

ALASKA LEGISLATURE COMMITTEE FILE 1985-1986 86/2
3214.23 HCRA HB 325 22

1 (6) for a second class borough, a designation of are^{wide}wide
2 and nonareawide powers to be exercised;

3 (7) maps, documents, and other information required by the
4 Department of Community and Regional Affairs;

5 (8) for a first class city [INCORPORATION], the signatures
6 and resident address of 50 permanent resident voters or of 15 percent
7 of the permanent resident voters within the proposed municipality,
8 whichever is greater, based on the number who voted in the area in the
9 last general election;

10 (9) for a town meeting home rule city or a second class
11 city [INCORPORATION], the signature and resident address of 25 perma-
12 nent resident voters or of 15 percent of the permanent resident voters
13 within the proposed municipality, whichever is greater, based on the
14 number who voted in the area in the last general election;

15 (10) for a borough [INCORPORATION], the signature and resi-
16 dent address of 15 percent of the permanent resident voters in each
17 first class city and 15 percent of voters in the area outside first
18 class cities based on the number who voted in the respective areas in
19 the last general election;

20 (11) for a first or second class city, a designation of the
21 powers proposed by the petitioners to be exercised;

22 (12) a proposed operating budget for the municipality pro-
23 jecting sources of income and items of expenditure through the first
24 full fiscal year of operation;

25 (13) for a town meeting home rule city, a proposed home rule
26 charter.

27 * Sec. 17. AS 29.18.110 is amended by adding a new subsection to read:

28 (e) A home rule charter included in an incorporation petition
29 under AS 29.18.050(13) is considered part of the incorporation

1 question. The home rule charter is adopted if the voters approve
2 incorporation of the town meeting home rule city.

3 * Sec. 18. AS 29.18.180(a) is amended to read:

4 (a) For the purpose of defraying the cost of transition to
5 borough or city government and in order to provide for development and
6 interim governmental operations, each borough and city incorporated
7 after January 1, 1968, or, in the case of a second class city, incor-
8 porated or reclassified after January 1, 1968, other than a unified
9 municipality incorporated under the provisions of AS 29.68.240 -
10 29.68.440 or former AS 29.85, or a municipality otherwise incorporated
11 by consolidation, is entitled to an organization grant equal to \$10
12 for every voter who voted in the borough or city incorporation elec-
13 tion. However, each incorporated borough, [AND EACH] first class
14 city, and town meeting home rule city incorporated or established by
15 reclassification outside an organized borough is entitled to at least
16 \$25,000.

17 * Sec. 19. AS 29.23.200 is amended to read:

18 Sec. 29.23.200. COMPOSITION, ELIGIBILITY, ELECTION AND TERM.

19 (a) Each first class representative home rule city has a council of
20 six members elected by the voters at large. Each ~~first or second~~ *delete* AM
#2

21 ~~class town meeting home rule~~ *delete* city has a council consisting of all
22 permanent resident voters within the city boundaries [SEVEN MEMBERS
23 ELECTED BY THE VOTERS AT LARGE]. The council of a first ~~OR SECOND~~ *delete*
24 class representative home rule city may by ordinance provide for
25 election of members other than on an at-large basis for all members. brackets

26 (b) A city voter is eligible to hold office as a member of the
27 council. The council may by ordinance establish residence require-
28 ments for council members not exceeding three years. A council member
29 who ceases to be eligible to be a city voter immediately forfeits that

1 office.

2 (c) Except for town meeting home rule cities, council members
3 [COUNCILMEN] are selected for three-year terms and until their succes-
4 sors are elected and have qualified. The regular term of office
5 begins on the first Monday following certification of the election.
6 The council may provide by ordinance for different terms not to exceed
7 four years, except that the current term of incumbent councilmen may
8 not be altered.

9 * Sec. 20. AS 29.23.210 is amended by adding a new subsection to read:

10 (e) This section applies to representative home rule cities and
11 general law cities.

12 * Sec. 21. AS 29.23.250(a) is amended to read:

13 (a) A voter of a representative home rule or a general law city
14 is eligible to hold the office of mayor, except that a representative
15 home rule city may prescribe additional residency requirements by
16 charter. The council, for all other cities except town meeting home
17 rule cities, may by ordinance establish residence requirements for
18 candidates for mayor not exceeding three years.

19 * Sec. 22. AS 29.23.255 is amended by adding a new subsection to read:

20 (b) This section applies to general law and home rule municipal-
21 ities except town meeting home rule cities.

22 * Sec. 23. AS 29.23.540(c) is amended to read:

23 (c) A state employee or school district employee may not be
24 denied the right to serve as an elected municipal official because of
25 employment by the state or a school district unless specifically
26 prohibited by charter or ordinance [OF A MUNICIPALITY,] adopted at a
27 special or general election or at a town council meeting election.
28 However, a school district employee may not serve on a school district
29 board in the school district where employed. [PROVISIONS OF THIS

1 SECTION DO NOT APPLY TO TERM OF OFFICE IN EFFECT ON AUGUST 24, 1976.]

2 * Sec. 24. AS 29.28.010(a) is amended to read:

3 (a) The governing body [BOROUGH ASSEMBLY OR CITY COUNCIL] shall
4 prescribe the general rules for conducting regular and special municipi-
5 pal elections and appoint at least three judges for each polling
6 place. The general rules for conducting town council meeting elec-
7 tions shall be prescribed in the charter of a town meeting home rule
8 city. A [THE] municipality may not alter the voter qualification
9 requirements of this title.

10 * Sec. 25. AS 29.28.250 is amended to read:

11 Sec. 29.28.250. ELECTION OF SUCCESSOR. If the voters recall an
12 officer, the clerk shall conduct an election for a successor to fill
13 the unexpired term. The election shall be held at least 10 but not
14 more than 45 days from the date of the recall election. However, if a
15 regular or special election occurs within 75 days of the recall elec-
16 tion, the successor to the recalled official shall be chosen at that
17 regular or special election. Unless the incumbent was elected in a
18 town council meeting of a town meeting home rule city, the [THE]
19 procedures and requirements for the regular election for the office
20 from which the incumbent is recalled apply to the election conducted
21 under this section.

22 * Sec. 26. AS 29.43.030 is amended to read:

23 Sec. 29.43.030. EDUCATION. A representative home [HOME] rule
24 and a first class city [CITIES] outside a borough constitutes a [BOR-
25 OUGHNS CONSTITUTE] city school district [DISTRICTS] and shall estab-
26 lish, maintain, and operate a system of public schools as provided by
27 AS 29.33.050 for boroughs.

28 * Sec. 27. AS 29.43.030 is amended by adding a new subsection to read:

29 (b) A town meeting home rule city is not a school district and

1 may not establish a system of public schools.

2 * Sec. 28. AS 29.43.040 is amended to read:

3 Sec. 29.43.040. PLANNING AND ZONING. (a) A representative home
4 [HOME] rule or a [AND] first class city [CITIES] outside a first or
5 [AND] second class borough [BOROUGHS] shall, and a town meeting home
6 rule or second class city [CITIES] outside a first or [AND] second
7 class borough [BOROUGHS] may, provide for planning, platting and
8 zoning, as provided by AS 29.33.070 - 29.33.245 for boroughs.

9 (b) A representative home [HOME] rule or a [AND] first class
10 city [CITIES] within a third class borough [BOROUGHS] shall, and a
11 town meeting home rule or second class city [CITIES] within a third
12 class borough [BOROUGHS] may, provide for planning, platting and
13 zoning, as provided by AS 29.33.070 - 29.33.245 for boroughs.

14 * Sec. 29. AS 29.48.050 is amended to read:

15 Sec. 29.48.050. FRANCHISES AND PERMITS. (a) The assembly
16 acting for the area outside cities and the governing body of the city
17 [COUNCIL] acting for the area within a city may grant franchises,
18 including exclusive franchise privileges, for the construction, opera-
19 tion and maintenance of bus transportation systems and public util-
20 ities not regulated under AS 42.05 and may permit them the use of
21 streets and other public places under regulations prescribed by ordi-
22 nance.

23 (b) A franchise is not valid until it has been submitted to the
24 qualified voters of the city or borough area outside cities in which
25 it applies, and at least 55 percent of the votes cast are in favor of
26 the franchise. At least 30 days notice of a franchise referendum
27 election shall be given in the same manner as is provided for notice
28 of regular municipal elections, and the notice shall specify the
29 purpose of the election. The ordinance granting a franchise shall

1 provide for its submission for ratification to the qualified voters of
2 the city or borough area outside cities at either a regular or special
3 election, and the result of the election shall be canvassed publicly
4 by the council or assembly and spread upon the records of the minutes
5 and the result declared and certified in the same manner as in a
6 regular election. This subsection does not apply to town meeting home
7 rule cities.

8 (c) Public utilities regulated under AS 42.05 have the right to
9 use the streets and other public places, upon payment of a reasonable
10 permit fee and on reasonable terms and conditions and with reasonable
11 exceptions the governing body [ASSEMBLY OR COUNCIL] requires. A
12 dispute as to whether fees, terms, conditions, or exceptions are
13 reasonable shall be decided by the Alaska Public Utilities Commission.

14 * Sec. 30. AS 29.43.060 is amended to read:

15 Sec. 29.48.060. PUBLIC UTILITIES RATES. The assembly acting for
16 the area outside cities and the governing body of the city [COUNCIL]
17 acting for the area within a city may regulate, fix, establish and
18 change, as it considers proper, the rates and charges imposed for
19 utilities services given to the municipality or its inhabitants by a
20 municipally owned utility not regulated under AS 42.05.010 - 42.05.721
21 and may regulate and provide what is a reasonable deposit for meters
22 and security for service to be given, provided that interest is paid
23 on the deposit. All rates, charges and regulations shall be reason-
24 able and shall permit a fair and reasonable return on invested capi-
25 tal.

26 * Sec. 31. AS 29.48.070 is amended to read:

27 Sec. 29.48.070. HEARING FOR REGULATION OF UTILITIES RATES. If
28 the governing body [ASSEMBLY OR COUNCIL] considers it advisable to
29 regulate, change, or fix the rates to be charged by a public service

1 corporation, association or individual not regulated under AS 42.05,
2 it shall order a hearing to be held before the governing body at a
3 time and place specified. Notice of the hearing shall be given by at
4 least one publication in a newspaper of general circulation distribut-
5 ed within the municipality or, if no newspaper of general circulation
6 is distributed within the municipality, notice shall be given by
7 posting a notice in three public places within the city or borough
8 area outside cities receiving the utilities services and by serving
9 written notice upon the corporations, associations and individuals
10 whose rates are to be regulated, fixed, or changed in the same manner
11 that summonses are served. The notices shall be published or posted
12 and served at least 15 days before the hearing.

13 * Sec. 32. AS 29.48.090 is amended to read:

14 Sec. 29.48.090. FURTHER PROCEEDINGS. A hearing under AS 29.48.-
15 070 shall begin at the time stated in the notice but may be continued
16 from time to time. Except in a town meeting home rule city, at [AT]
17 least a quorum of the assembly or council shall be present at the
18 hearing. At the conclusion of the hearing the parties interested may
19 make [SUCH] arguments before the governing body [ASSEMBLY OR COUNCIL],
20 either in person or by attorney, as they consider proper, touching the
21 matters at issue, and thereafter the governing body [ASSEMBLY OR
22 COUNCIL] shall proceed to regulate and fix the rates by ordinance.
23 The date upon which the rates fixed or regulated take effect shall be
24 stated in the ordinance and shall be at least 10 days after passage
25 and approval of the ordinance.

26 * Sec. 33. AS 29.48.180(b) is amended to read:

27 (b) Within three years after incorporation of the municipality,
28 the municipal executive or the town council in a town meeting home
29 rule city, with the advice and assistance of a legal advisor, shall

1 have prepared a general codification of all municipal ordinances of
2 general applicability having the force and effect of law. The municipi-
3 pal code shall be revised and printed at least every five years,
4 unless the code is kept current by regular supplements.

5 * Sec. 34. AS 29.48.220 is amended to read:

6 Sec. 29.48.220. POST AUDIT. The governing body [ASSEMBLY OR
7 COUNCIL] shall provide for an annual independent audit of the accounts
8 and financial transactions of the municipality or, in the case of a
9 second class city, an audit or statement of annual income and expendi-
10 tures. To make the audit the governing body [ASSEMBLY OR COUNCIL]
11 shall designate a public accountant who has no personal interest,
12 direct or indirect, in the fiscal affairs of the municipality. Copies
13 of the audit shall be available to the public upon request. This
14 section applies to home rule and general law municipalities.

15 * Sec. 35. AS 29.53.025(a) is amended to read:

16 (a) Except for a town meeting home rule city, a municipality
17 [MUNICIPALITIES] may exclude, [OR] exempt, or partially exempt resi-
18 dential property from taxation by ordinance ratified by the voters at
19 a regular or special election. A town meeting home rule city may
20 exclude, exempt, or partially exempt residential property from taxa-
21 tion by ordinance adopted at a town council meeting. An exclusion or
22 exemption authorized by this section may not exceed \$10,000 for any
23 one residence.

