

8  
9 Page 28, after line 26, insert:

10 "(b) At the time of voting on the proposed charter in a third class  
11 borough, voters shall vote also on whether the borough shall on adoption  
12 of the charter retain a combined assembly and school board or elect a  
13 separate assembly and board as otherwise provided for home rule boroughs  
14 If the majority of votes cast on the question favors retention of the  
15 combined assembly and board, the assembly serving at the time of the  
16 charter election continues to serve as the assembly and board on voter  
17 approval of the charter and until terms of assemblymen expire as pro-  
18 vided before adoption of the charter. If a separate board and assembly  
19 are approved at the charter election, a school board shall be elected in  
20 conformity with AS 14.12.030 - 14.12.100 at the next regular election,  
21 if it occurs within 90 days of the date of the charter election, or  
22 otherwise at a special election within 90 days of the date of the charte

1 election. Expiration dates of terms of school board members elected at  
2 a special election must coincide with the date of the regular election.  
3 Until a board is elected and qualified, the assembly continues to serve  
4 as the board."

5 Re-letter following subsection accordingly.

6 Page 49, line 2, after "BOARDS.", insert "(a)"

7 Page 49, line 3:

8 Delete "Members" and insert "Except as provided in (b) of this section,  
9 members"

10 Page 49, after line 6, insert:

11 "(b) The assembly is the school board for a third class borough.  
12 The mayor is the presiding officer of the assembly and president of the  
13 school board. The mayor has all powers of a borough executive, except  
14 that he may not veto an action of the school board."  
15

16 Page 77, line 5, after "basis", insert:

17 ", except areawide exercise of powers other than education and tax  
18 assessment and collection by a third class borough is not authorized"  
19

20 Page 78, line 2:

21 Delete "general law" and insert "first or second class"  
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Page 79, after line 28, insert:

"Sec. 29.35.220. THIRD CLASS BOROUGH POWERS. (a) A third class borough may, if approved by a majority of the voters at an election, provide for planning, platting, and land use regulation in accordance with AS 29.40, except the power may only be exercised within a service area.

(b) A third class borough may exercise any power not otherwise prohibited by law if approved by a majority of the voters at an election except the power may only be exercised within a service area."

Page 80, after line 6, insert:

"(b) A home rule or first class city in a third class borough shall provide for planning, platting, and land use regulation as provided by AS 29.40 for first and second class boroughs. A second class city in a third class borough may provide for planning, platting, and land use regulation as provided by AS 29.40 for the first and second class boroughs."

Re-letter the following subsection accordingly.

Page 80, line 20, after "for", insert:

"first and second class"

Page 80, line 23:

After "POWERS.", insert "(a)"

After "A", insert "first or second class"

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Page 80, after line 27, insert:

"(b) The acquisition of additional powers under AS 29.35.220 for a third class borough may be initiated in two ways:

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

(2) the assembly may propose the acquisition of the power."

Page 84, line 26:

Delete "Boroughs" and insert "First and second class boroughs"

Page 178, lines 26 - 29:

Delete all material

Page 179, lines 1 and 2:

Delete all material

Renumber following bill sections accordingly.

Page 190, line 20, after "AS 28.35.260(10)" insert:

"AS 29.08; AS 29.13; AS 29.18; AS 29.23; AS 29.28; AS 29.33;  
AS 29.38; AS 29.41; AS 29.43; AS 29.53; AS 29.58; AS 29.63; AS 29.68;  
AS 29.73; AS 29.78; AS 29.88; AS 29.89; AS 29.90; AS 29.95;"

A M E N D M E N T

#4

TO: CSHB 170(C&amp;RA)

CSSB 180(C&amp;RA)

1

2 Page 102, line 23, after "LAND":

3 Insert "AND COMMERCIAL GREENHOUSES"

4

5 Page 102, line 27, after "purpose.":

6 Insert "A commercial greenhouse shall be assessed on the basis of full  
7 and true value for farm use, whether classified as real or personal  
8 property for municipal purposes."  
9

10 Page 102, line 28, after "the":

11 Insert "greenhouse or"

12

13 Page 103, line 4, after "the":

14 Insert "greenhouse or"

15

16 Page 103, line 9, after "of":

17 Insert "e commercial greenhouse or"

18

19 Page 103, line 14, after <sup>the second</sup> "the":

20 Insert "greenhouse or"

21

22 Page 103, line 24, after "land.":

23 Insert "To be a commercial greenhouse the owner or lessee must derive at  
24 least 10 percent of his yearly gross income from the greenhouse or from  
25 the greenhouse together with other commercial greenhouses or farm use  
26 land."  
27

28 Page 103, line 27, after "use":

29 Insert "or commercial greenhouse"

Schedule B-1  
(Continued)

<u>Annual Serial Payments</u>	<u>Issued</u>	<u>Retired</u>	<u>1981 Outstanding</u>	<u>1980 Outstanding</u>
3,000,000 (1981)	\$ 50,000,000	\$ 3,000,000	\$ 47,000,000	\$ 50,000,000
2,000,000 (1982)				
5,000,000 (1983)				
6,000,000 (1984)				
5,000,000 (1985)				
2,000,000 (1986)				
3,000,000 (1987)				
7,000,000 (1988)				
4,000,000 (1989)				
6,000,000 (1990)				
7,000,000 (1991)				
12,000,000 (1982-84)	70,000,000		70,000,000	70,000,000
5,000,000 (1985-90)				
4,000,000 (1991)				
4,000,000 (1982)	70,000,000		70,000,000	
5,000,000 (1983-88)				
12,000,000 (1989-91)				
3,000,000 (1985)	75,000,000		75,000,000	
9,000,000 (1986-93)				
10,000,000 (1985-88)	65,000,000		65,000,000	
5,000,000 (1989-93)				
	<u>\$489,300,000</u>	<u>\$ 35,100,000</u>	<u>\$454,200,000</u>	<u>\$257,000,000</u>

## AMENDMENT ANALYSIS

CSSB 180 (C&RA)

### AMENDMENT #1 Land Selection Amendments

Page 160, line 1; allows municipalities more time to select state lands.

Page 167, lines 17-29; this would allow a municipality to select state land even though they may have a lawsuit pending against the state.

Page 168, lines 1-13; continuation of deleting this section.

### AMENDMENT #2 Tax and Revenue Sharing Amendments

Page 104, line 28; this would allow industrial sites to be included in the census counts for the purposes of levying and collecting oil & gas taxes.

Page 105, line 6; same as amendment on Page 104, line 28.

Page 105, line 13; clarifies the interpretation to determine a population count for purposes of levying oil & gas taxes.

Page 105, line 16; same as amendment on Page 105, line 13.

Page 105, line 17; " " " " " " "

Page 145, line 24; "a" is deleted because you are rewriting the section into one rather than two parts.

Page 145, line 25; this would include both industrial site and military reservations population counts for the purposes of revenue sharing.

Page 145, line 29; this has been incorporated into the rewritten section above.

Page 146, line 1; this has been incorporated into the rewritten section above.

Page 152, line 29; "or" is a grammatical change because the section is being rewritten.

Page 153, line 1; would allow for person working at isolated job sites to be included in the population counts for revenue sharing purposes.

CSSB 180 (C&RA)

AMENDMENT #1 Land Selection Amendments

These amendments do two things: 1. allow the municipalities more time to select state lands; and 2. allow the municipalities to select state land even though they may have a lawsuit pending against the state.

Amendment # 2 Oil&Gas Taxes and Revenue Sharing Amendments .

The amendments on Page 104 & 105 would allow the industrial sites within the Borough to be used for the census counts in the levying and collection of oil & gas taxes.

The amendments on pages 145,146,152 and 153 would include the industrial site populations in population determination for the purposes of revenue sharing for fire protection, hospital, etc.

TO: Theodore G. Smith, Director  
Division of Forest, Land and--  
Water Management  
Dept. of Natural Resources  
323 East Fourth Avenue  
Anchorage, Alaska 99501

DATE: February 19, 1980

FILE NO.

TELEPHONE NO.

FROM: AVRUM M. GROSS  
ATTORNEY GENERAL  
By: Thomas E. Meacham  
Assistant Attorney General  
AGO - Anchorage

SUBJECT: File No. A66-179-79  
Applicability of AS 29.18.211  
to State land entitlement  
of the North Slope Borough

You have requested a brief analysis of the relationship of AS 29.18.211 to the North Slope Borough's land entitlement under AS 29.18.201-.213, in light of the pendency of North Slope Borough v. LeResche (581 P.2d 1112, Alaska 1978), Supreme Court File No. 2275. Based upon my analysis, contained in this memorandum, it appears that a legitimate inquiry should be made into the steps, if any, which the North Slope Borough took to waive any claim to land entitlement under the former AS 29.18.190-.200 and to instead elect to take benefits under the new Municipal Entitlement Act, AS 29.18.201-.213, pursuant to the terms stated in AS 29.18.211.

AS 29.18.211 states,

Election of Benefits. (a) A municipality which on July 1, 1970 is engaged in litigation, or which becomes engaged in litigation, regarding a claim to state land under former sections 190 and 200 of this chapter shall elect either to obtain the benefits provided in Sections 201-213 of this chapter or to pursue the litigation and thereby waive any claim to entitlement under Sections 201-213 of this chapter. An election shall be made by filing a motion for dismissal with prejudice in the court in which the litigation is pending. If the claim involves a municipality identified in Section 201 of this chapter, the municipality shall file its motion for dismissal within 60 days of July 1, 1978. If the claim involves a city eligible to receive an entitlement under Section 202 of this chapter, the city shall file its motion for dismissal within 60 days after receiving the certificate of entitlement provided by the Director under Section 202 of this chapter. Failure of the municipality to file a motion for dismissal during the time period provided in this subsection shall be considered a waiver of entitlement under Sections 201-213 of this chapter.

February 19, 1980

Re: File No. A66-179-79  
Applicability of AS 29.18.211  
to State land entitlement  
of the North Slope Borough

Sections 201-213 of AS 29.18 became effective on July 1, 1978. The North Slope Borough is a municipality specifically listed in AS 29.18.201(11), and thus its motion for dismissal was required within 60 days of July 1, 1978, or in other words by August 30, 1978.

On July 1, 1978 the case of North Slope Borough v. LeResche, cited above, had been argued and was pending decision in the Supreme Court for the State of Alaska. On August 4, 1978 the decision of the Supreme Court, holding for the State of Alaska and against the North Slope Borough in this case, was issued. That decision did not become final, pursuant to Rule 27 of the Alaska Rules of Appellate Procedure, until the time for a possible petition for rehearing had passed. That time is set by the rule at ten days, unless extended by the Court. On August 9, 1978 and again on August 11, 1978 the attorneys for the North Slope Borough sought from the Supreme Court an extension of time for the filing of a possible petition for rehearing. Their first request did not specify a date to which they wanted the time extended, but their second motion requested an extension to September 4, 1978. The Court ordered the time for filing a possible petition for rehearing extended to September 5, 1978. No petition for rehearing was in fact filed, and the mandate of the Supreme Court, finally ending this lawsuit, was entered on September 11, 1978.

Thus it appears that during the entire time from July 1, 1978, the date of passage of AS 29.18.211, until September 11, 1978, the date upon which the Supreme Court mandate was finally entered, the North Slope Borough was "engaged in litigation" within the meaning of AS 29.18.211; further, during that time period, "... litigation [was] pending ..." within the meaning of that section. It appears that on the last day within which the North Slope Borough could have filed a motion for dismissal with prejudice, namely on August 30, 1978, the Borough was still within the time period granted them by their motion to consider filing a petition for a rehearing; that period did not expire until September 4, 1978. The litigation ceased to be "pending", and the Borough ceased to be "engaged in litigation", only after entry of the mandate of the Supreme Court on September 11, 1978.

The file in this case does not indicate that the North Slope Borough filed a motion for dismissal with prejudice before the Alaska Supreme Court regarding the election of benefits which is required under AS 29.18.211, and the presumption must be that such a motion was not in fact filed. Further, I am not aware of

Theodore G. Smith

-3-

February 19, 1980

Re: File No. A66-179-79  
Applicability of AS 29.18.211  
to State land entitlement -  
of the North Slope Borough

any other written documentation presented to the Court, which could be argued to have in effect fulfilled the purposes of a motion for dismissal with prejudice, within the time allowed by the statute. Instead, after the election period started running on July 1, 1978, the Borough, through its counsel, twice filed motions for an extension of time within which to consider filing a petition for rehearing. These motions were granted and the time was extended to September 5, 1978. The Borough took no affirmative act to close the period for filing such a petition until after August 30, 1978, and it expired by its own terms on September 5 upon the failure of the Borough to file a petition for rehearing.

