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Church-operated radio station. — Ad valorem taxes may be assessed and collected upon the facilities and property of a radio station operated by a church if a portion of the radio time is sold and used for commercial purposes, even if a portion of the profit is used to support the missionary work of the church. Evangelical Covenant Church of America v. City of Nome, Sup. Ct. Op. No. 243 (File No. 457), 394 P.2d 882 1964), construing section prior to 1964 amendment.

To hold that a church-operated, profit-making radio station was exempt from ad valorem taxes would result in a taxed commercial business being forced to compete with the commercial activities of institutions claiming a tax exempt status under the law. Evangelical Covenant Church of America v. City of Nome, Sup. Ct. Op. No. 243 (File No. 457), 394 P.2d 882 (1964), construing section prior to 1964 amendment.

Property need not be used fully and continuously for exempt purposes. — Property, to be exempt from taxation because of its use for religious, charitable or educational purposes, need not be fully and continuously in use for such purposes. Sisters of Charity v. Greater Anchorage Area Borough, 8 Alas. L.J. No. 11, p. 272 (Sept., 1970).

Electric cooperative operating under arrangement with federal agency is not exempt. — A nonprofit cooperative is not an agency of the United States government simply by virtue of an "arrangement" with the Rural Electrification Administration pursuant to 7 USC §§ 901—915, and therefore immune from local taxation. City of Anchorage v. Chugach Elec. Ass'n, 17 Alaska 481, 2.. F.2d 112 (9th Cir. 1958).

There is no statutory authority exempting the property of Chugach Electric Association from taxation by the city of Anchorage and the Anchorage independent school district. City of Anchorage v. Chugach Elec. Ass'n, 17 Alaska 481, 262 F.2d 112 (9th Cir. 1958).

Exemption of property on federal land inapplicable to Railroad Reserve. — The doctrine that property located upon federally owned land is immune from local taxation is inapposite where it is not shown that the Railroad Reserve is "federal property" or under the exclusive jurisdiction of the federal government. City of Anchorage v. Chugach Elec. Ass'n, 17 Alaska 481, 262 F.2d 112 (9th Cir. 1958).

Portion of property used intermittently for corporate purposes.—If a portion of the property of a charitable, religious or educational organization is used even intermittently for the corporate purposes, such portion is entitled to the exemption. Sisters of Charity v. Greater Anchorage Area Borough, 8 Alas. L.J. No. 11, p. 272 (Sept., 1970).

Determining portion of property devoted to purposes of organization. Determination of what portion of property owned by a charitable, religious, or educational organization is devoted to purposes of the organization, is a factual function devolving upon the assessor and the board of equalization by law. Sisters of Charity v. Greater Anchorage Area Borough, 8 Alas. L.J. No. 11, p. 272 (Sept., 1970).

Nonutilization of property. — Decisions do not go so far as to hold that nonutilization of the property of a charitable, religious or educational organization continues to entitle the entirety of such property to exemption. Sisters of Charity v. Greater Anchorage Area Borough, 8 Alas. L.J. No. 11, p. 272 (Sept., 1970).

The property of a veterans' organization or auxiliary, of the type mentioned in this section, is not subject to valuation by first class cities for the purposes of AS 11.17.010 et seq., to the extent that it is exempt from taxation. 1962 Op. Att'y Gen., No. 18.

Exclusive employment of occupants of properties sought to be taxed was such as to bring these properties within the exemptions provided in subsections (b)(1) and (b)(2) for residences of ministers owned by religious organizations, or property used for "solely charitable purposes" or "religious education." North Pac. Union Conference Ass'n of Seventh Day Adventists v. Harmon, 5 Alaska L.J. No. 11, p. 228 (Nov., 1967).

The providing of recreational facilities, such as accommodations for campers, is a charitable use of the property. Matanuska-Susitna Borough v. Boy Scouts of Am., Lake Camp, Sup. Ct. Op. No. 1[illegible] (File No. 857), 439 P.2d 111 (1968).

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. 1969 Op. Att'y Gen., No. 1.

Effect of amendments. — The 1973 amendment deleted "whose gross annual income totals less than $10,000" preceding "is exempt" in the first sentence of subsection (e), deleted the language beginning "however" from the end of the present second sentence of that subsection, and deleted the language following "exemption claimed under this section" from the end of the fourth sentence of subsection (f).

The 1975 amendment, in subsection (f), divided the former second sentence into the present second and third sentences by substituting "The claimant" for "and" at the beginning of the present third sentence, added the language beginning "but during the same year" to the end of the second sentence, and added the present fifth sentence.

The first 1976 amendment, in subsection (h), substituted "a bishop, pastor" for "the pastor" in paragraph (1) and inserted "religious administrative officers" in paragraph (2).

The second 1976 amendment, in subsection (e), deleted "After January 1, 1973" from the beginning of the first sentence, added the language beginning "up to and including an assessed value limit" to the end of that sentence, and added the former second sentence.

The third 1976 amendment added the second sentence of subsection (g), added "Except as provided in (g) of this section," to the beginning of subsection (h), and deleted the former second sentence of subsection (h), which read "However, under (e) — (i) of this section only the amount of revenue lost to the municipality by reason of the exemption authorized in those provisions may be reimbursed to the municipality by the state."

The 1977 amendment, in subsection (e), deleted "up to and including an assessed value limit determined no later than January 15 of each year by the commissioner of the Department of Community and Regional Affairs" from the end of the first sentence and deleted the former second sentence, which read "The assessed value limit is the upper limit of the third quartile class in a frequency distribution of previous year assessed values in the state."

The first 1980 amendment, effective July 1, 1980, added paragraph (7) of subsection (a) and subsection (j).

The second 1980 amendment, effective July 1, 1980, added paragraph (8) of subsection (a).

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

Strict construction.

The courts must narrowly construe statutes granting tax exemptions. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

Burden of showing eligibility for exemption. — A taxpayer claiming a tax exemption has the burden of showing that the property is eligible for the exemption. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

Exclusive use for nonprofit religious, etc., purposes must be shown. In order to qualify for an exemption, the taxpayer must show not benefits, but exclusive use for nonprofit religious, charitable, cemetery, hospital or educational purposes. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

When the property in question is used even in part by nonexempt parties for their private business purposes, there can be no exemption. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

Actual use rather than owner's use should be analyzed in determining eligibility for an exemption. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

Office space rented to doctors engaged in private practice. — Office space in a building partially used exclusively for nonprofit hospital purposes, rented to doctors engaged in the private practice of medicine by a nonprofit charitable and religious corporation, was not exempt from taxation. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

While the use of office space by doctor tenants in conducting their private practices does provide incidental benefits to the adjacent hospital, the office space is not used exclusively for hospital purposes. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

Sec. 29.53.025. Optional exemptions and exclusions. (a) Municipalities may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at a regular or special election. An exclusion or exemption authorized by this section may not exceed $10,000 for any one residence.

(b) Municipalities may by ordinance

(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage [a tax based upon a tonnage valuation shall not exceed $5 a year for a boat or vessel of less than five net tons and shall not exceed $15 a year for a boat or vessel of more than five net tons;]

(2) classify and exempt from taxation

(A) the household furniture over $500 in value and the effects of the head of a family or a householder; and

(B) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental of such property does not exceed the actual cost to the owner of the use by the renter; and

(C) historic sites, buildings and monuments;

(D) land of a nonprofit organization used for agricultural purposes if rights to subdivide the land are conveyed to the state and the conveyance includes a covenant restricting use of the land to agricultural purposes only; rights conveyed to the state under this subparagraph may be conveyed by the state only in accordance with AS 38.05.069(c).

(c) The provisions of (a) of this section notwithstanding,

(1) a home rule or first or second class borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of a city within it, including but not limited to, excluding personal property from taxation, establishing exemptions, and extending the redemption period;

(2) a home rule or first class city shall have the same power to grant exemptions or exclude property from borough taxes that it has as to city taxes, provided that the exemptions or exclusions have been adopted as to city taxes and further provided that the city appropriate to the borough sufficient money to equal revenues lost by the borough because of the exemptions or exclusions, the amount to be determined annually by the assembly without weighted voting;

(3) a home rule or general law city within an organized borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of the borough, including but not limited to exempting or partially exempting property from taxation.

(d) Exemptions or exclusions from property tax which have been granted by home rule municipalities in addition to exemptions authorized or required by law, and which are in effect on September 10, 1972 and not later withdrawn, are not affected by this Act.

(e) Municipalities may by ordinance classify and exempt or partially exempt from taxation privately owned land, wet land and water areas for which a scenic, conservation, or public recreation use easement is granted to a governmental body. To be eligible for a tax exemption, or partial exemption, the easement must be in perpetuity. However, the easement is automatically terminated before an eminent domain taking of fee simple title or less than fee simple title to the property so that the property owner is compensated at a rate which does not reflect the easement grant.

(f) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to real property if an increase in assessed value is directly attributable to alteration of the natural features of the land or new maintenance, repair or renovation of an existing structure and if the alteration, maintenance, repair or renovation, when completed, enhances the exterior appearance or aesthetic quality of the land or structure. No exemption may be allowed under this subsection for the construction of an improvement to a structure if the principal purpose of the improvement is to increase the amount of space for occupancy or nonresidential use within the structure or for the alteration of land as a consequence of construction activity. An exemption provided in this subsection may continue for up to four years from the date the improvement is completed or from the date of approval for the exemption by the local assessor, whichever is later.

(g) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to a single family dwelling if the principal purpose of the improvement is to increase the amount of space for occupancy. An exemption provided in this subsection may continue for up to two years from the date the improvement is completed or from the date of approval of an application for the exemption by the local assessor, whichever is later (§ 2 ch 118 SLA 1972; am § 2 ch 1 FSSLA 1973; am § 1 ch 33 SLA 1975; am § 1 ch 111 SLA 1976; am § 1 ch 262 SLA 1976; am § 1 ch 95 SLA 1977; am § 31 ch 94 SLA 1980)

Effect of amendments. – The 1973 amendment added the second sentence of subsection (a).

The 1975 amendment added subsection (e).

The first 1976 amendment added paragraph (3) of subsection (c).

The second 1976 amendment added paragraph (2)(D) of subsection (b).

The 1977 amendment added subsections (f) and (g).

The 1980 amendment deleted "adopted without weighted voting" near the beginning of paragraph (1) of subsection (c).

City may not exempt property without express authority. – The authority of a municipal corporation to allow exemptions of particular property from taxation, unless expressly conferred by law, has very generally been denied. Valentine v. City of Juneau, 36 F 2d 901 (9th Cir. 1929).

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. 1969 Op. Att'y Gen., No. 1.

Valuation of full and true value not precluded. – The fact that first class cities may choose the tonnage valuation of ships for the purposes of taxation does not preclude them from making a valuation of full and true value for the purposes of taxation. It necessarily follows that boats and vessels should be valued at full and true value for the purpose of AS 14.17.010 et seq. 1962 Op. Att'y Gen., No. 18.

Rules applicable to second class cities.—The rules applicable to boats and vessels in first class cities apply equally to those under the jurisdiction of second class cities. 1962 Op. Att'y Gen., No. 18.

Sec. 29.53.030. Mining claims. The assessed value of an unimproved unpatented mining claim which is not producing, and a nonproducing patented mining claim upon which the improvements originally required for patent have become useless and valueless through depreciation, removal or otherwise, is fixed at $200 for each 20 acres or fraction of 20 acres. If the surface ground of a claim has a separate and independent value for nonmining uses, the real and personal property is assessed at its full and true value. (§ 2 ch 118 SLA 1972)

Sec. 29.53.075. Farm or agricultural lands. (a) Farm use lands included in a farm unit and not dedicated or being used for nonfarm purposes shall be assessed on the basis of full and true value for farm use, and shall not be assessed as if subdivided or used for some other nonfarm purpose. The assessor shall maintain records valuing the farm use land for both full and true value and farm use value. Should the farm use land be sold, leased, or otherwise disposed of for uses incompatible with farm use or be converted to a use incompatible with farm use by the owner, the owner is liable to pay an amount equal to the additional tax at the current mill levy together with eight per cent interest for the preceding seven years, as though the land had not been assessed for farm use purposes. Payment by the owner shall be made to the state to the extent of its reimbursement for revenue loss under (e) of this section for the preceding seven years. The balance of the payment shall be made to the city or borough.

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before May 15 of each year in which the assessment is desired. The application shall be made upon forms prescribed by the state assessor for the use of the local assessor and shall include information which may reasonably be required to determine the entitlement of the applicant. If the farm use land is leased for farm use purposes, the applicant shall furnish to the assessor a copy of the lease bearing the signatures of both lessee and lessor along with the completed application. The applicant shall furnish the assessor a copy of the lease covering the period for which the exemption is requested.

(c) In this section "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural use for profit or any combination thereof. To be farm use land, the owner or the lessee must be actively engaged in farming the land, and derive at least 10 per cent of his yearly gross income from the farm use land. The provisions of this section do not apply to land respecting which the owner has granted, and has outstanding, a lease or option to buy the surface rights. A property owner wishing to file for farm use classification having no history of farm-related income may submit a declaration of intent at the time of filing the application with the assessor setting out the intended use of the land and the anticipated percentage of income. Those applicants using this procedure shall file with the assessor before February 1 of the following year a notarized statement of the percentage of gross

income attributable to the farm use land. Failure to make the filing required in this subsection forfeits the exemption.

(d) In the event of a crop failure by an act of God the previous year, the owner or lessee may submit an affidavit affirming that 10 per cent of his gross income for the past three years was from farming.

(e) 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. (§ 2 ch 118 SLA 1972; am § 1 ch 90 SLA 1974; am § 3 ch 229 SLA 1976; am § 1 ch 66 SLA 1978)

Effect of amendments. — The 1974 amendment made such changes in subsections (a), (b), and (c) as to make a detailed comparison impracticable and added subsections (d) and (e).

The 1976 amendment, effective June 23, 1976, and retroactive to January 1, 1975, in subsection (a), substituted "uses incompatible with farm use" for "other than farm use purposes," "a use incompatible with farm use" for "nonfarm use" and "eight per cent" for "five per cent" in the third sentence, inserted "at the current mill levy" in that sentence, and added "for the preceding seven years" at the end of the fourth sentence.

The 1978 amendment substituted "May 15" for "February 1" in the first sentence of subsection (b).

Sec. 29.53.040. Mobile homes. Mobile homes, trailers, house trailers, trailer coaches and similar property used or intended to be used for residential, office or commercial purposes and attached to the land or connected to water, gas, electric or sewage facilities are classed as real property for tax purposes except where expressly classified as personal property by ordinance. This section does not apply to house trailers and mobile homes which are unoccupied and held for sale by persons engaged in the business of selling mobile homes. (§ 2 ch 118 SLA 1972)

Sec. 29.53.045. Tax on oil and gas production and pipeline property. (a) A municipality may levy and collect taxes on taxable property taxable under AS 43.56 only by using one of the methods set out in (b) or (c) of this section.

(b) A municipality may levy and collect a tax on the full and true value of taxable property taxable under AS 43.56 as valued by the Department of Revenue at a rate not to exceed that which produces an amount of revenue from the total municipal property tax equivalent to $1,500 a year for each person residing within its boundaries.

(c) A municipality may levy and collect a tax on the full and true value of that portion of taxable property taxable under AS 43.56 as assessed by the Department of Revenue which value when combined with the value of property otherwise taxable by the municipality, does not exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.56.

(d) By February 1 of each assessment year a taxing municipality must inform the Department of Revenue which method of taxation the municipality will use.

(e) For purposes of this section, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data, and shall advise each municipality of its population as so determined by January 15 of each year. (§ 3 ch 1 FSSLA 1973; am § 6 ch 159 SLA 1975; am § 8 ch 107 SLA 1976)

Effect of amendments. — The 1975 amendment, in subsection (c), inserted "value" following "Department of Revenue which" in the first sentence and added the second sentence.

The 1976 amendment substituted "$1,500" for "$1,000" near the end of subsection (b).

Editor's note. — Section 8, ch 159, SLA 1975, contains a severability clause.

Legislative history report. — For report on ch. 107, SLA 1976 (SCS CSHB 583), see 1976 House Journal, p. 556.

Alaska Statutes 29.53.055 and 29.56.160(a) authorize taxes to pay for municipal bonds, independent of the limitations of this section or AS 29.53.050, and regardless of whether the bonds are in default or default is pending. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 3659), 585 P.2d 534 (1978).

Alaska Statute 29.53.055, literally read, does not render this section and AS 29.53.050 meaningless. AS 29.53.055 applies only to debt financing. The limitations of this section and AS 29.53.050 apply to operating revenues. Merely because they do not also curb taxes to pay for bonds does not render them nullities. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 3659), 585 P.2d 534 (1978).

Municipal taxation of AS 43.56 property may only occur as authorized under this section. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 3659), 585 P.2d 544 (1978).

The first sentence of AS 29.53.055 acts to suspend the limitations imposed by this section but not the language which authorizes taxation of AS 43.56 property. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 3659), 585 P.2d 534 (1978).

The second sentence of AS 29.53.055 does contain independent authorizing language, "[t]axes . . . may be levied," but it may not be construed as a grant to tax AS 43.56 property independent of the authority of subsection (a) of this section (as distinct from its limitations) because AS 43.56.030 and 43.56.010(b) provide that municipalities may tax AS 43.56 property only under this section. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 3659), 585 P.2d 534 (1978).

And all of it is entitled to a state tax credit. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 3659), 585 P.2d 534 (1978).

Regulation denying credit for tax levied under AS 43.56 was invalid. An emergency regulation which denied a credit against the tax levied by the state under AS 43.56.010(a) for property taxes collected by municipalities in excess of the limitations set forth in this section and AS 29.53.050(b) was invalid since AS 43.56.010(d) mandates that all taxes paid under AS 29.53.045 are to be credited against the levy of AS 43.56.010(a). North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 3659), 585 P.2d 534 (1978).

Sec. 29.53.050. Tax limitation. (a) No municipality may levy and tax for any purpose in excess of three per cent of the assessed valuation of property within the municipality in any one year.

(b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding $1,000 a year for each person residing within their boundaries or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding $1,000 a year for each person residing within their boundaries or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or other reliable population data. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58. (§ 2 ch 118 SLA 1972; am § 4 ch 1 FSSLA 1973; am § 5 ch 159 SLA 1975)

Effect of amendments. — The 1973 amendment added subsection (b).

The 1975 amendment, in subsection (b), inserted "(1)," "upon values which," and "exceed" in both the first and second sentences, deleted "either (1)" preceding "$1,000" in these sentences, and added the fourth sentence.

Editor's note. — Section 8, ch. 159, SLA 1975, contains a severability clause.

Prohibition on people, acting through initiative. — Since a municipality, in its legislative capacity, is prohibited from enacting a limitation on taxes to pay bonds, then the people, acting through the initiative, in their legislative capacity, are similarly precluded. Whitson v. Anchorage, Sup. Ct. Op. No. 2050 (File Nos. 4254, 4267), 606 P.2d 759 (1980).

Alaska Statutes 29.53.055 and 29.58.180(a) authorize taxes to pay for municipal bonds, independent of the limitations of this section or AS 29.53.045, and regardless of whether the bonds are in default or default is pending. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 3659), 585 P.2d 534 (1978).

Alaska Statute 29.53.055, literally read, does not render this section and AS 29.53.045 meaningless. AS 29.53.055 applies only to debt financing. The limitations of this section and AS 29.53.045 apply to operating revenues. Merely because they do not also curb taxes to pay for bonds does not render them nullities. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 3659), 585 P.2d 534 (1978).

Regulation denying credit against tax levied under AS 43.56 was invalid. An emergency regulation which denied a credit against the tax levied by the state under AS 43.56.010(a) for property taxes collected by municipalities in excess of the limitations set forth in AS 29.53.045 and subsection (b) of this section was invalid

since AS 43.56.010(d) mandates that all taxes paid under AS 29.53.045 are to be credited against the levy of AS 43.56.010(a). North Slope Borough v Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 36559, 585 P.2d 534 (1978).

Sec. 29.53.055. No limitation on taxes to pay bonds. The limitations provided for in AS 29.53.045 or 29.53.050 do not apply to taxes levied or pledged to pay or secure the payment of the principal and interest on bonds. Taxes to pay or secure the payment of principal and interest on bonds may be levied without limitation as to rate or amount, regardless of whether the bonds are in default or in danger of default. (§ 2 ch 118 SLA 1972; am § 5 ch 1 FSSLA 1973; am § 6 ch 94 SLA 1977)

Effect of amendments. — The 1973 amendment substituted "limitations provided for in AS 29.53.045 or 29.53.050 as" for "limitation provided for in § 50 of this chapter does" in the first sentence.

The 1977 amendment added "regardless of whether the bonds are in default or in danger of default" to the end of the section.

Conflicting legislative history of this section. — See North Slope Borough v Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 36559, 585 P.2d 534 (1978).

Chapter 94, SLA 1977, relating to both state and local taxation does not violate Alaska Const., art. II, § 13, which requires every bill to be confined to one subject. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 36559, 585 P.2d 534 (1978).

Authority to pay for municipal bonds. — This section and AS 29.58.180(a) authorize taxes to pay for municipal bonds, independent of the limitations of AS 29.53.045 or 29.53.050, and regardless of whether the bonds are in default or default is pending. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 36559, 585 P.2d 534 (1978).

This section, literally read, does not render AS 29.53.045 and 29.53.050 meaningless. This section applies only to debt financing. The limitations of AS 29.53.045 and 29.53.050 apply to operating revenues. Merely because they do not also curb taxes to pay for bonds does not render them nullities. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 36559, 585 P.2d 534 (1978).

Alaska Statute 29.53.045 governs taxation of AS 43.56 property. — The first sentence of this section acts to suspend the limitations imposed by AS 29.53.045 but not the language which authorizes taxation of AS 43.56 property. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 36559, 585 P.2d 534 (1978).

The second sentence of this section does contain independent authorizing language. "Taxes ... may be levied," but may not be construed as a grant to tax AS 43.56 property independent of the authority of AS 29.53.045(a) as distinct from its limitations because AS 43.56.030 and 43.56.010(b) provide that municipalities may tax AS 43.56 property only under AS 29.53.045. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 36559, 585 P.2d 534 (1978).