24 * Sec. 36. AS 29.63.065(b) is amended to read:

25 (b) An exemption may not be granted under this section except
26 upon written application for the exemption on a form prescribed by the
27 state assessor for use by local assessors and in accordance with the
28 following requirements:

29 (1) the claimant must file the initial application during

1 the period of time between the date the assessment roll is certified
2 and the time of payment fixed by the governing body [ASSEMBLY OR
3 COUNCIL]; within one year of the date the assessment roll is certi-
4 fied the governing body [ASSEMBLY OR COUNCIL] for good cause shown may
5 waive the claimant's failure to make timely initial application for
6 the exemption and authorize the assessor to accept the application as
7 if timely filed;

8 (2) a claimant receiving the exemption must file with the
9 department by March 15 of each subsequent year a separate application
10 proving eligibility as of January 1 in order to retain the exemption;
11 within the same year the department for good cause shown may waive the
12 claimant's failure to make timely application and approve the applica-
13 tion as if timely filed;

14 (3) if an application is filed within the required time
15 under this subsection and is approved by the governing body [ASSEMBLY
16 OR COUNCIL], the exemption shall be allowed in accordance with the
17 provisions of this section; if a waiver under this subsection is
18 granted and the application for exemption approved, the amount of any
19 assessment, penalty or interest that [WHICH] the claimant may have
20 already paid on the assessment shall be refunded; the municipality may
21 at any time require proof in the form considered necessary of the
22 right and amount of an exemption claimed under this section.

23 * Sec. 37. AS 29.78.010 is amended by adding a new paragraph to read:

24 (20) "governing body" means a borough assembly, city coun-
25 cil, or the voters of a town meeting home rule city acting in a town
26 council meeting.

27 * Sec. 38. AS 29.95.020(a) is amended to read:

28 (a) A municipality qualifying for an entitlement under AS 29.88
29 or AS 29.89.010 - 29.89.100 shall receive a minimum payment of \$25,000

1 plus an area cost-of-living differential for each fiscal year if:

2 (1) during the fiscal year preceding the year for which
3 payment of an entitlement is authorized under AS 29.88 or AS 29.89.-
4 010 - 29.89.100, the municipality has conducted a regular

5 (A) election under AS 29.28.010 - 29.28.050 [DURING
6 THE FISCAL YEAR PRECEDING THE YEAR FOR WHICH PAYMENT OF AN EN-
7 TITLEMENT IS AUTHORIZED BY AS 29.88.010 - 29.88.045 or 29.89.-
8 010 - 29.89.100] and has reported the results of the election to
9 the commissioner of the Department of Community and Regional
10 Affairs; or

11 (B) town council meeting if it is a town meeting home
12 rule city;

13 (2) unless it is a town meeting home rule city, regular
14 council meetings are held in the municipality in accordance with the
15 requirements of AS 29.23.210 during the fiscal year preceding the year
16 for which payment of an entitlement is authorized by AS 29.88 or
17 AS 29.89.010 - 29.89.100 and a record of the proceedings is main-
18 tained;

19 (3) a municipal budget has been adopted for the fiscal year
20 during which payment of an entitlement is authorized by AS 29.88 or
21 AS 29.89.010 - 29.89.100 and an audit or financial statement for the
22 preceding fiscal year has been prepared and furnished to the Depart-
23 ment of Community and Regional Affairs in accordance with AS 29.-
24 23.560(a); and

25 (4) local ordinances adopted by the governing body of the
26 municipality have been codified in accordance with AS 29.48.180.

27 * Sec. 39. AS 35.15.120(2) is amended to read:

28 (2) "governing body" means in the case of a municipality,
29 its assembly or council, or, if it is a town meeting home rule city,

1 the voters acting in a town council meeting, and, in the case of a
2 regional educational attendance area, its regional school board;

3 * Sec. 40. AS 39.20.340(a) is amended to read:

4 (a) An employee of the state, or a municipality [POLITICAL
5 SUBDIVISION,] with the approval of the governing body [CITY COUNCIL OR
6 BOROUGH ASSEMBLY], who is a member of a reserve or auxiliary component
7 of the United States Armed Forces is entitled to a leave of absence
8 without loss of pay, time or efficiency rating on all days during
9 which the employee is ordered to training duty, as distinguished from
10 active duty, with troops or at field exercises, or for instruction, or
11 when under direct military control in the performance of a search and
12 rescue mission. The leave of absence may not exceed 16 1/2 working
13 days in any 12-month period.

14 * Sec. 41. AS 39.20.350 is amended to read:

15 Sec. 39.20.350. RESTORATION OF RESERVE MEMBERS TO FORMER POSI-
16 TIONS. A member of a reserve component of the United States Armed
17 Forces employed by the state, a political subdivision, or a municipal
18 corporation with the approval of the governing body [CITY COUNCIL] who
19 is ordered to duty by proper authority, shall, when relieved from
20 duty, be restored to the position the employee held when ordered to
21 duty.

22 * Sec. 42. AS 39.50.145 is amended to read:

23 Sec. 39.50.145. PARTICIPATION BY MUNICIPALITIES. A municipality
24 may exempt its municipal officers from the requirements of this chap-
25 ter if a majority of the voters voting on the question at any regular
26 election, as defined by AS 29.78.010(14), or a special municipality-
27 wide election, vote to exempt its municipal officers from the require-
28 ments of this chapter. The question of exemption from the require-
29 ments of this chapter may be submitted by the governing body [CITY

1 COUNCIL OR BOROUGH ASSEMBLY] by ordinance or by initiative ordinance.

2 * Sec. 43. AS 42.30.030 is amended to read:

3 Sec. 42.30.030. BOOKS OF ACCOUNT. Every person installing,
4 operating or maintaining a public service plant for the purpose of
5 supplying the city or the inhabitants of the city with telephone
6 service, water, power, lightering, wharfage, dockage, storage, heat or
7 light, or rendering other kindred public service shall keep correct
8 books of account in permanent convenient form showing in detail the
9 volume of business done, the character of the business done, the
10 quantity and kind of service rendered, rates charged, and all expenses
11 incurred in connection with the operation of the enterprise, showing
12 the items of expense in detail. The books shall be open to inspection
13 by the mayor, [AND THE] city council and [BY] an accredited agent,
14 auditor, or representative appointed by the mayor, [AND] city council,
15 or voters at a town meeting home rule city at a town council meeting.

16 * Sec. 44. AS 42.30.040 is amended to read:

17 Sec. 42.30.040. ANNUAL STATEMENT. (a) During April of each
18 year, each person engaged in furnishing a public service, except a
19 rural electrification or telephone cooperative or nonprofit asso-
20 ciation receiving financial assistance from the federal government
21 under the Rural Electrification Act, shall file with the city council
22 a written statement under oath, sworn to by the person having the
23 management and control of the business or other person familiar with
24 all the facts. The statement shall contain a detailed list of all
25 property used in connection with the enterprise and shall give the
26 valuation of each piece of property listed. It shall also contain a
27 statement of the receipts and disbursements during the year, and the
28 profits or losses. The statement of disbursements shall show to whom
29 each item was paid and what for. The statement shall be for the

1 calendar year preceding and shall be for the use of the governing body
2 of the city [COUNCIL].

3 [(b) THE CITY COUNCIL IS NOT BOUND BY THE STATEMENT BUT MAY
4 INQUIRE INTO ITS TRUTH.]

5 * Sec. 45. AS 44.47.145(d) is amended to read:

6 (d) Before a grant is made under this section, the governing
7 body [CITY COUNCIL] or, if the community is not incorporated, a rea-
8 sonable representative body in the community shall agree in writing to
9 maintain and operate the bulk storage facility to be constructed with
10 the proceeds of the grant.

11 * Sec. 46. AS 44.88.220(5) is amended to read:

12 (5) "governing body of a political subdivision" means, when
13 used with respect to the location of a project, the council or the
14 voters of a town meeting home rule city acting in a town council
15 meeting if the project is to be located in a city in the unorganized
16 borough, or the assembly if the project is to be located in an or-
17 ganized borough or a unified municipality;

18 * Sec. 47. AS 46.40.130(a) is amended to read:

19 (a) Organization of a coastal resource service area may be
20 initiated

21 (1) by submission to the council of a petition signed by a
22 number of registered voters equal to 15 percent of the number of votes
23 cast within the coastal resource service area at the last state gener-
24 al election;

25 (2) by submission to the council of a resolution approved
26 by the governing body [CITY COUNCIL] or traditional village council of
27 not less than 25 percent of the number of cities and villages within
28 the coastal service area; or

29 (3) at the direction of a majority of the members of the

1 council in the manner set out in AS 46.40.160.

2 * Sec. 48. AS 46.40.180(a) is amended to read:

3 (a) Before adoption by a coastal resource service area board, or
4 by the Department of Community and Regional Affairs under AS 46.40.-
5 170, a district coastal management program shall be submitted for
6 review to each city or village within the coastal resource service
7 area. The governing body [COUNCIL] of a city or traditional village
8 council shall consider the program submitted for review. Within 60
9 days of submission, the governing body [COUNCIL] of a city or tra-
10 ditional village council shall either approve the program or enter
11 objections to all or any portion of the program.

12 * Sec. 49. AS 46.40.180(c) is amended to read:

13 (c) Objection by a city [COUNCIL] under (b) of this section is
14 limited to objection to elements of the program affecting resources or
15 the use of resources within the corporate limits of the city. Objec-
16 tion by a traditional village council under (b) of this section is
17 limited to objection to elements of the program affecting resources or
18 the use of resources within the village or within two miles of the
19 village.

20 * Sec. 50. This Act takes effect January 1, 1986.

21

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

January 29, 1986

BILL SHEFFIELD, GOVERNOR

Sheffield
File

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The Honorable Peter Goll
Alaska State House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Representative Goll:

RE: House Bill 325

You have asked for a refinement of comments provided by the Department to the House Community and Regional Affairs Committee regarding the above-referenced bill. As you are aware, the passage of the Title 29 revision has made some substantive changes to the municipal code as well as reorganizing and renumbering the current law. Because of these changes and the opportunity to review the legislation over the interim, some of the concerns raised at the hearing are no longer an issue. For instance, concern was raised about the need for a formal administrative framework to meet legal reporting requirements. A closer review of the bill has indicated that a mechanism is created at line 28 of page 6 of the bill, where it is required that the charter provide for the election "of at least three council members to provide for the administration of the city and carry out the duties prescribed by laws or charter".

The following comments are made in the context of the new law, which went into effect January 1, of this year and address certain issues raised by the changes to the law.

Exercise of executive power. The town meeting home rule city is subject to the home rule limitations now set out at Alaska Statute (AS) 29.10.200. Subsection (14) of that section provides as follows:

(a) The executive power in a municipality is vested in a mayor. The mayor of a home rule or unified municipality is elected by the voters. The mayors of other municipalities are elected in accordance with AS 29.20.230.

(b) The mayor acts as ceremonial head of government, executes official documents on authorization of the governing body, and is responsible for additional duties and powers prescribed by this chapter or by home rule charter.

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

This section seems inconsistent with the provisions set out in Section 13 of HB 325 relating to the town meeting city charter where it designates the moderator to preside at meetings and provides for the election of three or more members to provide for administration of the city. The relationship of the exercise of executive powers by the town meeting home rule city to this home rule limitation should be clarified.

It should be noted that this is a new home rule limitation created by the Title 29 revision and that the old Title 29 had an additional limitation that now has been deleted, i.e. former AS 29.13.100(4) relating to the election and term of the mayor. That former limitation was subject to amendment in the current bill at section 21.

Council Composition. Section 19 of the bill speaks to the composition of the town meeting home rule city council. The amended section of Title 29 under section 19 of the bill has been renumbered, but has not been changed substantively by the Title 29 revision. Under the proposed language of the bill, "Each first or second class town meeting home rule city has a council consisting of all permanent resident voters within the city boundaries." This is the only place in the bill where there is reference to a town meeting home rule city as either first or second class.

Additionally, the bill would do away with the provisions dealing with second class city councils entirely and establishes a new form of municipal government, the first class representative home rule city. At the present time, a home rule municipality may be a borough, a city or a unified municipality. There is not a differentiation of home rule cities into classes, and, indeed, the concept seems to go against the policy behind establishing home rule cities in the first place, i.e., to allow the residents of the municipality to establish the municipal structure in its charter, limited only by those home rule limitations set out in Title 29 (and, of course, those constitutional and other statutory provisions common to all municipalities which may not appear in Title 29).

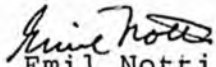
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Because that section of Title 29 dealing with council composition is not a home rule limitation in any case, it may be preferable to place the provision dealing with the council composition of a town meeting home rule city in section 13 of the bill, dealing with town meeting home rule city charters. For these reasons, it may be necessary to review the objectives sought to be achieved through the proposed amendments in Section 19.

Structure of Municipal Government system. A final concern which has been raised by the Department in the past is the desire to keep the municipal government system simple and understandable. The addition of a new form of government to the current structure may add more problems than it alleviates. The movement represented by this bill away from representative government at the local level toward the exercise of direct democracy is, in some respects, an appealing one, but goes against the thrust of local government development since statehood. This does not, of course, make the concept less valid, but indicates the care which must be taken in ensuring it will be a positive addition to the existing local government structure.

Thank you for this opportunity to share the Department's comments on this bill with you and the committee. If you have further questions or concerns, please feel free to contact Jennifer Fate, the Department's Legislative Liaison.

Sincerely,


Emil Notti
Commissioner

cc: Representative Koponen

ANALYSIS AND RECOMMENDATIONS
ON LOCAL GOVERNMENT QUESTIONS
AND ISSUES BEFORE THE
TASK FORCE ON FEDERAL/STATE/TRIBAL RELATIONS
DECEMBER 1985

Prepared By

Division of Municipal and Regional Assistance

State of Alaska
Bill Sheffield, Governor

Department of Community
and Regional Affairs
Emil Notti, Commissioner

6. Only eight community services (cemeteries, community centers, libraries, recreation, solid waste, fire protection, historic preservation, and trails) could be exercised by an Incorporated Village.