Based upon the foregoing, the North Slope Borough should be requested to produce documentation meeting the requirements of AS 29.18.211 and demonstrating its eligibility for the land entitlement set forth in AS 29.18.201(11) for 89,850 acres of state land. If such documentation of compliance with the requirements of Section 211 was not filed and cannot now be produced, then the statute requires that the Borough's inaction "... shall be considered a waiver of entitlement under Sections 201-213 of this chapter."

If you have further questions, please contact me at your convenience.

cc: Robert E. LeResche, Commissioner  
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**Sec 29.53.035. Agricultural Property Preferential Assessment. (a)**

Agricultural Property included in a commercial agricultural unit, subject to the requirements of this section, shall be assessed at agricultural value on the basis of its food production capabilities. The local assessor shall maintain records valuing said property for

1. the full and true value, and
2. the agricultural property value.

Subject to requirements of this section, the tax levied on the difference between the full and true value and the agricultural value shall be deferred.

(b) Should the agricultural property be sold, in parcels containing fewer than 20 acres (unless the parcels sold are incorporated into a commercial agricultural unit approved under this section), or should it be converted to a use incompatible with agricultural use, as determined by the local assessor, the owner of record at the time of a deferment is liable to pay to the state an amount equal to the deferred tax together with eight per cent compound interest for the preceding three years on the tax deferred parcels of property sold or converted.

(c) To secure the preferential assessment, the owner of the property must make application to the local assessor on or before May 15 of each year.

(d) A commercial agricultural unit approved for the preferential assessment prior to January 1, 1982 shall retain its approved status subject to (b) and (c) of this section.

(e) The application forms for the preferential assessment shall be prescribed by the state assessor for use by the local assessor and shall require at least the following information:

(1). Certification by the owner or the lessee that the property was used as agricultural property during the year prior to the year ~~for~~ which the deferment is requested;

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(2). if the property is leased for use as agricultural property, a signed copy of the lease which spans the period for which the deferment is sought;

(3). certification by the local assessor that the property qualifies for the preferential assessment under this section.

(f) In this section:

(1) agricultural property means any real property used principally for the purposes of producing foodstuffs for consumption by human beings or domestic livestock; or property which is being developed for such use (a) under an approved United States Soil Conservation Plan or, (b) under a signed agreement with the local assessor;

*includes  
greenhouses*

(2) parcel means a unit of land along with real property improvements <sup>Hansen</sup> ~~therein~~ whose boundaries shall be determined by the local assessor for purposes of this section.

(3) commercial agricultural unit means parcel(s) of land or improvements used as agricultural property for the purpose of engaging in the competitive trade of foodstuffs. At least fifty percent of the unit must be actively and exclusively utilized for the production of foodstuffs.

*includes  
greenhouses*

(9) Subject to legislative appropriations for the purpose, the state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of this section.

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# **TITLE 29**



## **LOCAL GOVERNMENT STATUTES of the STATE OF ALASKA 1981**

**A complete compilation of additions and amendments to  
Title 29 of the Alaska Statutes enacted by the State Legislature.**

### **- CONTENTS -**

- **Classification and Incorporation of Municipalities**
- **Elections and Municipal Officers and Employees**
- **Municipal Powers**
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- **State Revenue Sharing Act**

**STATE OF ALASKA**

**DEPT OF COMMUNITY AND REGIONAL AFFAIRS  
DIVISION OF LOCAL GOVERNMENT ASSISTANCE**

## Chapter 03. The Unorganized Borough.

**Sec. 29.03.010. Establishment.** Areas of the state which are not within the boundaries of an organized borough constitute a single unorganized borough. (§ 2 ch 118 SLA 1972)

**Constitutionality.** — See 1961 Op. Atty Gen., No. 3. Op. No. 61 (File No. 60), 368 P.2d 540 (1962).  
Cited in Fairview Pub Util Dist No. 1 v. City of Anchorage, Sup. Ct. Am. Jur. reference 37 Am. Jur. Municipal Corporations, § 1 et seq.

Quoted in Mobil Oil Corp. v. Local Boundary Comm'n, Sup. Ct. Op. No. 989 (File No. 1947), 518 P.2d 92 (1974).

**Sec. 29.03.020. Service areas.** Allowing for maximum local participation, the legislature may establish, alter, or abolish service areas within the unorganized borough to provide special services, which may include but are not limited to schools, utilities, land use regulations and fire protection. A new service area may not be established if the new service can be provided by an existing service area by incorporation as a city, or by annexation to a city. (§ 2 ch 118 SLA 1972)

This section carries out the intent of the Alaska Constitution, art. X, § 6. 1961 Op. Atty Gen., No. 24.

The legislature would be unable to create school service areas comparable to an incorporated school district under this section since it could not grant the same powers of fiscal autonomy to such a service area. Nor could the legislature accomplish this fiscal autonomy by authorizing school service areas to submit their budgets

to the people by referendum, since this would violate the Alaska Constitution, art. XI, § 7. 1961 Op. Atty Gen., No. 24.

But it could establish such school service areas in an unorganized borough by general law. 1961 Op. Atty Gen., No. 24.

Subject to the restrictive limitations of the Alaska Constitution, art. X, § 5. See 1961 Op. Atty Gen., No. 24.

## Chapter 04. Classification of Municipalities.

### Section

- 10 Home rule
- 40 Reclassification

**Sec. 29.04.010. Home rule.** A home rule municipality is a municipal corporation and political subdivision and is a city of the first class or an organized borough which has adopted a home rule charter. It has all legislative powers not prohibited by law or charter. (§ 2 ch 118 SLA 1972, am § 1 ch 127 SLA 1980)

**Effect of amendment.** — The 1980 amendment deleted "borough of the first class or" preceding "city of the first class," and inserted "or an organized borough"

Cited in Area Dispatch, Inc. v. City of Anchorage, Sup. Ct. Op. No. 1231 (File No. 2024), 544 P.2d 1024 (1976).

Ordinance exempting from local taxation any class of real or personal property. A home rule city has the power to enact an ordinance exempting from local taxation any class of real or personal property, if

such an exemption is not prohibited by the city's home rule charter. (1970 Op. Atty Gen., No. 1.)

The "local activity rule" is an expedient method for resolving an impasse between state statutes which

Conflicts between state statutes and municipal ordinances generally have been modulated by ruling in favor of the statutes. (Chugach Elec. Ass'n v. City of Anchorage, Sup. Ct. Op. No. 647 (File No. 1152), 478 P.2d 116 (1970).)

A parallel provision to Alaska Const., art. X, § 11, is found in this section. City of Fairbanks v. Schrock, Sup. Ct. Op. No. 667 (File No. 1032), 457 P.2d 243 (1969).

City of Anchorage, being a home rule city, is a city of the first class. City of Anchorage v. Lot 1 in Block 68, Sup. Ct. Op. No. 316 (File No. 666), 409 P.2d 609 (1966).

Am. Jur. reference. 37 Am. Jur., Municipal Corporations, §§ 8, 102 to 110.

**Sec. 29.08.020. General law.** A general law municipality is a municipal corporation and political subdivision and is an unchartered borough or city. It has legislative powers conferred by law. (§ 2 ch 118 SLA 1972)

Applied in *Lobby v. City of Dillingham*, Sup. Ct. Op. No. 2097 (File No. 3861), 612 P.2d 33 (1980).

**Sec. 29.08.030. Classes of general law.** General law municipalities are of five classes:

- (1) first class boroughs;
- (2) second class boroughs;
- (3) third class boroughs;
- (4) first class cities;
- (5) second class cities. (§ 2 ch 118 SLA 1972)

**Sec. 29.08.040. Reclassification.** (a) A second class city may be reclassified as a first class city by holding an election on the question as provided in this subsection, if the Department of Community and Regional Affairs determines from the best figures available that the population of the city has reached 400 permanent residents.

(b) An election on the question of reclassification may be initiated in two ways:

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

(2) the council may propose reclassification.

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

(d) The council shall, within 30 days after its findings have been made public, order an election to be held on the question. The election shall be held at least 30 days after the order and not later than the next regular election occurring after the 30-day period.

(e) If more than one question is to be voted on at the election, each appears separately on the ballot.

(f) The council shall certify the election results to the Department of Community and Regional Affairs. If the majority of votes cast on the question is favorable, the city shall be considered re-

classified to first class status 30 days after certification of the election results.

(g) A second class borough may reclassify as a first class or third class borough, and a third class borough may reclassify as a first class or second class borough, in the manner provided by AS 29.33.270—29.33.290 for the addition of powers by boroughs, except the petition or proposal requests reclassification instead of requesting addition of powers.

(h) At the time of voting on reclassification of a second class borough to third class status, borough voters in conformity with AS 29.41 shall elect an assembly to serve as the combined assembly and school board of the third class borough if reclassification is approved.

(i) At the time of voting on reclassification of a third class borough to second class or first class status, borough voters shall vote also on the question whether the borough shall upon reclassification retain a combined assembly and school board or a separate assembly and board as otherwise provided for first and second class boroughs. If the majority of votes cast on the question favors retention of the combined assembly and board, the assembly serving at the time of the reclassification election continues to serve as the assembly and board upon voter approval of reclassification and until terms of assemblymen expire as provided before reclassification. If a separate board and assembly are approved at the reclassification election, a school board shall be elected in conformity with AS 14.12 at the next regular municipal election, if it occurs within 90 days of the date of the reclassification election, or otherwise at a special election within that time called by the assembly with expiration dates of terms of members elected at the special election to coincide with the date of the regular municipal election. Until a board is elected and qualified, the assembly continues to serve as the board. (§ 2 ch 118 S.L.A. 1972; am § 9 ch 200 S.L.A. 1972)

(j) The effective date of reclassification of a borough for which reclassification is approved under (h) of this section is the first day of the borough's fiscal year which begins at least six months after the date on which the reclassification proposition has been approved by the voters.

(am § 3 ch 93 S.L.A. 1977)

**Effect of amendments**

The 1977 amendment added subsection

(j)

The 1972 amendment, effective July 1, 1972, substituted "Department of Commu-

nity and Regional Affairs" for "Local Affairs Agency" in subsection (a) and in the first sentence of subsection (f)

**Sec. 29.08.050. Transition.** (a) On September 10, 1972, the current classification of existing home rule cities and first class cities having 400 or more permanent residents is not affected by this Act. Second and third class cities incorporated before September 10, 1972 and having 400 or more permanent residents are reclassified as first class cities. The city council shall certify by resolution the number of permanent residents within the city. Upon the failure to certify, the Local Boundary Commission shall hold a public hearing and make a determination as to classification as provided in (c) of this section.

(b) On September 10, 1972, fourth class cities incorporated before that date are reclassified as second class cities subject to reclassification under § 40 of this chapter.

(c) The Local Boundary Commission shall, within two years of September 10, 1972, hold a public hearing in each city which was first, second, or third class before that date and whose population is under 400 permanent residents. The commission shall determine in each case whether the city should be classified as first or second class under the new classification. The commission's decision must be published at least once. Unless objections are filed with the Local Boundary Commission by at least five per cent of the permanent residents of the city within 60 days, the classification recommended by the commission becomes effective on the 61st day. If objections are filed by at least five per cent of the permanent residents of the city, the commission shall submit its recommendation to the legislature in the manner provided for submission of boundary changes in § 12, art. X of the state constitution. (§ 2 ch. 118 SLA 1972)

Cited in Arctic Slope Native Assembly  
Final Sup Ct Op No 2050 (File Nos  
379-3793, 3940, 4402 P 2d 32 (1980))

## Chapter 13. Home Rule Municipalities.

### Article 1. Charters.

**Sec. 29.13.010. Municipal charter adoption.** A first class municipality or second class borough may adopt a charter for its own government. A home rule municipality may amend its charter or adopt a new one. A charter is framed by a charter commission of seven members chosen by the municipal voters at a regular or special election. A candidate for the commission shall be a qualified voter of the municipality and a resident of the municipality for three years immediately preceding the election. A charter commission election is called by filing a petition with the borough assembly or the city council, or by resolution of the borough assembly or city council. The petition shall be signed by a number of municipal voters equal to 15 percent of the votes cast in the last regular election of the municipality. (§ 2 ch 118 SLA 1972; am § 2 ch 127 SLA 1980)

**Effect of amendment.** The 1980 amendment inserted "in second class borough" in the first sentence substituted "shall be made" in the fourth and sixth sentences, and substituted "15" for "10" near the end of the section.