Sec. 29.53.060. Full and true value. (a) The assessor shall assess property at its full and true value as of January 1 of the assessment year, except as provided in this section and AS 29.53.030, 29.53.035 and 29.53.160. The full and true value is the estimated price which the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

(b) Assessment of business inventories may be based on the average monthly method of assessment rather than the value existing on January 1. The method used to assess business inventories shall be prescribed by the borough assembly. (§ 2 ch 118 SLA 1972)

(e) In the case of cessation of business during the tax year, the assembly may provide for reassessment of business inventories using the average monthly me od of assessment for the tax year rather than the value existing on January 1 of the tax year, and for reduction and refund of taxes. In enacting an ordinance authorized by this section, the assembly may prescribe procedures, restrictions, and conditions of assessing or reassessing business inventories and of remitting or refunding taxes.
(am § 45 ch 53 SLA 1978; am § 1 ch 46 SLA 1974)

Effect of amendments. — The 1978 amendment deleted "of a municipality" following "assessor" in the first sentence of subsection (a).

The 1974 amendment added subsection (c).

Editor's note. — The annotation in the main pamphlet, reading "This section applies only to the tax year during which a disaster takes place," was incorrectly located under this section. It applies to AS 29.53.160.

Legislative committee report. — For report on ch. 53, SLA 1978 (CSHB 862), see 1978 House Journal, pp. 782, 865.

The equal protection clause does not compel the adoption of an iron rule of equal taxation. Hoblit v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

The equal protection clause does not prohibit inequality in taxation which is not shown to be the result of an intentional or systematic undervaluation of some but not all of the taxed property in a single class. Hoblit v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

And it does not forbid differences in tax burdens founded upon substantial and reasonable differences between the objects taxed. Hoblit v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

A borough has discretion to appraise by whatever recognized method of valuation it chooses, so long as there is no fraud or clear adoption of a fundamentally wrong principle of valuation. Hoblit v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

Income from property is not sole standard of value.—Although the income from property may be a legitimate factor to consider in fixing value for tax purposes, it is not the sole standard to apply. Twentieth Century Inv. Co. v. City of Juneau, Sup. Ct. Op. No. 28 (File No. 42), 359 P.2d 733 (1961).

Computing reconstruction cost and depreciation of dissimilar buildings. —Where two buildings are dissimilar in size, age, and basic construction, it would be entirely reasonable for the assessor to use different factors in computing reconstruction cost and depreciation, and thus achieve substantial equality and fair equivalence. Hoblit v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

Differences in construction materials between given structures are obvious distinctions sufficient to warrant the difference in treatment accorded by the assessor, and to nullify the charge that his actions were arbitrary and resulted in a lack of uniformity. Hoblit v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

This section applies only to the tax year during which a disaster takes place. Hoblit v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

And the assessor is empowered to reduce assessments in later years where the results of disasters have reduced market value. Hoblit v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

The borough assessor had the power to grant earthquake decrements. Hoblit v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

Property was not entitled to an earthquake decrement for tax assessment purposes since there was an absence of evidence indicating that its market value was reduced. Heblit v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 636 (File No. 1214), 478 P.2d 630 (1970).

Valuation of boats and vessels on the basis of registered or certified tonnage rather than full and true value does not limit the application of the full and true value as to boats and vessels. 1962 Op. Att'y Gen., No. 18.

Determining portion of property devoted to purposes of organization. —Determination of what portion of property owned by a charitable, religious, or educational organization is devoted to purposes of the organization, is a factual function devolving upon the assessor and the board of equalization by law. Sisters of Charity v. Greater Anchorage Area Borough, 8 Alas. L.J. No. 11, p. 272 (Sept., 1970).

Sec. 29.53.070. Returns. (a) The assembly may require every person having ownership or control of or an interest in property to submit a return in the form prescribed by the assessor, based on property values existing on January 1, except as otherwise provided in this chapter.

(b) The assessor may, by written notice, require a person to provide additional information within 30 days. (§ 2 ch 118 SLA 1972)

Am. Jur. references.—38 Am. Jur., Municipal Corporations, § 381 et seq.; 51 Am. Jur., Taxation, § 53 et seq.

Sec. 29.53.080. Independent investigation. (a) The assessor is not bound to accept a return as correct. He may make an independent investigation of property returned or of taxable property upon which no return has been filed. In either case, the assessor may make his own valuation of the taxable property, which is prima facie evidence.

(b) For investigation, the assessor or his agent may enter any premise during reasonable hours and may examine property on the premises. He may examine all property records involved. A person shall, upon request, furnish to the assessor or his agent every facility and assistance for the purposes of the investigation. If refused entry, the assessor may seek a court order to compel entry.

(An assessor may examine a person on oath. Upon request, the , son shall present himself for examination by the assessor. (§ 2 c. 118 SLA 1972)

Tax assessments as evidence in condemnation proceedings.—This section does not furnish the basis for the admissibility of tax assessments as evidence in condemnation proceedings. Given the limited purpose of the act, there is no indication that the legislature intended to make tax assessments prima facie evidence of value in condemnation proceedings. State v. 45,621 Square Feet of Land, Sup. Ct. Op. No. 641 (File No. 1115), 475 P.2d 553 (1970).

Sec. 29.53.090. Statement. A person who fails to file a statement required by ordinance or who knowingly makes a false affidavit to a statement required by a tax ordinance relative to the amount, location, kind or value of property subject to taxation with intent to evade the taxation, is guilty of a misdemeanor. Upon conviction, he is punishable by a fine of not more than $500, or by imprisonment for not more than 30 days, or by both, together with costs of prosecution. (§ 2 ch 118 SLA 1972)

Sec. 29.53.095. Reevaluation. A systematic reevaluation of taxable real and personal property undertaken by the assessor, whether of specific areas in which real property is located or of specific classes of real or personal property to be assessed, shall be made only in accordance with a resolution or other act of the assembly directing a systematic reevaluation of all taxable property within the borough over the shortest period of time practicable, as determined by the assembly and fixed in the resolution or other act of the assembly. (§ 2 ch 118 SLA 1972)

Sec. 29.53.100. Assessment roll. (a) The assessor shall prepare an annual assessment roll. The roll contains

(1) a description of all taxable property;

(2) the assessed value of all taxable property;

(3) the names and addresses of persons with property subject to assessment and taxation.

(b) The assessor may list real property by any description that may be made certain. Real property is assessed to the owner of record as shown in the records of the district recorder, who shall at least monthly provide the assessor a copy of each recorded change of ownership showing the name and mailing address of the owner and the name and mailing address of the party recording the change of ownership. Other persons having an interest in the property may be listed on the assessment records with the owner. The person in whose name property is listed as owner is conclusively presumed to be the legal owner of record. If the property owner is unknown, the property may be assessed to "unknown owner." No assessment is invalidated by a mistake, omission or error in the name of the owner, if the property is correctly described.
(am § 1 ch 204 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "change of ownership showing the name and mailing address of the owner and the name and mailing address" for "change of ownership and the address" in the second sentence of subsection (b).

Mandatory provisions of section not complied with. — Mandatory provisions of this section and AS 29.53.110 relating to assessment procedures were not complied with by the North Slope Borough. Such non-compliance is in violation of the rights of plaintiffs to due process in the levy of tax against them. Arco Pipe Line Co. v. North Slope Borough, Superior Court, 4th Jud. Dist., C.A. No. 73-296 and C.A. Nos. 73-294 to 73-306 (1973).

Prohibition on people, acting through initiative. — Since a municipality, in its legislative capacity, is prohibited from enacting a limitation on taxes to pay bonds, then the people, acting through the initiative, in their legislative capacity, are similarly precluded. Whitson v. Anchorage, Sup. Ct. Op. No. 2060 (File Nos. 4254, 4267), 606 P.2d 760 (1980).

Error in name of owner does not invalidate lien.—A lien of an assessment is valid against the property despite an error in the name of the owner where the property is correctly described, although no personal liability may be claimed against the true owner of record. Bentley v. Kirbo, 169 F. Supp. 88 (D. Alas. 1958).

ALR and C.J.S. references.—Provisions as to approval of expenditures, 91 ALR 1511.

Delegating to others matters relating to computation of tax, 107 ALR 1482.

63 C.J.S. Municipal Corporations § 1290; 64 C.J.S. Municipal Corporations § 1978.

Sec. 29.53.110. Assessment notice. (a) The assessor shall give every person named in the assessment roll a notice of assessment, showing the assessed value of his property. On each notice is printed a brief summary of the dates when taxes are payable, delinquent and subject to penalty and interest, and the dates when the board of equalization will sit.

(b) Sufficient assessment notice is given if mailed by first class mail 30 days before the equalization hearings. If the address is not known to the assessor, the notice may be addressed to the person at the post office nearest the property. Notice is effective on the date of mailing. (§ 2 ch 118 SLA 1972)

Mandatory provisions of section not complied with. — Mandatory provisions of AS 29.53.100 and this section relating to assessment procedures were not complied with by the North Slope Borough. Such non-compliance is in violation of the rights of plaintiffs to due process in the levy of tax against them. Arco Pipe Line Co. v. North Slope Borough, Superior Court, 4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973).

Sec. 29.53.120. Corrections. (a) A person receiving an assessment notice shall advise the assessor of errors or omissions in the assessment of his property. The assessor may correct errors or omissions in the roll before the board of equalization hearing.

(b) If errors found in the preparation of the assessment roll are adjusted, the assessor shall mail a corrected notice allowing 30 days for appeal to the board. (§ 2 ch 118 SLA 1972)

Sec. 29.53.130. Appeal. (a) A person whose name appears on the assessment roll or his agent or assigns may appeal to the board of equalization for relief from an alleged error in valuation not adjusted by the assessor to the taxpayer's satisfaction.

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(b) The appellant shall, within 30 days from the date of mailing of notice of assessment, submit to the assessor a written appeal specifying grounds in the form which the board may require. Otherwise, the right of appeal ceases unless the board finds that the taxpayer was unable to comply.

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

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

(e) A city may appeal an assessment to the board of equalization in the same manner as a taxpayer. Within five days after receipt of the appeal, the assessor shall notify the person whose property assessment is being appealed by the city. (§ 2 ch 118 SLA 1972)

Taxpayer may contest valuation. — Under this section a taxpayer may contest valuation before a board of trustees meeting as a board of equalization Yakutat & S. Ry. v. City of Yakutat, 16 Alaska 18, 227 F.2d 9 (9th Cir. 1955)

Determining portion of property devoted to purposes of organization. — Determination of what portion of property owned by a charitable, religious, or educational organization is devoted to purposes of the organization, is a factual function devolving upon the assessor and the board of equalization by law. Sisters of Charity v. Greater Anchorage Area Borough, 8 Alas. L.J. No. 11, p. 272 (Sept., 1970).

Applied in Arco Pipe Line Co. v. North Slope Borough, Superior Court, 4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973).

Quoted in Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2086), 534 P.2d 541 (1975).

Sec. 29.53.135. Board of equalization. The assembly sits as a board of equalization for the purpose of hearing any appeal from determinations of the borough assessor, or it may delegate this authority to a board appointed by it for that purpose. The board of equalization shall consist of at least that number of members of the assembly over and above the number required for a quorum to transact business. The board is governed in its proceedings by such procedures consistent with general rules of administrative law and the laws governing equalization proceedings as may be adopted by ordinance, including but not limited to quorum and voting requirements. The assembly shall by ordinance adopt rules for the membership and conduct of the board. (§ 2 ch 118 SLA 1972)

Borough assembly as administrative body. — When the borough assembly functions as a board of equalization or adjustment, it acts as an administrative, not a legislative, body. 1965 Op. Att'y Gen., No. 7.

When the borough assembly sits as an administrative body, whether as a board of equalization or adjustment, the weighted vote may not be used. 1965 Op. Att'y Gen., No. 7.

Board of equalization is administrative agency within meaning of Appellate Rule 45. — See Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2086), 534 P.2d 541 (1975).

Sec. 29.53.140. Hearing. (a) If an appellant fails to appear, the board of equalization may proceed with the hearing in his absence.

(b) The appellant bears the burden of proof.

(c) The only grounds for adjustment is proof of unequal, excessive or improper valuation based on facts which are stated in a valid written appeal timely filed or proved at the hearing.

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

(e) The assessor shall enter the changes and certify the final assessment roll by June 1.

(f) An appellant may appeal to the superior court for, and is entitled to, trial de novo of the board's action. Either party to the appeal may demand a jury trial. (§ 2 ch 118 SLA 1972)

Scope of review. — The superior court will not substitute its judgment for the judgment of those upon whom the law confers the authority and duty to assess and levy taxes. The superior court is concerned with nothing less than fraud or the clear adoption of a fundamentally wrong principle of evaluation. Sisters of Charity v. Greater Anchorage Area Borough, 8 Alas. L.J. No. 11, p. 272 (Sept., 1970); Twentieth Century Inv. Co. v. City of Juneau, Sup. Ct. Op. No. 28 (File No. 42), 359 P.2d 783 (1961).

When valuation or assessment violates due process.—The valuation and assessment of property for taxes does not contravene the due process clause of the 14th amendment unless it is plainly demonstrated that there is involved, not the exercise of the taxing power, but the exertion of a different and forbidden power, such as the confiscation of property. Such a demonstration is not made simply by showing overvaluation; there must be something which, in legal effect, is equivalent to an intention or fraudulent purpose to place an excessive valuation on property, and thus violate fundamental principles that safeguard the taxpayer's property rights. Twentieth Century Inv. Co. v. City of Juneau, Sup. Ct. Op. No. 28 (File No. 42), 359 P.2d 783 (1961).

Broad reading of subsection (c) held unconstitutional. — A broad reading of subsection (c) to implicitly permit the jury to set the valuation of property by finding that the valuation set by the assessor is "excessive" or "improper" is violative of the doctrine of separation of powers, while a more limited reading of subsection (c) is constitutionally permissible. Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2086), 534 P.2d 541 (1975).

Rights conferred by subsection (f) are not procedural within the meaning of Appellate Rule 45. Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2086), 534 P.2d 541 (1975).

Thus, powers reserved by Alaska Const., art. IV, §§ 1 and 15 not encroached on. — The right to jury review of municipal tax assessments does not encroach upon the judicial power reserved to the courts by Alaska Const., art. IV, §§ 1 and 15. Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2086), 534 P.2d 541 (1975).

Subsection (f) does not violate the constitutional principle of separation of powers. Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2086), 534 P.2d 541 (1975).

Proceeding on appeal is not new proceeding. Subsection (f) speaks of an "appeal to the superior court" and gives no indication that this proceeding, even though authorized as de novo and by jury, constitutes a new proceeding. Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2086), 534 P.2d 541 (1975).

Though review resembles original proceeding. De novo jury trial does expand judicial review beyond the limited scope associated with a classic appeal, and because under subsection (f) the jury may disregard some of the findings of a board of equalization without regard to the prior proceedings, the review resembles an original proceeding. Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2086), 534 P.2d 541 (1975).

Subsection (f) delegates to a jury the power previously held exclusively by the borough assembly. Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2086), 534 P.2d 541 (1975).

There is no constitutional right to a trial by jury to determine proper tax assessments. Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2086), 534 P.2d 541 (1975).

Proceedings to levy and collect taxes are not suits at common law. Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2086), 534 P.2d 541 (1975).

No right to fresh assessment of taxes on appeal. — Subsection (f) creates a taxpayer's right to have the judgment of a jury substituted for that of the borough assembly sitting as its own board of equalization. The right, however, is not to a fresh assessment of taxes of the property. Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2086), 534 P.2d 541 (1975).

Subsection (f) does not purport to authorize judicial formulation of general tax policies. It asks the courts to perform, with the aid of a jury, only the traditionally judicial task in tax cases of determining in particular instances whether policy to be followed in the assessment of taxes has been accurately applied. Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2086), 534 P.2d 541 (1975).

Contention that board cannot be administrative agency because its decisions are subject to judicial review under subsection (f) held without merit. — See Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2086), 534 P.2d 541 (1975).

Cited in Arco Pipe Line Co. v. North Slope Borough, Superior Court, 4th Jud. Dist., C.A. No. 73-306 and C.A. Nos. 73-294 to 73-306 (1973).

Sec. 29.53.150. Supplementary assessment rolls. The assessor shall include property omitted from the assessment roll on a supplementary roll, using the procedures set out in this chapter for the original roll. (§ 2 ch 118 SLA 1972)

Erroneous omissions from assessment roll do not invalidate all taxes. – The omission of property from an assessment roll, through error of judgment or of law, will not invalidate all taxes, thus practically putting an end to the operations of government. Valentine v. City of Juneau, 36 F.2d 904 (9th Cir. 1929).

Sec. 29.53.160. Tax adjustments on property affected by a natural disaster. (a) The assembly may provide for reassessment and reduction of taxes for property destroyed, damaged, or otherwise reduced in value as a result of a natural disaster.

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

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

(d) In enacting an ordinance or resolution authorized by this section, the assembly may, consistent with this section, prescribe procedures, restrictions and conditions of assessing or reassessing property and of remitting, refunding or forgiving taxes.

(e) In this section "disaster" means a major disaster declared by the President of the United States under the provisions of the Federal Disaster Act of 1950, Title 42, United States Code, sec. 1855-1855g, or other federal law. (§ 2 ch 118 SLA 1972)

Editor's note. — This section is based on former AS 29.10.397.

This section applies only to the tax year during which a disaster takes place. Hobbt v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

Sec. 29.53.170. Tax levy and rate. (a) The power granted to the assembly to assess, levy and collect a general property tax shall be exercised by means of general ordinances, but the rate of levy, the date of equalization and the date when taxes become delinquent shall be fixed by resolution.

(b) The assembly shall annually determine the rate of levy before June 15. By July 1 the tax collector shall mail tax statements setting out the levy, dates when taxes are payable and delinquent, and penalties and interest. (§ 2 ch 118 SLA 1972)

Prohibition on people, acting through initiative. – Since a municipality, in its legislative capacity, is prohibited from enacting a limitation on taxes to pay bonds, then the people, acting through the initiative, in their legislative capacity, are similarly precluded. Whitson v. Anchorage, Sup. Ct. Op. No. 2060 (File Nos. 4254, 4267), 606 P.2d 759 (1980).

Sec. 29.53.180. Rates of penalty and interest. (a) If the taxpayer is required to pay the entire tax on the due date set by the assembly, a penalty not to exceed 10 per cent may be added to all delinquent taxes, and interest at the rate of eight per cent a year shall accrue upon all unpaid taxes, not including penalty, from the due date until paid in full. If the taxpayer is given the right to pay the tax in two installments and the first half is not paid when due, the entire tax becomes delinquent and penalty and interest accrue as follows:

(1) if the first half is paid when due, the second half is payable on the due date fixed by the assembly for the second half and if not paid is delinquent after that date;

(2) a penalty not to exceed eight per cent shall be added to all taxes delinquent until the due date fixed for payment of the second half, and interest at the rate of eight per cent a year shall be charged on the whole of the unpaid taxes, not including penalty, from due date until paid in full;

(3) after the due date for the payment of the second half, a total penalty of not more than 10 per cent may be added to all delinquent taxes, and interest at the rate of eight per cent a year shall accrue upon all unpaid taxes, not including penalties, from due date until date paid in full.

(b) If the assembly imposes a penalty for the nonpayment of property taxes when due, or the late return of personal property assessment forms, the rate of penalty or combined rates of penalty may not exceed 10 per cent of the tax due on the property concerned.

(c) If the assembly charges interest on property taxes not paid when due, the rate of interest may not exceed eight per cent a year upon the delinquent taxes and shall be charged from the due date until paid in full. (§ 2 ch 118 SLA 1972)

Article 2. Enforcement of Tax Liens.

Sec. 29.53.200. Validity. Certified assessment and tax rolls are valid and binding on all persons, notwithstanding any defect, error, omission or invalidity in the assessment rolls or proceedings pertaining to the assessment roll. (§ 2 ch 118 SLA 1972)

The validity of assessment rolls established by this section is a rebuttable presumption of validity Arco Pipe Line Co v. North Slope Borough, Supreme Court,

4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973).

The acts of assessing officers are presumed to be valid, and, unless the contrary appears, the presumption is that an assessment is regular, valid and correct. Arco Pipe Line Co. v. North Slope Borough, Superior Court, 4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973).

Validity not affected by nonsubstantial errors, etc. — As to the making of the assessment roll itself, minute perfection of detail in assessing taxes is not required, and validity of the assessment roll, which is substantially correct, is not affected by errors, omissions or irregularities, entries not affecting substantial justice of the tax nor prejudicing the taxpayer's right. Arco Pipe Line Co. v. North Slope Borough, Superior Court, 4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973).

This is true unless a mandatory statutory requirement, intended for the taxpayer's protection, has not been observed. Arco Pipe Line Co. v. North Slope Borough, Superior Court, 4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973).

Such as provisions relating to notice, date, etc., of assessment. — In Alaska, statutory provisions relating to notice, date, mode and manner of assessment of taxes and to equalization of valuation of property assessed for taxes are not merely directory but are designed to apprise the taxpayer of the contemplated tax and of how and when it will be assessed. Further, it is to give the taxpayer notice and opportunity to be heard as to a tax obligation. These provisions are mandatory and, when they are not complied with, imposition of any tax arising therefrom is invalid and ineffective. Arco Pipe Line Co. v. North Slope Borough, Superior Court, 4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973).

Mandatory provisions of AS 29.53.100 and AS 29.53.110 relating to assessment procedures were not complied with by the North Slope Borough. Such noncompliance is in violation of the rights of plaintiffs to due process in the levy of tax against them. Arco Pipe Line Co. v. North Slope Borough, Superior Court, 4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973).

Then, upon showing of noncompliance, presumption is overcome. — Where there is a showing that mandatory statutory requirements, intended for the taxpayer's protection, have not been observed, the presumption of validity is overcome. Arco Pipe Line Co. v. North Slope Borough, Superior Court, 4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973).

Sec. 29.53.210. Tax liability. (a) The owner of personal property assessed is personally liable for the amount of taxes assessed against his property. The tax, together with penalty and interest, may be collected in a personal action brought in the name of the borough.

(b) Real property taxes, together with penalty and interest, are a lien upon the property assessed, and the lien is prior and paramount to all other liens or encumbrances against the property. (§ 2 ch 118 SLA 1972)

The remedies for enforcing tax collection are given in this section and AS 29.53.220. City of Anchorage v. Campbell, 13 Alaska 7[illegible], [illegible] F. Supp. 687 (D. Alas. 1953).

Taxes are not a lien unless expressly made so by statute, and when expressly created, the lien is not to be enlarged by construction. Libby, McNeill & Libby v. City of Yakutat, 14 Alaska 367, 208 F.2d 612 (9th Cir. 1953).