7. Council meetings would need to be held only once each quarter. Other town meetings could be adopted as part of the council procedure.

8. Incorporated Villages would not have the power to levy a property tax, but could levy a sales taxes in the manner of second class cities.

To update this concept, the actual community powers permitted this hypothetical form of local government could be expanded or reduced from those listed in item six. Additional powers might include public safety and planning and regulation of land use.

As an extension of item 7, perhaps existing Native Council meetings (representing community Native interests) might somehow be procedurally linked to the activities of the Incorporated Village meetings (representing the interests of all community residents). This might be in the form of a formally designated advisory committee in the manner of a planning commission. Such an advisory commission might even be delegated limited authority for certain municipal functions such as historical preservation and land use planning related to subsistence. In this event, the Incorporated Village Council would retain the powers of the body of higher appeal.

★ The "town Meeting Home Rule City" Proposal. Another alternative for a new minimal form of local government is contained in House Bill 325 which is pending in the House Community and Regional Affairs Committee. This proposal, sponsored by Representatives Koponen, Hurley, and Marrou, would authorize a "town meeting home rule city" form of government.

In its simplest form this bill would allow an unincorporated community to adopt a charter and incorporate as a town meeting home rule city. The charter, which would prescribe the general rules for conducting town council meetings, would be offered to the Local Boundary Commission as a key element of the community's petition for incorporation.

Upon incorporation, the charter would become the organic law of the town meeting city and would provide the basis for government as a direct democracy through town council meetings. Additionally, the charter would provide for annual (at least) town meetings and procedures for calling a special town meeting; preparing agendas; voting and ordinance adoption; reporting; and electing a moderator, at least three council members for administration of the city and a finance committee responsible for budget and fiscal affairs.

The town meeting format eliminates the need for secret elections by ballot and is designed for relatively small communities. The town meeting city can perform a wide range of services, including planning and zoning, through the adoption of ordinances.

D. Conclusions and Recommendations

1. The idea of creating an alternative to allow local decision-making; and provide limited service provision is a concept which may have merit. A third class city, for lack of better term, which could operate more informally and be exempt from costly State requirements requires a balancing of authority, accountability, autonomy, and jurisdiction.

2. Recommendation. Either the third class city (incorporated village) proposal or the town meeting home rule city proposal could be viable alternatives for a new minimal form of municipal incorporation. Of the two alternatives presented, DCRA staff prefer the third class city concept with a limited number of powers specifically set out in statute. The Task Force may wish to consider modifying the list to include planning and land regulation or other powers it may feel are necessary to protect and serve rural residents. The third class city option would require less overhaul of Title 29 and does not contemplate home rule status as conferred under the town meeting approach. The town meeting concept is untried and could entail many unanticipated problems with its implementation. It also represents a radical departure from the system of local government that has historically been in place since statehood.

3. Recommendation. Either of these new forms of local government may tax, or not tax, based on a majority vote of residents voting on the question. If the Task Force were to pursue either of these options, it may wish to consider recommending that the power to tax be withdrawn from a new lesser form of government to provide a further distinction between third class/town meeting cities and second class cities. The constitution is permissive on this point: "the state may delegate taxing powers to organized boroughs and cities only." From a DCRA staff perspective, the elimination of taxing authority is a serious matter and dramatically limits the flexibility of a local government to provide services. Therefore, staff recommends that taxing powers, however limited they might be, not be waived. To do so, legitimizes a multi-purpose political subdivision that is powerless to sustain itself except as a ward of the state.

4. Recommendation. Staff recommend that the Task Force consider a concept of local government in which existing Native Council meetings (representing community Native interests) might somehow be procedurally linked to the activities of local municipal government meetings (representing the interests of all community residents). This might be in the form of a formally designated advisory committee in the manner of a planning commission. While staff find this concept to have some merit upon initial inspection, there are a number of practical and legal considerations that would require more extensive research.

HB 325 - TOWN MEETINGS

"Town Meeting Government" is that form of local municipal government wherein the legislative authority resides in a general meeting in which all registered voters of the community can participate on an equal basis. Usually there is one regular town meeting a year (which may be recessed from day to day until all business is completed) at which the city's annual budget, tax rates, new local ordinances and other matters (including powers to be exercised in the coming year) are all discussed and voted on. In addition, local officials, responsible for carrying out the decisions of the town meeting, such as the treasurer, city clerk, etc. are usually elected, either by show of hands or secret ballot. There may be special town meetings called in case of emergency, either by petition of voters or by such officials as provided by statute or ordinance.

HISTORY

Although most Alaskans may consider the Town Meeting a traditional form of government for New England, the Town Meeting also has deep roots in Alaskan history both in some traditional native communities and also among our own "sourdoughs" in the form of Miners' Meetings.

According to a 1898 special mining edition of the Alaska Morning Record, Alaska's first Miners' Meeting was held in Juneau in 1881 at the Flag of All Nations for the purpose of framing mining laws for the Juneau district. The laws which came out of this and similar Miners' Meetings in Juneau and the Interior were known as the Miners' Code. The code dealt not only with matters of claim staking and recording, but also with criminal law and sentencing, marriage and divorce and anything else of common concern to the diverse people living in Alaska's young and growing communities at the turn of the century.

Miners' Meetings were organized at each camp or diggings and had only one elected official, the recorder. They had certified legal jurisdiction, but in the days when law enforcement was essentially non-existent in the Territory, before Alaska even had a non-voting representative to Washington, the only official legal power over marriages, criminal activity, or mining laws was the U.S. Congress. In light of the impracticality of depending on Congress for what amounted to municipal ordinances, Miners' Meetings were the de facto government of Alaska's early white settlements.

THE PRESENT

Town meetings remain the de facto form of government in most of Alaska's unincorporated communities. The meetings may be organized by

community residents simply to deal with community issues. In other cases, the Department of Community and Regional Affairs has required these communities to set up non-profit membership corporations in order to establish some legal body to accept state funds. The town meeting then becomes a shareholders' meeting. To some extent, town meetings take the place of municipal government in these communities, but, as was the case for the earlier Miners' Meetings, the decisions made do not have the certified force of law. This has created problems in present day Alaska that did not occur for the earlier Miners' Meetings. Dissenters to a community decision sometimes threaten to sue.

Although there are various barriers to incorporation, a law providing the option for a town meeting style of government would maintain the existing decision-making system rather than requiring the election of a representative city council, a form of government that has been criticized as being open to "government by clique" (see the Community and Regional Affairs Gustavus report). This simplification might well help small communities to incorporate in order to solve the problem of no one but the State itself having any real legal jurisdiction.

PRACTICAL CONSIDERATIONS

The Town Meeting works best in communities of less than 6,000. It is altogether impractical if the population reaches 25,000. However, 92% of Alaska's incorporated municipalities do have populations of under 6,000. All of the many unincorporated communities are much smaller than that. A persistent problem for Town Meeting governments in New England has been lack of a quorum. Alaska's small communities, however, have consistently better voter turn-out than its cities. To the extent that voter turn-out is an indicator of willingness to be involved in community affairs, participation level could be expected to be a strength rather than a weakness in Alaskan Town Meetings.

HB 325 would not require small communities to use the Town Meeting form of Government, but it does provide it as one option. Both Alaska's history and its present situation indicate that Town Meetings would be a practical and, in many cases, highly desirable form of municipal government.

STATE OF ALASKA
THE LEGISLATURE

POUOITY - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HC + RA 4-1-85 3p.m.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 23, 1985

SUBJECT: Sectional Analysis of WO 14-0096
(Town meeting home rule cities.)

TO: Representative Nilo Koponen
Chairman, House HESS,

FROM: Michael F. Ford *M.F.*
Legislative Counsel

Here is the section by section analysis that you requested of WO 14-0096. The bill permits the incorporation of cities that are governed as direct democracies through town meetings, rather than as representative democracies through the election of a mayor and council. Because these cities would not have mayors, the bill includes a great many technical changes to various statutes referring to mayors so that the statutes can be applied to these cities, or, if appropriate, so that these cities can be excluded from application of the statute. In this analysis these sections are simply noted as containing technical changes.

Sections 1 - 4 Technical changes.

Section 5 Town meeting home rule cities are not school districts, as are representative home rule cities in the unorganized borough.

Section 6 Technical change.

Section 7 A town meeting home rule city is included within the class of home rule municipalities.

Section 8 A second class city is allowed to adopt a home rule charter. A charter for an existing municipality is framed by a charter commission. Under existing law only first class municipalities or second class boroughs may adopt home rule charters. In section 9 of this bill, unincorporated communities are allowed to adopt charters.

Section 9 A first class city that adopts a charter may become either a representative or town meeting home rule city. A second class city that adopts a charter must become a town meeting home rule city. An unincorporated community is allowed to adopt a charter and incorporated as a town meeting home rule city. The proposed charter is prepared by the petitioners and filed with the petition to incorporate a city.

Section 10 A charter commission is elected only for an existing municipality that is considering going home rule. In an unincorporated community no commission is chosen.

Section 11 If a majority favors a proposed charter in an existing municipality or if a majority favors incorporation of a town meeting home rule city, the charter is adopted. If a proposed charter for an existing municipality is rejected, the commission prepares another.

Section 12 If incorporation of a town meeting home rule city is rejected in an unincorporated community, the charter is also rejected. There is no provision for the preparation of a new charter. Instead, a new effort at incorporation would have to be made if a new charter is to be presented to the voters.

Section 13 The charter for a town meeting home rule city must contain certain items not required for other home rule charters, including procedures for town meetings, provision for the election of a moderator to preside over town council meetings, and provision for a finance committee that prepares the annual budget.

Section 14 A charter amendment for a town meeting home rule city must be approved by the voters at a town meeting, while an amendment for other home rule municipalities must be ratified by the voter.

Section 15 A community that meets the first four standards for incorporation as a first class city, whether or not it meets the population requirement, may incorporate as a town meeting home rule city.

Section 16 The requirement that an incorporation petition include information about the composition and apportionment of the assembly or council does not apply to a town meeting home rule city, since no council is elected in that type of

city. The signature requirements for an incorporation petition of a town meeting home rule city are the same as for a second class city. No designation of powers is required for a petition to incorporate a town meeting home rule city, but a proposed home rule charter must be included with the petition.

Section 17 A home rule charter included in an incorporation petition for a town meeting home rule city is considered part of the incorporation question and the charter is adopted if incorporation is approved.

Section 18 A town meeting home rule city outside a borough qualifies for the minimum organization grant now provided to first class cities.

Section 19 Provides that a town meeting home rule city shall have a council composed of all permanent resident voters within the city boundaries.

Sections 20 - 23 Technical changes.

Section 24 General rules for conducting town meeting elections are to be prescribed in the charter.

Sections 25 Technical changes.

Section 26 A representative home rule city outside a borough is a school district. All home rule cities outside boroughs are school districts under existing law.

Section 27 A town meeting home rule city is not a school district.

Section 28 A town meeting home rule city outside a first or second class borough may provide for planning, platting and zoning, but does not have to. A representative home rule city must provide this service, just as under existing law all home rule cities outside first or second class boroughs must.

Sections 29 - 34 Technical changes.

Section 35 A town meeting home rule city may exclude, exempt, or partially exempt residential property from taxation by ordinance adopted at a town meeting. In other municipalities the ordinance must be ratified by the voters.

Representative Nilo Koponen
January 23, 1985
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Section 36 Technical change.

Section 37 A new definition is added to the municipal code so that "governing body" can be used to refer generally to an assembly, or a council.

Sections 38 - 49 Technical changes.

Section 50 This bill takes effect on January 1, 1986.

MFF:csh
c2/189

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

April 1, 1985

Position Paper

POUCH B
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PHONE: (907) 465-4700

949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508
PHONE: (907) 563-1073

RE: HB 325

Sponsor: Representatives Koponen, Hurley and Marrou

Program Effects

HB 325 would amend statutes found in the State Municipal Code (Title 29) and elsewhere to authorize the incorporation of "town meeting home rule cities", would set forth standards for their organization and operation, and would define their powers. If approved, this bill would sanction the creation or reorganization of municipalities in Alaska, based on the concept that town powers are exercised by the vote of all adult residents at a town meeting rather than by an elected council.

Comments

The Department does not oppose HB 325 at this time; however, there is a need for further study of the adaptability of the town meeting model in Alaska. This form of government essentially is unknown in Alaska, and may confuse the municipal structure and prove difficult to manage.

A town meeting-type government can only work if there is mass participation coupled with political maturity. People must obey basic rules of conduct and respect each others rights to avoid disorder at town meetings. Before this form of government could be effectively implemented, its administrative structure would need to be provided in detail. This includes specific meeting procedures, frequency of meetings, and its administrative apparatus.

In addition, HB 325 poses a problem in that the State constitution requires the governing body be a "council" (Article X, Section 8), which is generally defined to be a representative body. HB 325 would define the council as all the permanent resident voters within city boundaries. This distinction may require a constitutional amendment which broadens the definition of governing body to include town meetings.

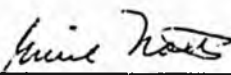
HB 325
April 1, 1985
Page Two

The most striking feature of HB 325 involves unincorporated communities. HB 325 may provide unincorporated communities the opportunity for State recognized governments, enabling them to maintain decentralized local governments, without having to incorporate into second class cities. Currently, many unincorporated communities seek greater local, decentralized control with State recognition, but do not want to incorporate. Organizing these communities under the town meeting model may be an acceptable and effective way to enable organized and recognized decision-making in the absence of elected councils or assemblies.