**A charter requirement for giving notice of claim within 4 months after an injury occurs is not void under this section.** *Maier v. City of Ketchikan, Sup. Ct. Op. No. 291 (File No. 489), 403 P2d 34 (1965).*

**Sec. 29.13.020. Nomination.** Charter commission candidates are nominated by petitions signed by 50 voters or the number of quali-

fied municipal voters equal to 10 per cent of the number of votes cast in the last regular election, whichever is less. (§ 2 ch 118 SLA 1972)

**Sec. 29.13.030. Election.** At the charter commission election the voters shall consider the question "Shall a charter commission be elected to frame a proposed new charter?" and shall select the members of the commission. If the question is approved, the seven candidates receiving the highest number of votes shall immediately organize as a charter commission. (§ 2 ch 118 SLA 1972)

**Sec. 29.13.040. Preparation of charter.** The charter commission shall, within one year, prepare a municipal charter. The proposed charter shall be signed by a majority of the charter commissioners and filed in the office of the municipal clerk. Within 15 days, the borough assembly or city council shall have the charter published once in a newspaper of general circulation if distributed within the municipality. The clerk shall post copies of the proposed charter in at least three public places and make copies available at the office of the clerk. The commission shall give published notice of and hold at least one public hearing on the proposed charter before the signing and filing of the charter. (§ 2 ch 118 SLA 1972)

**Sec. 29.13.050. Initiative and referendum.** (a) Municipal charters shall provide the procedures for the initiative and referendum.

(b) A charter may not require an initiative or referendum petition to have a number of signatures greater than 25 per cent of the total votes cast at the last regular municipal election.

(c) A charter may not permit the initiative and referendum to be used for a purpose prohibited by § 7, art. XI of the state constitution. (§ 2 ch 118 SLA 1972)

City ordinance not prohibited. — There is no statutory prohibition to the enactment of a city ordinance on referendums which required that the referendum petition contain the signatures of 25 percent of those voting in the last general election. *Area Dispatch, Inc. v. City of Anchorage*, Sup. Ct. Op. No. 1231 (File No. 2624), 544 P.2d 1024 (1976).

**Sec. 29.13.060. Charter election.** The charter shall be submitted to the municipal voters at a regular or special election held not less than 30 days nor more than 90 days from the publication of the charter. (§ 2 ch 118 SLA 1972)

**Sec. 29.13.070. Charter adoption.** (a) If a majority of those voting on the question favor the proposed charter, it becomes the organic law of the municipality. Thereafter, the court shall take judicial notice of the charter. The municipality shall file the indicated number of copies of the charter with the

- (1) lieutenant governor—two copies;
- (2) Department of Community and Regional Affairs — two copies;
- (3) district recorder—one copy;
- (4) municipal clerk—one copy.

(b) If a proposed charter is rejected, the charter commission shall prepare another proposed charter to be submitted to the voters at a regular or special election to be held within one year after the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of adoption of a charter shall be treated as if it had never been proposed or approved. (§ 2 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

Effect of amendment. — The 1972 amendment, effective July 1, 1972, substituted "Department of Community and Regional Affairs" for "Local Affairs Agency" in paragraph (2) of subsection (a).

**Sec. 29.13.080. Charter amendment.** A municipal charter may be amended as provided in the charter or by initiative referendum as provided in AS 29.28.060-29.28.110, except that no amendment shall be effective unless ratified by the voters. (§ 2 ch 118 SLA 1972)

## Article 2. Home Rule Limitations.

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

- (1) AS 29.13.080 (charter amendment)
- (2) AS 29.18.140 (borough transition)
- (3) [Effective until January 1, 1981] AS 29.23.020 — 29.23.050 (borough assembly representation)
- (3) [Effective January 1, 1981] AS 29.23.021 (borough assembly composition and apportionment), and AS 29.23.040 — 29.23.050 (borough assembly members)
- (4) AS 29.23.250(a) (election and term of mayor)
- (5) AS 29.23.540 (prohibitions respecting appointment and removal of personnel)
- (6) AS 29.23.560 (municipal reports)
- (7) AS 29.23.580 (meetings public)
- (8) AS 29.28.010, 29.28.020(b) — 29.28.030 (municipal elections)
- (9) AS 29.28.130 — 29.28.250 (recall)
- (10) AS 29.33.010(b) (areawide borough powers)
- (11) AS 29.33.290(c) (acquisition of additional areawide powers)
- (12) AS 29.48.020—29.48.040 (powers of cities outside boroughs)
- (13) AS 29.48.033 (garbage and solid waste services)
- (14) AS 29.48.035(b) (effect of areawide exercise of borough power)
- (15) AS 29.48.035(c) (borough building code jurisdiction within cities)
- (16) AS 29.48.037 (extraterritorial jurisdiction)
- (17) AS 29.48.040—29.48.100 (utilities)
- (18) AS 29.48.180 (codification)
- (19) Repealed by § 147 SLA 1972, effective September 10, 1972.
- (20) AS 29.48.210 (expenditure of borough revenue)
- (21) AS 29.48.220 (post audit)

- (22) AS 29.53.010 — 29.53.100 (borough and city property taxes)
- (23) AS 29.53.415(d) (interest on sales tax)
- (24) AS 29.58.180(b) (security for bonds)
- (25) AS 29.58.315 (bond attorneys, bond and financial consultants)
- (26) AS 29.68.010 (annexation and exclusion)
- (27) AS 29.68.030—29.68.110 (merger and consolidation)
- (28) AS 29.68.500—29.68.580 (dissolution)
- (29) AS 29.73.020 (eminent domain)
- (30) AS 29.73.030 (adverse possession)
- (31) AS 29.73.040 (taxation of municipalities)
- (32) AS 29.73.050 (municipal name changes)
- (33) AS 29.23.555 (conflict of interest). (§ 2 ch 118 SLA 1972; am §§ 2, 4 ch 147 SLA 1972)
- (34) AS 29.33.050, AS 29.41.010(a), AS 14.12.020(a) (responsibility for education on military reservations)
- (35) AS 29.58.345 — 29.58.350 (bonded debt for school construction)
- (36) AS 29.63.065 (exemption from special assessment)
- (37) AS 29.33.090(d) (zoning of state land for homesite entry)
- (38) AS 29.48.130(a)(12) (municipal exemption on contractor bond requirements)
- (39) AS 29.33.150(b) (applicability of local platting regulations to state land in a municipality)
- (40) AS 29.23.060(c) (expulsion of borough assemblyman)
- (41) AS 29.23.130(f) (removal of borough mayor from office)
- (42) AS 29.23.210(b) (expulsion of city councilman from office)
- (43) AS 29.23.255 (removal of mayor from office)
- (44) AS 29.28.050(i) (expulsion, removal from office)
- (45) AS 29.73.070 (taxpayer notice)
- (46) AS 29.88 (municipal tax resource equalization assistance)
- (47) AS 29.59 (state aid for miscellaneous municipal services). (am § 2 ch 32 SLA 1973; am § 43 ch 53 SLA 1973; am § 2 ch 137 SLA 1975; am § 2 ch 114 SLA 1975; am § 3 ch 218 SLA 1976; am § 4 ch 112 SLA 1977; am § 1 ch 20 SLA 1978; am § 2 ch 81 SLA 1978; am § 2 ch 83 SLA 1979; am § 1 ch 85 SLA 1979; am § 208 ch 100 SLA 1980; am § 1 ch 128 SLA 1980; am § 10 ch 155 SLA 1980)

**Effect of amendments.**

The first 1973 amendment added paragraph (40).

The second 1973 amendment deleted "city representation and vote on" preceding "borough assembly" and added "representation" to the end of paragraph (40) as it existed prior to the first 1973 amendment.

The 1974 amendment added paragraph (45).

The 1975 amendment added paragraph (46).

The 1976 amendment substituted "AS 29.58.015" for "AS 29.68.010" at the beginning of paragraph (40).

The 1977 amendment added paragraph (37).

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

The second 1978 amendment added paragraph (38).

The first 1979 amendment rewrote paragraph (3).

The second 1979 amendment added paragraph (39).

The first 1980 amendment, effective June 21, 1980, added paragraphs (40) — (44).

The second 1980 amendment, effective January 1, 1981, rewrote paragraph (3).

The third 1980 amendment added paragraphs (45) — (47). Section 17 of the amendatory act provides that §§ 1 — 12 of the act (including this amendment) take effect on the first day of the fiscal year for which \$33,400,000 or more is appropriated and allowed by the governor for distribution to municipalities and other recipients under §§ 1 — 12 of the act, or on July 1, 1983, whichever is earlier. A total of \$33,500,000 was appropriated for the program for the fiscal year beginning July 1, 1980. The appropriations were

made in §§ 51 and 52, ch. 120, SLA 1980, and § 6, ch. 165, SLA 1980.

**Editor's note.** — Subsection (d) of AS 29.33.090, referred to in paragraph (37), was repealed by § 45, ch. 85, SLA 1979.

**Legislative history report.** — For report on ch. 53, SLA 1973 (CSHB 382), see 1973 House Journal, pp. 793, 895.

**For discussion of constitutional limitation on home-rule powers,** see *Jefferson v. State*, Sup. Ct. Op. No. 1084 (File No. 2000), 527 P.2d 37 (1974).

**Applicability of AS 29.48.130.** — AS 29.48.130, which requires municipalities to perform certain actions by ordinance including the making of appropriations — was not one of the provisions designated applicable to home rule municipalities in this section. *Municipality of Anchorage v. Froane*, Sup. Ct. Op. No. 1477 (File No. 3050, 3104), 568 P.2d 3 (1977), decided prior to the second 1978 amendment.

Applied in *Roderick v. Sullivan*, Sup. Ct. Op. No. 1099 (File No. 2243), 528 P.2d 450 (1974).

**Revisor's note (1972).** — In ch. 118, SLA 1972, AS 29.48.036(b) was omitted from the list in AS 29.13.100. Since, by its own terms, it applies to home rule municipalities, it has been included here as AS 29.13.100(14); succeeding paragraphs (including the one added by § 2, ch. 147 SLA 1972) have been renumbered. For specific discussion of AS 29.13.100, see 1972 House Journal, p. 1720 or 1972 Senate Journal Supplement No. 3, p. 3.

**Effect of amendment.** — The 1972 amendment, effective September 10, 1972, added paragraph (33) and repealed paragraph (19).

## Chapter 18. Incorporation.

### Article 1. Requirements.

#### Sec. 29.18.010. First class cities.

Repealed by S 8 ch 212 S.L.A. 1976, effective June 21, 1976

*Cross reference.* For present Editor's note. The repealed section provisions covering the subject matter of derived from S 2, ch. 118, S.L.A. 1972. the repealed section, see AS 29.18.011(a).

**Sec. 29.18.011. Incorporation of cities.** (a) A community which meets the following standards may incorporate as a first class city:

- (1) the community has 400 or more permanent residents;
- (2) the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale;
- (3) the economy of the community includes the human and financial resources necessary to provide local services; in considering the economy of the community, the Local Boundary Commission shall consider property valuations, economic base, personal income, resources and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;
- (4) the population of the community is stable enough to support local government;
- (5) there is a demonstrated need for local government.

(b) A community which meets all the standards established in (a) of this section except (a) (1) may incorporate as a second class city. (S 1 ch 212 S.L.A. 1976)

Lack of a valid legislative body would not prevent the valid incorporation of a municipality. This conclusion is bolstered by noting that Alaska's newly enacted Municipal Government Code has completely separated the statutes relating to the incorporation procedure from those relating to the borough's legislative body. *Jefferson v State, Sup Ct Op No 1184*

*File No 2000-5271-04/1974* decided under former AS 29.18.010

The incorporation of a municipality is a process both conceptually and functionally distinct from that of establishing a legislative body for that corporation. *Jefferson v State, Sup Ct Op No 1184* *File No 2000-5271-04/1974* decided under former AS 29.18.010

#### Sec. 29.18.020. Second class cities.

Repealed by S 8 ch 212 S.L.A. 1976

*Cross reference.* For present Editor's note. The repealed section provisions covering the subject matter of derived from S 2, ch. 118, S.L.A. 1972. the repealed section, see AS 29.18.011 (c)

**Sec. 29.18.021. Limitations on incorporation of cities.** (a) A community within the unorganized borough may not incorporate as a city if the services may be provided by annexation to an existing city.