And a tax on real property creates no personal liability for the payment of which a judgment in personam may be obtained. City of Yakutat v. Libby, McNeill & Libby, 13 Alaska 378, 108 F. Supp. 1011 (D. Alas. 1951).

Lien may be enforced only against assessed property. — The remedy provided by this article is available only to enforce the lien of real property taxes against the realty assessed. Libby, McNeill & Libby v. City of Yakutat, 14 Alaska 367, 208 F.2d 612 (9th Cir. 1953).

Personal action may be brought.—Where a method of collecting taxes provided by statute is not exclusive, and does not provide an effective remedy, a personal action may be brought. City of Anchorage v. Baker, Sup. Ct. Op. No. 113 (File No. 210), 376 P.2d 482 (1962).

Personal actions to collect taxes limited to taxes assessed against individuals.—The rule that in the absence of statutory provision a personal action lies for the enforcement of the collection of a tax, is limited to taxes assessed against individuals. City of Yakutat v. Libby, McNeill & Libby, 13 Alaska 378, 98 F. Supp. 1011 (D. Alas. 1951).

Real and personal property may not be sold to satisfy taxes on both as lump sum.—Where the court ordered both real and personal property sold as an entirety to satisfy taxes, penalty and interest due upon both classes in a single, lump sum, the court erred. Libby, McNeill & Libby v. City of Yakutat, 14 Alaska 367, 206 F.2d 612 (9th Cir. 1953).

Am. Jur. and ALR references.—51 Am. Jur., Taxation, § 1010 et seq.

Statutes impairing or postponing lien for taxes, 53 ALR 1134; 136 ALR 328.

Cited in Fairbanks N. Star Borough v. Howard, Sup. Ct. Op. No. 2036 (File No. 4575), 606 P.2d 32 (1980).

Sec. 29.53.220. Enforcement of personal property tax liens by distraint and sale. The lien of personal property taxes may be enforced by distraint and sale of the property. The assembly shall provide the procedure for distraint and sale by ordinance. No seizure, levy or distraint is legal unless demand is first made of the person assessed for the amount of the tax, penalty and interest, and no sale is valid unless made at public auction after 15 days notice given by posting or publication. The seizure is made by virtue of a warrant issued by the borough clerk to a peace officer. If the property sold is not sufficient to satisfy the tax, penalty, interest, and costs of sale, the warrant may authorize the seizure of other personal property sufficient to satisfy the tax, penalty, interest and costs of sale. (§ 2 ch 118 SLA 1972)

Cited in Gregor v. City of Fairbanks, Sup. Ct. Op. No. 1925 (File No. 4154), 599 P.2d 743 (1979).

Sec. 29.53.230. Real property tax collection. (a) The borough shall enforce delinquent real property tax liens by annual foreclosure, unless otherwise provided by ordinance.

(b) If the tax on property described in § 40 of this chapter or on a leasehold interest in tax exempt property is not paid when due, a borough may enforce the tax by a personal action against the delinquent taxpayer brought in the district or superior court, in addition to other remedies available to the borough to enforce the lien. (§ 2 ch 118 SLA 1972)

Design.—This section and related sections setting forth the procedure for enforcing tax liens on real property were plainly geared to dealing primarily, if not solely, with real property in its essence, i.e., the land itself and improvements, and it is apparent from a reading of those statutes that they were not designed for the foreclosure and sale of intangible rights in real property, such as leasehold interests. City of Anchorage v. Baker, Sup. Ct. Op. No. 113 (File No. 210), 376 P.2d 482 (1962).

Land leased from Alaska Railroad is not subject to lien.—Land leased from the Alaska Railroad, being owned by the United States, is not subject to the lien contemplated by this section because it is immune from local taxation. City of Anchorage v. Baker, Sup. Ct. Op. No. 113 (File No. 210), 376 P.2d 482 (1962).

But tax can be collected by a personal action against lessee.—The tax on a leasehold interest in land leased from the Alaska Railroad can be collected by a personal action against the lessee. City of Anchorage v. Baker, Sup. Ct. Op. No. 113 (File No. 210), 376 P.2d 482 (1962).

Cited in Gregor v. City of Fairbanks, Sup. Ct. Op. No. 1925 (File No. 4154), 589 P.2d 743 (1979).

Personal action may be brought.—Where a method of collecting taxes provided by statute is not exclusive, and does not provide an effective remedy, a personal action may be brought. City of Anchorage v. Baker, Sup. Ct. Op. No. 113 (File No. 210), 376 P.2d 482 (1962).

A tax on real property creates no personal liability for the payment of which a judgment in personam may be obtained. City of Ynkutat v. Libby, McNeill & Libby, 13 Alaska 378, 98 F. Supp. 1011 (D. Alas. 1951).

Sec. 29.53.240. Foreclosure list. (a) The borough shall

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

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

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

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

(1) the last known owner;

(2) the property description as stated on the assessment roll;

(3) years and amounts of delinquency;

(4) penalty and interest due;

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

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

(c) Completion of the requirements of (a) of this section constitutes and has the same force and effect as the filing of an individual and separate complaint and service of summons to foreclose a lien against each property described on the foreclosure list. (§ 2 ch 118 SLA 1972)

Cited in Gregor v. City of Fairbanks, Sup. Ct. Op. No. 1925 (File No. 4154) 599 P.2d 743 (1979)

Section applicable to school districts. — The provisions of this section, while they relate only to municipal corporations, were made applicable to school districts by former AS 14.15.430. Johnson v. Miller, Sup. Ct. Op. No. 207 (File No. 379), 391 P.2d 437 (1964).

It requires a waiting period of thirty full days before the tax roll can be presented to the court for judgment and order of sale. Johnson v. Miller, Sup. Ct. Op. No. 207 (File No. 379), 391 P.2d 437 (1964).

And the statutory period of publication is twenty-eight days. Johnson v. Miller, Sup. Ct. Op. No. 207 (File No. 379), 391 P.2d 437 (1964).

Proceeding not void because notice states wrong date for presentation to court.—A proceeding is not void because the notice of delinquent taxes recited that the tax roll would be presented to the court on a date antecedent to the expiration of the period prescribed by law for that purpose, even though the tax roll was in fact not presented until after that date. In re Tax Rolls for City of Yakutat, 13 Alaska 622, 102 F. Supp. 785 (D. Alas. 1952); In re Delinquent Tax Roll for City of Yakutat, 11 Alaska 5, 111 F. Supp. 387 (D. Alas. 1952), rev'd sub nom. on other grounds, Libby, McNeil & Libby v. City of Yakutat, 11 Alaska 367, 206 F.2d 612 (9th Cir. 1953).

Order of sale denied where property not identified.—Where neither in the resolution levying the assessment, nor in the assessment roll, nor in the notice of the application for an order of sale, was there a description identifying the property on which the lien is claimed, an order of sale was denied. In re Ketchikan Delinquent Tax Roll, 6 Alaska 653 (1922).

Sec. 29.53.250. Clearing delinquencies. During the publication or posting of the foreclosure list and up to the time of transfer to the borough a person may pay the taxes, together with the penalty, interest and costs. The collector shall note payment on the foreclosure list. (§ 2 ch 118 SLA 1972)

Cited in Gregor v. City of Fairbanks, Sup. Ct. Op. No. 1925 (File No. 4154), 599 P.2d 743 (1979).

Sec. 29.53.260. List to lienholder. A holder of a mortgage or other lien on real property may request the clerk to send by certified mail notice of a foreclosure list which includes such real property. (§ 2 ch 118 SLA 1972)

Cited in Gregor v. City of Fairbanks, Sup. Ct. Op. No. 1925 (File No. 4154), 599 P.2d 743 (1979).

Sec. 29.53.270. General foreclosure. The borough shall bring one general foreclosure proceeding in rem against the properties included in the list. If the owner is unknown, the property is proceeded against as belonging to "unknown owner." Tax foreclosure proceedings have priority over all other civil proceedings except board of adjustment appeals as provided in AS 29.33.130(e). (§ 2 ch 118 SLA 1972)

Cited in Gregor v. City of Fairbanks, Sup. Ct. Op. No. 1925 (File No. 4154), 599 P.2d 743 (1979).

Sec. 29.53.280. Answer and objection. A person having an interest in a tract on the foreclosure list may file an answer within 30 days of the date of last publication, specifying his objection. The court shall make its decision in summary proceedings. The foreclosure list is prima facie evidence that the assessment and levy of the tax is valid and that the tax is unpaid. (§ 2 ch 118 SLA 1972)

Prejudice to substantial right is prerequisite to invalidation.—Objectors must show that they have been prejudiced in a substantial right, a prerequisite to invalidation under this section. In re Tax Rolls for City of Yakutat, 13 Alaska 622, 102 F. Supp. 785 (D. Alas. 1952); In re Delinquent Tax Roll for City of Yakutat, 14 Alaska 5, 111 F. Supp. 387 (D. Alas. 1952), rev'd sub nom. on other grounds, Libby, McNeill & Libby v. City of Yakutat, 14 Alaska 367, 206 F.2d 612 (9th Cir. 1953).

Failing to publish notice does not substantially affect taxpayers with actual knowledge of proceedings. — Where the city council failed to publish or post notices of taxpayers' delinquencies, but taxpayers had knowledge of the delinquencies and the proceedings to enforce the city's liens, their rights were not substantially affected by such failure. Yakutat & S. Ry. v. City of Yakutat, 16 Alaska 18, 227 F.2d 9 (9th Cir. 1955).

Necessary averments where complaint alleges excessive valuation. — Where a complaint to restrain collection of property taxes contains no allegation that the valuation placed on the property by the board of equalization was excessive the plaintiff must aver payment or tender the amount of taxes confessedly due, or at least offer to pay such amount as the court may find to be justly and equitably due. Valentine v. City of Juneau, 36 F.2d 904 (9th Cir. 1929)

Cited in Gregor v. City of Fairbanks, Sup Ct Op No 1925 (File No 4154), 599 P 2d 743 (1979)

Sec. 29.53.290. Judgment. The court shall in a proper case give judgment and decree that the tax liens be foreclosed. It is a several judgment against and a lien on each parcel. (§ 2 ch 118 SLA 1972)

Award of attorneys' fees.—There is nothing about a special statutory proceeding to enforce tax liens to distinguish it from an ordinary civil action as far as awarding attorneys' fees is concerned. Yakutat & S. Ry. v. City of Yakutat, 16 Alaska 18, 227 F.2d 9 (9th Cir. 1955).

Cited in Gregor v. City of Fairbanks, Sup Ct Op No 1925 (File No 4154), 599 P 2d 743 (1979)

Sec. 29.53.300. Transfer and appeal. (a) Foreclosed properties are transferred to the borough for the lien amount. When answers are filed the court may enter judgment against and order the transfer to the borough of all other properties on the list pending determination of the matters in controversy. The court shall hear and determine the issues raised by the complaint and answers in the same manner and under the same rules as it hears and determines other actions.

(b) The court clerk shall deliver a certified copy of the judgment and decree to the borough clerk. The certified judgment and decree constitutes a transfer to the borough.

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

(d) Appeal from a judgment and decree of foreclosure, or from a final order in the proceeding, may be taken in the manner provided for appeals in civil actions. (§ 2 ch 118 SLA 1972)

Cited in Gregor v. City of Fairbanks, Sup Ct Op No 1925 (File No 1154), 599 P 2d 743 (1979)

Sec. 29.53.310. Redemption period. (a) Properties transferred to the borough are held by the borough for at least one year. During the redemption period a party having an interest in the property may redeem it by paying the lien amount plus penalties, interest and costs, including all costs incurred under AS 29.53.350(a). Property redeemed is subject to all taxes, assessments, liens and claims as though it had continued in private ownership. Only the amount applicable under the judgment and decree must be paid in order to redeem the property.

(b) A person holding a mortgage or other lien of record covering a part only of a parcel of real property included in the judgment and decree of foreclosure may redeem that part by paying the proportionate amount applicable under the judgment and decree. (§ 2 ch 118 SLA 1972; am § 1 ch 48 SLA 1977)

Effect of amendment. The 1977 amendment added "including all costs incurred under AS 29.53.350(a)" to the end of the second sentence of subsection (a).

Record owner has certain term in which to redeem property. — It is the law in Alaska, as in most jurisdictions, that the record owner of the property has a certain term in which he can redeem the property by paying the delinquent taxes plus interest, Jefferson v. Metropolitan Mtg. & Sec. Co., Sup. Ct. Op. No. 849 (File No. 1438), 503 P.2d 1396 (1972).

Applied in Municipality of Anchorage v. Wallace, Sup. Ct. Op. No. 1865 (File No. 4062), 597 P.2d 148 (1979).

Cited in Gregor v. City of Fairbanks, Sup. Ct. Op. No. 1925 (File No. 4154), 599 P.2d 743 (1979).

Sec. 29.53.320. Effect. Receipt of redemption money by the clerk releases all claims of the borough to the property. The clerk shall record the redemption and issue a certificate containing a property description, the redemption amount, and the date of judgment and decree of foreclosure. The clerk shall file the certificate with the recorder and collect the recording fee from the person redeeming at the time of redemption. The court clerk shall file the certificate as part of the judgment roll. (§ 2 ch 118 SLA 1972)

Cited in Gregor v. City of Fairbanks, Sup. Ct. Op. No. 1925 (File No. 4154), 599 P.2d 743 (1979).

Sec. 29.53.330. Additional liens. If a property included in a foreclosure list is removed after payment of delinquencies or redemption by another lienholder, the payment represented by receipt for payment constitutes an additional lien on the property, collectible by the lienholder in the same manner as the original lien. (§ 2 ch 118 SLA 1972)

Cited in Gregor v. City of Fairbanks, Sup. Ct. Op. No. 1925 (File No. 4154), 599 P.2d 743 (1979).

Sec. 29.53.340. Possession during redemption period. Foreclosure does not affect the former owner's right to possession during the redemption period. In the event that waste is committed by the former owner, or by anyone acting under his permission or control, the borough may declare an immediate forfeiture of the right to possession. (§ 2 ch 118 SLA 1972)

Cited in Gregor v. City of Fairbanks, Sup. Ct. Op. No. 1925 (File No. 4154), 599 P.2d 743 (1979).

Sec. 29.53.350. Expiration. (a) At least 30 days before the expiration of the redemption period the clerk shall publish a redemption period expiration notice. The notice shall contain the date of judgment, the date of expiration of the period of redemption and a warning to the effect that all properties ordered sold under the judgment, unless redeemed, shall be deeded to the borough or city immediately on expiration of the period of redemption and that every right or interest of any person in the properties will be forfeited forever to the borough or city. The notice is published once a week for four consecutive weeks in a newspaper of general circulation distributed within the borough. If there is no newspaper of general circulation distributed within the borough, the notice is posted in three public places for at least four consecutive weeks. The clerk shall send a copy of the published notice by certified mail to each record owner of property against which a judgment of foreclosure has been taken and, if the assessed value of the property is more than $10,000, to all holders of mortgages or other liens of record on the property. The notice shall be mailed within five days of the first publication. The mailing shall be sufficient if mailed to the property owner and to the holder of a mortgage or recorded lien at the last address of record. The right of redemption shall expire 30 days after the date of the first publication notice.

(b) Costs incurred in the determination of holders of mortgages and other liens of record and costs of publication of notice incurred by a municipality under (a) of this section are a lien on the property and may be recovered by the municipality. (§ 2 ch 118 SLA 1972; am §§ 2, 3 ch 48 SLA 1977)

Effect of amendment. — The 1977 amendment designated the provisions of this section as subsection (a) and to that subsection, substituted "At least" for "Not earlier than" at the beginning of the first sentence, substituted the language beginning "which a judgment of foreclosure has been taken and" for "whom a judgment of foreclosure has been taken" at the end of the fifth sentence and inserted "and to the holder of a mortgage or recorded lien" in the seventh sentence. The amendment also added subsection (b).

Applied in Municipality of Anchorage v. Wallace, Sup Ct Op No 1865 (File No 4062), 597 P 2d 148 (1979).

Cited in Gregor v. City of Fairbanks, Sup Ct Op No 1925 (File No 4154), 599 P 2d 743 (1979).

Sec. 29.53.360. Deed to borough or city. (a) Unredeemed properties in the area of the borough outside cities are deeded to the borough by the clerk of the court. Unredeemed properties within a city are deeded to the city subject to the payment by the city of unpaid borough taxes and costs of foreclosure levied against the property before foreclosure. The deeds shall be recorded in the recording district in which the property is located.

(b) The conveyance gives the borough or the city clear title except for prior recorded liens of the United States and the state.

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

(d) No deed is invalid for irregularities, omissions or defects unless the former owner has been prejudiced by his injury. After two years from the date of the deed, its validity is conclusively presumed and any claim of the former owner is forever barred. (§ 2 ch 118 SLA 1972)

Upon foreclosure, municipality receives new title to property, free from encumbrances. — The general rule in Alaska and the great majority of jurisdictions is that when a municipality forecloses on property for failure to pay taxes, it receives a new title to the property free from all encumbrances. Jefferson v. Metropolitan Mtg. & Sec. Co., Sup. Ct. Op. No. 849 (File No. 1438), 503 P.2d 1396 (1972).

And a buyer of the property at a subsequent tax sale receives a new, independent title and not that of the former owner. Jefferson v. Metropolitan Mtg. & Sec. Co., Sup. Ct. Op. No. 849 (File No. 1438), 503 P.2d 1396 (1972).

As a general rule the purchaser of property at a tax sale receives a new title free from all encumbrances. Jefferson v. Metropolitan Mtg. & Sec. Co., Sup. Ct. Op. No. 849 (File No. 1438), 503 P.2d 1396 (1972).

Unless the buyer is the owner. — An owner of property may not perfect his own title to property by failing to pay his taxes and either directly or mediately repurchasing the property at a tax sale. Jefferson v. Metropolitan Mtg. & Sec. Co., Sup. Ct. Op. No. 849 (File No. 1438), 503 P.2d 1396 (1972).

It is the general rule that when the owner of record redeems or repurchases his property, his purchase merely operates as a payment of the taxes and he receives the same title he held before the municipality's foreclosure. He cannot evade the purpose of this exception by allowing the property to be sold to a third person and then buying from him, or by any other arrangement which would directly or indirectly defeat the operation of the rule. Jefferson v. Metropolitan Mtg. & Sec. Co., Sup. Ct. Op. No. 849 (File No. 1438), 503 P.2d 1396 (1972).

Cited in Gregor v. City of Fairbanks, Sup. Ct. Op. No. 1925 (File No. 4154), 599 P.2d 743 (1979).

Sec. 29.53.370. Disposition and sale of foreclosed properties. (a) The assembly of a borough or council of a city shall determine by ordinance whether foreclosed property deeded to the municipality under AS 29.53.360 shall be retained by the municipality for a public purpose. The ordinance shall contain the legal description of the property, the address or a general description of the property sufficient to provide the public with notice of its location, and the name of the last record owner of the property as his name appears on the assessment rolls of the municipality.

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

(c) The clerk shall send a copy of the published notice of hearing of an ordinance to consider a determination required by (a) or (b) of this section by certified mail to the former record owner of the parcel of property which is the subject of the ordinance. The notice shall be mailed within five days of its first publication and shall be sufficient if mailed to the property owner at the last address of record.

(d) The provisions of (c) of this section do not apply with respect to property which has been held by the municipality for a period of more than 10 years after the close of the redemption period. (§ 2 ch 118 SLA 1972, am § 1 ch 48 SLA 1977)

Effect of amendment. The 1977 amendment rewrote this section.

Notice to record owners. Borough was obliged to give notice to the record owners of the fact that their property was being considered for devotion to a public purpose. Municipality of Anchorage v. Wallace, Sup. Ct. Op. No. 1865 (File No. [illegible]), 599 P.2d 148 (1979).

Quoted in Gregor v. City of Fairbanks, Sup. Ct. Op. No. 1925 (File No. 4154), 599 P.2d 743 (1979).

Applied in United States v. Reeves, 349 F. Supp. 1321 (D. Alas. 1971), aff'd, 466 F.2d 921 (9th Cir. 1972).

Sec. 29.53.375. Repurchase by record owner. (a) The record owner at the time of tax foreclosure of property acquired by a borough or city, or his assigns, may, at any time before the sale or contract of sale of the tax-foreclosed property by the borough or city, repurchase the property. The borough or city shall sell the property for the full amount applicable to the property under the judgment and decree, with interest at the rate of eight per cent a year from the date of entry of the judgment of foreclosure to the date of repurchase, delinquent taxes assessed and levied as though it had continued in private ownership, and costs of foreclosure and sale, including, but not limited to, costs of publication of notice and any costs associated with the determination of holders of mortgages and other liens of record under AS 29.53.350(a).

(b) After adoption of an ordinance providing for the retention of a parcel of tax-foreclosed property by the municipality for a public purpose, the right of the former record owner to repurchase the property ceases. (§ 2 ch 118 SLA 1972; am §§ 5, 6 ch 48 SLA 1977)

Effect of amendment. — The 1977 amendmen. deleted "together with" following "date of repurchase" in the second sentence of subsection (a), added the language beginning "and costs of foreclosure and sale" to the end of that sentence, and rewrote subsection (b).

Under this section, purchaser must be record owner or assignee thereof. — Where neither defendant partnership nor its partners have ever at any time been record owners or assignee o. the record owner of certain property, defendant is not entitled t obtain pursuant to this section a deed to the property. United States v Reeves, 349 F Supp 1321 (D. Alas. 1971), aff'd, 468 F 2d 921 (9th Cir 1972).

Record owner may purchase property after redemption period has run. — In Alaska, even after the time for redemption of foreclosed property has run, the record owner may still purchase the property by paying the delinquent taxes, so long as the property has not yet been sold to a third party at a tax sale. Jefferson v. Metropolitan Mtg & Sec Co., Sup Ct Op No 849 (File No 1438), 503 P 2d 1396 (1972).

When owners had right to repurchase. — Between the date that property was deeded to the borough and the date that the assembly enacted a resolution holding or devoting the property to a public purpose, the record owners had the right to repurchase their property. Municipality of Anchorage v Wallace, Sup Ct Op No 1865 (File No 4062), 597 P 2d 148 (1979).

Quoted in Gregor v City of Fairbanks, Sup Ct Op No 1925 (File No 4134), 599 P 2d 743 (1979).

Repurchase of property by record owner merely operates as payment of taxes. — It is the general rule that when the owner of record redeems or repurchases his property, his purchase merely operates as a payment of the taxes. Jefferson v Metropolitan Mtg & Sec Co., Sup. Ct. Op. No. 849 (File No. 1438), 503 P.2d 1396 (1972).