At least, this concept is one to research and look into further. The Department may want to work over the interim or offer to work with the House CRA committee 1) to determine if this is an appropriate institution to fit into the municipal framework, 2) if so, to identify specific organizational or administrative aspects of town meeting government which should be dealt with in statute, and 3) to determine a population limit for this form of government.

However, the Department cannot give support to HB 325 without further comprehensive investigation to determine whether town meeting local governments are needed, desired or practical in Alaska. This would involve consultation with a wide range of affected parties, including, among others, unincorporated communities and the Alaska Municipal League.

APPROVED:


Emil Notti, Commissioner

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 325
 Title: Authorizing the incorp.
of town meeting home rule cities.
 Sponsor: Rep. Koponen, et al.
 Requestor: House C&RA
 Date of Request: 4/1/85

FISCAL DETAIL

Agency Affected: DCRA
 Program Category Affected: _____
 BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
500 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-		
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-		
FEDERAL FUNDS					
OTHER					
TOTAL	-0-	-0-	-0-		

POSITIONS:

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: Attach a separate page if necessary

Prepared By: Jennifer Fate *JF* Phone: 465-4700
 Division: Commissioner's Office Date: 4/1/85
 Approved by Commissioner: Emil Notti *Emil Notti* Date: 4/1/85
 Agency: Community & Regional Affairs

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

7/1/84

GUSTAVUS SURVEY RESULTS--SUMMARY

The results of the Gustavus Community Survey have finally been tabulated. Exactly one hundred people answered the survey, making for a response rate of about 65%. The survey yields predictable results, but also some surprises. On most issues, the results show distinct trends of opinion. On occasion, however, these trends are contradictory. A summary of the survey results follows.

Natural Resources:

A slight majority of respondents believe that natural resources in Gustavus are adequately protected, but a strong minority(45%) do not believe that area resources are well protected. Almost everyone is at least somewhat concerned about the environment and about 60% of respondents would like to see a local role in the management of resources. Of those favoring a local management role, most believe an advisory role is appropriate.

Almost all of the respondents participate in subsistence activities. At least three-quarters of the respondents fish, gather plants, garden, and collect firewood. About one half hunt while about a third raise livestock. Subsistence resources constitute large portions of the annual food supplies of respondents.

Most respondents believe that supplies of subsistence resources are presently adequate. They also generally agree that access to these resources is adequate. Many, however, qualified their responses by saying that supply and access could become problems in the future.

Beach and Riverfronts

The survey responses indicate that several problems are threatening the beaches and riverbanks of Gustavus. Over one half of the respondents feel that blocked access to the waterfront, unwise development, state land sales, and tree clearings pose major threats to the beaches and river banks of Gustavus. Many believe that erosion is a minor threat to Gustavus river banks and beaches.

Local Government

Most people do not support the formation of a local government in Gustavus. Forty percent of the respondents strongly oppose incorporation while another sixteen percent are somewhat opposed. A little over of a third of the respondents either strongly support or somewhat support the formation of a local government. If an election on incorporation was held today, the proposition would fail by about a 2 to 1 margin.

Respondents consider the major advantages of local government as the ability to plan and zone and to present an "official" local voice to State and federal governments. The major disadvantages of local government include fear of taxation and rule by a "cliqueish" few.

Eventhough most respondents are opposed to incorporation, fifty percent believe that residents would have at least a somewhat greater say in local development and service delivery matters. Twenty percent of the respondents feel that little would change with the formation of a local government while about one fourth of the respondents believe residents would have less say in local matters.

Community Character

Clean air and water, security, the area's natural setting, neighborliness, and a good environment for families are the most prized community characteristics with over three-quarters of the respondents rating them as very important. The community's inaccessibility, pace of life, small population, low density, lack of large developments, self-sufficiency, and abundant resources are rated as very important by over fifty percent of the respondents.

Apparently the community character of Gustavus is being diminished. Over fifty percent of the survey respondents believe that Gustavus is a less desirable place to live today than it was five years ago. A little more than a quarter of the respondents think that Gustavus is presently a better place to live than it was five years ago.

About forty percent of survey respondents are satisfied with the existing size of Gustavus. Another third would like to see Gustavus grow. Only 16% of the respondents would like to see the population of Gustavus decrease.

Land and Development

The survey results indicate that respondents are concerned about how new development will affect Gustavus. Over half of the respondents identified soil and water pollution, increased service demand, increased density, changes in community character, land drainage, inappropriate development, and incompatible land use patterns as possible major problems of new development.

Respondents appear to want to control development problems with local regulations. Fifty percent of those polled would like to see local regulations, in addition to state requirements, to guide growth and development. About 35% of the respondents do not see a need for local regulations.

Almost half of all respondents believe that it is very important to control land use while another quarter believe that controlling land use is somewhat important. Lot size and parking and traffic considerations are other development factors that at least seventy percent of the respondents believe is at least somewhat important to control. Over one half of the respondents believe that it is at least somewhat important to control building setbacks and aesthetics.

State Lands

Generally, survey respondents are opposed to additional state land sales in Gustavus. At least two thirds of the respondents believe that state lands should not be disposed for mineral, timber and logging, and industrial purposes. About half of the respondents feel that no additional homesites or agricultural lands should be passed to the private sector. About a third of all respondents are opposed to disposing land for recreational purposes. Respondents support by a greater than two to one margin the development of land use plan that would classify state lands for particular uses.

Economic Development

About 60% of the survey respondents are able to secure enough employment to meet their needs, while 40% are not. About half of the respondents are opposed to additional economic development in Gustavus while a little over 40% support additional economic development in the community. About half of the respondents would like to see more jobs in tourism, retail business, commercial fishing, marine repair, and cottage industries. Respondents prefer seasonal jobs--both full-time and part-time.

Community Services

Respondents generally believe that the Gustavus Community Association is doing its job. About 60% of the respondents believe that the Community Association is doing an adequate or more than adequate job while 35% feel that the Association is doing a less than adequate job. The State of Alaska receives almost identical marks for its job of responding to community problems and needs. Respondents are generally satisfied with the level of community services provided in Gustavus. Harbor facilities, health facilities, and road maintenance are the most maligned community services. Three-quarters of the respondents believe that the existing level of community services is about adequate or more than they expected.

Demographic Data

Many respondents (about one third) did not answer the demographic questions at the end of the survey, so results are less complete. Over half of the respondents have lived in Gustavus at least six years, while only a handful (4%) have lived in the community for less than two years. Forty percent of the respondents spend at least ten months a year in Gustavus. Only about 15% of the respondents have household incomes that exceed \$30,000/year. About one quarter of the respondents report a household income of less than \$15,000/year.

WHAT NEXT????

An analysis of the survey results as well as a discussion of "where we go from here" is being prepared by Community & Regional Affairs staff. This paper should be completed in the next couple of weeks. It will be sent to Gustavus before the next planning meeting, scheduled for March 29, 1984.

What is Town Meeting all about?

Functions — The annual town meeting is the yearly meeting of the inhabitants of a town to elect the town's officers and to conduct the town's business. It is important to remember the two distinct functions of the annual meeting: 1) to elect town officers; and, 2) to conduct the town's business.

Although some of the town's business may be conducted by ballot during the election of officers, the two functions are distinct.

The town meeting is the legal body for conducting a town's legislative affairs unless a different form of government has been adopted under the Home Rule statute (RSA 49-B). A town meeting may be held whenever necessary to conduct the affairs of the town, but the annual meeting is held to adopt annual operating and capital budgets, enact ordinances and take other actions required or authorized by law.

When and Where — The annual meeting is held on the second Tuesday of March; this year the date is March 8. Some towns operating on the optional July-June fiscal year hold their annual meeting on the second Tuesday of May.

The town meeting ought to be held in a reasonably central and accessible place in the town. (RSA 39:1-b, though, allows a town belonging to a cooperative school district to hold its meeting outside the boundaries of the town in a building owned by the district. If there is voting on prepared, preprinted ballots, that portion of the meeting must be held at the usual polling place in the town and only that business which does not involve use of these ballots can be conducted outside the town.) The place in which town meeting is held should comply with any applicable fire or safety codes. RSA 155:47 requires designation of a non-smoking area in public buildings. In places where it is not possible to effectively segregate smoking, smoking must be totally prohibited. If food will be served for consumption on the premises where town meeting will be held, a poster depicting an anti-choking maneuver, such as the "Heimlich" maneuver, must be posted.

Officers elected — Selectmen, moderator, treasurer, town clerk, supervisors of the checklist and trustees of trust funds are elected at the annual meeting. One selectman is elected each year unless the town has a 5-member board. The moderator is elected every even-numbered year and holds office from the close of the meeting at which elected until the close of the meeting at which a successor is chosen. Town clerks and treasurers are elected annually unless the town has adopted 3-year terms for these positions. One checklist supervisor is elected every even-numbered year to a 6-year term. One trustee is elected each year to a 3-year term, but a town may also choose to annually elect a single trustee or to increase its board of trustees to 5.

Towns have the option of establishing a number of

other elective positions including: tax collector, combined town clerk-tax collector, police officers, sewer commissioner, board of auditors, library trustees, highway agents, overseers of welfare, planning board members and fire wards or engineers. In fact, towns can choose such officers as they deem necessary for managing their affairs.

What takes place at Town Meeting?

Moderator's role — The Moderator is the presiding officer at town meeting. RSA 40:4 requires the moderator to "preside in the town meetings, regulate the business thereof, decide questions of order, and make a public declaration of every vote passed." Although there are few general statutory requirements for specific procedures, a town meeting may adopt rules of procedure governing its operation. If formal rules have not been adopted by the town meeting, it would be wise for the moderator to have standards by which to operate. In fact, RSA 40:4 states that a moderator may prescribe rules of procedures, which may be altered by the town.

Regardless of whether formal rules are adopted or not, it is imperative to remember that neither the town nor the moderator may act contrary to state law. For example, if state law requires that an action be taken by specified officers or in a particular manner, town meeting votes inconsistent with those requirements will likely be invalid. Failure to follow state law may lead to court challenges and possible invalidation of town meeting action.

If rules of procedure have been adopted by the moderator or town meeting, motions should conform to these rules. If the town meeting has not adopted rules of procedure, the following procedure could serve as a guide to take action on an article:

- (1) Read the article in full as printed in warrant;
- (2) Always try to secure a main motion and a second on the article;
- (3) Recognize the selectman or person responsible for giving the town meeting the necessary background on the article under consideration;
- (4) Open general discussion from the floor;
- (5) After the conclusion of discussion, the motion should be restated as printed or amended (it is wise to reduce all motions and subsequent amendments to writing before taking action);
- (6) The vote should be taken and the outcome announced. If the vote is to be challenged, this is the appropriate time for action.

Recognition of a motion to "pass over" a warrant article can create confusion and may raise procedural questions. If no governing rules are applicable, the moderator may require motions to be stated in an unambiguous manner so that the intent of the motion is clear. For example, compare these 2 motions: "I move town meeting pass over article X"; "I move town meet-

ing postpone consideration of article X until after consideration of article Y". The exact intent of the latter motion is obviously clearer. If the intent of a motion is to postpone action on the article indefinitely, the motion should be so stated: "I move that consideration of article X be postponed indefinitely".

Actions by the moderator under his extensive traditional and statutory powers may not be reversed except by vote at the town meeting at which the ruling is made. Any qualified voter may appeal to the meeting to overrule the moderator's ruling. The voter should clearly state his objection. The moderator is then obliged to call for a vote of the meeting to see whether his ruling is sustained.

Voting — RSA 654:1 defines a legal voter as an "inhabitant of the state, having a fixed and permanent established domicile, being a citizen of the United States, of the age (of 18)..." Domicile is a "question of factual physical presence incorporating an intention to reside for an indefinite period" and is the "voter's residence" and the "place in which he dwells on a continuing basis for a significant portion of each year." Any person domiciled in the town and on the voter checklist may vote in town elections.

Methods — Most articles are adopted by a majority vote of those voters present and voting. State law may require more than a majority to pass an article, so the laws concerned with each article should be consulted to determine the required vote. Those requiring a $\frac{2}{3}$ vote include: (1) to approve all bond and note issues except tax anticipation notes; (2) to accept and expend federal or state grants of aid in connection with any project for which the municipality will incur indebtedness in accordance with RSA 33:7-b; (3) to alter town lines; (4) to acquire or establish a municipal utility plant or rarify a contract of the selectmen for an electric utility; (5) to change the purpose of a capital reserve fund; (6) to approve amendment to a zoning ordinance if a protest petition signed by the required number of affected property owners is filed under RSA 31:64.

There are five usual methods of voting utilized by the town meeting: (1) Voice Vote; (2) Show of Hands; (3) Standing Vote; (4) Division of the House; (5) Written Ballot.

Ballot Votes — Some statutes require or authorize certain types of town business to be decided by ballot votes. If the town uses the official ballot, the procedures for such balloting are employed and the voting is conducted at the same time the election is held. Ballot questions can be placed on the same ballot as that used for the election of officers or may be put on separate ballots. Examples of items which are voted by ballot include zoning, local-option tax exemptions, and alteration in the term or composition of some local boards or officials. The official ballot cannot be used for submitting questions to voters unless use of the official ballot for that article or type of article is specifically required or authorized by law. Any other articles may be taken up only at the business session, although secret balloting is allowed at that time.