(b) A community within an organized borough may not incorporate as a city if the services could be provided on an areawide or nonareawide basis by the borough in which it is located or by annexation to an existing city. (§ 1 ch 212 S.L.A. 1976)

**Effective date.** — Section 9, ch. 212, S.L.A. 1976, makes this section effective June 21, 1976, in accordance with AS 01.10.070 (c).

**The permanent nature of the community asking for incorporation should be well established, based upon the economic situation of the community.** In re Second Class Incorporation of Kasan, 8 Alaska 226 (1930).

**And real necessity for incorporation shown.** — In determining the granting of a petition for incorporation, a real necessity for the incorporation should be shown, arising out of the needs of the entire community, and not a mere desire to try an experiment in the way of municipal self-government. In re Second Class Incorporation of Kasan, 8 Alaska 226 (1930).

**Also that community is qualified to assume responsibilities.** — Where incorporation is requested, it should be shown, not only that a few of the citizens of this community may be qualified to assume the duties and responsibilities arising out of such incorporation, but that the entire com-

munity, educationally and otherwise, is qualified fundamentally to do so, and has a clear understanding of the nature of the undertaking for which they ask. In re Second Class Incorporation of Kasan, 8 Alaska 226 (1930).

**And that burdens and benefits of incorporation will be equal and just.** — Where a petition is presented for incorporation, it should be shown not only that the burdens of the parties and interests affected will be equal and just, but that the benefits to be derived by these parties and interests will be equally distributed and just, and that those who are to pay the expenses which will necessarily arise out of the incorporation, or which may arise out of the incorporation, will be in a position to protect their interests and see to the proper and reasonable expenditure of the money which may be raised under the broad powers of taxation conferred by the legislature upon the cities in Alaska. In re Second Class Incorporation of Kasan, 8 Alaska 226 (1930).

**Sec. 29.18.030. Organized boroughs.** An area may incorporate as an organized borough if it conforms to the following standards:

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support organized borough government;

(2) the boundaries of the proposed borough conform generally to natural geography and include all areas necessary for full development of local services;

(3) the economy of the area includes the human and financial resources capable of providing local services; evaluation of an area's economy includes land use, property valuations, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough;

(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated local government. (§ 2 ch 118 S.L.A. 1972)

**Determining compliance.** — The Department of Community and Regional Affairs has the duty of determining whether a proposed borough meets

standards for incorporation set forth in this section. *Wahara v. Case*, Sup. Ct. Op. 246 (File No. 5184) 391 P.2d 670 (1964).

**As to de facto incorporation.** — See *Jefferson v. State*, Sup. Ct. Op. No. 1054 (File No. 2000) 527 P.2d 37 (1974).

**Chapter 145, S.L.A. 1971 held unconstitutional.** Chapter 145, S.L.A. 1974, by which the Eagle River Chugach Borough was organized, contravened the provisions of Alaska Const., art. II, § 19,

since it was special and local legislation creating a new local government without regard to the general statutory provisions that prescribe the method that otherwise governs the creation of new local governmental entities from existing ones. *Abrams v. State*, Sup. Ct. Op. No. 1142 (File No. 2407) 534 P.2d 91 (1975).

## Article 2. Procedures.

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

- (1) class;
- (2) name;
- (3) boundaries;
- (4) [Effective until January 1, 1981] composition and apportionment of the assembly or council;
- (4) [Effective January 1, 1981] composition and apportionment of the assembly or council;
- (5) for a first class borough, a designation of areawide powers to be exercised;
- (6) for a second class borough, a designation of areawide and nonareawide powers to be exercised;
- (7) maps, documents, and other information required by the Department of Community and Regional Affairs;
- (8) for first class city incorporation, the signatures and resident address of 50 permanent resident voters or of 15 per cent of the permanent resident voters within the proposed municipality, whichever is greater, based on the number who voted in the area in the last general election;
- (9) for second class city incorporation, the signature and resident address of 25 permanent resident voters or of 15 per cent of the permanent resident voters within the proposed municipality, whichever is greater, based on the number who voted in the area in the last general election;
- (10) for borough incorporation, the signature and resident address of 15 per cent of the permanent resident voters in each first class city and 15 per cent of voters in the area outside first class cities based on the number who voted in the respective areas in the last general election;
- (11) for a city, a designation of the powers proposed by the petitioners to be exercised;
- (12) a proposed operating budget for the municipality projecting sources of income and items of expenditure through the first full fiscal year of operation. (§ 2 ch 118 SLA 1972; am § 9 ch 200 SLA 1972; am § 2 ch 212 SLA 1976; am § 3 ch 83 SLA 1979; am § 2 ch 128 SLA 1980)

**Effect of amendment.** — The 1972 amendment, effective July 1, 1972, substituted "Department of Community and Regional Affairs" for "Local Affairs Agency" in the first sentence of the introductory paragraph and in paragraph (7).

**Petition to contain only designation of areawide power.** — Paragraph (5) of this section contemplates that the incorporation petition contain only a designation of the areawide power to be exercised. 1962 Op. Att'y Gen., No. 9.

**And not provisions setting up organization apart from the borough assembly to exercise the particular power.** 1962 Op. Att'y Gen., No. 9.

**As the latter is a task for the borough assembly.** — The establishment of a department, and of standards and procedures to be used in the exercise of an areawide power is a task for the borough assembly, in which is vested the general legislative power. 1962 Op. Att'y Gen., No. 9.

**Effect of amendments.**

The 1976 amendment, effective June 21, 1976, substituted "and nonresidence powers to be exercised" for "powers to be exercised and of powers to be exercised in the area outside cities only" at the end of paragraph (6), deleted "to show that the proposed municipality meets the standards for incorporation" from the end of paragraph (7), inserted "or of 15 percent of the permanent resident voters" in paragraph (8), added the language beginning "whichever is greater" to the

end of paragraph (8), substituted "25 permanent resident voters or of 15 percent of the permanent resident voters" for "10 permanent resident voters" in paragraph (9), added the language beginning "whichever is greater" to the end of paragraph (9), and added paragraphs (11) and (12).

The 1979 amendment, effective January 1, 1981, added "but the number of members of a borough assembly may not exceed 11" to the end of paragraph (11).

**Sec. 29.18.060. Review.** The Department of Community and Regional Affairs shall review petitions for content and signatures and shall return deficient petitions for correction and completion. (§ 2 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

**Effect of amendment.** -- The 1972 amendment, effective July 1, 1972, substituted "Department of Community and Regional Affairs" for "Local Affairs Agency."

**Sec. 29.18.070. Investigation.** (a) If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

(b) The department may combine petitions for incorporation from the same general area.

(c) The department shall hold at least one public hearing in the area proposed for incorporation. (§ 2 ch 118 SLA 1972, am § 9 ch 200 SLA 1972; am §§ 3, 4 ch 212 SLA 1976)

**Effect of amendment.**

The 1976 amendment, effective June 21, 1976, deleted the former second sentence of subsection (a), which read "It may use U.S.

Bureau of the Census reports or other reliable information to determine more accurately the population of the proposed municipality," and added subsection (c).

**Sec. 29.18.080. Report and hearing.** (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendations regarding the incorporation.

(b) The Local Boundary Commission shall hold at least one public hearing in the area proposed to be incorporated for the purpose of receiving testimony and evidence on the proposal (am § 5 ch 212 SLA 1976)

**Effect of amendment.**

The 1976 amendment, effective June 21, 1976, substituted "receiving testimony and evidence on the proposal" for "gathering

public sentiment on the incorporation proposal" at the end of subsection (b).

**Sec. 29.18.090. Decision on municipal incorporation.** (a) If the Local Boundary Commission determines that a proposed municipality fails to meet the standards for incorporation, it shall reject the petition. If the commission determines that the proposed municipality meets the standards, it shall accept the petition. If the commission determines that the proposed boundaries can be altered to meet the standards, it may alter the boundaries and accept the petition.

(b) A commission decision under this section may be appealed under the Administrative Procedure Act (AS 44.62). (§ 2 ch 118 SLA 1972; am § 6 ch 212 SLA 1976)

**Effect of amendment.** — The 1976 amendment, effective June 21, 1976, substituted "municipality" for "borough" in the first and second sentences of subsection (a).

**Sec. 29.18.100. Decision on city incorporation.**

Repealed by § 8 ch 212 SLA 1976, effective June 21, 1976.

**Cross references.** For provisions relating incorporation of cities, see AS 29.18.021. As to decision on municipal incorporation, see AS 29.18.090.

**Editor's note.** The repealed section derived from § 2, ch 118, SLA 1972.

**Sec. 29.18.110. Incorporation election.** (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of an incorporation petition. Within 30 days after notification, the lieutenant governor shall order an election in the proposed municipality to determine whether the voters desire incorporation and, if so, to elect the initial officers in the same election. If incorporation is rejected, no officers are elected. The election is held not less than 30 nor more than 90 days after the date of the election order. The election order must specify the dates during which nomination petitions for election of initial officers may be filed. (am § 1 ch 23 SLA 1976)

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

(c) Areawide borough powers included in the incorporation petition are considered to be part of the incorporation question. In an election for the incorporation of a second class borough, each power to be exercised outside cities only is placed separately on the ballot. Adoption of a nonareawide power requires a majority of the votes cast on the question, and the vote is limited to the voters residing outside cities.

(d) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05 — 15.60). The state shall pay all election costs under this section. (§ 2 ch 118 SLA 1972)

**Constitutionality.** — This section does not violate Alaska Const., art. IX, § 9, with regard to creation of debts by political subdivisions of the state, since that provision relates only to debts created by contract and not debts created by operation of law. 1964 Op. Att'y Gen., No. 3.

Even if the local option provisions were considered to be local acts, the assumption of election costs by the state would not be unconstitutional, since incorporation by local option requires an affirmative vote of the peo-

ple. By voting to incorporate as a borough by local option, they accept the duty to repay the costs of holding the election. 1961 Op. Att'y Gen. No. 3.

**Am. Jur., ALK and C.J.S. references.** — 18 Am. Jur., Elections, § 1 et seq; 28 Am. Jur., Municipal Corporations, §§ 709, 710.

**Effect of defects in title of election officer.** 1 ALR 1536.

**Punishment of election officers for contempt.** 64 ALR 1019.

63 C.J.S. Municip. Corporations § 1032.

**Effect of amendment.** — The 1976 amendment, in subsection (a), added "and, if so, to elect the initial officers in the same election" to the end of the second sentence, and added the third sentence.

**Sec. 29.18.120. Election of initial officers.**

(a) Repealed by § 4 ch 23 SLA 1976.

(b) Nominations for initial officers are made by petition. The petition is in the form prescribed by the lieutenant governor and includes the name and address of the nominee and a statement of the nominee that he is qualified under the provisions of this title for the office that he seeks. A person may file for and occupy more than one office, but he may not serve simultaneously as borough mayor and as a member of the borough assembly or as mayor and as a member of the council of a home rule or first class city. Petitions to nominate officers of a second class city must include the signature and resident address of 10 voters in the area of the proposed city. Petitions to nominate elected municipal officers must include the signature and resident address of 50 voters in the area of the proposed municipality, or that area of the proposed municipality from which the officers are to be elected under the composition and apportionment set out in the accepted incorporation petition.

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

(d) The initial elected municipal officials take office on the first Monday following certification of their election.

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

(am 66 2 - 4 ch 23 SLA 1976)

**Effect of amendment.**

The 1976 amendment repealed subsection (a), which provided for an election to choose an initial slate of officers if incorporation is approved, deleted the former second and third sentences of

legislative intent. The legislative intent expressed by this section ap-

pears to be for the newly formed borough to be in normal operation as soon as possible after the incorporation election. There is no indication that the legislature felt that the first elected borough assembly

**Effect of amendment.** - The 1972 amendment, in subsection (b), deleted a former fifth sentence, substituted "elected" for "other" in the present fifth sentence, and added the language following "proposed municipality" in that sentence. In the second sentence of subsection (d), the amendment deleted "are" following "first class cities" and deleted "and" following "city council."

**Editor's note.** - Section 17, ch. 118, SLA 1972, as amended by § 9, ch 147, SLA 1972, effective September 10, 1972, provides: "Sec. 17. Secs. 10-16 of this Act to take effect upon the condition and at the time that the Supreme Court of the State of Alaska finds that sec. 4, art. X of the Constitution of the State of Alaska as it relates to representation of cities on borough assemblies is in violation of the Constitution of the United States

subsection (d), which related to the terms served by the initial elected municipal officials, and added subsection (e).