And he receives the same title he held before the municipality's foreclosure. Jefferson v Metropolitan Mtg & Sec Co., Sup Ct Op No 849 (File No 1438), 503 P 2d 1396 (1972).

Obviously it would be most unfair t holders of liens on the property if the owner of record could gain a clear title by the simple, tilted devious, expedient of not paying his taxes and then repurchasing the property by paying the delinquent taxes at a tax sale. Courts have not allowed mortgagors to avoid their obligations in this manner. Jefferson v Metropolitan Mtg & Sec Co., Sup. Ct. Op No 849 (File No 1438), 503 P 2d 1396 (1972).

A record owner cannot evade the purpose of this rule by allowing the property to be sold to a third person and then buying from him, or by any other arrangement which would directly or indirectly defeat the operation of the rule. Jefferson v Metropolitan Mtg & Sec Co., Sup Ct Op No 849 (File No 1438), 503 P 2d 1396 (1972).

An owner of property may not protect his own title to property by failing to pay his taxes and either directly or mediately repurchasing the property at a tax sale. Jefferson v Metropolitan Mtg & Sec Co., Sup Ct Op No 849 (File No 1438), 503 P 2d 1396 (1972).

Payment of taxes constitutes an application to repurchase property from foreclosure. Jameson v. Wurtz, Sup. Ct. Op. No. 259 (File No. 431), 396 P.2d 98 (1964).

Sec. 29.53.380. Proceeds of tax sale. (a) Upon sale of foreclosed real or personal property the borough or city shall divide the proceeds less cost of collection, between the borough and the city having unpaid taxes against the property. The division is in proportion to the respective municipal taxes against the property at the time of foreclosure.

(b) The former record owner of tax-foreclosed real property which has been held by a municipality for less than 10 years after the close of the redemption period and never designated for a public purpose which is sold at a tax-foreclosure sale is entitled to the portion of the proceeds of the sale which exceeds the amount sufficient to satisfy unpaid taxes, delinquent taxes assessed and levied as if the property had continued in private ownership, penalty, interest and costs of property sold, including costs incurred under AS 29.53.350(a). If the proceeds of the sale of tax-foreclosed property exceed the total of unpaid and delinquent taxes, penalty, interest, and costs, the borough or city shall provide the former owner of the property written notice advising of the amount of the excess and the manner in which a claim for the balance of the proceeds may be submitted. Notice is sufficient under this subsection if mailed to the former owner at his last address of record. Upon presentation of a proper claim, the municipality shall remit the excess to the former record owner. A claim for the excess filed after six months of the date of sale is forever barred. (§ 2 ch 118 SLA 1972; am § 7 ch 48 SLA 1977)

Effect of amendment. — The 1977 amendment added subsection (b).

Sec. 29.53.385. Payment of taxes upon public utilization. If a city or borough holds or takes title to tax-foreclosed property for a public purpose, the city or borough shall satisfy unpaid taxes and assessments against the property held by other municipalities, with accrued interest but without penalty. If the amount required to satisfy the unpaid taxes and assessments exceeds the assessed valuation of the property, the city or borough shall pay the other municipalities the assessed valuation, which shall be divided between the other municipalities in proportion to their respective taxes and assessments against the property at the time of foreclosure. (§ 2 ch 118 SLA 1972)

Sec. 29.53.390. Refund of taxes. (a) If a taxpayer pays taxes under protest, he may bring suit in the superior court against the borough for recovery of the taxes. If judgment for recovery is given against the borough, the borough shall refund the amount of the taxes to the taxpayer with interest at eight per cent from the date of payment plus costs.

(b) If, in payment of taxes legally imposed, a remittance by a taxpayer through error or otherwise exceeds the amount due, and the borough, on audit of the account in question, is satisfied that this is the case, the borough shall refund the excess to the taxpayer with interest at eight percent from the date of payment. A claim for refund filed after one year of the due date of the tax is forever barred. (§ 2 ch 118 SLA 1972)

Sec. 29.53.400. Power of levy. Home rule and first class cities within boroughs may levy a general property tax. A property tax, if levied, shall be levied in the manner provided for borough levies in § 170(a) of this chapter and is subject to §§ 10—25, 50—55 and 310—350 of this chapter. The council shall by June 15 of each year present to the borough assembly a statement of the city's rate of levy, unless a different date is agreed upon by the borough and city. (§ 2 ch 118 SLA 1972; am § 5 ch 147 SLA 1972)

Effect of amendment. — The 1972 amendment, effective September 10, 1972, in the second sentence, inserted "shall be levied in the manner provided for borough levies in § 170(a) of this chapter and," inserted "10—25," and inserted "55."

Sec. 29.53.405. Differential tax zones. Cities may by ordinance establish, alter and abolish differential tax zones to provide and levy property taxes for services not provided generally within the city or a different level of service than that provided generally within the city. (§ 2 ch 118 SLA 1972)

Sec. 29.53.410. Limited property taxing power for second class cities. A second class city may by referendum levy real and personal property taxes as provided for first class cities. However, levy by a second class city may not exceed one-half of one percent of the assessed valuation of the property taxed, except that the limit does not apply to a levy necessary to avoid a default upon payment of principal and interest of bonded or other indebtedness which is secured by a pledge to levy ad valorem or other taxes without limit to meet debt payments. (§ 2 ch 118 SLA 1972)

Applied in North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 1460, 3513, 3659), 585 P.2d 514 (1978).

Article 4. Borough Sales and Use Taxes.

Section

Sec. 29.53.415. Sales and use tax. (a) A borough may levy and collect a sales tax not exceeding six percent on sales or rents and on services made within the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance. (am § 3 ch 127 SLA 1980)

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

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

(d) If the assembly of a home rule or general law borough charges interest on sales taxes not paid when due, the rate of interest may not exceed eight per cent a year upon the delinquent taxes and shall be charged from the due date until paid in full. (§ 2 ch 118 SLA 1972)

This section gave municipalities the additional power to levy a consumers' sales tax. City of Anchorage v. Chugach Elec. Ass'n, 17 Alaska 181, 252 F.2d 112 (9th Cir. 1958).

A municipality may impose the consumer sales tax on retail sales of liquor. Juneau, Alaska & Juneau-Douglas Independent School Dist. v. Baranof Hotel, Inc., 1 Alas. L.J. No. 6, p. 12 (June, 1963).

It is a tax on the "price" paid by the consumer not a tax on the commodity sold or on the vendor Juneau, Alaska & Juneau Douglas Independent School Dist. v. Baranof Hotel, Inc., 1 Alas. L.J. No. 6, p. 12 (June, 1963).

The prohibition against additional taxes on liquor in the Liquor Manufacture and Traffic Control Act does not apply to the consumer's sales tax. Juneau, Alaska & Juneau-Douglas Independent School Dist. v. Baranof Hotel, Inc., 1 Alas. L.J. No. 6, p. 12 (June, 1963).

A real property lien is beyond the scope of what may be "necessarily or fairly implied in or incident to" the authority to collect a sales tax. Fairbanks N. Star Borough v. Howard, Sup. Ct. Op. No. 2036 (File No. 4575), 608 P.2d 32 (1980).

Effect of amendment. — The 1980 amendment substituted "six" for "three" in the first sentences of subsection (a).

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

Evolutionary development of present language of subsection (a). — See Liberati v. Bristol Bay Borough, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978).

Subsection (a) of this section permits a selective sales tax. Liberati v. Bristol Bay Borough, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978).

This section states no limits on what may be exempted. Liberati v. Bristol Bay Borough, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978).

And there is nothing in the statute which expressly requires a general tax. Liberati v. Bristol Bay Borough, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978).

The term "sales tax" carries no connotation of generality. Liberati v. Bristol Bay Borough, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978).

An effective implied collection power exists in the right to sue the collecting party for the tax moneys owed. Fairbanks N. Star Borough v. Howard, Sup. Ct. Op. No. 2036 (File No. 4575), 608 P.2d 32 (1980).

Sec. 29.53.420. Referendum, adoption and modification. (a) The assembly shall hold a referendum vote on the question of enacting a sales tax or increasing the rate of levy of sales taxes. Borough sales tax propositions may be presented only once in any 12-month period. A sales tax proposition may be submitted to the voters at a regular or special election or at a general election of the state.

(b) If the proposition receives a majority of the votes cast, the assembly may enact the sales tax or increase the rate of the sales tax as a levy upon buyers, sellers, or both. The sales tax is collected at the time of sale or at the time of payment in credit transactions and transmitted to the borough. (§ 2 ch 118 SLA 1972; am § 4 ch 127 SLA 1980)

Effect of amendment. — The 1980 amendment inserted "enacting a sales tax or increasing the rate of" in the first sentence of subsection (a), added the third sentence of subsection (a), and inserted "the sales tax or increase the rate of" in the first sentence of subsection (b).

Sec. 29.53.440. Power of levy. Cities within a borough which levies and collects sales or use taxes for areawide borough functions may levy sales or use taxes upon all sources taxed by the borough in the manner provided for boroughs. (§ 2 ch 118 SLA 1972)

Am. Jur. reference.—47 Am. Jur., Sales and Use Taxes, §§ 37 to 41.

Sec. 29.53.450. Power of levy and collection. Cities within a borough which does not levy and collect sales or use taxes for areawide borough functions may levy and collect sales or use taxes in the manner provided for boroughs. (§ 2 ch 118 SLA 1972)

Sec. 29.53.460. Combining sales tax with incorporation. A petition for second class city incorporation may request that a sales tax proposal be placed on the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent upon the passage of the sales tax proposition. If so, the incorporation proposition fails if the sales tax fails. (§ 2 ch 118 SLA 1972)

Chapter 58. Municipal Debt.

Article 1. Revenue Anticipation Notes.

Sec. 29.58.010. Borrowing in anticipation of revenue. A municipality of the state which is authorized to incur indebtedness may borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues for that year but all debt so contracted shall be paid before the end of the next fiscal year. Revenue anticipation notes may be issued as evidence of the borrowing. (§ 2 ch 118 SLA 1972; am § 1 ch 88 SLA 1974)

Effect of amendment. The 1974 amendment divided the section into two sentences, and in the first sentence, deleted "in a fiscal year" following "may borrow money," substituted "any fiscal year" for "that fiscal year," "the revenues" for "taxes and [illegible] revenues," and "that year" for "the fiscal year," and added "but all the debt so contracted shall be paid before the end of the next fiscal year" to the end. The amendment also, in the second sentence, substituted "Revenue anticipation notes may be [illegible] for and may [illegible] revenue anticipation notes"

Sec. 29.58.020. Issuance of notes. The governing body of a municipality may, by ordinance or resolution, authorize the issuance of revenue anticipation notes and prescribe the form and details of the notes and the manner of their execution. The governing body of the municipality may delegate to its chief fiscal officer the power to issue the notes from time to time under the terms and conditions of the ordinance or resolution which provides for the manner of their sale. (§ 2 ch 118 SLA 1972; am § 2 ch 88 SLA 1974)

Effect of amendment. The 1974 amendment deleted the third sentence.

Sec. 29.58.030. Limitation on issuance of notes. Repealed by § 3 ch 88 SLA 1974.

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

Sec. 29.58.040. Issuance of notes in anticipation of state, federal grants. (a) The governing body of a municipality, upon adoption of a long-range capital improvement budget by ordinance or resolution, may by resolution provide for revenue anticipation notes in an amount not to exceed the total amount of any state or federal grants finally committed for these projects. The notes mature no later than the end of the next fiscal year. The notes may be for single or multiple projects outlined in the adopted capital improvement budget.

(b) If the state or federal grants for capital improvement projects have not been paid to the municipality before maturity of the notes issued in anticipation of the receipt of the revenue, the governing body of the municipality may issue new notes in order to meet payment of the notes then maturing or may renew the outstanding revenue anticipation notes. New notes issued or renewals of outstanding revenue anticipation notes shall mature not later than the end of the next fiscal year. (§ 2 ch 118 SLA 1972)

Sec. 29.58.050. Priority of repayment. The payment of the principal and interest on revenue anticipation notes shall be payable from revenues, and their payment additionally shall be secured by a pledge of the full faith, credit and unlimited taxing power of the municipality issuing them. (§ 2 ch 118 SLA 1972)

Sec. 29.58.060. Sale of notes. The municipality may sell revenue anticipation notes in the manner and at the price it determines, at either public or private sale. (§ 2 ch 118 SLA 1972)

Article 2. Bond Anticipation Notes.

Sec. 29.58.070. Bond anticipation borrowing. A municipality may borrow money in anticipation of the sale of general obligation and revenue bonds if

(1) the general obligation bonds to be sold have been authorized by the assembly or council and ratified by a majority vote at a regular or special election;

(2) the revenue bonds to be sold have been authorized by ordinance. (§ 2 ch 118 SLA 1972)

Sec. 29.58.080. Issuance of notes. The assembly or council shall issue negotiable or nonnegotiable notes for the amounts borrowed with a maturity date not to exceed one year from the date of issue. All notes and the interest on them are payable at fixed places on or before a fixed time, from the proceeds of the sale of bonds in anticipation of which the original note or notes were issued, unless the bonds have not been sold by the maturity date of the notes. (§ 2 ch 118 SLA 1972)

Sec. 29.58.090. Issuance of new notes. If the sale of the bonds has not occurred before the maturity of the notes issued in anticipation of the sale, the assembly or council shall issue new notes in

order to meet payment of the notes then maturing or shall renew the outstanding bond anticipation notes. New notes issued or renewals of outstanding bond anticipation notes shall bear a maturity date not to exceed one year from the date of issue. Notes, new notes, and renewals of notes shall not be outstanding for a total elapsed time of more than three years. (§ 2 ch 118 SLA 1972)

Sec. 29.58.100. Repayment of notes. Every note is payable from the proceeds of the sale of bonds which the notes anticipated or from the proceeds of the sale of new bond anticipation notes. (§ 2 ch 118 SLA 1972)

Sec. 29.58.110. Security. (a) Notwithstanding any other provisions of this chapter as to payment of notes, notes issued in anticipation of the sale of general obligation bonds and the interest on them are secured by the full faith, credit, taxing power and resources of the municipality. The municipality may levy ad valorem taxes for payment without limitation of rate or amount.

(b) Notes issued in anticipation of the sale of revenue bonds and the interest on them are secured in the same manner as are the revenue bonds in anticipation of which the notes are issued. (§ 2 ch 118 SLA 1972)

Sec. 29.58.120. Limitation. The total amount of notes issued and outstanding shall at no time exceed the total amount of bonds authorized to be issued. (§ 2 ch 118 SLA 1972)

Sec. 29.58.130. Use of proceeds. The proceeds from the sale of notes shall be used only for the purposes for which the proceeds from the sale of bonds may be used or to meet payment of outstanding bond anticipation notes. (§ 2 ch 118 SLA 1972)

Sec. 29.58.140. Sale of notes. Notes issued under this chapter shall be sold by the municipality in the manner and at the price it determines, at either public or private sale, but no note may be sold for less than par and accrued interest. (§ 2 ch 118 SLA 1972)

Article 3. General Obligation Bonds.

Sec. 29.58.150. General obligation bonds. A municipality may acquire, construct, improve and equip capital improvements and issue negotiable or nonnegotiable general obligation bonds for these purposes. (§ 2 ch 118 SLA 1972)

Section supplements Alaska Constitution. — The legislature enacted this section to supplement Alaska Constitution, art IX, § 9, and did not intend to attempt to substitute a different purpose than that established by "capital improvements" in the constitution. City of Juneau v. Hin

son, Sup. Ct. Op. No. 93 (File No. 201), 373 P.2d 743 (1962).

"Improvement" in its broad sense means betterment. City of Juneau v. Hixson, Sup. Ct. Op. No. 93 (File No. 201), 373 P.2d 743 (1962).

Off-street parking facilities constitute public improvements or public works and this section is sufficiently broad to cover such facilities. Kissane v. City of Anchorage, 17 Alaska 514, 159 F. Supp. 733 (D. Alas. 1958).

Section assumes city will acquire right of occupancy before building improvement. — This section assumes that a city will acquire the rights of occupancy necessary to construct wharves, as a preliminary to their construction. Berger v. Ohlson, 10 Alaska 81, 120 F.2d 56 (9th Cir. 1941).

It does not authorize building on federal land. — The section could not authorize a city to build and maintain a wharf on land already set apart by the federal government for the use of the railroad. Berger v. Ohlson, 10 Alaska 81, 120 F.2d 56 (9th Cir. 1941).

And improvement built on federal land belongs to the United States. — A city dock built upon land belonging to the United States must in legal contemplation have become a part of it in the absence of [illegible] land belonging to a territory or municipality where no specific authority for the erection of the wharf as property of the city of Anchorage can be found. Berger v. Ohlson, 10 Alaska 81, 120 F.2d 56 (9th Cir. 1941).

At best the public of the city of Anchorage had a mere license to use a city dock built and maintained within the Alaska railroad terminal reserve, and the United States had a right to terminate the use of the dock. Berger v. Ohlson, 10 Alaska 81, 120 F.2d 56 (9th Cir. 1941).

Am. Jur. references. — 56 Am. Jur. Municipal Corporations [illegible]. 64 Am. Jur., Public Works and Contracts, § 1 et seq.

Sec. 29.58.160. Vote and notice of existing indebtedness required. (a) A municipality may incur general obligation bond debt only after a bond authorization ordinance is approved by a majority of those voting on the question at a regular or special election. Any municipal voter may vote in the bond election, except as otherwise provided by charter or law.

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

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

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

(3) the total assessed valuation within the municipality. (Ch. 118 SLA 1972)

Sec. 29.58.170. Form and terms of sale. The assembly or council shall fix the date of the bonds, denominations, maturities, rate of interest, place and manner of payment, redemption terms, registration privileges, manner of execution, and signatures required. If an officer whose signature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature is valid as if he had remained in office until delivery. (§ 2 ch 118 SLA 1972)

Sec. 29.58.180. Payment. (a) The full faith and credit of a municipality are pledged for the payment of principal and interest on general obligation bonds. The municipality may levy ad valorem taxes for payment without limitation of rate or amount to pay or secure the payment of the principal and interest on bonds, regardless of whether the bonds are in default or in danger of default.
(am § 7 ch 94 SLA 1977)

(b) General obligation bonds issued for acquiring, constructing, improving and equipping a municipally-owned utility or other revenue-generating enterprise may be additionally secured by a pledge of the revenue derived from operation. Bonds so secured are not subject to a debt limitation imposed by a borough or city home rule charter. (§ 2 ch 118 SLA 1972)

Effect of amendment. The 1977 amendment added the language beginning "to pay or secure the payment" to the end of the second sentence of subsection (a).

Chapter 94, SLA 1977, relating to both state and local taxation does not violate Alaska Const., art. II, § 13, which requires every bill to be confined to one subject. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 3560, 3565 P.2d 851 (1978).

Authority to pay for municipal bonds. — Alaska Statute 29.53.055 and subsection (a) of this section authorize taxes to pay for municipal bonds, independent of the limitations of AS 29.53.045 or 29.53.050, and regardless of whether the bonds are in default or default is pending. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 3560, 3565 P.2d 851 (1978).

Article 4. Revenue Bonds.

Section

Sec. 29.58.200. Revenue bonds. (a) A municipality may acquire, construct, improve and equip capital improvements to be operated upon a revenue producing basis, and bonds for these purposes are payable solely from unpledged revenue of the public facilities for which the bonds are issued.

(b) A municipality may issue its revenue bonds to finance the purchase of residential mortgage loans. The revenue bonds issued under this subsection are payable solely from the principal and interest of the mortgage loans and from any other amounts pledged by the municipality, except the pledge of revenues derived from taxes. Revenue bonds issued under this subsection do not constitute a general obligation of the municipality.

(c) A municipality may also issue revenue bonds for any lawful purpose. The bonds are payable from any amounts pledged by the municipality except taxes and do not constitute general obligations of the municipality. (§ 2 ch 118 SLA 1972; am § 20 ch 83 SLA 1979)

Effect of amendment. The 1979 amendment added subsection [illegible]

Sec. 29.58.205. No election required. No election is required to authorize the issuance and sale of revenue bonds, unless otherwise provided by ordinance. (§ 2 ch 118 SLA 1972)

Sec. 29.58.210. Forms and terms. The assembly or council shall fix the date of the bonds, denominations, maturities, rate or rates of interest, place and manner of payment, redemption terms, registration privileges, manner of execution, signatures required, and other details of the bonds. If an officer whose signature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature is valid as if he had remained in office until delivery. (§ 2 ch 118 SLA 1972; am § 21 ch 83 SLA 1979)

Effect of amendment. — The 1979 amendment, in the first sentence, inserted "or rates" and substituted "signatures required, and other details of the bonds" for "and signatures required."

Sec. 29.58.220. Payment. Bonds issued under AS 29.58.200–29.58.220 or the proceedings of the assembly or council authorizing their issuance may contain the covenants which the assembly or council considers advisable concerning

(1) the rates or fees to be charged for services rendered by the public facilities, the revenue of which is pledged to the payment of the bonds, or the terms and conditions of any other amounts collected which are pledged to the payment of the bonds;

(2) the deposit and use of the revenue of the public facilities or of other amounts collected which are pledged to the payment of the bonds;

(3) the issuance of additional bonds payable from revenue of the public facilities or of other amounts collected which are pledged to the payment of the bonds;

(4) the rights of the bondholders in case of default in the payment of the principal or interest on the bonds, including the appointment of a receiver to operate the public facilities;

(5) other covenants as the assembly or council determines. (§ 2 ch 118 SLA 1972; am § 22 ch 83 SLA 1979)

Effect of amendment. — The 1979 amendment added "or the terms and conditions of any other amounts collected which are pledged to the payment of the bonds" to the end of paragraph (1), added "or of other amounts collected which are pledged to the payment of the bonds" to the end of paragraphs (2) and (3), and inserted "or council" in paragraph (5).

Article 5. Refunding Bonds.