Unofficial Ballots — When secrecy of the ballot is desired and the official ballot is not used, a written bal-

lot may be taken. This type of balloting is done when tellers pass out slips of paper on which the voter indicates his decision in writing. The votes are then delivered to the moderator and counted. This type of balloting can be used with the checklist to guarantee that only eligible voters will participate, but can be time consuming.

The moderator must conduct a secret "yes-no" ballot when five voters (three voters in a town of a population of 500 or less) make a written request prior to a voice or division vote on the article. (RSA 40:4-a). If seven or more voters question in writing or orally any non-ballot vote, immediately and before any other business is begun, the moderator must retake the vote by a secret "yes-no" ballot. (RSA 40:40b).

Whether the moderator votes or not is subject to local traditions and personal preference. If it is local tradition that the moderator does not customarily vote, two instances in which he might choose to vote are to break a tie or, if a motion he opposes would otherwise pass by one vote, to cast his vote against it, which would mean defeat of the motion.

Absentee Voting — If the town has adopted the official ballot for town elections, opportunity for absentee voting on all items which will be included on the official ballot must be provided for any registered voter who: 1) will be absent from the town on the day of the election; 2) cannot appear in public on election day due to religious commitment; or, 3) is unable to vote in person by reason of physical disability.

Election of Officers — Towns may elect officers by use of an official ballot, unofficial ballot or other means, such a voice vote, as determined by the town meeting. The official ballot is used when adopted by a previous meeting and is either partisan (Australian) or non-partisan (RSA 669:11-13). All officers required to be elected at the annual meeting must be elected by use of the official ballot if it is used in the town, otherwise by use of the unofficial ballot. Ballot votes must also be used for election of the following optional officers: town clerk-tax collector, full-time police officers, sewer commissioners, tax collectors with 3-year terms, boards of auditors, and library trustees. Other officers which a town may choose to create and fill by election can be voted for by ballot or by other means as the voters determine. When optional officers are first created, initial officers can be elected at the same meeting by any appropriate means or interim appointments can be authorized. (RSA 669:16 and 17).

Requirements of Office — RSA 669:6 states that unless otherwise provided by law, an elective town office can be filled only by a person who has a domicile in the town. A number of town offices are incompatible under RSA 669 7: (1) No one may at the same time serve as selectman, treasurer, moderator, trustee of trust funds, tax collector, auditor or highway agent; (2) nor may one person simultaneously hold the office of treasurer, moderator, trustee of trust funds, selectman or head of a police department of full-time duty; (3) the same person could not be both treasurer and town clerk; (4) no person handling town funds may also be auditor;

(Continued on next page)

(5) no selectman, moderator, town clerk or election inspector can simultaneously serve as supervisor of the checklist; and (6) no selectman, town manager, school board member, village district commissioner or full time employee of the town, village district, school district or other associated agency may also be an at-large budget committee member under RSA 31:95 and 32. Under RSA 665:8, a town manager may also be manager of a district or precinct wholly or mainly within the town and may be elected or appointed to municipal offices under his supervision, but can hold no other public office except notary public or justice of the peace or tax collector when authorized under RSA 37:16.

Disqualifications — Under RSA 658:24 (which governs state elections but also applies to local elections conducted by official ballot), an election official whose name is on the ballot for a position other than election official is disqualified from performing the duties of election officials for that election. Likewise, RSA 659:58 prohibits an election official, other than the moderator, who is also a candidate from remaining within the guardrail during the counting of votes for the office for which he is a candidate.

The moderator oversees the counting of official ballots by other election officials, including the selectmen and the town clerk (RSA 659:60). Unofficial ballots are counted by the moderator with the assistance of the selectmen and town clerk (RSA 669:58). Officers chosen by unofficial ballot must receive a majority of votes cast to be elected. For offices filled by election by one of the official ballot systems, a plurality vote is sufficient to elect.

Two part town meetings — Some towns elect offices on one day, and complete town business on another day. This can be accomplished in one of two ways: (1) adopting a motion to recess the town meeting and to set another time, date and place to resume the meeting; (2) adopting RSA 39:2-a, which authorizes 2 sessions for the annual town meeting: the first to elect offices and transact other business by official ballot, the second to transact all other town business on a day and time chosen by the selectmen. Such a "bifurcated" town meeting takes effect at the next town meeting, with selectmen required to set the place, day and hour of the second session on the town warrant.

Tape recording — There is no prohibition against recording town meeting procedures. It may even prove useful for town officials to tape town meetings to precisely recall proceedings, such as how amendments were made to warrant items or the exact wording of amendments. Officials who utilize tape recording report that it is particularly useful for bond articles. Bond attorneys may ask about the precise wording of how a bond issue article was presented to voters or how amendments were worded. In general, a tape recording is valuable aid to the town clerk who must report on the proceedings of the meeting.

Reconsideration — A town meeting may reconsider actions previously taken in the same manner as other parliamentary bodies. Procedurally, reconsideration will be governed by the procedural rules adopted by the

moderator or town meeting itself. Procedurally, reconsideration will be governed by the procedural rules adopted by the moderator or town meeting itself. A fairly uniform procedure requires that the person proposing reconsideration must have voted with the prevailing side. Sometimes, procedural rules require that reconsideration be made immediately or within a specified period of time. At any rate, reconsideration would be questionable if it were undertaken a substantial length of time after the original action was taken and if the subsequent action was inconsistent with actions taken by others who relied on the original vote and acted reasonably.

Some special considerations are also involved because of the nature of town meeting and the statutes governing town meeting conduct. While no specific statutes govern reconsideration, the distinction between "official ballot" and "deliberative session" actions envisioned by RSA 39 probably means that items required to be voted by official ballot could not be reconsidered at the deliberative session. For example, votes on zoning questions taken by officials ballot could not be revoted at the town meeting after the results of the ballot vote were announced. (In addition, special statutory procedures are called for under RSA 31:74 if someone wishes to obtain a rehearing on a zoning matter decided by town meeting.)

Related to the issue of reconsideration is the matter of attempting to regulate or mandate future town meetings procedures. It is a general rule that rules of procedure adopted by a town meeting expire at the adjournment of that meeting unless readopted at a subsequent meeting, and, in the absence of specific statutory authority, a town may not adopt procedural rules for the governing of future town meetings. That rule, coupled with the doctrine that a town may exercise only those powers granted to it by law, means, for example, that a town meeting could not adopt an ordinance and try to require a 2/3 vote of a future town meeting to repeal or amend that ordinance.

This limitation upon town meeting powers extends only to the power to bind other town meetings and does not necessarily limit a town meeting's power over the exercise of authority by town officials. Recent court decisions, though, have made it clear that a town meeting's authority over other local officials and bodies is limited by state law; if the law vests authority in an official or board other than the town meeting, it is quite possible that town meeting cannot override or alter that delegation of authority.

Recounts — Different statutes govern recounts for elections for town officials and for questions voted on at town meeting. The former are covered by RSA 669:30-35 which allow a recount if a person for whom a vote was cast applies within 15 days after the election to the town clerk and submits a fee of \$10. The moderator, town clerk and selectmen constitute a board to recount the votes not less than 7 nor more than 10 days after the recount application is received.

RSA 40:4-c allows 10 or more voters to apply to the town clerk within 7 days after a meeting for a recount

of ballots cast on any question appearing on the official ballot. An application fee of \$10 is required. Ballots are recounted in the same manner as an election.

Warrant — Calling a town meeting

Town meetings must be preceded by a warrant, or document, addressed to the voters, which gives notice of, or "warns", the meeting. The warrant must describe the place, day and hour of the town meeting, and specific "articles" or subjects on which the town has the power to act. Articles may be included on the warrant at the initiative of the selectmen. The warrant must include articles presented to the selectmen at least 35 days before the meeting by written petition of 10 or more voters (RSA 39:13).

The selectmen prepare and sign the warrant, and must post an attested copy at the place of meeting and an attested copy in one other public place at least 14 days before town meeting. Under statutory rules for counting, the warrant must be posted this year by February 21 (RSA 39:5). The selectmen would be well advised to have the town counsel check the legality of the warrant articles for form and content. Recent court decisions indicate it is necessary to review enabling legislation to: (1) determine the exact source of authority for town action; and, (2) see what special procedures might be required.

In a town which uses official ballots, the warrant must clearly specify those articles to be voted on by ballot at the election and those which will be considered at the business meeting. The town's annual report, including the proposed budget, must be made available 7 days before the town meeting. (For more information about annual reports, see the November 1980 issue of N.H. Town and City.) Although some warrants contain an article at the end, "To transact any other business which may legally come before the meeting", action taken under this general provision is limited in scope because of the requirement that subjects on which the meeting will act must be specifically included in the warrant.

Reminders

Many statutes were amended by the 1983 legislature. While it is not possible to address the details of all of these changes here, it is appropriate to remind municipalities of new procedures or statutory authorizations which may require consideration by the town meeting.

Deputy Tax Collectors

All towns must now have a deputy tax collector, RSA 41:38, or deputy town clerk/tax collector, RSA 41:45-c. The town should remember this when formulating its budget.

Central Business Service Districts

Municipalities are now authorized to establish central business service districts in high density areas of pre-

dominantly commercial uses. The costs of providing special services, exclusive of capital expenditures, may be an additional charge within the district. RSA 31:120-:125.

Incompatible Offices

Selectmen may not be full time employees of the town. RSA 669:7.

Bonds

RSA 33:7-b, :8 and :8-a are amended to make clear that a *ballot* vote of $\frac{2}{3}$ of those present is necessary when issuing bonds.

Fines

RSA 31:39 was amended to increase the maximum fine which may be imposed by a municipality for violation of a local ordinance to \$1,000. A town may wish to increase its fines accordingly.

Libraries

Towns may authorize their library to retain money received from its income generating equipment to be used for general repairs and upgrading and for the purchase of books, supplies and equipment. RSA 202-A:11-a and :11-b.

Road Agents

A town may elect a road agent for a term of up to three years by following the procedures contained in RSA 231:62-a and :62-b.

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Referred: Community & Regional
Affairs and Judiciary

1 IN THE HOUSE

BY KOPONEN, HURLEY AND MARROU

2

HOUSE BILL NO. 325

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to home rule municipalities, author-
7 izing the incorporation of town meeting home rule
8 cities; and providing for an effective date."

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

10 * Section 1. AS 04.11.090(e) is amended to read:

11 (e) A holder of a beverage dispensary license may not maintain
12 upon the licensed premises more than one room in which there is regu-
13 larly maintained a fixed counter or service bar at which alcoholic
14 beverages are sold or served to members of the public for consumption
15 unless the holder of a beverage dispensary license [HE] is issued by
16 the board, after investigation, a duplicate of the original license
17 for each of the rooms. The holder of the beverage dispensary license
18 shall pay to the board with each application for a duplicate license
19 an amount equal to the fee payable for the original beverage dispen-
20 sary license under (b) of this section. If the licensed premises are
21 located within a municipality, a duplicate beverage dispensary license
22 may not be issued unless approved by the local governing body [COUNCIL
23 OR ASSEMBLY, AS APPROPRIATE].

24 * Sec. 2. AS 04.21.080(b)(10) is amended to read:

25 (10) "local governing body" means, as appropriate, a city
26 council, a borough assembly, the voters of a town meeting home rule
27 city acting in a town council r ting, or a traditional village coun-
28 cil, but does not include a corporation established under the Alaska
29 Native Claims Settlement Act;

1 * Sec. 3. AS 08.60.060 is amended to read:

2 Sec. 08.60.060. CERTIFICATE OF LOCATION. A person using or
3 proposing to use a location for a commercial or public junk yard must
4 obtain a certificate of approval for the location. If the location is
5 in a city of any class, the certificate shall be procured from the
6 governing body [CITY COUNCIL] or its designee. If the location is
7 outside the city limits but within the boundaries of an organized
8 borough, the certificate shall be procured from the assembly of the
9 organized borough or its designee. If the location is outside an
10 incorporated city or borough, the certificate of location shall be
11 obtained from the commissioner of public safety.

12 * Sec. 4. AS 08.60.070 is amended to read:

13 Sec. 08.60.070. STANDARDS FOR LOCATION AND REGULATION. The
14 commissioner of public safety and the governing body of a municipality
15 [, THE CITY COUNCIL, AND ORGANIZED BOROUGH ASSEMBLY], in considering
16 applications and regulations, shall take into account

17 (1) the nature and development of surrounding property;

18 (2) the need to protect the local economy, adjacent land
19 owners, and the motoring public from economically depressing and
20 unsightly roadside locations;

21 (3) the proximity of churches, schools, hospitals, public
22 buildings, recreation areas, or other places of public gathering;

23 (4) the sufficiency in number of other similar business
24 establishments in the vicinity;

25 (5) the adequacy of fences and other types of enclosures to
26 prevent the unsightly display of a junk yard;

27 (6) the health, safety, and general welfare of the public;

28 (7) the suitability of the applicant to establish, main-
29 tain, or operate the business under AS 08.60.050 - 08.60.100.

1 * Sec. 5. AS 14.12.010 is amended to read:

2 Sec. 14.12.010. DISTRICTS OF STATE PUBLIC SCHOOL SYSTEM. The
3 districts of the state public school system are as follows:

4 (1) each representative home rule city and each first class
5 city in the unorganized borough is a city school district;

6 (2) each organized borough is a borough school district;

7 (3) the area outside organized boroughs and outside first
8 class cities is divided into regional educational attendance areas.