**Am. Jur. reference.** - 37 Am. Jur. Municipal Corporations, § 46 et seq.

should be an interim body to serve only for a year or less until a new assembly could be elected. 1943 Op. Att'y Gen., No. 25.

**Am. Jur. reference.** - 37 Am. Jur. Municipal Corporations, § 46 et seq.

or an amendment to the Constitution of the State of Alaska relating to assembly representation and consistent with the provisions of secs. 10-16 of this Act becomes effective, whichever occurs earlier."

The Alaska constitutional amendment referred to in § 17, ch. 118, SLA 1972 (i.e., the one proposed in 1972 SJR 52) was approved by the voters August 22, 1972.

**Legislative intent.** - The legislative intent expressed by this section appears to be for the newly formed borough to be in normal operation as soon as possible after the incorporation election. There is no indication that the legislature felt that the first elected borough assembly should be an interim body to serve only for a year or less until a new assembly could be elected. 1943 Op. Att'y Gen., No. 25.

**Sec. 29.18.130. Integration of special districts and service areas.** Service areas in a newly incorporated borough or city shall be integrated into the borough or city within two years after the date of incorporation. On integration the borough or city succeeds to all the rights, powers, duties, assets and liabilities of the service areas. After integration, the borough assembly or city council may exercise within a former service area all of the rights and powers exercised by the service area at the time of integration, and may levy and collect special charges, taxes, or assessments to amortize bonded indebtedness incurred by the service area or by a borough or city as successor to the service area. Upon integration no less than all property in the service area at the time of integration remains subject to taxation to pay the principal of and interest on the bonds. The provisions of this section apply to all organized boroughs whether incorporated or organized before or after September 10, 1972. (§ 2 ch 118 SLA 1972)

*Cross reference.* — For constitutional provision as to integrating existing special service districts, see Alaska Const., art. X, § 15.

*Duties.* — When boroughs assume powers previously exercised by service areas, public utility districts, and school districts, they are required by this section to assume the following duties: contractual obligations, and liability on bonded and other indebtedness. 1963 Op. Att'y Gen., No. 29.

*Teacher tenure not lost when school becomes part of organized borough.* A teacher who has served a two-year probationary period in a rural or district school, and who obtained tenure in that school, retains his tenure status when the school becomes part of an organized borough. 1963 Op. Att'y Gen., No. 11.

*Borough must repay city for advances made from city general fund to pay debts incurred in behalf of the city school district.* 1965 Op. Att'y Gen., No. 1.

*Creditors may enforce payment of debts.* — If the borough fails to pay city school district obligations, as required by this section, the city or other creditors may enforce payment. 1965 Op. Att'y Gen., No. 1.

*Borough not required to allocate portions of state support money for debt repayment.* Though the borough is liable to pay the city school district's obligations, the Department of Education has no authority to require that the borough place a share of state support money into special accounts to be used only for this purpose. 1965 Op. Att'y Gen., No. 1.

**Sec. 29.18.140. Transition.** (a) The powers and functions exercised by home rule or general law cities and service areas which are succeeded to by a newly incorporated borough or city are exercised by them until the new borough or city assumes the powers and functions, which may not exceed two years after the date of incorporation. Ordinances, rules, resolutions, procedures, and orders in effect before the transfer remain in effect until superseded by the action of the new borough or city.

(b) The borough or city shall give written notice of its assumption of the powers, duties and other items enumerated in §§ 130—140 of this chapter, to the city, and service area concerned before the assumption. Borough or city officials shall consult with the officials of the city and service area concerned, and arrange an orderly transfer.

(c) After the incorporation of a new borough or city, no service area within it may assume new bonded indebtedness, make any contract, or transfer any assets without the consent of the assembly or council. (§ 2 ch 118 SLA 1972)

*Editor's note.* — Paragraphs (3) and (4) next-to-last annotations in the name of AS 14.15.010, referred to in the pamphlet were repealed in 1966

Transition period inapplicable to state-operated schools.—This section provides for a two-year transition period during which the organized borough must assume the powers of any school district within its boundaries. The statute does not make this transition period applicable to state-operated schools, since such schools exist only outside of city school districts, incorporated school districts, and independent school districts. 1963 Op. Att'y Gen., No. 23.

A newly incorporated borough assumes administrative responsibility for a state-operated school within its boundaries immediately after incorporation. 1963 Op. Att'y Gen., No. 23.

The law provides that the organized borough shall provide, establish, maintain, and operate the schools within its boundaries. Ownership of state-operated schools must be conveyed by the state to the local school district as soon as possible after incorporation. The transfer of direct administration of these schools should be made shortly after incorporation, prior to the beginning of the next fiscal year, and as quickly as is consistent with continuity of operation and efficient management. 1963 Op. Att'y Gen., No. 23.

Superfluous to include duration of ordinances in incorporation petition.

— Under this section, city ordinances affecting public health would remain in effect for a period not to exceed two years from the date of the borough's incorporation or until superseded by ordinances passed by the borough, and it is superfluous to include this in the incorporation petition. 1962 Op. Att'y Gen., No. 9.

The clear meaning of subsection (c) of this section is that after the

incorporation of an organized borough and until the powers exercised by service areas and special districts are assumed by the borough, service areas and special districts cannot assume new bonded indebtedness, make any contract, or transfer any asset without first receiving the consent of the borough assembly. There is no limitation on the type of contract into which the service area or special district may enter except that the approval of the borough assembly first be obtained. 1963 Op. Att'y Gen., No. 29.

Subsection (c) of this section provides a safeguard for the boroughs to assure that special service districts, public utility districts and school districts do not incur financial obligations which are not in the best interest of the borough during the transition period between the organization of the borough and date at which the powers presently exercised by the service areas and service districts are assumed by the borough. 1963 Op. Att'y Gen., No. 29.

The school districts referred to in AN 14.15.010(3) and (4) exist only for purposes of clarification and terminology, and have no "powers" which are subject to the two-year transition period referred to by this section. 1963 Op. Att'y Gen., No. 23.

Duties assumed. — When boroughs assume powers previously exercised by service areas, public utility districts, and school districts, they are required by § 130 of this chapter to assume the following duties, contractual obligations, and liability on bonded and other indebtedness. 1963 Op. Att'y Gen., No. 29.

**Sec. 29.18.150. (Challenge of legality. No person may challenge the formation of a municipality except within six months of the date of its incorporation. (§ 2 ch 118 SLA 1972)**

Am. Jur., A.L.R. and C.J.S. references. — 37 Am. Jur., Municipal Corporations, §§ 7 to 17.

Estoppel as to validity of organization of municipality by recitals in bonds. 85 A.L.R. 1088

Injunction to restrain enforcement of municipal tax upon ground involving attack upon legal existence of municipality. 129 A.L.R. 767

Power of district or prosecuting attorney to bring action of quo warranto attacking existence of municipal corporation. 121 A.L.R. 1219.

Organization thought to be incorporated under unconstitutional statute as a de facto corporation. 74 A.L.R. 193

62 C.J.S. Municipal Corporations §§ 8, 25

Issues. — In case involving the validity of a suit of quo warranto, enforcement of tax may be raised as a defense to such a claim.

Continued existence of a borough through incorporation. 1963 Op. Att'y Gen., No. 29.

### Article 3. Transitional Assistance.

**Sec. 29.18.180. Organization grants.** (a) For the purpose of defraying the cost of transition to borough or city government and in order to provide for development and interim governmental operations, each borough and city incorporated after January 1, 1968, or, in the case of a second class city, incorporated or reclassified after January 1, 1968, other than a unified municipality incorporated under the provisions of AS 29.85, or a municipality otherwise incorporated by consolidation, is entitled to an organization grant equal to \$10 for every voter who voted in the borough or city incorporation election. However, each incorporated borough and each first class city incorporated or established by reclassification outside an organized borough is entitled to at least \$25,000.

(b) Within 30 days after the date of incorporation of a borough or city after September 10, 1972, the Department of Community and Regional Affairs shall determine the number of voters in the borough or city who voted in the incorporation election.

(c) Within 30 days after the completion of its findings, or as soon thereafter as money is appropriated to it for the purpose, the Department of Community and Regional Affairs shall transmit to the borough or city the total amount of money to which the borough or city is entitled. (§ 2 ch 118 S.L.A. 1972; am § 9 ch 200 S.L.A. 1972)

**Effect of amendment.** - The 1972 amendment, effective July 1, 1972, substituted "Department of Community and Regional Affairs" for "Local Affairs Agency" in subsection (b) and (c).

**Secs. 29.18.190 — 29.18.200.**

Repealed by § 5 ch 180 S.L.A. 1978, effective July 1, 1978.

**Cross reference.** - As to general grant fund, see § 18.201 et seq.

**Editor's note.** - The repealed sections derived from § 2 ch 118, S.L.A. 1972.

As to purpose of repealing act, see § 1, ch 180, S.L.A. 1978, effective July 1, 1978, in

the 1978 Temporary and Special Acts and Resolutions in Binder 9.

For recent case constraining the repealed sections, see *North Slope Borough v LeRouche*, Sup. Ct. Op. No. 1687 (File No. 3275), 581 P.2d 1112 (1978).

## Article 3A. General Grant Land.

Effective date of article. Section 7, ch 180, SLA 1978, provides: "This Act takes effect July 1, 1978, except that AS 29.18.208, enacted by sec. 2 of this Act, takes effect July 1, 1980."

Editor's note. - Section 1, ch. 180, SLA 1978, effective July 1, 1978, provides: "STATEMENT OF PURPOSE. The purposes of this Act are to remove uncertainties in the existing municipal land selection law of the state, to provide for an immediate, final determination and settlement of municipal land entitlement, to provide for the completion of rational ownership patterns for sound land management, to provide for expeditious

patent of land to municipalities to fulfill their respective entitlements, and to provide payment for land within certain municipalities which are unable to receive full entitlement rights in appropriate vacant, unappropriated, unreserved land."

Section 6, ch. 180, SLA 1978, effective July 1, 1978, provides: "REPORT. Within 30 days after the convening of each regular session of the Eleventh and Twelfth Legislatures and the first regular session of the Thirteenth Legislature, the director of the division of lands shall report to the legislature on the implementation of AS 29.18.201 - 29.18.213 in sec. 2 of this Act."

**Sec. 29.18.201. Determination of entitlement of boroughs and unified municipalities.** The general grant land entitlement of each of the municipalities in this section is the amount set out opposite each:

- (1) Municipality of Anchorage - 44,893 acres;
- (2) City and Borough of Juneau - 19,584 acres;
- (3) City and Borough of Sitka - 10,500 acres;
- (4) Bristol Bay Borough - 2,898 acres;
- (5) Fairbanks North Star Borough - 112,000 acres;
- (6) Paines Borough - 2,000 acres;
- (7) Kenai Peninsula Borough - 155,700 acres;
- (8) Kotzebue Gateway Borough - 11,500 acres;
- (9) Kodiak Island Borough - 56,500 acres;
- (10) Matanuska Susitna Borough - 355,210 acres;
- (11) North Slope Borough - 89,850 acres. (S 2 ch 180 SLA 1978)

Editor's note. Section 11, ch. 85, SLA 1979 provides: "State land which is leased under a lease for which an application was made for conversion to an owned lease under sec. 12, ch. 138, SLA 1977, as amended by sec. 21, ch. 182, SLA

1979, may not be selected by a unified municipality to satisfy a general grant land entitlement granted under AS 29.18.201 until the expiration of the lease or until January 1, 1981, whichever is earlier."

**Sec. 29.18.202. Determination of entitlement for cities.** The general grant land entitlement of a city formerly eligible to receive general grant land under the provisions of AS 29.18.190 and 29.18.200, as repealed by this act, is 10 per cent of the maximum total acreage of vacant, unappropriated, unreserved land within the boundaries of each city at any time between the initial date of eligibility under former AS 29.18.190 and 29.18.200 and July 1, 1978. Within six months of July 1, 1978, the director shall determine the entitlement for each city eligible to receive general grant land under this section and certify that entitlement to the city. (§ 2 ch 180 SLA 1978)

**Sec. 29.18.203. Determination of entitlement for newly incorporated municipalities.** (a) The general grant land entitlement of a municipality incorporated after July 1, 1978 is 10 per cent of the total acreage of vacant, unappropriated, unreserved land within the boundaries of the municipality on the date of incorporation of that municipality.