Sec. 29.58.240. Authorization. If a municipality has outstanding general obligation or revenue bonds and the assembly or council determines that it would be financially advantageous to refund the bonds, the assembly or council may provide by ordinance for the issuance of general obligation or revenue refunding bonds. (§ 2 ch 118 SLA 1972)

Sec. 29.58.250. Effect of bonds. The refunding bonds may take up and refund all or any part of outstanding bonds at or before their maturity or redemption date. The assembly or council may include various series and issues of bonds in a single issue of refunding bonds. (§ 2 ch 118 SLA 1972)

Sec. 29.58.260. No election required. No election is required to authorize the issuance and sale of refunding bonds. Their issuance may be authorized and all proceedings with reference to them prescribed by ordinance of the assembly or council. However, when it is desirable to use general obligation bonds to refund a revenue bond issue, the governing body shall call an election on the question. (§ 2 ch 118 SLA 1972)

Sec. 29.58.270. Payment of refunding bonds. General obligation refunding bonds are payable according to § 180 of this chapter. Revenue refunding bonds are payable according to § 220 of this chapter. (§ 2 ch 118 SLA 1972)

Sec. 29.58.280. Sale. General obligation or revenue refunding bonds may, in the discretion of the assembly or council, be exchanged at par for the bonds being refunded, or may be sold at public or private sale for an amount not less than par and accrued interest. They may be issued and delivered at any time before the date of maturity or redemption of the refunded bonds. (§ 2 ch 118 SLA 1972)

Article 6. Miscellaneous Provisions.

Sec. 29.58.300. Public sale. The municipality shall sell all bonds at a public or private sale as provided by ordinance. No bonds may be sold at less than par value. (§ 2 ch 118 SLA 1972)

Sec. 29.58.310. Interest rate. No municipal bond or note may bear an interest rate exceeding the contract usury rate of interest provided by law. (§ 2 ch 118 SLA 1972)

Sec. 29.58.315. Bond attorneys, bond and financial consultants. The governing body or its designee of a home rule or general law municipality shall be the sole contracting authority for bond attorneys, bond consultants and financial consultants engaged in long-range financial planning of the municipality which leads to sale of bonds. (§ 2 ch 118 SLA 1972)

Sec. 29.58.320. Redemption before maturity. A bond or note may be made subject to redemption before maturity as stated in the authorization or in the bond or note. (§ 2 ch 118 SLA 1972)

Sec. 29.58.340. Borough indebtedness. (a) Boroughs may incur indebtedness

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

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

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

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

(c) If the bonded debt to be incurred by a borough is an areawide debt, the vote is areawide; if the full faith and credit of the entire borough is pledged for the payment of the debt of the area outside cities or of a service area, an areawide election is held and the proposition must pass both areawide and in the area which will benefit from the improvement; if the bonded indebtedness to be incurred is limited to areas outside cities only or to service areas, the vote is limited to voters in those areas. (§ 2 ch 118 SLA 1972)

(d) The indebtedness of a municipality reclassified under AS 29.08.040 is not affected by reclassification. Not less than all property within a municipality which is reclassified remains subject to taxation to amortize

bonded or other indebtedness affecting the municipality and authorized on the effective date of reclassification
(am § 4 ch 93 SLA 1977)

Effect of amendment The 1977 amendment added subsection (d)

Sec. 29.58.345. Bonded indebtedness for school construction. A home rule city levying property taxes for schools, upon furnishing proof satisfactory to the Department of Education and the Department of Community and Regional Affairs of the needs for school facilities which, if provided, will require the city to exceed limits on authorizing or issuing bonds which may be established by charter, may exceed the limits to the extent necessary to pay costs of school construction. In this section "costs of school construction" means costs as defined in AS 43.18.100(g)(2). (§ 1 ch 137 SLA 1974)

Sec. 29.58.350. Bond guarantee fund. (a) To guarantee payment by the state of the principal and interest of bonds issued under the enabling authority of § 345 of this chapter, there is in the Department of Community and Regional Affairs a special fund called the local school bond guarantee fund in which there shall be deposited all money appropriated by the legislature for the purpose of the fund and other money which may be made available for the purpose of the fund from any other source. Money in the fund shall be held and applied solely to further guarantee and provide an additional pledge of payment of all bonds issued under the provisions of § 345 of this chapter. Money shall not be withdrawn from the fund if a withdrawal would reduce the amount in the fund to an amount equal to less than the "maximum debt service reserve" (as defined in this section), except for payment of interest then due and payable on bonds and the principal of bonds then maturing and payable and for the retirement of bonds in accordance with the terms of a contract between the municipality and its bondholders and for the payments on account of which interest or principal or retirement of bonds other money is not then available in accordance with the terms of the contract. In this section "maximum debt service reserve" means, as of any date of computation, the largest amount of money required by the terms of all contracts between municipalities and their bondholders as to bonds issued under § 345 of this chapter to be raised in any succeeding calendar year for the payment of interest on and maturing principal of outstanding bonds and payments required by the terms of the contracts to sinking funds established for the payment or redemption of the bonds, all calculated on the assumption that bonds will cease to be outstanding after the date of the computation by reason of the payment of bonds at their respective maturities and the payments of the required money to sinking funds and the application of the money in accordance with the terms of the contracts to the retirement of bonds.

(b) Money in the guarantee fund at any time in excess of the maximum debt service reserve, whether by reason of investment or otherwise, may be withdrawn by the department and transferred to the general fund.

(c) Money at any time in the guarantee fund may be invested in any direct obligation of, or obligations as to which principal and interest is guaranteed by, the United States, the state or a political subdivision.

(d) For purposes of valuation, investments in the guarantee fund shall be valued at the lowest of the par value, cost to the authority, or market value of the investments. Valuation on any particular date shall include the amount of interest then earned or accrued to that date on any money or investments in the fund.

(e) Other provisions of this section notwithstanding, no bonds may be issued carrying the guarantee provided in this section unless there is in the guarantee fund the maximum debt service reserve for all bonds then issued and outstanding and the bonds about to be issued, but nothing prevents or precludes a municipality from satisfying the foregoing requirement by depositing so much of the proceeds of the bonds about to be issued, upon their issuance, as is needed to achieve the maximum debt service reserve.

(f) In order to assure the maintenance of the maximum debt service reserve in the guarantee fund, there is authorized to be appropriated annually and paid to the authority for deposit in the fund, the sum, if any, that is certified by the commissioner of community and regional affairs to the governor as necessary to restore the fund to an amount equal to the maximum debt service reserve. The chairman shall annually, before December 2, deliver to the governor his certificate stating the sum, if any, required to restore the fund to that amount, and the sum so certified is authorized to be appropriated and paid to the fund during the then current state fiscal year.

(g) Nothing in this section may be considered to cause bonds, payment of which is guaranteed from money in the fund established under this section, to be in any way a debt or liability of the state or any political subdivision of the state other than the political subdivision issuing the bonds, and the bonds, whether or not payable from the maximum debt service reserve created and established under this section, shall not create or constitute an indebtedness, liability or obligation of the state or be or constitute a pledge of the faith and credit of the state. (§ 1 ch 137 SLA 1974; am § 4 ch 218 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "§ 345" for "§ 340" in the first, second, and fourth sentences of subsection (a).

Editor's note. — Section 340 of this chapter, providing for bonded indebtedness for school construction, referred to in the first, second, and fourth sentences of subsection (a), has been renumbered as AS 29.58.345 since a section providing for borough indebtedness is presently designated as AS 29.58.340.

Chapter 59. Obligations Issued on Behalf of Municipalities.

Sec. 29.59.010. Authority to issue obligations for specified purposes.

Repealed by § 2 ch 87 SLA 1979, effective June 2, 1979.

Cross reference. — As to loan to [illegible] through purchase of municipal bonds [illegible] municipalities by the bond bank authority, AS 44.85.170.

Chapter 63. Special Assessments and Service Areas.

Article 1. Special Assessments.

Sec. 29.63.010. Assessment and proposal. The assembly or council may assess against the property of a governmental unit and private real property benefited all or a portion of the cost of constructing or improving capital improvements. The state shall pay an assessment levied, except as otherwise provided by law and subject to its right of protest under § 15(a)(8) of this chapter. If a governmental unit other than the state benefited by an assessment refuses to pay the assessment, it shall be denied the benefit of the improvement. An improvement proposal may be initiated by

(1) petition to the assembly or council of the owners of one-half in value of the property to be benefited; or

(2) the assembly or council. (§ 2 ch 118 SLA 1972)

This section does not constitute a special or local law. Kissane v. City of Anchorage, 17 Alaska 514, 159 F. Supp. 733 (D. Alas. 1958).

Determination of assessments is for city council. The determination of assessments by municipal corporations of adjacent property for local improvements is a matter for the city council acting in its legislative capacity, and such determination is conclusive, in the absence of fraud or conduct so arbitrary as to be the equivalent of fraud, or so manifestly arbitrary or unreasonable as to be palpably unjust and oppressive. Kissane v. City of Anchorage, 17 Alaska 514, 159 F. Supp. 733 (D. Alas. 1958).

As to different assessment for residence or business property. If any distinction in the method of assessment between business and residence property is to be made, such must be done by the city council, acting in its legislative capacity. Kissane v. City of Anchorage, 17 Alaska 514, 159 F. Supp. 733 (D. Alas. 1958).

Assessment may be made if property will benefit. The levy of special assessments for off-street parking facilities is justified if the improvement is a public one and the property to be assessed will receive a benefit. Kissane v. City of Anchorage, 17 Alaska 514, 159 F. Supp. 733 (D. Alas. 1958).

Whether a tax is in the form of special assessments or a general tax, the test is substantially the same; that is, whether any benefit, direct and tangible or indirect and intangible, will result to the property owner. Kissane v. City of Anchorage, 17 Alaska 514, 159 F. Supp. 733 (D. Alas. 1958).

Assessment is not arbitrary if there is some benefit. Where property will receive some benefit, gain or advantage from the proposed improvement, the assessment contemplated under this section cannot be considered so arbitrary or unjust as to render the method of assessment invalid as a matter of law. Kissane

v. City of Anchorage, 17 Alaska 514, 159 F. Supp. 733 (D. Alas. 1958).

It is not essential that the benefits be direct or immediate, although it is essential that they be based on more than mere speculation or conjecture. Kissane v. City of Anchorage, 17 Alaska 514, 159 F. Supp. 733 (D. Alas. 1958).

Except in the case of flagrant inequality amounting to confiscation. — The principle is firmly established that only where an assessment imposed clearly results in such a flagrant and palpable inequality between the burden imposed and the benefits received that it amounts to an arbitrary taking of property without compensation, does it violate the due process guaranty of the 14th amendment. Kissane v. City of Anchorage, 17 Alaska 514, 159 F. Supp. 733 (D. Alas. 1958).

Special assessments are usually distinguished from general taxation. Special assessments are levied for improvements which benefit particular individuals or property and are levied with reference to, and in proportion to, the special benefit conferred. General taxes, on the other hand, are imposed for the purpose of raising moneys to be expended for governmental purposes without regard to special benefits conferred on a particular group or class of persons or property. 1966 Op. Att'y Gen., No. 10.

Improvements and assessments against abutting property, not provided for by ordinance or resolution, are void. In re Ketchikan Delinquent Tax Roll, 293 F. 577 (9th Cir. 1923).

The power to locate, construct, and maintain streets, and more especially the power to impose a tax upon abutting property owners, is a legislative one and can only be exercised by ordinance or resolution. In re Ketchikan Delinquent Tax Roll, 293 F. 577 (9th Cir. 1923).

Valid petition will be presumed. — Unless its records disclose a failure on the part of the common council to take all of the jurisdictional steps required by law, it will be presumed for the construction and widening of a street was passed pursuant to a petition sufficient in law to give the council jurisdiction to pass such an ordinance. Town of Ketchikan v. Zimmerman, 4 Alaska 336 (1911).

Signer of petition may question council's jurisdiction. — While one signing a petition to the common council to widen and extend a street is estopped from questioning any irregularities in the acts of the common council in carrying out the purposes of such petition, yet he is not estopped from questioning the jurisdiction of the common council, for all his name to the petition indicates is that he is willing to be bound, providing the law is followed and a majority of the owners in value sign the same petition. Town of Ketchikan v. Zimmerman, 4 Alaska 336 (1911).

Town may recover value of requested improvements under implied contract. — The reasonable value of that the council acted according to law, and that an ordinance providing money expended by a town, at the special instance and request of the defendant, in the improvement of the street in front of his property may be recovered by the town upon the theory of an implied contract to pay. Town of Nome v. Lang, 1 Alaska 503 (1902).

Am. Jur. and A.L.R. references. — 38 Am. Jur., Municipal Corporations, §§ 381 to 394; 48 Am. Jur., Special or Local Assessments, § 1 et seq.

Who is owner within statutes as to special assessments, 2 A.L.R. 790; 95 A.L.R. 1091.

Loss of right to contest assessment, 9 A.L.R. 631.

Use of general funds or credit in case of inability to collect special assessment, 70 A.L.R. 176.

Assessment as affected by character or extent of traffic, 73 A.L.R. 1295.

Personal liability of property owner to pay assessment, 86 A.L.R. 779, 127 A.L.R. 551; 167 A.L.R. 1030.

Diversion of traffic into business district as special benefit, 96 A.L.R. 1380.

Sec. 29.63.015. Procedure. (a) The assembly or council may prescribe by ordinance the complete special assessment procedure for local improvements, including and subject to the following:

(1) the procedure for filing petitions;

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

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

(4) a resolution of the assembly or council determining to proceed or not to proceed with the proposed local improvement;

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

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

(7) a resolution confirming the special assessment roll for the local improvement;

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

(b) If the assembly or council does not prescribe a procedure for special assessments as permitted by this section, the assembly or council shall comply with the special assessment procedures set out in §§ 20—70 of this chapter. (§ 2 ch 118 SLA 1972)

Quoted in Martens v. Metzgar, Sup Ct Op No 1059 (File No 1885), 521 P 2d 666 (1974)

Sec. 29.63.020. Decision and notice. (a) When an improvement proposal has been filed with the municipal clerk and presented to the assembly or council, the assembly or council shall find by resolution whether (1) the improvement request is necessary and should be made, and (2) the request has sufficient and proper petitioners. The findings of the assembly or council are conclusive.

(b) If the assembly or council passes a resolution approving an improvement proposal with the necessary findings, it shall develop a proposed improvement plan including the cost estimate and the percentage of the improvement plan cost to be assessed against the property benefited. This plan is to be filed with the municipal clerk.

(c) The assembly or council shall set a time for public hearing on the improvement plan. The assembly or council shall publish a notice at least once a week for four consecutive weeks in a newspaper of general circulation if distributed within the municipality and shall send notice by mail to every record owner of property within the special assessment district. (§ 2 ch 118 SLA 1972)

Section is mandatory. As the provisions of this section are mandatory, full compliance with due process otherwise is not sufficient. Ashley v. City of Anchorage, 13 Alaska 168, 95 F Supp. 189 (D. Alas. 1951).

And steps must be taken in order. —The steps to be taken by the council must be followed in the order provided in this section without substan-

tial devintion, and one council is not permitted by ratification to validate the acts of a previous council. Ashley v. City of Anchorage, 13 Alaska 168, 95 F. Supp. 189 (D. Alas. 1951).

Levy of assessment must be made when petition heard. — See In re Ketchikan Delinquent Tax Roll, 293 F. 577 (9th Cir. 1923); Ashley v. City of Anchorage, 13 Alaska 168, 95 F. Supp. 189 (D. Alas. 1951).

And assessment may not be made by another council.—Most assuredly one city council cannot make an improvement, and some other city council, at some later day, exercise the discretion to impose a part of the burden upon abutting property owners. Ashley v. City of Anchorage, 13 Alaska 168, 95 F. Supp. 189 (D. Alas. 1951).

When defect in proceedings prior to assessment may be raised.—Where no opportunity was afforded objectors prior to the assessment to protest against the work, no notice was given them that their property would be assessed for any part of the cost of the improvement, there was no showing by the city in the testimony that they had knowledge that the city contemplated assessing the cost of the improvement, and there was no showing that they had any knowledge of the defect in the proceedings, they had the right to object and insist upon any defect in the proceedings anterior to the assessment. In re Ketchikan Delinquent Tax Roll, 6 Alaska 653 (1922).

Am. Jur., ALR and C.J.S. references.—48 Am. Jur., Special or Local Assessments, § 57 et seq.

Denying right of property owners to defeat street improvement by protest, 52 ALR 883.

Lump sum assessment for improvement against property owned in undivided shares, 80 ALR 862.

Sufficiency of statutory provisions for hearing, 81 ALR 1098.

Petition of property owners for local improvement, 95 ALR 116.

Withdrawal of signer of petition, 126 ALR 1031.

Classification of streets as regards source of payment for improvements, 127 ALR 1090.

63 C.J.S. Municipal Corporations § 1097.

Sec. 29.63.025. Record owner. The person in whose name property is listed on the municipal property tax roll as owner is conclusively presumed to be the legal owner of record. If the owner is unknown, the assessment may be made against "unknown owner." (§ 2 ch 118 SLA 1972)

Sec. 29.63.030. Objections and revision. (a) Objections to the improvement plan may be filed not less than 30 nor more than 60 days after publication of notice on a date specified by the assembly or council. The assembly or council may by resolution approve the plan and proceed with the improvement if the owners of one half in value of the property to be benefited do not object in writing.

(b) If objections are made by the owners of property bearing one-half of the estimated cost of the improvement, the assembly or council may not proceed with the improvement unless it revises the plan to meet the objections and the objections are reduced to less than 50 per cent. A revised plan shall be approved and adopted as an original plan. (§ 2 ch 118 SLA 1972)

Sec. 29.63.040. Assessment roll. (a) At any time after project approval, the assembly or council shall assess the authorized percentage of the cost against tracts in proportion to benefit received. Assessments may not exceed actual costs.

(b) The special assessment roll contains property descriptions, names of owners of record and assessment amounts.

(c) The assembly or council shall fix a time to hear objections to the roll. The municipal clerk shall send an assessment and hearing notice by mail to each record owner of an assessed tract not less than 15 days before the hearing. (§ 2 ch 118 SLA 1972)

Right to object may be waived.—A party may be held to have waived all right to a remedy by a course of conduct which renders it unjust and inequitable to others that he should be allowed to complain of the illegality. In re Ketchikan Delinquent Tax Roll, 6 Alaska 653 (1922).

Am. Jur. and ALR references.—48 Am. Jur., Special or Local Assessments, § 57 et seq.

Assessment by front-foot rule, 56 ALR 941.

Classification of streets as regards source of payment for improvements, 127 ALR 1090.

Sec. 29.63.050. Hearing and settlement. After the public hearing, the assembly or council shall correct errors and any inequalities in the roll. When the roll is corrected, the clerk shall so certify. (§ 2 ch 118 SLA 1972)

Sec. 29.63.060. Payment. (a) The assembly or council shall fix times of payment, rate of interest on unpaid installments, and delinquency of assessments. Payment may not be required sooner than 60 days after assessment. Payment may be in one sum or by installments, but a sum or installment may not exceed 25 per cent of the assessed value of the property affected. Penalty and interest are the same as for real property taxes.

(b) Within 30 days after fixing the time of payment, the municipal clerk shall mail a statement to the owner of record of each property assessed. The statement designates the property, the assessment amount, the time of delinquency, and penalties.

(c) Within five days after the statements are mailed, the clerk shall publish notice that the statements have been mailed.

(d) Assessments are liens upon the property assessed and are prior and paramount to all liens except municipal tax liens. They may be enforced as provided in AS 29.53.200 - 29.53.390 for enforcement of property tax liens. (§ 2 ch 118 SLA 1972)

Property must be described with certainty. To create a lien on real estate, the property must be described with reasonable certainty, sufficient for identification. In re Ketchikan Delinquent Tax Roll, 6 Alaska 653 (1922).

Am. Jur., ALR and C.J.S. references.—39 Am. Jur., Notice and Notices, § 27; 48 Am. Jur., Special or Local Assessments, § 194 et seq.

Priority as between liens for public improvements, 5 ALR 1301, 99 ALR 1178.

Transfer or assignment of lien, 55 ALR 667.

Priority of lien for improvement and prexisting contractual lien, 78 ALR 513.

Duration of lien, 111 ALR 389.

63 C.J.S. Municipal Corporations § 1561 et seq.

Sec. 29.63.065. Exemption. (a) The real property owned and occupied by a resident 65 years of age or over, or the spouse, widow, widower, or minor heir of the original applicant, on which is located only his permanent abode which is a single family residence, is exempt from (1) special sewer assessments levied by a home rule or general law municipality after September 2, 1975 and (2) special water assessments levied by a home rule or general law municipality after September 2, 1975. Only one exemption may be granted with respect to the same property, and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the municipality determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the municipality is appealable under AS 44.62.560 - 44.62.570.

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

(1) the claimant must file the initial application during the period of time between the date the assessment roll is certified and the time of payment fixed by the assembly or council. Within one year of the date the assessment roll is certified the assembly or council for good cause shown may waive the claimant's failure to make timely initial application for the exemption and authorize the assessor to accept the application as if timely filed.

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

(3) if an application is filed within the required time under this subsection and is approved by the assembly or council, the exemption shall be allowed in accordance with the provisions of this section. If a waiver under this subsection is granted and the application for exemption approved, the amount of any assessment, penalty or interest which the claimant may have already paid on the assessment shall be refunded to him. The municipality may at any time require proof in the form considered necessary of the right and amount of an exemption claimed under this section.

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

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

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

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

(d) In this section

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

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

(3) "minor heir" means a person who, at the time of transfer of the property, has not attained the age of 19 years or who, if he has not attained the age of 22 years, is a full time student at an educational institution or a member of the armed forces of the United States. (§ 1 ch 111 SLA 1975, am § 1 ch 215 SLA 1976; am § 23 ch 83 SLA 1979)

Effect of amendments. — The 1976 amendment, effective June 21, 1976, rewrote this section.

The 1979 amendment, effective June 2, 1979, in paragraph (2) of subsection (b), substituted "with the department by March 15" for "by January 15" in the first sentence and "the department" for "the assembly or council" in the second sentence.

Editor's note. — Alaska Statutes 34.10.070 — 34.10.220, referred to in the introductory paragraph of subsection (c), were repealed by § 20, ch 182, SLA 1978

Sec. 29.63.070. Reassessment. (a) The assembly or council shall within one year correct any deficiency in a special assessment found by a court.

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

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

(d) The reassessment becomes a charge upon the property notwithstanding failure to comply with any provision of the assessment procedure. (§ 2 ch 118 SLA 1972)

C.J.S. reference.—63 C.J.S. Municipal Corporations § 1641 et seq.

Sec. 29.63.080. Objection and appeal. (a) The regularity or validity of an assessment may not be contested by a person who did not file with the municipal clerk a written objection to the assessment roll before its confirmation.