9 * Sec. 6. AS 15.13.010(a) is amended to read:

10 (a) This chapter applies in every election for governor, lieu-
11 tenant governor, a member of the state legislature, a delegate to a
12 constitutional convention, or judge seeking electoral confirmation.
13 It also applies to every candidate for election to a municipal office
14 in a city or borough with a population of more than 1,000 inhabitants
15 according to the latest United States census figures or estimates of
16 population certified as correct for administrative purposes by the
17 Department of Community and Regional Affairs. A municipality may
18 exempt its elected municipal officers from the requirements of this
19 chapter if a majority of the voters voting on the question at any
20 regular election, as defined by AS 29.78.010(14), or a special munic-
21 ipality-wide election called for that purpose, vote to exempt its
22 elected municipal officers from the requirements of this chapter. The
23 question of exemption from the requirements of this chapter may be
24 submitted by [THE CITY COUNCIL OR BOROUGH ASSEMBLY BY] ordinance
25 adopted by the governing body or by initiative ordinance. Nothing in
26 this chapter prohibits a municipality from regulating by ordinance
27 campaign contributions and expenditures.

28 * Sec. 7. AS 29.08.010 is amended to read:

29 Sec. 29.08.010. HOME RULE. A home rule municipality is a

1 municipal corporation and political subdivision and is a unified
2 municipality, representative or town meeting home rule city, [OF THE
3 FIRST CLASS] or an organized borough that has adopted a home rule
4 charter. It has all legislative powers not prohibited by law or
5 charter.

6 * Sec. 8. AS 29.13.010 is amended to read:

7 Sec. 29.13.010. MUNICIPAL CHARTER ADOPTION. (a) A first class
8 municipality, [OR] second class borough, or second class city may
9 adopt a charter for its own government in accordance with AS 29.13.-
10 025 - 29.13.070. [A HOME RULE MUNICIPALITY MAY AMEND ITS CHARTER OR
11 ADOPT A NEW ONE.]

12 (b) A proposed charter for an existing municipality is framed by
13 a charter commission of seven members chosen by the municipal voters
14 at a regular or special election. A candidate for the commission
15 shall be a qualified voter of the municipality and a resident of the
16 municipality for three years immediately preceding the election.

17 (c) A charter commission election is called by filing a petition
18 with the borough assembly or the city council, or by resolution of the
19 borough assembly or city council. The petition shall be signed by a
20 number of municipal voters equal to 15 percent of the votes cast in
21 the last regular election of the municipality.

22 * Sec. 9. AS 29.13.010 is amended by adding new subsections to read:

23 (d) Upon adoption of a charter a

24 (1) first class city shall become a representative home
25 rule city or town meeting home rule city; and

26 (2) second class city shall become a town meeting home rule
27 city.

28 (e) At an election to incorporate as a city, an unincorporated
29 community may adopt a charter for its own government and incorporate

1 as a town meeting home rule city. The proposed charter for an unin-
2 corporated community shall be prepared by the petitioners and filed
3 with the petition to incorporate a town meeting home rule city under
4 AS 29.18.050.

5 (f) A home rule municipality may adopt a new charter.

6 * Sec. 10. AS 29.13.030 is amended to read:

7 Sec. 29.13.030. ELECTION. At the charter commission election
8 the voters of the existing municipality shall consider the question
9 "Shall a charter commission be elected to frame a proposed new char-
10 ter?" and shall select the members of the commission. If the question
11 is approved, the seven candidates receiving the highest number of
12 votes shall immediately organize as a charter commission.

13 * Sec. 11. AS 29.13.070 is amended to read:

14 Sec. 29.13.070. CHARTER ADOPTION OR REJECTION. (a) If a major-
15 ity of those voting in an existing municipality [ON THE QUESTION]
16 favor the proposed charter or if a majority of those voting in an
17 unincorporated community favor incorporation of a town meeting home
18 rule city, the charter, [IT] becomes the organic law of the municipal-
19 ity. Thereafter, the court shall take judicial notice of the charter.
20 The municipality shall file the indicated number of copies of the
21 charter with the

22 (1) lieutenant governor - two copies;

23 (2) Department of Community and Regional Affairs - two
24 copies;

25 (3) district recorder - one copy;

26 (4) municipal clerk - one copy.

27 (b) If a proposed charter for an existing municipality is re-
28 jected, the charter commission shall prepare another proposed charter
29 to be submitted to the voters at a regular or special election to be

1 held within one year after the date of the first charter election. If
2 the second proposed charter is also rejected, the charter commission
3 shall be dissolved and the question of adoption of a charter shall be
4 treated as if it had never been proposed or approved.

5 * Sec. 12. AS 29.13.070 is amended by adding a new subsection to read:

6 (c) If incorporation of a town meeting home rule city is reject-
7 ed by the voters in an unincorporated community, the proposed charter
8 is rejected.

9 * Sec. 13. AS 29.13 is amended by adding a new section to read:

10 Sec. 29.13.072. CHARTERS FOR TOWN MEETING HOME RULE CITIES. A
11 town meeting home rule city shall be governed as a direct democracy
12 through town council meetings. In addition to other requirements for
13 a home rule charter, the charter of a town meeting home rule city
14 shall provide for

15 (1) regular town council meetings to be held at least once
16 each year;

17 (2) a procedure for calling a special town council meeting
18 by the voters;

19 (3) the preparation of an agenda for each town council
20 meeting, including a procedure to enable any voter to insert an item
21 into the agenda;

22 (4) the election and term of office of a moderator to
23 preside over town council meetings;

24 (5) procedures for conducting town council meetings, in-
25 cluding procedures for voting and adopting ordinances and resolutions;

26 (6) preparation and distribution to the voters of a report
27 of actions taken at each town council meeting;

28 (7) the election and term of office of at least three
29 council members to provide for the administration of the city and

1 carry out the duties prescribed by law or charter; and

2 (8) the appointment or election of a finance committee that
3 shall be responsible for the preparation of the city budget for each
4 fiscal year, submit the budget to the voters at a town council meeting
5 for approval, and perform other duties prescribed by charter or ordi-
6 nance.

7 * Sec. 14. AS 29.13.080 is amended to read:

8 Sec. 29.13.080. CHARTER AMENDMENT. A municipal charter may be
9 amended as provided in the charter or by initiative or referendum [AS
10 PROVIDED IN AS 29.28.060 - 29.28.110], except that an amendment is not
11 effective unless

12 (1) ratified by the voters; or

13 (2) in a town meeting home rule city, approved by the
14 voters at a town council meeting.

15 * Sec. 15. AS 29.18.011 is amended by adding a new subsection to read:

16 (c) A community that meets the standards established in (a)(2) -
17 (4) of this section may incorporate as a town meeting home rule city.

18 * Sec. 16. AS 29.18.050 is amended to read:

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

23 (1) class;

24 (2) name;

25 (3) boundaries;

26 (4) unless the proposed municipality is a town meeting home
27 rule city, composition and apportionment of the assembly or council;

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

1 (6) for a second class borough, a designation of areawide
2 and nonareawide powers to be exercised;

3 (7) maps, documents, and other information required by the
4 Department of Community and Regional Affairs;

5 (8) for a first class city [INCORPORATION], the signatures
6 and resident address of 50 permanent resident voters or of 15 percent
7 of the permanent resident voters within the proposed municipality,
8 whichever is greater, based on the number who voted in the area in the
9 last general election;

10 (9) for a town meeting home rule city or a second class
11 city [INCORPORATION], the signature and resident address of 25 perma-
12 nent resident voters or of 15 percent of the permanent resident voters
13 within the proposed municipality, whichever is greater, based on the
14 number who voted in the area in the last general election;

15 (10) for a borough [INCORPORATION], the signature and resi-
16 dent address of 15 percent of the permanent resident voters in each
17 first class city and 15 percent of voters in the area outside first
18 class cities based on the number who voted in the respective areas in
19 the last general election;

20 (11) for a first or second class city, a designation of the
21 powers proposed by the petitioners to be exercised;

22 (12) a proposed operating budget for the municipality pro-
23 jecting sources of income and items of expenditure through the first
24 full fiscal year of operation;

25 (13) for a town meeting home rule city, a proposed home rule
26 charter.

27 * Sec. 17. AS 29.18.110 is amended by adding a new subsection to read:

28 (e) A home rule charter included in an incorporation petition
29 under AS 29.18.050(13) is considered part of the incorporation

1 question. The home rule charter is adopted if the voters approve
2 incorporation of the town meeting home rule city.

3 * Sec. 18. AS 29.18.180(a) is amended to read:

4 (a) For the purpose of defraying the cost of transition to
5 borough or city government and in order to provide for development and
6 interim governmental operations, each borough and city incorporated
7 after January 1, 1968, or, in the case of a second class city, incor-
8 porated or reclassified after January 1, 1968, other than a unified
9 municipality incorporated under the provisions of AS 29.68.240 -
10 29.68.440 or former AS 29.85, or a municipality otherwise incorporated
11 by consolidation, is entitled to an organization grant equal to \$10
12 for every voter who voted in the borough or city incorporation elec-
13 tion. However, each incorporated borough, [AND EACH] first class
14 city, and town meeting home rule city incorporated or established by
15 reclassification outside an organized borough is entitled to at least
16 \$25,000.

17 * Sec. 19. AS 29.23.200 is amended to read:

18 Sec. 29.23.200. COMPOSITION, ELIGIBILITY, ELECTION AND TERM.

19 (a) Each first class representative home rule city has a council of
20 six members elected by the voters at large. Each first or second
21 class town meeting home rule city has a council consisting of all
22 permanent resident voters within the city boundaries [SEVEN MEMBERS
23 ELECTED BY THE VOTERS AT LARGE]. The council of a first [OR SECOND]
24 class representative home rule city may by ordinance provide for
25 election of members other than on an at-large basis for all members.

26 (b) A cit. voter is eligible to hold office as a member of the
27 council. The council may by ordinance establish residence require-
28 ments for council members not exceeding three years. A council member
29 who ceases to be eligible to be a city voter immediately forfeits that

1 office.

2 (c) Except for town meeting home rule cities, council members
3 [COUNCILMEN] are selected for three-year terms and until their succes-
4 sors are elected and have qualified. The regular term of office
5 begins on the first Monday following certification of the election.
6 The council may provide by ordinance for different terms not to exceed
7 four years, except that the current term of incumbent councilmen may
8 not be altered.

9 * Sec. 20. AS 29.23.210 is amended by adding a new subsection to read:

10 (e) This section applies to representative home rule cities and
11 general law cities.

12 * Sec. 21. AS 29.23.250(a) is amended to read:

13 (a) A voter of a representative home rule or a general law city
14 is eligible to hold the office of mayor, except that a representative
15 home rule city may prescribe additional residency requirements by
16 charter. The council, for all other cities except town meeting home
17 rule cities, may by ordinance establish residence requirements for
18 candidates for mayor not exceeding three years.

19 * Sec. 22. AS 29.23.255 is amended by adding a new subsection to read:

20 (b) This section applies to general law and home rule municipal-
21 ities except town meeting home rule cities.

22 * Sec. 23. AS 29.23.540(c) is amended to read:

23 (c) A state employee or school district employee may not be
24 denied the right to serve as an elected municipal official because of
25 employment by the state or a school district unless specifically
26 prohibited by charter or ordinance [OF A MUNICIPALITY,] adopted at a
27 special or general election or at a town council meeting election.
28 However, a school district employee may not serve on a school district
29 board in the school district where employed. [PROVISIONS OF THIS

1 SECTION DO NOT APPLY TO TERM OF OFFICE IN EFFECT ON AUGUST 24, 1976.]

2 * Sec. 24. AS 29.28.010(a) is amended to read:

3 (a) The governing body [BOROUGH ASSEMBLY OR CITY COUNCIL] shall
4 prescribe the general rules for conducting regular and special municipi-
5 pal elections and appoint at least three judges for each polling
6 place. The general rules for conducting town council meeting elec-
7 tions shall be prescribed in the charter of a town meeting home rule
8 city. A [THE] municipality may not alter the voter qualification
9 requirements of this title.

10 * Sec. 25. AS 29.28.250 is amended to read:

11 Sec. 29.28.250. ELECTION OF SUCCESSOR. If the voters recall an
12 officer, the clerk shall conduct an election for a successor to fill
13 the unexpired term. The election shall be held at least 10 but not
14 more than 45 days from the date of the recall election. However, if a
15 regular or special election occurs within 75 days of the recall elec-
16 tion, the successor to the recalled official shall be chosen at that
17 regular or special election. Unless the incumbent was elected in a
18 town council meeting of a town meeting home rule city, the [THE]
19 procedures and requirements for the regular election for the office
20 from which the incumbent is recalled apply to the election conducted
21 under this section.

22 * Sec. 26. AS 29.43.030 is amended to read:

23 Sec. 29.43.030. EDUCATION. A representative home [HOME] rule
24 and a first class city [CITIES] outside a borough constitutes a [BOR-
25 OUGHS CONSTITUTE] city school district [DISTRICTS] and shall estab-
26 lish, maintain, and operate a system of public schools as provided by
27 AS 29.33.050 for boroughs.

28 * Sec. 27. AS 29.43.030 is amended by adding a new subsection to read:

29 (b) A town meeting home rule city is not a school district and

1 may not establish a system of public schools.

2 * Sec. 28. AS 29.43.040 is amended to read:

3 Sec. 29.43.040. PLANNING AND ZONING. (a) A representative home
4 [HOME] rule or a [AND] first class city [CITIES] outside a first or
5 [AND] second class borough [BOROUGHS] shall, and a town meeting home
6 rule or second class city [CITIES] outside a first or [AND] second
7 class borough [BOROUGHS] may, provide for planning, platting and
8 zoning, as provided by AS 29.33.070 - 29.33.245 for boroughs.