(b) Within six months of the date of incorporation of a municipality which is incorporated after July 1, 1978, the director shall determine the entitlement of each municipality eligible to receive general grant land under (a) of this section and certify the entitlement to the municipality. (§ 2 ch 180 SLA 1978)

**Sec. 29.18.204. Status of entitlements.** (a) After July 1, 1978, general grant land entitlements provided in AS 29.18.201 and 29.18.202 are vested property rights which must be fulfilled as provided in AS 29.18.205 or 29.18.208.

(b) General grant land entitlements provided by AS 29.18.203 are property rights which vest on the date of incorporation of the municipality. The entitlement must be fulfilled as provided in AS 29.18.205.

(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.

(d) Land may be selected by a municipality to satisfy a general grant land entitlement under AS 29.18.203 at any time within one year after the director certifies the entitlement to the municipality.

(e) The time limitations imposed by (c) and (d) of this section for exercising a vested general grant land entitlement do not apply to:

(1) the portion of an entitlement which cannot be satisfied by that date because of a shortage of land suitable for residential, commercial and industrial purposes which is vacant, unappropriated, unreserved land;

(2) payments for land deficiency under AS 29.18.208;

(3) the portion of an entitlement which cannot be satisfied because the land selected by a municipality has been selected by a party entitled to select land owned by the United States or the state; or

(4) the portion of an entitlement which cannot be satisfied because the land nominated for selection by the municipality is not tentatively approved for patent to the state. (§ 2 ch 180 SLA 1978, and § 2 ch 85 SLA 1979; see § 1 ch 113 SLA 1981)

**Sec. 29.18.205. Fulfillment of land entitlements.** (a) The acreage of each municipality's land selections under former AS 29.18.190 and 29.18.200 for which patent has been issued before July 1, 1978 shall be credited toward fulfillment of the entitlement of that municipality.

(b) All approved selections under former AS 29.18.190 and 29.18.200 for which patent has not been issued to a municipality on July 1, 1978 shall be reviewed by the director within nine months of July 1, 1978. Any approved selection of land which was vacant, unappropriated or unreserved on the date of selection is valid as of the date of the approval under former AS 29.18.190 and 29.18.200, and a patent shall be issued to the municipality within three months after approval by the director of a plat of survey. The acreage shall be credited toward fulfillment of the municipality's entitlement. No municipality is entitled to receive patent under this chapter to more than its entitlement determined under AS 29.18.201 - 29.18.203. Any prior approval by the director of municipal selections for land which was not vacant, unappropriated or unreserved on the date of selection shall be rescinded, and patent may not be issued except when disposal to a third party by sale or lease has occurred. Transfers of land to municipalities under this chapter are subject to AS 38.05.321. Classification actions as reflected upon the land status records of the Department of Natural Resources are determinative of land classification status for purposes of this chapter.

(c) Repealed by § 45 ch 85 SLA 1979.

(d) Repealed by § 45 ch 85 SLA 1979.

(e) Repealed by § 45 ch 85 SLA 1979.

(f) The director shall approve each selection for patent within nine months of its selection by a municipality, and a patent shall be issued to the municipality for land selected in satisfaction of a general grant land entitlement vested under AS 29.18.201 - 29.18.203 within three months after approval by the director of a plat of survey.

(g) Repealed by § 45 ch 85 SLA 1979.

(h) Repealed by § 45 ch 85 SLA 1979.

(i) Repealed by § 45 ch 85 SLA 1979 ( § 2 ch 180 SLA 1978; am §§ 3, 45 ch 85 SLA 1979).

**Effect of amendment.** The 1979 amendment repealed subsections (c) and (g) and in subsection (f), substituted "The director shall approve each selection for patent for "Each selection shall be approved or disapproved for patent by the director under (g) of this section" and inserted "for land selected in satisfaction of a general grant land entitlement vested under AS 29.18.201 - 29.18.203".

**Sec. 29.18.206. School, university and mental health land.** (a) If an entitlement determined in AS 29.18.201 or 29.18.202 results in a per capita entitlement for the municipality of less than one and one-half acre, the municipality may select vacant school, university or mental health land within the municipality in partial fulfillment of its land entitlement under this chapter. School, university or mental health land may be selected notwithstanding the fact that these lands are not unappropriated and unreserved within the meaning of this chapter and AS 29.18.190 and 29.18.200, repealed by this act, but each selection of school, university or mental health land by a municipality must be vacant, unappropriated, or unreserved land as defined in this chapter, except that it need not be general grant land.

(b) The acreage of school, university or mental health land, if any, within a municipality may not be included in the determination of entitlement under AS 29.18.201 or 29.18.202.

(c) Land conveyed under this section will be credited against a municipality's remaining land entitlement under this chapter.

(d) Within six months after approval of a municipal selection of school, university, or mental health land, the director shall identify state general grant land of approximately equal value to the land requested by the municipality, and shall propose the replacement land for the concurrence of the appropriate board. If a proposal by the director is rejected by the board, the director shall meet with the board as often as necessary to determine the type and amount of equal value replacement land that would be required to obtain the board's concurrence, and shall propose the replacement land for consideration by the board. The replacement land shall thereafter be managed for the purposes for which the land selected by the municipality was acquired by the Territory and State of Alaska.

(e) The notice and review provisions of AS 38.05.005 and 38.05.045 are applicable to the designation of other general grant land as school, university or mental health land in replacement of land selected under this section. The provisions of AS 38.50 and 38.05.032 do not apply to such designations under this section. The provisions of AS 38.05.030(a), 38.05.030(e), and 38.05.035(a)(13) which require the approval of the respective trust board before disposal of lands by the director do not apply to selections of school, university or mental health land by a municipality under this section.

(f) For purposes of determining the per capita entitlement under (a) of this section, the population of a municipality shall be the population determined by the commissioner of the Department of Community and Regional Affairs under AS 43.18.010 for the program year beginning July 1, 1978 for a municipality whose entitlement is determined under AS 29.18.201 or 29.18.202. (S 2 ch 180 SLA 1978)

*Revisor's note.* AS 29.18.206, as it appeared in sec. 2, ch. 180 SLA 1978, referred to "school land" and "mental health land" as well as university land. However, both school land and mental health land were redesignated as general grant land in sec. 1 and 2 of ch. 182 SLA 1978, and references to these categories have been dropped from AS 29.18.206. Sections 3 and 24 of ch. 182, SLA 1978, also provided for the redesignation of university land as general grant land, subject to approval by the Board of

Regents of the University of Alaska. This redesignation, however, was disapproved by the Board of Regents on August 17, 1978.

*Editor's note.* Subsections (c) of AS 38.05.010 and AS 38.05.012, referred to in subsection (c) of this section, were repealed by § 20, ch. 182, SLA 1978. Paragraph (13) of AS 38.05.035 (a), also referred to in subsection (c) of this section, was repealed by § 15, ch. 181, SLA 1978 and § 20, ch. 182, SLA 1978.

**Sec. 29.18.207. Selection and conveyance procedure.** (a)  
Repealed by § 45 ch 86 SLA 1979

(b) Repealed by § 45 ch 86 SLA 1979

(c) If land selected by a municipality is not conveyed at the time of approval, the director shall convey or may approve the municipality's

survey of, the exterior boundaries of an approved selection without interior subdivision, and shall issue patent in terms of the exterior boundary survey. The cost of the survey shall be borne by the municipality. If land selected by a municipality has been surveyed at the time of its selection, the boundaries shall conform to the public land subdivisions established by the approved survey.

(d) The director may approve municipal selections of land which have been tentatively approved or patented to the state by the federal government, but he may not issue patent to a municipality until the land has first been patented to the state. After approval of a selection by the director, but before patent to a municipality, the municipality may execute conditional leases and make conditional sales only with the consent of the director. Conditional sales and conditional leases made before July 1, 1978 do not require the consent of the director.

(e) Nothing in this chapter affects a valid existing claim, location or entry under the laws of the state or the United States whether for homestead, mineral, right-of-way or other purposes. Nothing in this chapter affects the rights of an owner, claimant, locater or entryman to the full use and enjoyment of the land so occupied. (§ 2 ch 180 SLA 1978; am § 45 SLA 1979)

*Effect of amendment* - The 1979 amendment repealed subsection (a) and (b), providing for selections to be in reasonably compact tracts whenever possible and for relinquishment of selections, and providing for certification of certain information to each municipality having an entitlement under AS 29.18.201 - 29.18.203, respectively.

**Sec. 29.18.208. Payment for land deficiency.** (a) There is established within the general fund the Alaska municipal land account for the following purposes:

(1) providing payment to the borough and unified municipalities designated in AS 29.18.201 for a deficiency of land physically suitable for residential, commercial or industrial purposes, or

(2) providing payment to the boroughs and unified municipalities designated in AS 29.18.201 for certain general grant lands selected by the state and conveyed to a Native corporation under the provisions of the Alaska Native Claims Settlement Act.

(b) A municipality shall receive payment for its land deficiency from the account established in (a) of this section. A municipality is eligible to receive payment for land deficiency if, after July 1, 1980, the amount of land selected by a municipality which is physically suitable for residential, commercial or industrial purposes amounts to less than one-third acre per capita. Any entitlement under AS 29.18.201 which is less than one-third acre per capita will, for the purposes of this subsection, be considered a land deficiency. An unselected remaining entitlement will, for the purpose of deficiency payment under this subsection, be considered as land physically suitable for residential, commercial or industrial purposes. A municipality eligible under this subsection is entitled to receive a payment for land deficiency equal to \$1,000 per acre for a number of acres equal to the difference between one-third of the population of the municipality less the number of acres physically suitable for residential, commercial or industrial purposes which has been selected by the municipality. For the purpose of this subsection, the population of the municipality shall be the population determined in accordance with AS 29.18.206(f). No payment may be made to a municipality under this subsection in excess of \$9,000,000.

(c) If a municipality selected vacant, unappropriated, unreserved land on or before December 18, 1971, to which the state had received tentative approval or patent, and such land was also selected by a Native corporation organized under the Alaska Native Claims Settlement Act (P.L. 92-203), and title to that land is ultimately vested in that Native

corporation, the municipality may, at its option, request payment for land deficiency from the account established in (a) of this section. The acceptance of payment under this subsection by a municipality constitutes a relinquishment of any other right, title or claim to the land by that municipality. The total payment to a municipality under this subsection may not exceed \$1,000 per acre to a maximum of 8,000 acres.

(d) The governor shall annually submit to the legislature a request for an appropriation to the account for the municipalities which have elected to receive payments under (b) or (c) of this section. The request for appropriation shall distinguish between amounts necessary to make payments for land deficiency under (b) of this section and those required to make payments for land deficiency under (c) of this section.

(e) For purposes of fulfilling entitlements under this section, the legislature is authorized to appropriate:

(1) not more than \$4,000,000 per fiscal year, and not more than \$12,000,000 in total, for the purpose of paying entitlements under (b) of this section;

(2) not more than \$1,000,000 per fiscal year, and not more than \$3,000,000 in total, for the purpose of paying entitlements under (c) of this section.

(f) If an annual appropriation is not sufficient to meet the amount due to all municipalities which have elected to accept payment for land deficiency under (b) or (c) of this section, the governor shall apportion the appropriation among the municipalities in proportion to the payment calculated for each municipality for that year. When a distribution of payments is made under (c) of this section, the remaining entitlement of a municipality to which payment is made shall be reduced in an amount equal to the number of acres for which payment was received. An appropriation made under this section is in addition to other grants and entitlements authorized to eligible municipalities.

(g) Payments authorized by this section may not be made to a municipality eligible for an entitlement under § 202 or 203 of this chapter.

(h) Payments made under this section shall be used by those local governments which levy property taxes to reduce those taxes in proportion to the amount of state payments received by a local government for a given fiscal year. The governing body of each local government shall furnish a notice with the tax statement describing the effect on property tax levies of payments received under this section (S 2 ch 180 S.L.A. 1978, am S 4, 5 ch 85 S.L.A. 1979)

**Effect of amendment** The 1979 amendment substituted "residential, commercial or industrial purposes" for "the purposes described in AS 29.18.20(a)(1)" in paragraph (c) of subsection (a) and in subsection (b) substituted "selected by a municipality which is physically suitable for residential, commercial or industrial purposes" for "physically suitable for the purposes described in AS 29.18.20(a)(1) for which approval has been given by the

director under AS 29.18.20(g) within one year of selection" in the second sentence, "for residential, commercial or industrial purposes" for "the purposes described in AS 29.18.20(a)(1)" in the fourth sentence, and "residential, commercial or industrial purposes for which has been selected by the municipality" for "the purposes described in AS 29.18.20(a)(1) for which approval has been given by the director under AS 29.18.20(g)" in the fifth sentence.