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

(c) If no objection is filed or an appeal taken within the time provided in this section, the assessment procedure shall be considered regular and valid in all respects. (§ 2 ch 118 SLA 1972)

Sec. 29.63.085. Special assessment bonds. (a) The assembly or council may by ordinance authorize the issuance and sale of special assessment bonds to pay all or part of the cost of an improvement in a special assessment district. The principal and interest of bonds issued shall be payable solely from the levy of special assessments against the property to be benefited. The assessments shall constitute a sinking fund for the payment of principal and interest on the bonds. The property benefited may be pledged by the assembly or council to secure a payment.

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

(c) Before the assembly or council may issue special assessment bonds, it shall establish a guarantee fund and appropriate to the fund annually a sum adequate to cover any deficiency in meeting payments of principal and interest of bonds issued by reason of nonpayment of assessments when due. Money received from actions taken against property for nonpayment of assessments shall be credited to the guarantee fund. Interest on the guarantee funds shall be a cost of the improvement district. (§ 2 ch 118 SLA 1972)

Article 2. Service Areas.

Sec. 29.35.090. Service areas. (a) Service areas to provide special services within a borough may be established, operated, altered or abolished by the assembly by ordinance. Special services include services not provided on an areawide basis within the borough or the borough area outside cities or a higher or different level of service than that provided on an areawide basis or in the borough area outside cities. In a first class borough the assembly may exercise within a service area any power granted a first class city by general law. Except as provided in (f) of this section, a second class borough may exercise the powers granted a first class city by general law but the exercise of the powers must be approved by a majority of the qualified voters residing within the service area and voting on the question at a regular or special election.

(b) The assembly may levy or authorize the levying of taxes, charges, or assessments in service areas to finance the special services.

(c) The assembly may provide for appointed or elected boards to supervise the furnishing of special services in service areas.

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

(e) The assembly may exercise or delegate to a service area any powers which may be exercised by a first class borough in the area outside cities. In a second class borough, each exercised or delegated power must be approved by a majority vote at a regular or special election held within the service area. The rate of taxation and the issuance of bonds are subject to assembly approval. (§ 2 ch 118 SLA 1972)

(f) A second class borough may establish a service area by ordinance which may include only vacant, unappropriated and unreserved land owned by the municipality. A second class borough may establish a service area, with the concurrence of the commissioner of natural resources, which may include only vacant, unappropriated and unreserved land owned by the state and classified for disposal to individuals. A second class borough may provide those services in a service area established under this subsection necessary to develop state or municipal land as required by the planning and platting ordinances of the borough. Exercise of the powers authorized by this subsection shall be by ordinance.
(am §§ 9, 10 ch 85 SLA 1979)

Effect of amendment. — The 1979 amendment, effective July 1, 1979, divided the former third sentence of subsection (a) into the present third and fourth sentences, substituted the language beginning "Except as provided in (f) of this section" and ending "by general law but the exercise of the powers" for "in a second class borough an exercise of the powers" in the present fourth sentence of subsection (a), and added subsection (f).

Chapter 68. Alteration of Boundaries.

Article 1. Annexation and Exclusion.

Sec. 29.68.010. Local boundary commission. (a) The Local Boundary Commission may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first 10 days of any regular session. The change shall become effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

(b) In addition to the regulations governing annexation by local action adopted under AS 44.19.260, the Local Boundary Commission shall, within 90 days of September 10, 1972, establish procedures for annexation and exclusion of territory by cities and boroughs by local action. The procedures established under this subsection shall include

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

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

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

(c) A boundary change effected under (a) of this section prevails over a boundary change initiated by local action, without regard to priority in time. (§ 2 ch 118 SLA 1972)

Defining boundaries is a legislative function. The creation of municipalities, and the defining of the extent of the boundaries thereof, involve the exercise of legislative, not judicial, power. Town of Fairbanks v. Barnett, 282 F. 417 (9th Cir. 1922); In re Annexation to City of Anchorage, 16 Alaska 549, 146 F. Supp. 98 (D. Alas. 1956).

Expansion of municipal boundaries is matter of statewide concern. Those who reside or own property in the area to be annexed have no vested right to insist that annexation take place only with their consent. The subject of expansion of municipal boundaries is legitimately the concern of the state as a whole, and not just that of the local community. Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, Sup. Ct. Op. No. 61 (File Nos. 69, 71), 368 P.2d 540 (1962).

Annexation procedure may be changed. The state may permit residents of local communities to determine annexation questions at an election. But when this has been done, the state is not irrevocably committed to that arrangement. If the citizens of the state, in adopting a constitution, decide that it is in the public interest to establish another election procedure, there is no constitutional obstacle to that course of action. Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, Sup. Ct. Op. No. 61 (File Nos. 69, 71), 368 P.2d 540 (1962).

One proceeding for annexing several tracts. See In re Town of Sitka, 11 Alaska 201 (1947).

Areas in public utility district may be annexed. The fact that the areas are embraced within a public utility district constitutes no bar to annexa-

tion. In re Annexation to City of Anchorage, 15 Alaska 504, 129 F. Supp. 551 (D. Alas. 1955). See Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, Sup. Ct. Op. No. 61 (File Nos. 69, 71), 368 P.2d 540 (1962).

Consent of voters in district required if annexation proceeds under this article. — The provision of AS 42.35.370 providing for dissolution of a utility district with the consent of the voters when "the whole or the integral part of a district becomes annexed to an incorporated city" has application only where annexation takes place under the petition-election procedure of this article and has no application where annexation takes place under a different method established by Alaska Const., art. X, § 12. Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, Sup. Ct. Op. No. 61 (File Nos. 69, 71), 368 P.2d 540 (1962).

Cross reference. For further provisions relating to local boundary commission procedures, see AS 44.19.250 — 44.19.340. For requirements of a hearing on local boundary changes, see AS 44.19.330.

The local action provision of Alaska Const., art. X, § 12 has been implemented by this section and by 19 AAC § 15.010 et seq. Port Valdez Co. v. City of Valdez, Sup. Ct. Op. No. 1044 (File No. 1980), 522 P.2d 1147 (1974).

Sec. 29.68.020. Annexation of military reservations. A military reservation may be annexed to a city or borough in the same manner as prescribed for any other territory under AS 29.68.010. If a city within an organized borough annexes a military reservation under this section, the territory encompassing the military reservation automatically is annexed to the borough of which the city is a part. (§ 1 ch 32 SLA 1973; am § 8 ch 72 SLA 1974)

Cross reference. — For further provisions relating to local boundary commission procedures, see AS 44.19.250 — 44.19.340. For requirement of a hearing on local boundary changes, see AS 44.19.330.

Effect of amendment. — The 1974 amendment deleted "Notwithstanding the provisions of § 3(d), ch. 52, SLA 1961" from the beginning of the first sentence.

Legislative history report. — For report on ch. 72, SLA 1974 (HCS CSSB 122 (Finance) am H), see 1974 House Journal, p. 519.

Article 2. Merger and Consolidation.

Sec. 29.68.030. Methods of merger or consolidation. Two methods may be used to initiate merger or consolidation of home rule and general law municipalities:

(1) petition to the Local Boundary Commission under regulations adopted by the commission, or

(2) the local option method specified in §§ 40—110 of this chapter. (§ 2 ch 118 SLA 1972)

Sec. 29.68.040. Petition. (a) Residents of two or more municipalities may file a merger or consolidation petition with the Department of Community and Regional Affairs. The petition must be signed by a number of municipal voters of each municipality equal to at least 25 per cent of the number of votes cast in its last regular election.

(b) The petition includes

(1) the name and class of each municipality;

(2) the name and class of the proposed municipality;

(3) the proposed composition and apportionment of the assembly or council;

(4) maps, documents, and other information which show that the proposed municipality meets the standards for municipal incorporation. (§ 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 the first sentence of subsection (a).

Sec. 29.68.050. Review. The Department of Community and Regional Affairs shall review a petition for content and signatures and shall return a deficient petition for correction or 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. 29.68.060. Investigation. If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal. (§ 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. 29.68.070. 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 merger or consolidation.

(b) The Local Boundary Commission shall hold at least one public hearing in each of the municipalities included in the merger or consolidation petition, unless officials of the municipalities agree to a single hearing. (§ 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" near the beginning of subsection (a).

Sec. 29.68.080. Decision. If the Local Boundary Commission determines that the proposed municipality fails to meet the standards for incorporation, it shall reject the petition. If the commission determines that the proposed municipality meets these standards, it shall accept the petition. If the commission determines that the proposed boundaries or the composition and apportionment of the assembly or council can be altered to meet the standards, it may change the proposal and accept the petition. The decision may be appealed under the Administrative Procedure Act (AS 44.62). (§ 2 ch 118 SLA 1972)

Sec. 29.68.090. Election. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of a merger or consolidation petition. Within 30 days after notification, the lieutenant governor shall order an election within the area to be included in the new municipality to determine whether the voters desire merger or consolidation. The election is held not less than 30 nor more than 90 days after the election order.

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

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

(d) The lieutenant governor shall certify the election results. If merger or consolidation is approved, he shall, within 10 days, set a date for election of officers of the new municipality under AS 29.18.120. The election date is not less than 60 nor more than 90 days after the election order. This date is the effective date for the merger or consolidation. (§ 2 ch 118 SLA 1972)

Sec. 29.68.100. Assets and liabilities. (a) When two or more municipalities merge, one municipality succeeds to the rights, powers, duties, assets and liabilities of the others.

(b) When two or more municipalities consolidate, the newly-incorporated municipality succeeds to the rights, powers, duties, assets and liabilities of the consolidated municipalities. (§ 2 ch 118 SLA 1972)

Sec. 29.68.110. Ordinances. The ordinances, resolutions, rules, regulations, procedures and orders of the former municipalities remain in force within their respective territories until superseded by the action of the successor municipality. (§ 2 ch 118 SLA 1972)

Article 3. Unification of Local Governments.

Sec. 29.68.240. Unification of local governments authorized. An organized borough and all cities within the borough may unite to form a single unit of home rule local government by complying with this chapter. (§ 2 ch 118 SLA 1972)

Unification is consistent with the purpose expressed in Alaska Const., art. X, § 1, of encouraging the number of local governmental units [illegible] City of Ketchikan v. City & Borough of Juneau, Sup. Ct. Op. No. [illegible], 181 P.2d 1010 (1947).

Coexistence of cities and boroughs not required. Alaska Const., art. X, § 1, merely authorizes but does not require the coexistence of cities and boroughs. City of Ketchikan v. City & Borough of Juneau, Sup. Ct. Op. No. [illegible], 181 P.2d 1010 (1947).

Sec. 29.68.250. Unification to be proposed by petition. (a) Formation of a charter commission to propose a unification charter shall be proposed by resolution of the assembly or by petition. An assembly resolution for the purpose may be adopted not more often than once every 12 months.

(b) The borough assembly, a city council, or a person living within the area of proposed unification may initiate the petition. (§ 2 ch 118 SLA 1972)

Sec. 29.68.260. Petition requirements. (a) The petition shall read:

"PETITION FOR ELECTION OF CHARTER COMMISSION TO PROPOSE UNIFICATION CHARTER

We, the undersigned, qualified voters of the Borough do hereby petition that the following proposition be placed before the voters as provided by law:

'Shall a charter commission be formed (and charter commission members be elected as elsewhere provided on this ballot) to prepare, adopt and submit to the voters for their approval or rejection a proposed charter uniting the Borough and all cities within it as a single unit of home rule government having the powers, duties and functions of a unified government as authorized by law?

Yes [ ] No [ ]'

Signature	Address	Inside First Class or Home Rule City	Outside First Class or Home Rule City"

(b) The petition shall be signed by at least

(1) that number of qualified voters of the borough living outside all first class and home rule cities in the borough equal to 25 per cent of the qualified voters who voted in the last regular borough election; and

(2) that number of qualified voters residing in each first class and home rule city located in the borough equal to 25 per cent of the qualified voters who voted in the last regular borough election in each city. (§ 2 ch 118 SLA 1972)

Sec. 29.68.270. Review of petition. Upon receipt of a petition, the borough assembly shall review the petition within 15 days after its receipt to determine whether it complies with § 260 of this chapter. If the petition does not meet the designated requirements, it shall be immediately returned to the person who initiated the petition with a statement indicating which requirements have not been satisfied. (§ 2 ch 118 SLA 1972)

Sec. 29.68.280. Call for charter commission nominations. Once it is determined by the borough assembly that a petition meets the requirements of § 260 of this chapter, or the assembly by its resolution proposes an election on formation of a charter commission to propose a unification charter, the assembly shall issue a call for the nomination of charter commission candidates, specifying the filing deadline and outlining the procedure described for making nominations under § 290 of this chapter. (§ 2 ch 118 SLA 1972)

Procedures apply to determination of method of district representation. — The detailed statutory procedures prescribed for unification of local governments continued to apply to the determination of the method of district representation in the same manner as they apply to the other provisions of the charter. Municipality of Anchorage v. Frohne, Sup. Ct. Op. No. 1477 (File Nos. 3050, 3101), 565 P.2d [illegible] (1977).

Sec. 29.68.290. Nomination of charter commission candidates. (a) Charter commission candidates shall be nominated by petition signed by at least 50 qualified voters of the area from which the candidate seeks election or by a number of qualified voters from that area equal to at least 10 per cent of the number of votes cast from that area in the last regular borough election, whichever is less.

(b) Nomination petitions shall be filed with the borough clerk on or before the date fixed by the borough assembly, which date shall not be less than 30 days after notice of the call for nominations has been given through the borough. (§ 2 ch 118 SLA 1972)

Sec. 29.68.300. Qualifications of charter commission candidates. A person is eligible to be nominated as a candidate for the charter commission if he has been a qualified voter of the area from which he seeks election for at least one year immediately preceding the date his nomination petition is filed with the borough clerk. (§ 2 ch 118 SLA 1972)

Sec. 29.68.310. Composition of charter commission. The charter commission members shall be qualified voters and shall consist of 11 members, three of whom shall be residents elected at large from the area of the borough and eight of whom shall be (1) residents of and elected from the area outside cities in the borough or (2) residents of and elected from a city or cities in the borough. The number representing each of these areas shall be proportionate to the respective populations as determined by the Department of Community and Regional Affairs. (§ 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" at the end of the section.

Anchorage Charter Commission, as presently constituted, is a valid public body authorized to proceed with its statutory functions under the article. Jordan v. Reed, Sup Ct Op No 1217 (File No 2688), 544 P 2d 75 (1975)

Residents of temporarily-existing borough not unconstitutionally denied right to vote in charter commission election. — Where the Eagle River-Chugiak Borough was officially incorporated on September 12, 1974, but the act authorizing the residents of that area to vote on the question of whether or not to form a second class borough was held unconstitutional in Abrams v. State, Sup Ct Op No 1142 (File Nos 2407, 2418), 534 P 2d 91 (1975) on April 15, 1975, and the Eagle River-Chugiak area was automatically reincorporated into the Greater Anchorage Area Borough, the Eagle River-Chugiak area residents were not unconstitutionally denied the right to vote on a February 11, 1975 election held in the Greater Anchorage Area Borough at which the creation of a charter commission was approved, and its members elected. Jordan v. Reed, Sup Ct Op No 1217 (File No 2688), 544 P 2d 75 (1975)

Denying residents of the Eagle River-Chugiak area the right to vote on the question of who sits on the charter commission in the Greater Anchorage Area Borough was not a denial of fundamental fairness since the realignment of political boundaries which occurred as a result of the Abrams v. State, Sup Ct Op No 1142 (File Nos 2407, 2418), 534 P 2d 91 (1975) decision is functionally equivalent to an annexation, and the general rule regarding annexation is that when territory has been lawfully and finally annexed, the new area becomes, ipso facto, a part of the municipality subject to municipal jurisdiction and it may be governed as the original municipal territory was governed prior to the change. Jordan v. Reed, Sup Ct Op No 1217 (File No 2688), 544 P 2d 75 (1975)

And composition of commission need not reflect them. — Where the area reincorporated within the former Eagle River-Chugiak Borough had a separate status under the de facto municipal incorporation doctrine, the composition of the charter commission need not reflect a group of citizens not part of the Greater Anchorage Area Borough at the time the charter commission was formed. Jordan v. Reed, Sup Ct Op No 1217 (File No 2688), 544 P 2d 75 (1975)

Sec. 29.68.320. Election. (a) After receipt of a valid petition or adoption of an assembly resolution for the purpose, the borough assembly shall submit to the voters the question of whether that borough and all cities within it shall unite to form a single unit of home rule government. The vote shall be held at the next regular borough election scheduled at least 90 days after receipt of the valid petition or adoption of the resolution.

(b) The ballot on the question of unification shall be worded exactly as in § 260(a) of this chapter.

(c) The election of charter commission members shall take place at the same time as the election on the question of unification.

(d) All costs incurred in conducting an election under this chapter shall be paid by the borough. (§ 2 ch 118 SLA 1972)

Sec. 29.68.330. Requirements for approval of unification and election of charter commission. (a) The votes on unification shall be tabulated in two separate classifications. One classification shall consist of all votes cast in the first class and home rule cities of the borough. The other classification shall consist of all votes cast in the remaining areas of the borough. In order for unification to be approved, it is necessary that a majority of the votes in each classification favor unification.

(b) If unification is approved, those charter commission candidates who received the highest number of votes from their respective areas shall serve as members of the commission. (§ 2 ch 118 SLA 1972)

Sec. 29.68.340. Charter commission organization and procedure. (a) The charter commission authorized by this chapter shall hold its first meeting within 30 days of the date of certification of its election. The commission shall elect from among its members a chairman and a deputy chairman.

(b) A majority of the total membership of the charter commission constitutes a quorum. No decision of the commission is valid or binding unless approved by that number of members necessary to constitute a quorum.

(c) The charter commission may elect other officers from among its membership, adopt rules governing its procedures and hire and discharge commission employees. Rules adopted must conform with the provisions of this chapter.

(d) Meetings of the charter commission shall be open to the public at all times. A journal of commission proceedings shall be kept and shall be available for public inspection at the borough office.

(e) Except as provided in § 390(c) of this chapter, vacancies on the charter commission shall be filled by a majority vote of the commission. The person appointed to fill a vacancy must be a qualified voter of the same area as the person whom he succeeds and must have been a qualified voter of that area for at least one year immediately preceding the date of his appointment.

(f) The borough assembly may grant a per diem allowance to the commission members and may reimburse the members for travel expenses incurred in carrying out the duties prescribed by this chapter.

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

Sec. 29.68.350. Charter preparation. (a) A charter commission established under this chapter shall prepare, adopt and submit a proposed home rule charter for the area to be unified to the voters for approval or rejection at a regular or special borough election called by the borough assembly held within 60 days of the date of publication and posting of the proposed charter as required in AS 29.68.380. The charter shall include among its provisions:

(1) provisions for adjustment of existing bonded indebtedness and other obligations in a manner which will reserve a fair and equitable burden of taxation for debt service, subject to AS 29.68.410;

(2) [Effective January 1, 1981] provisions for

(A) the establishment of service areas; and

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

(C) reapportionment of the sections, if established;

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

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

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

(6) a method of amending the charter;

(7) the date on which the charter, if approved at the charter election required by AS 29.68.390, is effective;

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

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

(b) The area to be unified shall be known as a borough or a city or by some other designation consistent with existing law. (§ 2 ch 118 SLA 1972; am § 5 ch 147 SLA 1972; am § 12 ch 128 SLA 1980)

Effect of amendment.

The 1980 amendment, effective January 1, 1981, rewrote paragraph (2) of subsection (a).

This section requires a home rule charter to provide for apportionment. Municipality of Anchorage v. Frohne, Sup. Ct. Op. No. 1477 (File Nos. 3050, 3104), (Alas. [2d] 3 (1977).

Sec. 29.68.360. Public hearings. Both before and after drafting the proposed charter, the charter commission shall hold a public hearing in each area of the borough represented on the borough assembly. Other public hearings may be held by the charter commission whenever and wherever it believes necessary and appropriate. (§ 2 ch 118 SLA 1972)

Applied in Municipality of Anchorage v. Frohne, Sup. Ct. Op. No. 1477 (File Nos. 3050, 3104), 568 P.2d 3 (1977).

Sec. 29.68.370. Filing of proposed charter. Upon the adoption of a proposed home rule charter by the charter commission, the charter shall be signed by at least a majority of the total membership of the commission and shall be filed with the borough clerk. A copy with signatures affixed shall also be filed with the clerk of each city within the borough. (§ 2 ch 118 SLA 1972)

Sec. 29.68.380. Publication and posting of proposed charter. Within 10 days after filing the proposed charter, the borough clerk shall have it published once in at least one newspaper having general circulation distributed within the borough, if there is a newspaper having general circulation distributed within the borough. In addition, the clerk shall have a copy of the proposed charter posted in at least three public places within each city of the borough and each area outside cities. Copies of the proposed charter shall be made available by the borough assembly to the public . both the office of the borough clerk and the office of the clerk of each city within the borough. The clerk shall publish notice by radio and television of the publication, posting, and availability of the proposed charter in a manner intended to apprise the entire borough population of the existence of the proposed charter. (§ 2 ch 118 SLA 1972)

Sec. 29.68.390. Election on charter. (a) The proposed charter adopted by the charter commission shall be submitted to the voters for ratification or rejection at the borough election specified in § 350 of this chapter. The borough clerk shall prepare the ballots for use in the election and shall give published notice of and otherwise conduct the election in the manner in which regular municipal elections are conducted. In addition, the clerk shall publish notice of the election by radio and television in a manner intended to apprise the entire borough population of the election.

(b) A person who is a qualified voter of the borough may vote in the election on the proposed charter.

(c) If a majority of the votes cast in the area of the borough outside all first class and home rule cities and a majority of the votes cast in the remaining area of the borough, composed of all first class and home rule cities, are cast in favor of the proposed charter, the charter is ratified. If the charter is ratified, two copies of the charter shall be filed with each of the following authorities:

(1) lieutenant governor;

(2) commissioner of the Department of Community and Regional Affairs;

(3) district recorder for the area of the borough;

(4) clerk of the borough;

(5) clerk of each city in the borough.

(d) If a proposed charter is rejected, the charter commission shall prepare, adopt and submit a proposed charter to the voters at a general or special borough election called by the borough and held within one year of 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 unification shall be treated as if it had never been proposed or approved.

(e) If after the rejection of the first proposed charter, more than one-half of the charter commission members resign from the commission, the borough assembly shall appoint new members to fill the vacancies in accordance with § 110(e) of this chapter. (§ 2 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

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

Subsection (c) constitutional. — In light of the authorization provided by Alaska Const., art. X, § 7, for legislative enactment of a statutory system for the merger and consolidation, as well as the dissolution of cities, subsection (c) is constitutional and does not violate the provisions of Alaska Const., art. X, § 9. City of Douglas v. City & Borough of Juneau, Sup. Ct. Op. No. 672 (File No. 1379), 484 P.2d 1040 (1971).