9 (b) A representative home [HOME] rule or a [AND] first class
10 city [CITIES] within a third class borough [BOROUGHS] shall, and a
11 town meeting home rule or second class city [CITIES] within a third
12 class borough [BOROUGHS] may, provide for planning, platting and
13 zoning, as provided by AS 29.33.070 - 29.33.245 for boroughs.

14 * Sec. 29. AS 29.48.050 is amended to read:

15 Sec. 29.48.050 FRANCHISES AND PERMITS. (a) The assembly
16 acting for the area outside cities and the governing body of the city
17 [COUNCIL] acting for the area within a city may grant franchises,
18 including exclusive franchise privileges, for the construction, opera-
19 tion and maintenance of bus transportation systems and public util-
20 ities not regulated under AS 42.05 and may permit them the use of
21 streets and other public places under regulations prescribed by ordi-
22 nance.

23 (b) A franchise is not valid until it has been submitted to the
24 qualified voters of the city or borough area outside cities in which
25 it applies, and at least 55 percent of the votes cast are in favor of
26 the franchise. At least 30 days notice of a franchise referendum
27 election shall be given in the same manner as is provided for notice
28 of regular municipal elections, and the notice shall specify the
29 purpose of the election. The ordinance granting a franchise shall

1 provide for its submission for ratification to the qualified voters of
2 the city or borough area outside cities at either a regular or special
3 election, and the result of the election shall be canvassed publicly
4 by the council or assembly and spread upon the records of the minutes
5 and the result declared and certified in the same manner as in a
6 regular election. This subsection does not apply to town meeting home
7 rule cities.

8 (c) Public utilities regulated under AS 42.05 have the right to
9 use the streets and other public places, upon payment of a reasonable
10 permit fee and on reasonable terms and conditions and with reasonable
11 exceptions the governing body [ASSEMBLY OR COUNCIL] requires. A
12 dispute as to whether fees, terms, conditions or exceptions are
13 reasonable shall be decided by the Alaska Public Utilities Commission.

14 * Sec. 30. AS 29.48.060 is amended to read:

15 Sec. 29.48.060. PUBLIC UTILITIES RATES. The assembly acting for
16 the area outside cities and the governing body of the city [COUNCIL]
17 acting for the area within a city may regulate, fix, establish and
18 change, as it considers proper, the rates and charges imposed for
19 utilities services given to the municipality or its inhabitants by a
20 municipally owned utility not regulated under AS 42.05.010 - 42.05.721
21 and may regulate and provide what is a reasonable deposit for meters
22 and security for service to be given, provided that interest is paid
23 on the deposit. All rates, charges and regulations shall be reason-
24 able and shall permit a fair and reasonable return on invested capi-
25 tal.

26 * Sec. 31. AS 29.48.070 is amended to read:

27 Sec. 29.48.070. HEARING FOR REGULATION OF UTILITIES RATES. If
28 the governing body [ASSEMBLY OR COUNCIL] considers it advisable to
29 regulate, change, or fix the rates to be charged by a public service

1 corporation, association or individual not regulated under AS 42.05,
2 it shall order a hearing to be held before the governing body at a
3 time and place specified. Notice of the hearing shall be given by at
4 least one publication in a newspaper of general circulation distribut-
5 ed within the municipality or, if no newspaper of general circulation
6 is distributed within the municipality, notice shall be given by
7 posting a notice in three public places within the city or borough
8 area outside cities receiving the utilities services and by serving
9 written notice upon the corporations, associations and individuals
10 whose rates are to be regulated, fixed, or changed in the same manner
11 that summonses are served. The notices shall be published or posted
12 and served at least 15 days before the hearing.

13 * Sec. 32. AS 29.48.090 is amended to read:

14 Sec. 29.48.090. FURTHER PROCEEDINGS. A hearing under AS 29.48.-
15 070 shall begin at the time stated in the notice but may be continued
16 from time to time. Except in a town meeting home rule city, at [AT]
17 least a quorum of the assembly or council shall be present at the
18 hearing. At the conclusion of the hearing the parties interested may
19 make [SUCH] arguments before the governing body [ASSEMBLY OR COUNCIL],
20 either in person or by attorney, as they consider proper, touching the
21 matters at issue, and thereafter the governing body [ASSEMBLY OR
22 COUNCIL] shall proceed to regulate and fix the rates by ordinance.
23 The date upon which the rates fixed or regulated take effect shall be
24 stated in the ordinance and shall be at least 10 days after passage
25 and approval of the ordinance.

26 * Sec. 33. AS 29.48.180(b) is amended to read:

27 (b) Within three years after incorporation of the municipality,
28 the municipal executive or the town council in a town meeting home
29 rule city, with the advice and assistance of a legal advisor, shall

1 have prepared a general codification of all municipal ordinances of
2 general applicability having the force and effect of law. The municipi-
3 pal code shall be revised and printed at least every five years,
4 unless the code is kept current by regular supplements.

5 * Sec. 34. AS 29.48.220 is amended to read:

6 Sec. 29.48.220. POST AUDIT. The governing body [ASSEMBLY OR
7 COUNCIL] shall provide for an annual independent audit of the accounts
8 and financial transactions of the municipality or, in the case of a
9 second class city, an audit or statement of annual income and expendi-
10 tures. To make the audit the governing body [ASSEMBLY OR COUNCIL]
11 shall designate a public accountant who has no personal interest,
12 direct or indirect, in the fiscal affairs of the municipality. Copies
13 of the audit shall be available to the public upon request. This
14 section applies to home rule and general law municipalities.

15 * Sec. 35. AS 29.53.025(a) is amended to read:

16 (a) Except for a town meeting home rule city, a municipality
17 [MUNICIPALITIES] may exclude, [OR] exempt, or partially exempt resi-
18 dential property from taxation by ordinance ratified by the voters at
19 a regular or special election. A town meeting home rule city may
20 exclude, exempt, or partially exempt residential property from taxa-
21 tion by ordinance adopted at a town council meeting. An exclusion or
22 exemption authorized by this section may not exceed \$10,000 for any
23 one residence.

24 * Sec. 36. AS 29.63.065(b) is amended to read:

25 (b) An exemption may not be granted under this section except
26 upon written application for the exemption on a form prescribed by the
27 state assessor for use by local assessors and in accordance with the
28 following requirements:

29 (1) the claimant must file the initial application during

1 the period of time between the date the assessment roll is certified
2 and the time of payment fixed by the governing body [ASSEMBLY OR
3 COUNCIL]; within one year of the date the assessment roll is certi-
4 fied the governing body [ASSEMBLY OR COUNCIL] for good cause shown may
5 waive the claimant's failure to make timely initial application for
6 the exemption and authorize the assessor to accept the application as
7 if timely filed;

8 (2) a claimant receiving the exemption must file with the
9 department by March 15 of each subsequent year a separate application
10 proving eligibility as of January 1 in order to retain the exemption;
11 within the same year the department for good cause shown may waive the
12 claimant's failure to make timely application and approve the applica-
13 tion as if timely filed;

14 (3) if an application is filed within the required time
15 under this subsection and is approved by the governing body [ASSEMBLY
16 OR COUNCIL], the exemption shall be allowed in accordance with the
17 provisions of this section; if a waiver under this subsection is
18 granted and the application for exemption approved, the amount of any
19 assessment, penalty or interest that [WHICH] the claimant may have
20 already paid on the assessment shall be refunded; the municipality may
21 at any time require proof in the form considered necessary of the
22 right and amount of an exemption claimed under this section.

23 * Sec. 37. AS 29.78.010 is amended by adding a new paragraph to read:

24 (20) "governing body" means a borough assembly, city coun-
25 cil, or the voters of a town meeting home rule city acting in a town
26 council meeting.

27 * Sec. 38. AS 29.95.020(a) is amended to read:

28 (a) A municipality qualifying for an entitlement under AS 29.88
29 or AS 29.89.010 - 29.89.100 shall receive a minimum payment of \$25,000

1 plus an area cost-of-living differential for each fiscal year if:

2 (1) during the fiscal year preceding the year for which
3 payment of an entitleme it is authorized under AS 29.88 or As 29.89.-
4 010 - 29.89.100, the municipality has conducted a regular

5 (A) election under AS 29.28.010 - 29.28.050 [DURING
6 THE FISCAL YEAR PRECEDING THE YEAR FOR WHICH PAYMENT OF AN EN-
7 TITLEMENT IS AUTHORIZED BY AS 29.88.010 - 29.88.045 or 29.89.-
8 010 - 29.89.100] and has reported the results of the election to
9 the commissioner of the Department of Community and Regional
10 Affairs; or

11 (B) town council meeting if it is a town meeting home
12 rule city;

13 (2) unless it is a town meeting home rule city, regular
14 council meetings are held in the municipality in accordance with the
15 requirements of AS 29.23.210 during the fiscal year preceding the year
16 for which payment of an entitlement is authorized by AS 29.88 or
17 AS 29.89.010 - 29.89.100 and a record of the proceedings is main-
18 tained;

19 (3) a municipal budget has been adopted for the fiscal year
20 during which payment of an entitlement is authorized by AS 29.88 or
21 AS 29.89.010 - 29.89.100 and an audit or financial statement for the
22 preceding fiscal year has been prepared and furnished to the Depart-
23 ment of Community and Regional Affairs in accordance with AS 29.-
24 23.560(a); and

25 (4) local ordinances adopted by the governing body of the
26 municipality have been codified in accordance with AS 29.48.180.

27 * Sec. 39. AS 35.15.120(2) is amended to read:

28 (2) "governing body" means in the case of a municipality,
29 its assembly or council, or, if it is a town meeting home rule city,

1 the voters acting in a town council meeting, and, in the case of a
2 regional educational attendance area, its regional school board;

3 * Sec. 40. AS 39.20.340(a) is amended to read:

4 (a) An employee of the state, or a municipality [POLITICAL
5 SUBDIVISION,] with the approval of the governing body [CITY COUNCIL OR
6 BOROUGH ASSEMBLY], who is a member of a reserve or auxiliary component
7 of the United States Armed Forces is entitled to a leave of absence
8 without loss of pay, time or efficiency rating on all days during
9 which the employee is ordered to training duty, as distinguished from
10 active duty, with troops or at field exercises, or for instruction, or
11 when under direct military control in the performance of a search and
12 rescue mission. The leave of absence may not exceed 16 1/2 working
13 days in any 12-month period.

14 * Sec. 41. AS 39.20.350 is amended to read:

15 Sec. 39.20.350. RESTORATION OF RESERVE MEMBERS TO FORMER POSI-
16 TIONS. A member of a reserve component of the United States Armed
17 Forces employed by the state, a political subdivision, or a municipal
18 corporation with the approval of the governing body [CITY COUNCIL] who
19 is ordered to duty by proper authority, shall, when relieved from
20 duty, be restored to the position the employee held when ordered to
21 duty.

22 * Sec. 42. AS 39.50.145 is amended to read:

23 Sec. 39.50.145. PARTICIPATION BY MUNICIPALITIES. A municipality
24 may exempt its municipal officers from the requirements of this chap-
25 ter if a majority of the voters voting on the question at any regular
26 election, as defined by AS 29.78.01(14), or a special municipality-
27 wide election, vote to exempt its municipal officers from the require-
28 ments of this chapter. The question of exemption from the require-
29 ments of this chapter may be submitted by the governing body [CITY

1 COUNCIL OR BOROUGH ASSEMBLY] by ordinance or by initiative ordinance.

2 * Sec. 43. AS 42.30.030 is amended to read:

3 Sec. 42.30.030. BOOKS OF ACCOUNT. Every person installing,
4 operating or maintaining a public service plant for the purpose of
5 supplying the city or the inhabitants of the city with telephone
6 service, water, power, lighterage, wharfage, dockage, storage, heat or
7 light, or rendering other kindred public service shall keep correct
8 books of account in permanent convenient form showing in detail the
9 volume of business done, the character of the business done, the
10 quantity and kind of service rendered, rates charged, and all expenses
11 incurred in connection with the operation of the enterprise, showing
12 the items of expense in detail. The books shall be open to inspection
13 by the mayor, [AND THE] city council and [BY] an accredited agent,
14 auditor, or representative appointed by the mayor, [AND] city council,
15 or voters at a town meeting home rule city at a town council meeting.

16 * Sec. 44. AS 42.30.040 is amended to read:

17 Sec. 42.30.040. ANNUAL STATEMENT. (a) During April of each
18 year, each person engaged in furnishing a public service, except a
19 rural electrification or telephone cooperative or nonprofit asso-
20 ciation receiving financial assistance from the federal government
21 under the Rural Electrification Act, shall file with the city council
22 a written statement under oath, sworn to by the person having the
23 management and control of the business or other person familiar with
24 all the facts. The statement shall contain a detailed list of all
25 property used in connection with the enterprise and shall give the
26 valuation of each piece of property listed. It shall also contain a
27 statement of the receipts and disbursements during the year, and the
28 profits or losses. The statement of disbursements shall show to whom
29 each item was paid and what for. The statement shall be for the

1 calendar year preceding and shall be for the use of the governing body
2 of the city [COUNCIL].

3 [(b) THE CITY COUNCIL IS NOT BOUND BY THE STATEMENT BUT MAY
4 INQUIRE INTO ITS TRUTH.]