**Sec. 29.18.209. Authorization for land exchanges.** The director, with the concurrence of the commissioner, and any municipality are authorized to exchange land or interests in land when it is in the public interest. Land or interests in land exchanged under this section must be of approximately equal value, including the non-monetary value of public benefits. Exchange procedures shall comply with applicable law and municipal ordinances. The notice and review provisions of AS 38.05.305 and 38.05.345 are applicable to exchanges of land under this section. The provisions of AS 38.50 do not apply to exchanges of land under this section. (S 2 ch 180 SLA 1978)

**Sec. 29.18.210. Public purpose and expansion needs.** (a) Consistent with the best interests of the state, if a municipality does not contain and cannot reasonably acquire sufficient nonfederal land within its boundaries to meet its legitimate needs for public or private settlement or development, it shall be the policy of the state to select federal land reasonably necessary to meet the needs of the municipality and to make the land selected available to the municipality under AS 38.05.315 or (b) of this section.

(b) Where state land is the most logical location for demonstrated municipal expansion for nonpublic settlement and development purposes, and when an exchange of land under § 209 of this chapter is not possible or is not in the public interest, it is the policy of the state to sell or lease the land at public auction. The state may contract with a municipality to act as its agent in an auction of state land under applicable statutes. When a municipality acts as the agent of the state in an auction, the municipality may retain from the proceeds of the auction the expenses which the director determines to be necessary and reasonable.

(c) Nothing in this chapter limits or impairs the authority of the director to transfer land to municipalities, without limit or consideration, for public purposes in accordance with AS 38.05.315. If there is a remaining entitlement of the municipality, land transferred under AS 38.05.315 shall be credited toward fulfillment of the entitlement. (S 2 ch 180 SLA 1978)

**Sec. 29.18.211. Election of benefits.** (a) A municipality which on July 1, 1978 is engaged in litigation, or which becomes engaged in litigation, regarding a claim to state land under former §§ 190 and 200 of this chapter shall elect either to obtain the benefits provided in §§ 201 - 213 of this chapter or to pursue the litigation and thereby waive any claim to entitlement under §§ 201 - 213 of this chapter. An election shall be made by filing a motion for dismissal with prejudice in the court in which the litigation is pending. If the claim involves a municipality identified in § 201 of this chapter, the municipality shall file its motion for dismissal within 60 days of July 1, 1978. If the claim involves a city eligible to receive an entitlement under § 202 of this chapter, the city shall file its motion for dismissal within 60 days after receiving the certificate of entitlement provided by the director under § 202 of this chapter. Failure of the municipality to file a motion for dismissal during the time period provided in this subsection shall be considered a waiver of entitlement under §§ 201 - 213 of this chapter.

(b) A municipality which was eligible to file land selections under former §§ 190 and 200 of this chapter and which does not enter into litigation over a claim to rights under those sections before the expiration of the time period within which it could make an election under (a) of this section shall be considered to have elected to receive benefits under §§ 201 — 213 of this chapter and to have waived any claim which might have been raised under former §§ 190 and 200 of this chapter.

(c) The provisions of §§ 201 — 213 of this chapter do not affect the rights, if any, of any party to litigation regarding the former AS 29.18.190 — 29.18.200 or 29.18.420, which litigation is maintained by a municipality that has elected not to obtain the benefits provided by §§ 201 — 213 of this chapter. (5 2 ch 180 SLA 1978)

**Sec. 29.18.212. Administration.** The commissioner may adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) necessary to carry out the purposes of AS 29.18.201 — 29.18.213. (5 2 ch 180 SLA 1978)

**Sec. 29.18.213. Definitions.** In AS 29.18.201 — 29.18.213, unless the context otherwise requires,

- (1) Repealed by § 45 ch 85 SLA 1979
- (2) "approved selection" means a municipal land selection which has been approved in writing by the director for transfer by patent to a municipality;
- (3) "director" means the director of the division of lands, Department of Natural Resources, or his designee;
- (4) "general grant land" means land patented or tentatively approved to the state from the United States under § (2a) or (b) of the Alaska Statehood Act;
- (5) "mental health land" means land granted under Title II, § 202 of P.L. 84-830, as amended before or after July 1, 1978;
- (6) "municipal land selection" means a request by a municipality, filed in writing with the director under authority of AS 29.18.190 and 29.18.200 repealed by this act or under AS 29.18.201 — 29.18.213 for vacant, unappropriated, unreserved general grant land within its municipal boundaries in partial fulfillment of its municipal entitlement;
- (7) "municipality" means a home rule or general law city or organized borough of any class, and includes unified municipalities established under AS 29.68.240 — 29.68.440;
- (8) "patent" means a document, issued by the director to a municipality for a previously approved selection, which conveys and quitclaims all the right, title and interest of the state without reservation or condition except as may be required by law;
- (9) "remaining entitlement" means the general grant land entitlement determined in accordance with AS 29.18.201 — 29.18.213, reduced by the total acreage of approved selections, including both patented and unpatented parcels;
- (10) "school land" means those rectangular sections 16 and 36 within each township surveyed on or before January 3, 1959, and confirmed and transferred to the State of Alaska upon its admission under § 6(k), Alaska Statehood Act, 72 Stat. 339, and any other land designated solely for school revenues.

(11) "university land" means all sections 33 reserved to the university under 38 Stat. 1214, as amended (48 U.S.C. 353) and all land granted to or reserved for the benefit of the university;

(12) "vacant, unappropriated, unreserved land" means general grant land as defined in (4) of this section, excluding minerals as required by § 6(i) of the Alaska Statehood Act, which

(A) has not been set aside by statute for one or more particular uses or purposes;

(B) has not been approved for patent to a municipality under AS 29.18.201 -- 29.18.213 or former AS 29.18.190 and 29.18.200 repealed by this act; or

(C) is unclassified or, if classified under AS 38.05.300, is classified for agricultural, grazing, commercial, industrial, private recreational, residential, utility or open-to-entry purposes, or where classified in accordance with an agreement between a municipality and the state providing for state management of land of the municipality. (S 2 ch 160 SLA 1978; am § 45 ch 85 SLA 1979)

**Effect of amendment.** The 1979 amendment repealed paragraph (1), which defined "appropriate vacant, unappropriated, unreserved land"

amended 48 U.S.C. 350, referred to in subdivision (11), was repealed by P.L. 96-509, 1979, effective July 7, 1978, 22 Stat. 113

**Editor's note.** 38 Stat. 1214 as

## Article 4. Development Cities.

Revised note (1972). Provisions virtually identical to §§ 220—160 of this chapter were originally enacted as AS 29.76, ch 19, SLA 1972. Also see ch 110, SLA 1972, which incorporated the development city of Last River.

**Sec. 29.18.220. Legislative findings.** The legislature finds that the development of natural resources in isolated and relatively unpopulated areas requires a policy and procedure which will provide planning, financial and other assistance necessary for encouraging orderly development of well-planned, diversified and economically sound new cities necessary to support the sound development of the state's resources by both the private and public sector. It is the purpose of §§ 220—160 of this chapter to set out the mutual responsibilities of the private and public sectors to achieve these objectives with a view to securing information valuable to future legislatures so that general legislation applicable to the establishment of development cities may be perfected. (§ 19 ch 118 SLA 1972)

**Sec. 29.18.230. Development cities.** Subject to reclassification under § 400(c) of this chapter, a development city is a city of the class designated by the Department of Community and Regional Affairs. (§ 19 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

**Effect of amendment.** — The 1972 amendment, effective July 1, 1972, substituted "Department of Community and Regional Affairs" for "Local Affairs Agency."

**Sec. 29.18.240. Incorporation.** An area not served by an existing municipality which is not reasonably practicable to be served by an existing municipality may be incorporated as a development city by

(1) petition of the industrial developer to the Department of Community and Regional Affairs to be acted on by the Local Boundary Commission; or

(2) act of the legislature. (§ 19 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

**Effect of amendment.** — The 1972 amendment, effective July 1, 1972, substituted "Department of Community and Regional Affairs" for "Local Affairs Agency" in paragraph (1).

**Sec. 29.18.250. Petition for incorporation.** A development city incorporation petition proposed by an industrial developer shall include the following information about the proposed city:

- (1) class,
- (2) name,
- (3) boundaries,
- (4) composition of the council,
- (5) maps, documents, preliminary economic development projections, preliminary population projections, outline of the industrial developer's investigative and development expenditures and its proposed capital program, and other information required by the Department of Community and Regional Affairs to show that the proposed city meets the standards for incorporation.

(6) the proposed agreement required under § 330 of this chapter. (§ 19 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

**Effect of amendment.** — The 1972 amendment, effective July 1, 1972, substituted "Department of Community and Regional Affairs" for "Local Affairs Agency" in paragraph (6).

**Sec. 29.18.260. Review.** The Department of Community and Regional Affairs shall review the petition for content and shall return deficient petitions for correction and completion. (§ 19 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

**Effect of amendment.** — The 1972 "Community and Regional Affairs" for "Local Affairs Agency" amendment, effective July 1, 1972, substituted "Department of Commu-

**Sec. 29.18.270. Investigation.** If the petition contains the required information, the Department of Community and Regional Affairs shall investigate the proposal to determine whether the development expenditures and proposed capital program by the developer serve the public interest and demonstrate a probability of being carried forward to a successful conclusion. (§ 19 ch 11 SLA 1972; am § 9 ch 200 SLA 1972)

**Effect of amendment.** — The 1972 "Community and Regional Affairs" for "Local Affairs Agency" amendment, effective July 1, 1972, substituted "Department of Commu-

**Sec. 29.18.280. Report.** (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendations regarding the incorporation within 60 days of receipt of the petition for incorporation.

(b) The Local Boundary Commission shall review the petition and the findings and recommendations of the Department of Com-

munity and Regional Affairs within 60 days of receiving them. (§ 19 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

**Effect of amendment.** — The 1972 "Community and Regional Affairs" for "Local Affairs Agency" amendment, effective July 1, 1972, substituted "Department of Commu-" and (b).

**Sec. 29.18.290. Decision on development city incorporation.** (a) The Local Boundary Commission may reject a petition for incorporation if it finds that

(1) the area proposed for incorporation is served by an existing municipality or could be served by an existing municipality;

(2) it is improbable that the proposed development will take place;

(3) the program and activities contemplated by this chapter may be undertaken through expansion of the corporate limits of an existing city and then declares that city to be a development city for the purpose of preferential designation under §§ 10 and 340-460 of this chapter;

(4) the program and activities contemplated by this chapter may be undertaken by establishing a service area within an existing organized borough for development project, and declares the service area to be eligible for preferential designation under §§ 410 and 460 of this chapter;

(5) the proposed development does not serve the public interest.

(b) If the Local Boundary Commission finds that a service area within an organized borough is to be designated for preferential treatment under (a) (4) of this section, the assembly may undertake the project in the manner of a development city and shall present to the Local Boundary Commission a contractual agreement outlining responsibilities assumed by the borough and the industrial developer to implement the proposed development program.

(c) The assembly may decline findings under (b) of this section to establish a service area and in the alternative request the Local Boundary Commission to approve incorporation of a development city.

(d) The Local Boundary Commission may dissolve a development city established under § 20 of this chapter if subsequent to its incorporation

(1) the major economic development projected does not occur within a period of five years; and

(2) if the development project had been reviewed as a new project the Local Boundary Commission determines it would have rejected the petition on the basis that it is improbable the proposed development would have taken place.

(e) A commission decision under this section may be appealed under the Administrative Procedure Act (AS 44.62). (§ 19 ch 118 SLA 1972)

**Sec. 29.18.300. Preliminary planning.** The city shall prepare and submit to the state preliminary plans in advance of completion of the final basic comprehensive plan for the city. The preliminary plans shall include

(1) maps, documents, preliminary economic development projections, preliminary population projections, outline of the industrial developer's investigative and development expenditures and its proposed capital program, and other information required by reviewing agencies of the state;

(2) a report on the physical and biological character of the proposed city's site and a land and water use plan and the design and siting of the community to be developed based upon these natural factors. (§ 19 ch 118 SLA 1972)

**Sec. 29.18.310. Review and report.** (a) The division of planning and research, in conjunction with the Departments of Community and Regional Affairs, Natural Resources, and Environmental Conservation and other departments as determined appropriate by the division of planning and research, shall review the preliminary planning and additional data may be requested.