The charter was ratified under this section because the favorable vote in the city of Juneau outweighed the negative vote in Douglas, their votes being counted together in the category of remaining area of the borough, composed of all first class and home rule cities. City of Douglas v. City & Borough of Juneau, Sup. Ct. Op. No. 672 (File No. 1379), 484 P.2d 1040 (1971).

Cited in Municipality of Anchorage v. Frohne, Sup. Ct. Op. No. 1477 (File Nos. 2060, 2104), 568 P.2d 3 (1977).

Sec. 29.68.400. Effect of the charter after ratification. Upon ratification, the charter of a unified municipality organized under §§ 240—440 of this chapter operates to dissolve all local governments within the area of unification in accordance with the charter. (§ 2 ch 118 SLA 1972)

Sec. 29.68.410. Assets and liabilities. A municipality created by unification shall succeed to all the assets and liabilities of the local governments it unified. A bonded indebtedness or other debt incurred before unification shall remain the tax obligation of the area which contracted the debt, except that the tax obligation may be spread over a larger area by ordinance if the governing body determines that the asset for which the bonded indebtedness or other debt was incurred was used for the benefit of the larger area before unification, or is so used after unification. However, pre-unification bonded indebtedness or other debt for sewage collection systems, water distribution systems, and streets, even if determined to be used for the benefit of a larger area than that which incurred the debt, shall remain the tax obligation of the area which incurred the debt. (§ 2 ch 118 SLA 1972)

Sec. 29.68.420. Ordinances. Within two years after ratification of the charter, the governing body of the unified municipality shall revise, repeal, or reaffirm all borough and city ordinances, resolutions and orders in force within the borough at the time of unification. Each ordinance, resolution, regulation, or order in force at the time of unification shall remain in force until superseded by action of the new governing body. (§ 2 ch 118 SLA 1972)

Sec. 29.68.430. Right to state and federal funds preserved. All provisions of law authorizing contributions of any kind, in money or otherwise, from the state or federal government to boroughs and cities shall remain in full force and effect with respect to a unified municipality organized under §§ 240—440 of this chapter. (§ 2 ch 118 SLA 1972)

Sec. 29.68.440. Powers of a unified municipality. A municipality organized under §§ 240—440 of this chapter shall have all powers

(1) not prohibited it by law or charter;

(2) granted to organized boroughs and first class cities. (§ 2 ch 118 SLA 1972)

Article 4. Dissolution.

Sec. 29.68.500. Methods of dissolution. (a) Two petition methods may be used to initiate dissolution of home rule and general law municipalities:

(1) petition to the Local Boundary Commission under regulations adopted by the commission or

(2) the local option method specified in §§ 510—580 of this chapter.

(b) A home rule or general law borough is dissolved when its entire territory is included within a home rule or first class city or cities. A city is dissolved when all its powers become areawide borough powers.

(c) The Department of Community and Regional Affairs shall investigate a municipality which it considers to be inactive and shall report to the Local Boundary Commission on the status of the municipality. The commission may submit its recommendation to the legislature that the municipality be dissolved in the manner

provided for submission of boundary changes in § 12, art. X of the state constitution. (§ 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" near the beginning of subsection (c).

Legislature empowered to construct constitutional scheme for dissolution.—Since Alaska Const., art. X, § 7, says dissolved "in the manner" provided by the legislature, it empowers the legislature to construct any otherwise constitutional scheme for dissolution, rather than requiring the legislature to perform the dissolution. City of Douglas v. City & Borough of Juneau, Sup. Ct. Op. No. 672 (File No. 1379), 484 P.2d 1040 (1971).

Alaska Const., art. X, § 7, leaves the legislature free to determine the manner of dissolution of cities. City of Douglas v. City & Borough of Juneau, Sup. Ct. Op. No. 672 (File No. 1379), 484 P.2d 1040 (1971).

Alaska Const., art. X, § 9, empowers first class cities to determine the local question of whether to have home rule without interference by others, but by virtue of Alaska Const., art. X, § 7, the legislature is authorized to decide the broader and quite different question of whether a home rule city should be dissolved, as well as the method or manner of dissolution. City of Douglas v. City & Borough of Juneau, Sup. Ct. Op. No. 672 (File No. 1379), 484 P.2d 1040 (1971).

Sec. 29.68.510. Petition. (a) Municipal residents may file a dissolution petition with the Department of Community and Regional Affairs in the form prescribed by the department. The petition must be signed by a number of municipal voters equal to at least 25 per cent of the number of votes cast in the last regular municipal election.

(b) The petition includes

(1) the name of the municipality;

(2) maps, documents, and other information showing that the municipality meets the standards for dissolution. (§ 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 the first sentence of subsection (a) and substituted "department" for "agency" therein.

Sec. 29.68.520. Standards. (a) Except as provided in (b) of this section, a municipality may petition for dissolution when

( ) it is free of debt, or if in debt, each of its creditors is satisfied with a method of repayment; and

(2) either it no longer meets the minimum standards prescribed for incorporation by ch. 18 of this title, or it ceases to use each and every one of its mandatory powers.

(b) A home rule or general law city in a borough may petition for dissolution if the borough consents to assume the city's rights, powers, duties, assets and liabilities. The consent must be ratified by a majority of borough voters voting on the question. (§ 2 ch 118 SLA 1972)

Sec. 29.68.530. Review. The Department of Community and Regional Affairs shall review a petition for content and signatures and shall return a deficient petition for correction or 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" near the beginning of the section.

Sec. 29.68.540. Investigation. If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal. (§ 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. 29.68.550. Report and hearing. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendation regarding the dissolution.

(b) The Local Boundary Commission shall hold at least one public hearing in the area proposed to be dissolved. (§ 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 subsection (a).

Sec. 29.68.560. Decision. If the Local Boundary Commission determines that the municipality fails to meet the standards for dissolution, it shall reject the petition. If the commission determines that the municipality meets the standards, it shall accept the petition. (§ 2 ch 118 SLA 1972)

Sec. 29.68.570. Election. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of a dissolution petition. Within 30 days after notification, the lieutenant governor shall order an election within the municipality to determine whether the voters desire dissolution. The election is at least 30 and not more than 90 days after the election order.

(b) A person who is a qualified voter of the municipality may vote in the dissolution election.

(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.

(d) The lieutenant governor shall certify the election results. If dissolution is approved, he shall declare that the municipality is dissolved effective on the date of certification. (§ 2 ch 118 SLA 1972)

Sec. 29.68.580. Succession. The government succeeding to a dissolved municipality succeeds to all its rights, powers, duties, assets, and liabilities as provided in AS 29.18.130—29.18.140. (§ 2 ch 118 SLA 1972; am § 7 ch 147 SLA 1972)

Effect of amendment. — The 1972 amendment, effective September 10, 1972, substituted "AS 29.18.130—29.18.140" for "AS 29.18.140—29.18.150."

Sec. 29.73.020. Eminent domain. A home rule or general law municipality may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power or function of the municipality, in accordance with AS 09.55.250—09.55.460. In the case of a second class city, before exercising the power, the council shall request or petition the Department of Community and Regional Affairs for permission to exercise the power. The council may not exercise the power of eminent domain or declaration of taking without the formal approval of the Department of Community and Regional Affairs. The exercise of the power of eminent domain or declaration of taking shall be by ordinance which shall be submitted to the qualified voters at the next regularly scheduled general election or special election called for that purpose. A majority of the qualified voters voting on the question is required for approval of the ordinance. (§ 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 the second and third sentences.

Sec. 29.73.030. Adverse possession. A home rule or general law municipality may not be divested of title to real property by adverse possession. (§ 2 ch 118 SLA 1972)

Sec. 29.73.040. Taxation of municipalities. No state law or regulation may assess or tax, or be construed to assess or tax, home rule or general law cities or boroughs of the state, unless the law or regulation expressly provides that the cities or boroughs are to be assessed or taxed by the particular law or regulation. (§ 2 ch 118 SLA 1972)

Sec. 29.73.050. Change of municipal name. (a) The governing body of a home rule or general law municipality may change the official municipal name by adopting an ordinance for the purpose and filing the ordinance with the office of the lieutenant governor. Upon receipt of a legally adopted ordinance ratified by the qualified voters voting on the question at a regular or special election, the lieutenant governor shall issue an appropriate order to the municipality changing its existing name. The name change shall become effective on a date fixed in the order and occurring within 45 days of receipt of the ordinance. A copy of the order shall be transmitted to the Department of Community and Regional Affairs.

(b) If an ordinance adopted under (a) of this section which results in an order changing the municipal name is subsequently repealed, the lieutenant governor shall issue a further order reinstating the former municipal name within 45 days of the date of the order, unless a different municipal name is adopted by ordinance transmitted to the lieutenant governor for implementation as provided in (a) of this section.

(c) When a municipal name change takes effect by means of an order issued under (a) or (b) of this section, civil or criminal suits, applications, petitions, hearings and other proceedings to which the municipality is a party and pending at or brought after the date the name change takes effect shall proceed in the name of the municipality as changed by the order. (§ 2 ch 118 SLA 1972; am § 9 ch 200 SLA 1974)

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

Sec. 29.73.080. Property tax equivalency payments. (a) A resident of the state 65 years of age or older who rents a permanent place of abode is eligible for tax equivalency payments from the state through the Department of Community and Regional Affairs.

(b) For purposes of determining payments to eligible persons, the department shall calculate a property tax equivalent percentage for each home rule or general law municipality which levies a general property tax at the rate of one percent per mil. The property tax equivalent percentage applied to the annual rent charged to the applicant equals the property tax equivalency payment payable under this section.

(c) To obtain tax equivalency payments the eligible resident must apply to the department for payment for the preceding year by January 15 of each year on forms and in the manner prescribed by the department. Each applicant shall submit with the application rental receipts or, if rental receipts are not available, other evidence satisfactory to the department for determination of the fact of payment of rent and the amount paid.

(d) If two or more persons occupy a residence as tenants, not all of whom are eligible for tax equivalency payments under this section, the assessor shall determine equitable partial payments to be made to the eligible tenants. However, tax equivalency payments to an eligible applicant may not be reduced because the spouse is less than 65 years of age. If all occupants in a residence are eligible for tax equivalency payments under this section, the occupants shall decide between and among themselves which shall receive payment. (§ 2 ch 217 SLA 1976; am § 1 ch 124 SLA 1980)

Effect of amendment. — The 1980 amendment, effective July 1, 1980, and retroactive to January 1, 1980, inserted a comma following "municipality" and "general property tax", substituted "one" for "½", substituted "The property tax equivalent" for "This", substituted "equals" for "or $375, whichever is less is", and added "payable under this section", all in subsection (b).

Sec. 29.73.070. Taxpayer notice. (a) If a municipality levies and collects real or personal property taxes, the governing body shall provide the following notice:

"NOTICE TO TAXPAYER

For the current fiscal year the (city) (borough) has been allocated the following amount of state aid for school and municipal purposes under the applicable financial assistance Acts:

PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE (AS 14.17)	$
STATE AID FOR RETIREMENT OF SCHOOL CONSTRUCTION DEBT (AS 43.18.100)	$
MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE (AS 29.88)	$
STATE AID FOR MISCELLANEOUS MUNICIPAL SERVICES (AS 29.89)	$
TOTAL AID	$

The millage equivalent of this state aid, based on the dollar value of a mill in the municipality during the current assessment year and for the preceding assessment year, is:

	MILLAGE EQUIVALENT	
	PREVIOUS YEAR	THIS YEAR
PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE	.... MILLS	.... MILLS
STATE AID FOR RETIREMENT OF SCHOOL CONSTRUCTION DEBT	.... MILLS	.... MILLS
MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE	.... MILLS	.... MILLS
STATE AID FOR MISCELLANEOUS MUNICIPAL SERVICES	.... MILLS	.... MILLS
TOTAL MILLAGE EQUIVALENT	.... MILLS	.... MILLS"

Notice shall be provided

(1) by furnishing a copy of the notice with tax statements mailed for the fiscal year for which aid is received; or

(2) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget.

(b) If the municipality levies and collects only a sales tax, the governing body shall provide a notice substantially in the form set out in (a) of this section. In providing notice under this subsection, the council or assembly shall substitute for the millage equivalency its estimate of the equivalent sales tax rate for each of the categories of financial assistance set out in (a) of this section. Notice shall be provided

(1) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget; or

(2) if there is no newspaper of general circulation in the municipality, by posting a copy of the notice for at least 20 days in at least two public places within the municipality, with posting to occur not later than 45 days after the final adoption of the municipality's budget.

(c) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.88 and state aid for miscellaneous municipal services under AS 29.89. The Department of Community and Regional Affairs shall withhold annual allocations under those chapters until municipal officials demonstrate that the requirements of this section have been met. (§ 9 ch 155 SLA 1980)

Effective date. — Section 17, ch. 155, SLA 1980, provides that §§ 1 — 12 [including this section] of the act 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 the provisions of §§ 1 — 12 of this act, or on July 1, 1983, whichever is earlier. A total of $33,500,000 was appropriated for the programs for the fiscal year beginning July 1, 1980. The appropriations were made in §§ 51 and 52, ch. 120, SLA 1980, and § 6, ch. 166, SLA 1980.

Editor's note. — Section 12, ch. 155, SLA 1980, effective on the same day as AS 29.73.070, provides: "(a) Notwithstanding other provisions of secs. 1 — 11 of this act, (1) a municipality may not receive less than $25,000 plus an area cost-of-living differential during the first fiscal year in which this act is effective, and (2) a municipality which would receive under AS 29.88, added by sec. 2 of this act, less than 125 percent of the amount which it received for the last fiscal year under AS 43.18.010 — 43.18.045, repealed by sec. 11 of this act, is, for each of the first five fiscal years during which secs. 1 — 10 of this act are effective, entitled to receive an amount equal to 125 percent of the amount which it received for the last fiscal year under the former provisions of AS 43.18.010 — 43.18.045 in accordance with those provisions. (b) For the first five fiscal years during which secs. 1 — 10 of this act are effective, in order to pay the amounts required by (a) of this section, the allocations made by the Department of Community and Regional Affairs to the accounts established in AS 29.88.035, AS 29.89.080, and AS 29.90.020 shall be prorated by an amount which reduces the allocation to each account in equal proportion, and the prorated amounts shall be allocated to these accounts. (c) For the first five fiscal years during which secs. 1 — 10 of this act are effective, payment of an entitlement to a borough under AS 29.88 may be made to a borough only if the borough assembly agrees to allocate to each borough service area in the borough at least the amount of money that the service area received during the last fiscal year under the former provisions of AS 43.18.010 — 43.18.045, in accordance with these provisions."

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

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

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

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

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

(3) study the need for improvement in the timely delivery of emergency services to residents of the participating municipalities;

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

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

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

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

(d) In this section

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

(2) "emergency service agency" means an agency that provides emergency services;

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

(§ 2 ch 107 SLA 1981)

Chapter 78. General Provisions.

Sec. 29.78.010. Definitions. In this title, unless otherwise provided, or the context otherwise requires,

(1) "borough" means a general law first, second or third class organized borough;

(2) "city" means a general law first or second class city;

(3) "conditional use" means exception, special exception, special use, or special permit designated in the zoning ordinance;

(4) "consolidation" means dissolution of two or more municipalities and their incorporation as a new municipality;

(5) "majority" means a simple majority;

(6) "merger" means dissolution of a municipality and its absorption by another municipality;

(7) "municipal election" includes but is not limited to elections to choose city councilmen, borough assemblymen, school board members and utility board members;

(8) "municipality" means a general law municipal corporation and political subdivision, which is a first or second class borough or city, or a third class borough, incorporated under the laws of the state;

(9) "owner", "record owner", or "owner of record" means owner of record or purchaser of record;

(10) "personal property" means tangible property other than real property, such as merchandise and stock in trade, machinery and equipment, furniture and fixtures, motor vehicles and vehicles, boats and vessels and aircraft;

(11) "property" means real and personal property;

(12) "published" means appearing at least once in a newspaper of general circulation distributed within the municipality or, if there is no newspaper of general circulation distributed within the municipality, posting in three public places for at least five days;

(13) "real property" means land and improvements and all possessory rights and privileges appurtenant to the property, and includes personal property affixed to the land or improvements;

(14) "regular election" means the municipal election held on the first Tuesday of October annually, or on an election date or at an interval of years provided by ordinance;

(15) "street" includes streets, avenues, boulevards, roads, lanes alleys, and other ways;

(16) "subdivision" means the division of a tract or parcel of land into two or more lots, sites, or other divisions for the purpose, whether immediate or future, of sale or building development, includes resubdivision, and, when appropriate to the context, relates to the process of subdividing or to the land or area subdivided;

(17) "voter" means a United States citizen who is qualified to vote in state elections and has been a resident of the municipality for 30 days immediately preceding the election and who is registered to vote in state elections and is not disqualified under art. V of the state constitution.

(18) "areawide power" means a power of an organized borough exercised throughout the borough.

(19) "nonareawide power" means a power of an organized borough exercised by the borough only in the area outside of cities. (§ 2 ch 118 SLA 1972; am § 7 ch 212 SLA 1976, am § 10 ch 93 SLA 1977)

Effect of amendments. — The 1976 amendment, effective June 21, 1976, added paragraphs (18) and (19).

The 1977 amendment substituted "first, second or third class" for "first or second class" in paragraph (1).

Am. Jur. reference.—42 Am. Jur., Property, § 10 et seq.

Chapter 88. Municipal Tax Resource Equalization.

Effective date of chapter. — Section 17, ch. 155, SLA 1980, provides that §§ 1 — 12 of the act 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 the provisions of §§ 1 — 12 of this act or on July 1, 1983, whichever is earlier. A total of $33,500,000 was appropriated for the programs for the fiscal year beginning July 1, 1980. The appropriations were made in §§ 81 and 82, ch. 120, SLA 1980, and § 6, ch. 165, SLA 1980.

Editor's note. — Section 1, ch. 155, SLA 1980, effective on the same day as this chapter, provides "It is the purpose of sec. 2 of this act [this chapter] to (1) improve the revenue raising and distribution system for the benefit of residents of home rule and general law municipalities by providing for more equitable allocation of financial resources among municipalities to improve their fiscal capacities, and (2) assure that no municipality suffers impoverishment of necessary public services, relative to other municipalities, because of the chance location of taxable wealth in the state."

Section 12, ch. 155, SLA 1980, effective on the same day as this chapter, provides "(a) Notwithstanding other provisions of secs. 1 — 11 of this act, (1) a municipality may not receive less than $25,000 plus an area cost-of-living differential during the first fiscal year in which this act is effective, and (2) a municipality which would receive under AS 29.88, added by sec. 4 of this act, less than 125 percent of the amount which it received for the last fiscal year under AS 43.18.010 — 43.18.045, repealed by sec. 11 of this act, is, for each of the first five fiscal years during which secs. 1 — 10 of this act are effective, entitled to receive an amount equal to 125 percent of the amount which it received for the last fiscal year under the former provisions of AS 43.18.010 — 43.18.045 in accordance with those provisions. (b) For the first five fiscal years during which secs. 1 — 10 of this act are effective, in order to pay the amounts required by (a) of this section, the allocations made by the Department of Community and Regional Affairs to the accounts established in AS 29.88.035, AS 29.89.080, and AS 29.90.020 shall be prorated by an amount which reduces the allocation to each account in equal proportion, and the prorated amounts shall be allocated to those accounts. (c) For the first five fiscal years during which secs. 1 — 10 of this act are effective, payment of an entitlement to a borough under AS 29.88 may be made to a borough only if the borough assembly agrees to allocate to each borough service area in the borough at least the amount of money that the service area received during the last fiscal year under the former provisions of AS 43.18.010 — 43.18.045, in accordance with those provisions."

Sec. 29.88.010. State equalization of tax resources for local government services. (a) During each fiscal year the department shall compute an equalization entitlement for local government services provided by a taxing unit.

(b) The equalization entitlement computed for a taxing unit is based on the population, relative ability to generate revenue, and local tax burden of the taxing unit as it is determined by the application of the

formula

Entitlement = P x R

where P = population, and

R = millage rate equivalent, determined by dividing the sum of the locally generated revenue of the taxing unit by one-tenth of one percent (0.1) of the full and true value of assessed property of the taxing unit determined under AS 29.88.020(d); however, the property value used under this subsection may not be less than 15 percent of the statewide average per capita full and true assessed property value.

(c) For purposes of this section, locally generated revenue

(1) includes

(A) the actual revenue derived from the levy and collection of local taxes in the taxing unit for local government services during the preceding fiscal year of the taxing unit;

(B) motor vehicle payments received by the municipality during the preceding fiscal year under AS 28.10.431;

(C) revenue from fees, rentals, leases, penalties, licenses or permits received during the preceding fiscal year by the municipality for a function or service over which it has control, including revenues derived from parks and recreation services, mass transit, offstreet parking, and garbage and solid waste disposal services;

(D) special assessments received during the preceding fiscal year, and

(E) payments received by a municipality from a utility which are in place of taxes levied and collected by the municipality;

(2) excludes

(A) revenue derived from the levy and collection of municipal taxes and appropriated for the operating expenses and debt service of utilities;

(B) revenue from interest earned on investments and from the sale and lease of land or equipment, and

(C) all other revenue from whatever service derived. (§ 2 ch 155 SLA 1980)

Sec. 29.88.015. Determination of population. (a) For purposes of this chapter, the population of a taxing unit shall be determined annually by the latest figures of the United States Bureau of the Census or other population data which, in the judgment of the department, is reliable.

(b) The population of the taxing unit includes the population of any military reservation which is a part of the taxing unit. (§ 2 ch 155 SLA 1980)

Sec. 29.88.020. Determination of millage rate equivalent. (a) The department may require a municipality to return a certification, signed by the municipal treasurer or manager and the mayor, which provides an estimate of the locally generated revenue received by the municipality during the preceding fiscal year.

(b) By October 15 of each year, the department shall make an initial determination of the millage rate equivalent of each taxing unit to be used for computing and distributing equalization entitlements for the current fiscal year under this chapter. The department shall base the initial determination on the estimates in the certification returned by a municipality under (a) of this section.