(b) The division of planning and research shall coordinate the preparation of a report and recommendations, if any, which shall be submitted to the governor within 60 days of receipt by the state of the preliminary plans from the city. The city may proceed to the completion of the final basic comprehensive plan upon satisfying any specific recommendations contained in the report.

(c) During the course of planning toward completion of the basic comprehensive development plan the division of planning and research and the Department of Community and Regional Affairs shall be kept currently informed and the final plan shall be subject to review and recommendation by the division of planning and research, which shall act in its coordinating capacity to secure review by the Department of Environmental Conservation and other state agencies as appropriate. (§ 19 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

**Effect of amendment.** The 1972 amendment, effective July 1, 1972, in subsection (a), deleted "Local Affairs Agency and the" following "conjunction with the" and inserted "Community and Regional Affairs" following "Departments of." In subsection (c), the amendment substituted "Department of Community and Regional Affairs" for "Local Affairs Agency."

**Sec. 29.18.320. Limitation.** The city may not proceed with commitment of funds or formal undertakings for physical development until it has a signed contract or contracts for sale of the company's products in quantities shown in the economic data and submitted by the company to be adequate to sustain an economically viable operation. The company may submit alternative valid evidence that the projected operation will proceed. The company shall notify the

Department of Community and Regional Affairs of the meeting of this requirement. Unless the Department of Economic Development makes a determination that the data is insufficient, the city may proceed. (§ 19 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

**Effect of amendment.** — The 1972 amendment, effective July 1, 1972, substituted "Department of Community and Regional Affairs" for "Local Affairs Agency" in the third sentence.

**Sec. 29.18.330. Local hire.** In consideration of the incorporation of a development city under this chapter, the major developer shall enter into an agreement with the appropriate agencies of the state concerning

(1) establishing and maintaining an approved Department of Labor on-the-job training program to qualify Alaska residents lacking in the requisite technical skills of the activities to be undertaken;

(2) establishing resident hire goals in terms of per cent of employees at the end of the first year, second year and third year of operation;

(3) establishing the responsibilities of the various state agencies towards providing technical assistance, manpower procurement, relocation assistance, job opportunity services to residents in the area, supplemental vocational training, and the scope of effort each state agency has in this regard with specific commitments in terms of numbers of residents, time schedule and dollar value of training;

(4) establishing the penalties and conditions of noncompliance with the agreement. (§ 19 ch 118 SLA 1972)

**Sec. 29.18.340. Development city council.** The council of a development city has five members consisting of the commissioner of the Department of Community and Regional Affairs, or his designee, and four public members designated by the governor. The governor shall appoint no fewer than two public members from a list of nominees designated by the major developer providing the industrial base of the city as measured by employment and capital investment. The council shall serve at the pleasure of the governor. The designated councilmen need not be residents of the city during its development stage. (§ 19 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

**Effect of amendment.** — The 1972 amendment, effective July 1, 1972, substituted "consisting of the" and substituted "Department of Community and Regional Affairs" for "Local Affairs Agency" in the first sentence, substituted "commissioner" for "director" following "Agency".

**Sec. 29.18.350. Filling a vacancy.** If a vacancy occurs in the council as constituted under § 340 of this chapter, the applicable appointing authority shall designate the replacement during the development stage of the city. (§ 19 ch 118 SLA 1972)

**Sec. 29.18.360. Powers and duties of council.** During the development stage the council of a development city may

(1) exercise the powers and duties of a school board if the city is located outside an organized borough;

(2) exercise the powers and duties of a planning commission under AS 29.33.080, except that during the first five years or until the development city has 400 permanent residents, zoning and zoning changes will be reviewed and approved by the division of planning and research and the Department of Environmental Conservation. (§ 19 ch 118 S.L.A. 1972)

**Sec. 29.18.370. Powers and duties of development city executive director.** During the development stage the council shall appoint an executive director of the development city, who may be one of its members, to serve at the pleasure of the council. The executive director shall have the powers and duties of all executive and administrative city officials set out in this title in order to develop the city under a comprehensive community development plan. (§ 19 ch 118 S.L.A. 1972)

**Sec. 29.18.380. Procedures.** During the development stage, the council may provide for conference telephone or radiophone meetings at times determined by the council and shall determine its own rules and order of business. (§ 19 ch 118 S.L.A. 1972)

**Sec. 29.18.390. Development city capital improvement funds.** All state agencies shall, where appropriate, adopt procedures to insure that, during the development stage, the needs of a development city are carefully considered in the allocation of funds available for capital improvement projects where those funds have not otherwise been committed by the legislature. (§ 19 ch 118 S.L.A. 1972)

**Sec. 29.18.400. Transition.** (a) When a development city has 400 permanent residents elections shall take place according to the following schedule:

(1) in the first year two additional councilmen who shall be city residents elected for three-year terms;

(2) in the second year two councilmen who shall be city residents elected for three-year terms to replace one of the councilmen nominated by the industrial developer and one of the public members designated by the governor;

(3) in the third year two councilmen who shall be city residents elected for three-year terms to replace the commissioner of the Department of Community and Regional Affairs and one of the councilmen nominated by the industrial developer;

(4) in the fourth year a mayor who shall be a city resident elected for a three-year term to replace the remaining councilman nominated by the industrial developer.

(b) At the time of the election under (a) (4) of this section, or any time after it, the electorate may exercise the right to become a home rule city as authorized under this title.

(c) If, within a period of five years from the incorporation of a development city, the number of permanent residents does not reach 400, the Department of Community and Regional Affairs shall order an election for city officials and designate a successor class of city based on population as provided in this title. If the department designates a successor class of city, the provisions of this title relating to that class of city apply, and the city shall be reclassified accordingly. (§ 19 ch 118 S.L.A. 1972; am § 9 ch 200 S.L.A. 1972)

**Effect of amendment.** — The 1972 amendment, effective July 1, 1972, substituted "commissioner of the Department of Community and Regional Affairs" for "local affairs director" in paragraph (3) of subsection (a). The amendment also substituted "Department of Community and Regional Affairs" for "Local Affairs Agency" in the first sentence of subsection (c) and substituted "department" for "agency" in the second sentence of that subsection.

**Sec. 29.18.410. Housing powers.** From the time of the appointment of the first city council, and for a period of 10 years following the first election of councilmen, the council may act as its own housing and urban renewal authority if such powers have been granted to cities under applicable provisions of law. (§ 19 ch 118 S.L.A. 1972)

**Sec. 29.18.420. Land selection.**

Repealed by § 5 ch 180 S.L.A. 1978, effective July 1, 1978.

**Cross reference.** As to general grant land, see 29.18.201 et seq.  
**Editor's note.** The repealed section derived from § 19, ch 118 S.L.A. 1972.  
As to purpose of repealing act, see § 5 ch 180, S.L.A. 1978, effective July 1, 1978, in the 1978 Temporary and Special Acts and Resolutions in Number 3.

**Sec. 29.18.430. Revenue bonds.** Revenue bonds may be issued by a development city under the provisions of AS 29.58.200—29.58.220. However, no vote of the people is required to issue revenue bonds during the development stage. During the development stage revenue bonds may be issued by a majority vote of the city council. (§ 19 ch 118 S.L.A. 1972)

**Sec. 29.18.440. Shared revenue.** A development city is entitled to shared revenue and other state funds on the same basis as a city or organized borough of the first class or, if reclassified under § 4001(c) of this chapter, on the basis of the reclassification. During the development stage the Department of Community and Regional Affairs may establish an assumed population figure which shall be used to determine shared revenue based on population on per capita grants. (§ 19 ch 118 S.L.A. 1972; am § 9 ch 200 S.L.A. 1972)

**Effect of amendment.** The 1972 amendment, effective July 1, 1972, substituted "Department of Community and Regional Affairs" for "Local Affairs Agency" in the second sentence.

**Sec. 29.18.450. Applicability of other provisions of this title.** All applicable provisions of this title consistent with the provisions of this chapter apply to development cities. Provisions of this chapter prevail over other provisions of this title which are inconsistent. (§ 19 ch 118 SLA 1972)

**Sec. 29.18.460. Definition.** In this chapter "development stage" means that period of time extending from the date of incorporation of a development city until such time as the city may attain a population of 400 permanent residents, or five years from the date of incorporation, whichever is earlier. (§ 19 ch 118 SLA 1972)

### Article 5. Capital City Incorporation.

Section	Section
510. Incorporation	570. Transition
520. Boundaries	580. Planning and zoning authority
530. City council	590. Transfer of utilities to capital city
540. Filling a vacancy	600. Definitions
550. Appointment of city officials	610. Short title

**Cross references.** - For provisions that the Alaska municipal bond bank authority reserve fund includes accounts created to secure payment of bonds issued by the capital city established by AS 29.18.510, see AS 44.58.270 (c) As in the Alaska Capital City Development Corporation, see AS 44.07.

**Effective date of article.** Section 7, ch 143, SLA 1978, provides "This Act takes effect 30 days after certification that a bond issue for costs of relocation of the capital has been adopted by the voters of the state." In November 1978 the voters of the state rejected a bond issue for costs of relocation of the capital.

**Editor's note.** Section 6 of ch 143

SLA 1978 provides "The commissioner of revenue may loan an amount not to exceed \$49,000,000 from surplus money in the general fund to the Alaska State Housing Authority (AS 18.55.010 - 18.55.250) for the purpose of providing housing for persons of lower income in the capital city area. The amounts loaned shall be used by the authority for that purpose in accordance with the provisions of AS 18.55.300 - 18.55.370. The loan or loans by the commissioner of revenue to the authority shall be made at the rate or rate of interest and upon the terms and conditions as the commissioner of revenue and the authority may agree upon."

**Sec. 29.18.510. Incorporation.** There is created and incorporated a city of the state as the capital city of Alaska which is a city of the first class. The capital city has all the powers of a first class city. (§ 3 ch 143 SLA 1978)

**Cross reference.** For provisions that secure payment of bonds issued by the the Alaska municipal bond bank authority the capital city established by this section, see reserve fund includes accounts created to AS 44 58 270(d).

**Sec. 29.18.520. Boundaries.** The boundaries of the capital city shall include all of that area of land designated by the voters of Alaska as the new capital site of the state. (§ 3 ch 143 SLA 1978)

**Sec. 29.18.530. City council.** (a) Until council members elected by the residents of the capital city take office as provided in § 570 of this chapter, the council of the capital city shall have five members, four of whom shall be appointed by the governor and shall serve at the pleasure of the governor. The development corporation shall designate one person to serve as a member of the council. The council members appointed by the governor or designated by the development corporation shall serve an initial term which expires on the Monday following the first Tuesday in October of the calendar year following the calendar year of initial appointment or designation. Council members may be reappointed by the governor or redesignated by the development corporation. Except as provided in § 570 of this chapter, the successors of the initial appointees and designee shall serve for a term of two years commencing on the date the initial appointments and designation expire. Each appointee and designee shall hold office for the term of his appointment and until his successor has been appointed or designated and has qualified.

(b) Council members appointed by the governor or designated by the development corporation need not be residents of the capital city.

(c) The council shall elect a chairman from among its membership. The chairman presides at council meetings, determines the agenda for council meetings, and carries out the other duties specified by ordinance (§ 3 ch 143 SLA 1978)

**Sec. 29.18.540. Filling a vacancy.** If a vacancy occurs among the members appointed by the governor, the governor shall designate the replacement who shall serve for the unexpired portion of the term. (§ 3 ch 143 SLA 1978)

**Sec. 29.18.550. Appointment of city officials.** Until a mayor is elected in accordance with § 570 of this chapter, the council shall appoint a city manager for the capital city to serve at the pleasure of the council. The city manager may not be a council member. (§ 3 ch 143 SLA 1978)

**Sec. 29.18.570. Transition.** (a) When the capital city attains a population of 100 permanent residents, as certified by the lieutenant governor based on the best information available, the lieutenant governor shall notify the council of this determination. The lieutenant governor shall specify an election date which shall be the first Tuesday of October following the notification, except that if it is less than six months from the date of the certification to the first Tuesday of October then the election date shall be the first Tuesday of October of the year following. The elected members shall take office on the Monday following the election.