(c) As early as possible, but not later than December 15 of each year, the department shall make a final determination of the millage rate equivalent of each taxing unit to use to compute and distribute equalization entitlements under this chapter. The department shall base the determination on audits, financial statements and other financial reports prepared and submitted by a municipality. The department shall adjust the locally generated revenue reported by a municipality to exclude the municipal revenue claimed by the municipality which does not qualify for inclusion in or recognition as locally generated revenue for local government purposes under AS 29.88.010(c)(1). The adjustment shall be made by deducting from total revenue claimed by the municipality the amount of the department's estimate of revenue which is not recognized for local government purposes.

(d) The full and true assessed property value shall be determined by the department in the manner provided for the computation of state aid to education under AS 14.17.140. When the determination of locally generated revenue includes revenue of a utility received under AS 29.88.010(c)(1)(E), the full and true assessed property value shall include the computed assessed value of the utility, determined by dividing the amount of the payment in place of taxes made by the utility by the millage rate which would apply to the utility if the utility were subject to levy and collection of taxes under AS 29.53.

(e) In addition to the computation for municipalities which levy and collect a property tax, the department shall determine an estimated full and true assessed property value under (d) of this section for

(1) each municipality which is a school district and which does not levy and collect a property tax;

(2) each second class city with a population of 750 or more persons; however, a computation is not required under this paragraph more often than once during a period of three successive calendar years; and

(3) all other second class cities, by determining the average per capita full and true assessed property value of all cities having a population of less than 750 persons in which an assessment has been completed by a municipality or for which a determination is not made under (1) or (2) of this subsection.

(f) The department shall annually compute a statewide average per capita full and true assessed property value. (§ 2 ch 155 SLA 1980)

Sec. 29.60.025. Reports. A payment of an equalization entitlement may not be made to a municipality under this chapter until the municipality has submitted its certificate of estimated revenue and its financial report to the department for the fiscal year preceding the year for which the equalization entitlement is sought, together with a budget for the municipality's current fiscal year. The financial report shall include a listing of general revenue collected from taxes levied and assessed by the municipality and any other revenue which, in the opinion of the municipal officials, is eligible for inclusion in computations of the locally generated revenue of the taxing unit. (§ 2 ch 155 SLA 1980)

Sec. 29.60.030. Limitation on computation and use of payments. (a) An equalization entitlement generated by the general tax levy of a taxing unit may be used only for authorized expenditures of that taxing unit, but up to 15 percent of the payment of an equalization entitlement generated by areawide revenue of a municipality may be used by the municipality for areawide or nonareawide purposes at the discretion of its assembly or council.

(b) An equalization entitlement determined with reference to revenue other than revenue obtained from the levy and collection of taxes may be used for areawide or nonareawide purposes, at the discretion of the assembly or council (§ 2 ch 155 SLA 1980)

Sec. 29.88.035. Tax equalization account. The tax equalization account is established. Money to carry out the provisions of this chapter shall be allocated by the department to the account. The amount allocated to the account shall be fully distributed by the department as payments to municipalities to fulfill each municipality's share authorized under AS 29.88.010. The amount allocated to the account shall be distributed by the department pro rata among eligible municipalities. (§ 2 ch 155 SLA 1980)

Sec. 29.88.040. Administration. (a) The department may adopt regulations necessary to implement this chapter. The regulations shall include, among other provisions,

(1) procedures and filing dates for submitting certification and financial reports;

(2) procedures for obtaining information required to compute and determine the municipality's millage rate equivalent; and

(3) procedures by which the department shall notify a municipality in writing of the reasons for a proposed disallowance or adjustment of any factor bearing upon the determination of the municipality's entitlement and by which the municipality will be provided reasonable time in which to respond or to challenge the department's determination.

(b) The department shall make reasonable efforts to advise and assist municipalities in collecting information and completing reports necessary for the determination of entitlements under this chapter.

(c) The department shall, by regulation, classify for inclusion or exclusion as a component of a municipality's millage rate equivalent under AS 29.88.010 any tax revenue appropriated for a utility not included in the definition set out in AS 29.88.045(4) (§ 2 ch 155 SLA 1980)

Sec. 29.88.045. Definitions. In this chapter

(1) "department" means the Department of Community and Regional Affairs;

(2) "municipality" means a city, borough or unified municipality incorporated under the laws of the state;

(3) "taxing unit" means a municipality and

(A) in a borough or unified municipality, a service area or the entire area outside cities;

(B) in a city, a differential tax zone.

(4) "utilities" means electricity, water, sewer, gas, heat, or telephone services, and refuse and garbage collection services (§ 2 ch 155 SLA 1980)

Chapter 89. State Aid for Miscellaneous Municipal Purposes.

Effective date of chapter. -- Section 17, ch. 155, SLA 1980 provides that §§ 1 — 12 of the act 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 the provisions of §§ 1 — 12 of this act or on July 1, 1983, whichever is earlier. A total of $33,500,000 was appropriated for the programs 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. — Section 12, ch. 155, SLA 1980, effective on the same day as this chapter, provides: "(a) Notwithstanding other provisions of secs. 1 — 11 of this act, (1) a municipality may not receive less than $25,000 plus an area cost-of-living differential during the first fiscal year in which this act is effective; and (2) a municipality which would receive under AS 29.88, added by sec. 2 of this act, less than 125 percent of the amount which it received for the last fiscal year under AS 43.18.010 — 43.18.045, repealed by sec. 11 of this act, is, for each of the first five fiscal years during which secs. 1 — 10 of this act are effective, entitled to receive an amount equal to 125 percent of the amount which it received for the last fiscal year under the former provisions of AS 43.18.010 — 43.18.045 in accordance with those provisions. (b) For the first five fiscal years during which secs. 1 — 10 of this act are effective, in order to pay the amounts required by (a) of this section, the allocations made by the Department of Community and Regional Affairs to the accounts established in AS 29.88.035, AS 29.89.060, and AS 29.90.020 shall be prorated by an amount which reduces the allocation to each account in equal proportion, and the prorated amounts shall be allocated to these accounts. (c) For the first five fiscal years during which secs. 1 — 10 of this act are effective, payment of an entitlement to a borough under AS 29.88 may be made to a borough only if the borough assembly agrees to allocate to each borough service area in the borough at least the amount of money that the service area received during the last fiscal year under the former provisions of AS 43.18.010 — 43.18.045, in accordance with those provisions."

Sec. 29.89.010. Revenue sharing payable. In addition to the equalization entitlements paid under AS 29.88, during each fiscal year the department shall pay aid

(1) to a municipality or other eligible recipient which has the power to provide the services described in AS 29.89.020 - 29.89.040 and exercises the power in the manner required by this chapter;

(2) to a Native village government under AS 29.89.050. (§ 3 ch 155 SLA 1980)

Sec. 29.89.020. State aid to municipalities for roads. (a) The department shall pay to a municipality which has power to provide for road maintenance and exercises that power, $2,500 a mile for each mile of road, street or highway maintained by the local government, excluding (1) the official state highway system, (2) roads, streets or highways not dedicated to public use, (3) roads, streets or highways maintained under the local service road program (AS 19.30.111 —

19.30.251), and (4) alleyways, in accordance with regulations adopted by the Department of Transportation and Public Facilities. A payment may not be made under this subsection for maintenance of a road which is not used by automotive equipment.

(b) A frozen waterway and a connection from an inhabited area to a waterway which may be safely used for public transportation by automotive equipment and is so used during a portion of a year is eligible for a payment of $1,500 per mile if the waterway and connection are maintained during the period of use by a municipality or combination of municipalities. The department, after consultation with the Department of Transportation and Public Facilities, shall determine which waterways and connections qualify and, where the waterways or connections lie outside the corporate limits of a municipality, which municipalities shall receive the payments under this subsection, unless the municipalities involved have agreed in writing to a particular distribution. (§ 3 ch 155 SLA 1980)

Sec. 29.89.030. State aid to municipalities and other eligible recipients for health facilities and hospitals. (a) The department shall pay

(1) to a municipality which has the power to provide hospital facilities and services and which exercises that power, $1,000 per bed for each bed actually used for patient care, limited to the number of beds provided for in the construction design of the hospital, or $250,000 a hospital for those hospitals with 10 or more beds, or $50,000 a hospital for those hospitals with less than 10 beds, as the municipality may elect; money received under this paragraph may be used only for hospitals and shall be apportioned among qualifying hospitals as the municipality determines;

(2) on the basis set out in (1) of this subsection to a municipality for a nonprofit hospital not operated by a municipality if the municipality first certifies to the department that the nonprofit hospital is in compliance with all standards for hospitals which have been adopted by the municipality; money may not be paid on behalf of a nonprofit hospital without this certification; payments to the municipality shall be transferred to the nonprofit hospital in accordance with the basis by which the payment was generated by the hospital, and shall be applied to the annual cost of operation and maintenance of the hospital or for the provision of health care service at the hospital as the directors of the hospital determine;

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

(b) A hospital may not receive payment under both (a)(1) and (a)(2) of this section.

(c) Money received by a municipality under (a)(3) of this section shall be used for expenses of health services or operation and maintenance of health facilities as the municipality determines.

(d) Before money may be distributed under this section, the commissioner of health and social services shall certify to the commissioner of community and regional affairs that any accumulation of assets by nonprofit corporations or other recipients under this section is dedicated irrevocably to a public purpose. (§ 3 ch 155 SLA 1980; am §§ 1, 2 ch 103 SLA 1981)

Cross reference. — As to state aid for hospital construction, see AS 29.90.

Editor's note. — As to reports by Department of Health and Social Services and Department of Community and Regional Affairs and commissioner of health and social services, see § 14, ch. 155, SLA 1980, effective July 1, 1980, in the 1980 Temporary and Special Acts and Resolves.

Sec. 29.89.040. State aid to volunteer fire departments in the unorganized borough. (a) The department shall pay to a volunteer fire department registered with the state fire marshal and serving an area not in an organized borough or city a sum for protection purposes equal to $10 per capita for the population served by the department, as determined by the state fire marshal.

(b) A grant shall be made under (a) of this section to facilitate the organization of a volunteer fire department in an area not in an organized borough or city, upon application of the proposed fire protection group to the state fire marshal and upon approval of applications according to standards of organization and service prescribed by regulations adopted by the state fire marshal. (§ 3 ch 155 SLA 1980)

Sec. 29.89.050. State aid to Native village governments. The state shall pay $25,000 to a Native village government for a village which is not incorporated as a city under this title. In this section, "Native village government" means

(1) a local governing body organized by authority of the Act of Congress of June 18, 1934 (25 U.S.C. § 476); or

(2) a traditional village council or, if there is no traditional village council, the paramount chief or other governing body of a Native village which meets the requirements of the Alaska Native Claims Settlement Act (43 U.S.C. §§ 1601 — 1628). (§ 3 ch 155 SLA 1980)

Sec. 29.89.060. Population determination. For purposes of this chapter, population shall be determined by the latest figures of the United States Bureau of the Census or other reliable population data, including but not limited to public school enrollment figures, public utility connection, registered voters or certified employment payrolls. (§ 3 ch 155 SLA 1980)

Sec. 29.89.070. Area cost-of-living differential. (a) Payments to a municipality or other eligible recipient under AS 29.89.020 — 29.89.030 shall reflect area cost-of-living differentials. Payments shall be based upon the sum of per capita, per mile and per bed or facility grants due each municipality or other recipient multiplied by the appropriate area cost-of-living differential. The area cost-of-living differential for each recipient shall be determined annually by election district under the provisions of AS 39.27.030. Application of the area cost-of-living differential may not result in distribution of an amount less than the amount of the payment determined without application of this section.

(b) The election districts used to establish area cost-of-living differentials under (a) of this section are those designated by the proclamation of reapportionment and redistricting of December 7, 1961, and retained for the house of representatives by proclamation of the governor September 3, 1965. (§ 3 ch 155 SLA 1980)

Sec. 29.89.080. Miscellaneous services account. The miscellaneous services account is established. Money to carry out the provisions of this chapter shall be allocated by the department to the account in accordance with AS 29.95.010. If amounts in the account are insufficient to pay each municipality's or other recipient's share authorized under this chapter, the amounts which are available shall be distributed pro rata among eligible municipalities and other recipients. (§ 3 ch 155 SLA 1980)

Sec. 29.89.090. Regulations. The department shall adopt regulations necessary to carry out the purposes of this chapter. The regulations shall include minimum standards required to qualify a municipality or other recipient for payments for each service. The department may require a municipality or other recipient to submit a performance report adequate to demonstrate to the department that a service for which payment is requested under this chapter was performed by the municipality or other recipient and meets minimum standards of service prescribed by regulation. (§ 3 ch 155 SLA 1980)

Sec. 29.89.100. Definitions. In this chapter

(1) "department" means the Department of Community and Regional Affairs;

(2) "health facility"

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

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

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

(3) "hospital" means a licensed hospital determined by the Department of Health and Social Services to be a general hospital; the term excludes a facility operated or wholly supported by the state or the federal government. (§ 3 ch 155 SLA 1980)

Chapter 90. State Aid for Hospital Construction.

Section

10. State aid for hospital construction
20. Hospital construction assistance account
30. Definitions

Cross reference. — As to state aid to municipalities and other eligible recipients for health facilities and hospitals, see AS 29.89.030.

Effective date of chapter. — Section 17, ch. 155, SLA 1980, provides that §§ 1 — 12 of the act 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 the provisions of §§ 1 — 12 of this act or on July 1, 1983, whichever is earlier. A total of $33,500,000 was appropriated for the programs for the fiscal year beginning July 1, 1980. The appropriations were made in §§ 51 and 52, ch. 120, SLA 1980, and § 6, ch. 155, SLA 1980.

Editor's note. — Section 12, ch. 155, SLA 1980, effective on the same day as this chapter, provides: "(a) Notwithstanding other provisions of secs. 1 — 11 of this act, (1) a municipality may not receive less than $25,000 plus an area cost-of-living differential during the first fiscal year in which this act is effective; and (2) a municipality which would receive under AS 29.60, added by sec. 2 of this act, less than 125 percent of the amount which it received for the last fiscal year under AS 43.18.010 — 43.18.045, repealed by sec. 11 of this act, is, for each of the first five fiscal years during which secs. 1 — 10 of this act are effective, entitled to receive an amount equal to 125 percent of the amount which it received for the last fiscal year under the former provisions of AS 43.18.010 — 43.18.045 in accordance with those provisions. (b) For the first five fiscal years during which secs. 1 — 10 of this act are effective, in order to pay the amounts required by (a) of this section, the allocations made by the Department of Community and Regional Affairs to the accounts established in AS 29.88.035, AS 29.89.060, and AS 29.90.020 shall be prorated by an amount which reduces the allocation to each account in equal proportion, and the prorated amounts shall be allocated to these accounts. (c) For the first five fiscal years during which secs. 1 — 10 of this act are effective, payment of an entitlement to a borough under AS 29.88 may be made to a borough only if the borough assembly agrees to allocate to each borough service area in the borough at least the amount of money that the service area received during the last fiscal year under the former provisions of AS 43.18.010 — 43.18.045, in accordance with those provisions."

As to reports by Department of Health and Social Services and Department of Community and Regional Affairs and commissioner of health and social services, see § 14, ch. 155, SLA 1980, in the 1980 Temporary and Special Acts and Resolves

Sec. 29.90.010. State aid for hospital and health facility construction. If construction of a hospital began after January 1, 1968, or if construction of a health facility began after January 1, and before July 1, 1980, and state matching aid for construction approved for payment to the municipality or other hospital or health facility sponsor constitutes less than 25 percent of the total project cost, the department shall pay to the municipality or other hospital or health facility sponsor each fiscal year $2,500 a bed for the maximum number of beds provided for in the construction design of the hospital or health facility or five percent of the total project cost, whichever is greater. State aid provided for in this section shall continue until the municipality or other hospital or health facility sponsor has received an amount which, combined with state matching money for construction of the hospital or health facility, equals 25 percent of the total project cost. Money received for construction may not be used for any other purpose. (§ 4 ch 155 SLA 1980; am § 3 ch 103 SLA 1981)

Sec. 29.90.020. Hospital and health facility construction assistance account. The hospital and health facility construction assistance account is established. Money to carry out the provisions of this chapter shall be allocated by the department to the account in accordance with AS 29.95.010. If amounts in the account are insufficient to pay each recipient's share authorized under this chapter, the amounts which are available shall be distributed pro rata among eligible recipients. (§ 4 ch 155 SLA 1980; am § 4 ch 103 SLA 1981)

Sec. 29.90.030. Definitions. In this chapter

(1) "department" means the Department of Community and Regional Affairs;

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

(3) "total project cost" means

(A) costs directly related to the project; and

(B) the total of all costs of financing and carrying out the project, including but not limited to,

(i) the costs of all necessary studies, surveys, plans and specifications, architectural, engineering or other special services, acquisition of real property, site preparation and development, purchase, construction, reconstruction and improvement of real property, and the acquisition of machinery and equipment as may be necessary in connection with the project,

(ii) an allocable portion of the administrative and operating expenses of the municipality or other hospital sponsor;

(iii) the cost of financing the project, including interest on bonds issued to finance the project; and

(iv) the cost of other items, including any indemnity and surety bonds and premiums on insurance, legal fees, fees and expenses of trustees, depositaries, financial advisors, and paying agents for the bonds issued as the issuer considers necessary

(4) "health facility"

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

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

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

(§ 4 ch 155 SLA 1980; am § 5 ch 103 SLA 1981)

Chapter 95. Administration of Municipal Financial Assistance Programs.

Section

10. Allocation and distribution
20. Qualification for minimum payment
30. Proration of payments

Effective date of chapter. — Section 17, ch. 155, SLA 1980, provides that §§ 1 — 12 of the act 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 the provisions of §§ 1 — 12 of this act or on July 1, 1983, whichever is earlier. A total of $33,500,000 was appropriated for the programs for the fiscal year beginning July 1, 1980. The appropriations were made in §§ 51 and 52, ch. 120, SLA 1980, and § 6, ch. 155, SLA 1980.

Editor's note. — Section 12, ch. 155, SLA 1980, effective on the same day as this chapter, provides: "(a) Notwithstanding other provisions of secs. 1 — 11 of this act, (1) a municipality may not receive less than $25,000 plus an area cost-of-living differential during the first fiscal year in which this act is effective; and (2) a municipality which would receive under AS 29.88, added by sec. 2 of this act, less than 125 percent of the amount which it received for the last fiscal year under AS 43.18.010 — 43.18.045, repealed by sec. 11 of this act, is, for each of the first five fiscal years during which secs. 1 — 10 of this act are effective, entitled to receive an amount equal to 125 percent of the amount which it received for the last fiscal year under the former provisions of AS 43.18.010 — 43.18.045 in accordance with those provisions. (b) For the first five fiscal years during which secs. 1 — 10 of this act are effective, in order to pay the amounts required by (a) of this section, the allocations made by the Department of Community and Regional Affairs to the accounts established in AS 29.88.035, AS 29.89.080, and AS 29.90.020 shall be prorated by an amount which reduces the allocation to each account in equal proportion, and the prorated amounts shall be allocated to those accounts. (c) For the first five fiscal years during which secs. 1 — 10 of this act are effective payment of an entitlement to a borough under AS 29.88 may be made to a borough only if the borough assembly agrees to allocate to each borough service area in the borough at least the amount of money that the service area received during the last fiscal year under the former provisions of AS 43.18.010 — 43.18.045, in accordance with those provisions."

Sec. 29.95.010. Allocation and distribution. (a) Each year, the Department of Community and Regional Affairs shall allocate money appropriated to the accounts established in AS 29.88, AS 29.89, and AS 29.90 in the amounts determined by the legislature.

(b) Money in the miscellaneous services account established in AS 29.89.080 which exceeds the amount required to fully fund distributions authorized by AS 29.89 shall be reallocated to the tax equalization account established in AS 29.88.035 and distributed according to the provisions of AS 29.88.

(c) Money in the hospital construction assistance account established in AS 29.90.020 which exceeds the amount required to fully

fund distributions authorized by AS 29.90 shall be reallocated to the tax equalization account established in AS 29.88.035 and distributed according to the provisions of AS 29.88. (§ 5 ch 155 SLA 1980)

Sec. 29.95.020. Qualification for minimum payment. (a) A municipality qualifying for an entitlement under AS 29.88 or AS 29.89 shall receive a minimum payment of $25,000 plus an area cost-of-living differential for each fiscal year if:

(1) the municipality has conducted a regular election under AS 29.28.010 — 29.28.060 during the fiscal year preceding the year for which payment of an entitlement is authorized by AS 29.88 or AS 29.89 and has reported the results of the election to the commissioner of the Department of Community and Regional Affairs;

(2) regular council meetings are held in the municipality in accordance with the requirements of AS 29.23.210 during the fiscal year preceding the year for which payment of an entitlement is authorized by AS 29.88 or AS 29.89 and a record of the proceedings is maintained;

(3) a municipal budget has been adopted for the fiscal year during which payment of an entitlement is authorized by AS 29.88 or AS 29.89 and an audit or financial statement for the preceding fiscal year has been prepared and furnished to the Department of Community and Regional Affairs in accordance with AS 29.23.560(a); and

(4) local ordinances adopted by the governing body of the municipality have been codified in accordance with AS 29.48.180.

(b) The area cost-of-living differential payable to each municipality under this section shall be determined annually by election district under the provisions of AS 39.27.030. Except as provided in AS 29.95.030, application of the area cost-of-living differential may not result in a payment which is less than the minimum payment determined under (a) of this section. For purposes of this subsection, the election districts used are those designated by the proclamation of reapportionment and redistricting of December 7, 1961, and retained for the house of representatives by proclamation of the governor September 3, 1965.

(c) The Department of Community and Regional Affairs shall pay to each municipality eligible to receive a minimum payment under this section an amount equal to the difference between the minimum payment determined under (a) and (b) of this section and the sum of the amounts payable for the same fiscal year under AS 29.88 and AS 29.89.

(d) A payment under this section may be prorated and reduced under AS 29.95.030.

(e) Payments under this section shall be made from the money allocated to the tax equalization account established in AS 29.88.035. (§ 5 ch 155 SLA 1980)

Sec. 29.95.030 Proration of payments. (a) Payments under AS 29.95.020 and AS 29.88 shall equal the amount allocated to the tax equalization account (AS 29.88.035), adjusted in accordance with AS 29.95.010.

(b) Adjustments of payments shall be determined by prorating amounts payable under AS 29.95.020 and amounts payable under AS 29.88 by a factor which, when applied, reduces all payments in equal proportion so that payments under AS 29.95.020 and payments under AS 29.88 equal the amount allocated to the tax equalization account established in AS 29.88.035. (§ 5 ch 155 SLA 1980)