5 * Sec. 45. AS 44.47.145(d) is amended to read:

6 (d) Before a grant is made under this section, the governing
7 body [CITY COUNCIL] or, if the community is not incorporated, a rea-
8 sonable representative body in the community shall agree in writing to
9 maintain and operate the bulk storage facility to be constructed with
10 the proceeds of the grant.

11 * Sec. 46. AS 44.88.220(5) is amended to read:

12 (5) "governing body of a political subdivision" means, when
13 used with respect to the location of a project, the council or the
14 voters of a town meeting home rule city acting in a town council
15 meeting if the project is to be located in a city in the unorganized
16 borough, or the assembly if the project is to be located in an or-
17 ganized borough or a unified municipality;

18 * Sec. 47. AS 46.40.130(a) is amended to read:

19 (a) Organization of a coastal resource service area may be
20 initiated

21 (1) by submission to the council of a petition signed by a
22 number of registered voters equal to 15 percent of the number of votes
23 cast within the coastal resource service area at the last state gener-
24 al election;

25 (2) by submission to the council of a resolution approved
26 by the governing body [CITY COUNCIL] or traditional village council of
27 not less than 25 percent of the number of cities and villages within
28 the coastal service area; or

29 (3) at the direction of a majority of the members of the

1 council in the manner set out in AS 46.40.160.

2 * Sec. 48. AS 46.40.180(a) is amended to read:

3 (a) Before adoption by a coastal resource service area board, or
4 by the Department of Community and Regional Affairs under AS 46.40.-
5 170, a district coastal management program shall be submitted for
6 review to each city or village within the coastal resource service
7 area. The governing body [COUNCIL] of a city or traditional village
8 council shall consider the program submitted for review. Within 60
9 days of submission, the governing body [COUNCIL] of a city or tra-
10 ditional village council shall either approve the program or enter
11 objections to all or any portion of the program.

12 * Sec. 49. AS 46.40.180(c) is amended to read:

13 (c) Objection by a city [COUNCIL] under (b) of this section is
14 limited to objection to elements of the program affecting resources or
15 the use of resources within the corporate limits of the city. Objec-
16 tion by a traditional village council under (b) of this section is
17 limited to objection to elements of the program affecting resources or
18 the use of resources within the village or within two miles of the
19 village.

20 * Sec. 50. This Act takes effect January 1, 1986.

21

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM

March 13, 1984

SUBJECT: Constitutional amendment authorizing the legislature to provide for direct democracies (HJR 61)

TO: Representative Mike W. Miller
Chairman, House Community and Regional Affairs

FROM: Tamara Brandt Cook
Deputy Director
Division of Legal Services

Here is the section by section analysis that you requested of HJR 61.

Section 1 amends the state constitution so that the legislature may provide for a city to be governed as a direct democracy. Now a city is required to be governed by a representative body, the council. Under a direct democracy from of government the voters would not elect representatives, but, rather, would govern the city themselves through majority action.

Section 2 requires that the amendment be placed before the voters at the next general election.

TBC:ojb
J4/078

STATE OF ALASKA
THE LEGISLATURE

POUCH V. STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3600

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 17, 1985

SUBJECT: Incorporation of Town Meeting Home Rule Cities
(Work Order No. 14-0096)

TO: Representative Koponen

FROM: Tamara Brandt Cook *TBC*
Deputy Director

I wanted to make sure that you are aware of a constitutional problem contained in this work draft. Although the draft attempts to avoid the necessity of amending the Alaska constitution to allow for government by town meeting, it raises the question whether the term "council" used in article X, section eight, can be stretched to include the town meeting concept. I have checked the minutes of the constitutional convention and can find no record of any discussion of the term "council". The common definition of the term in this context is "a group of people chosen as an administrative, advisory, or legislative assembly."

In short, if this bill becomes law in my opinion a court would find that the term "council" cannot be interpreted to mean all permanent resident voters within the city boundaries, in that this would be a different meaning than is normally given to the term. In interpreting a constitution it is assumed that each term has a particular meaning. Assuming that the meaning of the term "council" is limited to a representative body, or a group smaller than all members of the community, the bill would be struck down as an attempt to amend the constitution in violation of article XIII, section one, which provides that amendment can only occur by constitutional convention or by action of the legislature.

If you have further questions on this issue please contact me.

TBC: csh
c2/176

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU, ALASKA 99911
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 14, 1984

SUBJECT: Sectional Analysis of HB 615
(Town meeting home rule cities.)

TO: Representative Mike W. Miller
Chairman, House Community
and Regional Affairs

FROM: Tamara Brandt Cook *TBC*
Deputy Director
Division of Legal Services

Here is the section by section analysis that you requested of HB 615. The bill permits the incorporation of cities that are governed as direct democracies through town meetings, rather than as representative democracies through the election of a mayor and council. Because these cities would not have councils or mayors, the bill includes a great many technical changes to various statutes referring to councils or mayors so that the statutes can be applied to these cities, or, if appropriate, so that these cities can be excluded from application of the statute. In this analysis these sections are simply noted as containing technical changes.

Sections 1 - 4 Technical changes.

Section 5 Town meeting home rule cities are not school districts, as are representative home rule cities in the unorganized borough.

Section 6 Technical change.

Section 7 A town meeting home rule city is included within the class of home rule municipalities.

Section 8 A second class city is allowed to adopt a home rule charter. A charter for an existing municipality is framed by a charter commission. Under existing law only first class municipalities or second class boroughs may

adopt home rule charters. In section 9 of this bill, unincorporated communities are allowed to adopt charters.

Section 9 A first class city that adopts a charter may become either a representative or town meeting home rule city. A second class city that adopts a charter must become a town meeting home rule city. An unincorporated community is allowed to adopt a charter and incorporated as a town meeting home rule city. The proposed charter is prepared by the petitioners and filed with the petition to incorporate a city.

Section 10 A charter commission is elected only for an existing municipality that is considering going home rule. In an unincorporated community no commission is chosen.

Section 11 If a majority favors a proposed charter in an existing municipality or if a majority favors incorporation of a town meeting home rule city, the charter is adopted. If a proposed charter for an existing municipality is rejected, the commission prepares another.

Section 12 If incorporation of a town meeting home rule city is rejected in an unincorporated community, the charter is also rejected. There is no provision for the preparation of a new charter. Instead, a new effort at incorporation would have to be made if a new charter is to be presented to the voters.

Section 13 The charter for a town meeting home rule city must contain certain items not required for other home rule charters, including procedures for town meetings, provision for the election of selectmen to provide for the administration of the city, and provision for a finance committee that prepares the annual budget.

Section 14 A charter amendment for a town meeting home rule city must be approved by the voters at a town meeting, while an amendment for other home rule municipalities must be ratified by the voter.

Section 15 A community that meets the first four standards for incorporation as a first class city, whether or not it meets the population requirement, may incorporate as a town meeting home rule city.

Section 16 The requirement that an incorporation petition include information about the composition and apportionment of the assembly or council does not apply to a town meeting home rule city, since no council is elected in that type of city. The signature requirements for an incorporation petition of a town meeting home rule city are the same as for a second class city. No designation of powers is required for a petition to incorporate a town meeting home rule city, but a proposed home rule charter must be included with the petition.

Section 17 A home rule charter included in an incorporation petition for a town meeting home rule city is considered part of the incorporation question and the charter is adopted if incorporation is approved.

Section 18 A town meeting home rule city outside a borough qualifies for the minimum organization grant now provided to first class cities.

Sections 19 - 22 - Technical changes.

Section 23 General rules for conducting town meeting elections are to be prescribed in the charter.

Sections 24 - 27 Technical changes.

Section 28 A representative home rule city outside a borough is a school district. All home rule cities outside boroughs are school districts under existing law.

Section 29 A town meeting home rule city is not a school district.

Section 30 A town meeting home rule city outside a first or second class borough may provide for planning, platting and zoning, but does not have to. A representative home rule city must provide this service, just as under existing law all home rule cities outside first or second class boroughs must.

Sections 31 - 37 Technical changes.

Section 38 A town meeting home rule city may exclude, exempt, or partially exempt residential property from taxation by ordinance adopted at a town meeting. In other municipalities the ordinance must be ratified by the voters.

Representative Mike W. Miller
Page 4
March 14, 1984

Section 39 A new definition is added to the municipal code so that "governing body" can be used to refer generally to an assembly, council or the voters of a town meeting home rule city.

Sections 40 - 51 Technical changes.

Section 52 This bill takes effect on the effective date of a constitutional amendment that would authorize the formation of cities governed as direct democracies.

TBC:ojb
J4/086

TOWN MEETINGS

... Each qualified inhabitant of the town has an indisputable right to vote upon every question presented, as well as to discuss it, or there is no town meeting. This is universally understood as the vital feature of the town system of government as practiced from a long time before the Declaration of Independence until the present.

— Opinion of the Justices, 229 Mass. 601, 1918

Although today there are more people living in cities than in towns, the form that still sets local government in Massachusetts apart from that in all other sections of the country outside New England is the *Town Meeting*. The following is primarily a description of the traditional town meeting, but most of the details apply equally to representative town meetings.

What is a Town Meeting?

A *town meeting* is a gathering of all the people in the town who are eligible to vote. Of course they don't all come, but those who stay away must abide by the decisions of those who attend.

It isn't just an ordinary meeting but a very special kind of meeting. Since its decisions affect the lives and the pocketbooks of all the citizens, there are very special requirements which must be followed in calling and conducting the meeting. Any failure to meet the requirements may invalidate the action of the meeting.

Here is a brief list of the most important items of business of the town meeting which come up from year to year.

1. The town meeting decides what officers the town shall have, what salary it will pay for each office, and in some cases the length of term.
2. The town meeting elects citizens to fill certain town offices.
3. The town meeting decides for what purposes the town will spend money and how much may be spent for each purpose.
4. The town meeting adopts and changes by-laws to govern the conduct of the inhabitants of the town in local affairs.

The Common Pattern

No matter how large or small, in *every* town* the town meeting follows the *same* pattern, and

*Agawam and Methuen, still retaining the name of *Town*, have abandoned the town meeting and have created *town councils* of 15 and 21 members respectively. The councils have all the legislative power of a town meeting and are required to meet at least once a month.

is conducted under the *same* laws. But within that common pattern there are allowances for variations. There is flexibility. That is why it is sometimes hard to realize that the all-day community get-together in the small farm town has anything in common with the protracted evening meetings in some of the large metropolitan towns near Boston. Let us see what some of the common factors are.

The Day. With but few exceptions, annual town meetings are held in February or March, but they may be held as late as May.

In most towns, the election of officers is held on a different day than the meeting for the conduct of other business. There is a decided preference for holding the election first and the business meeting a week or more later.

In a few towns, the election of officers is held in November, December, or January under the provisions of special Acts.

Special meetings may be called by the selectmen at any time, and must be called by them upon receipt of a request signed by 200 voters. If there



Danvers Town Seal

YOUR MASSACHUSETTS GOVERNMENT

are less than 1000 voters, only 20 percent of them need sign.

The Hour for calling the town meeting may be established in the by-laws.

The Warrant. Every town meeting is called by the issuing of a warrant. This is usually done by the selectmen, but the law authorizes other officers to do it if there are no selectmen remaining in office or if the selectmen refuse. The *warrant* is a document which states (1) the time of the meeting, (2) the place of the meeting, and (3) the business to be taken up at the meeting.

Traditionally, the warrant is addressed to the constables, who are required thereby to give notice of the meeting to the inhabitants. The law specifies only that the warrant is to be issued at least seven days before the meeting. It does not say how the constables shall notify the people. That is left to the town to prescribe in a by-law or by vote. In some towns the warrant is merely posted in a few public places. In others, a copy of the warrant is published in the local paper. In still others, a copy is delivered to every residence.

The warrant for the annual meeting usually states that the first item of business, *Article 1*, is to elect officers for the year. Then it lists every office to be filled.

Article 2 may be to hear the reports of town officers. Then follow other articles, each one naming a single subject to come before the meeting. Sometimes there are seventy or more. Different towns have different customs. In some towns there may be a separate article for the appropriation for each town department. In other towns there is a single article such as to "appropriate money for all necessary town expenses or act in any matter relating thereto."

The preparation and the wording of the warrant are important because a town meeting cannot take valid action on any subject unless it is contained in the warrant.

Any voter who gets the signatures of nine others may have any subject included in the warrant for the annual meeting by filing his request with the selectmen. To require the selectmen to include a subject in the warrant for a special meeting is more difficult. Such a request must have 100 signatures. If there are less than 1000 voters, the signatures of only ten percent of them are needed.

The Moderator is the person who presides over the town meeting. His is one of the most important positions in the town because he has great authority to direct and regulate the conduct of the meeting. In some of the smaller towns, each meeting is called to order by the town clerk. The selection of a moderator for that meeting is then the first item of business, and the clerk presides until a moderator is selected. Years ago this was

the usual practice. Today, however, most towns elect a moderator to preside at all town meetings during his term of office. The term is either one or three years.

The Conduct of the Meeting is largely under the control of the moderator. He is governed by a few basic provisions in the law, and there may be by-laws regulating some aspects of the meeting. Some of the most common rules established in town by-laws regulate admission to the meeting and fix the number of voters which will constitute a *quorum*, i.e., the minimum number of voters who may legally conduct business. Some towns, including the larger ones and particularly the towns with representative town meetings, have fairly detailed rules of procedure, while the majority of small towns leave details of parliamentary procedure to the moderator.

The Town Clerk serves as clerk of the town meeting, takes the minutes, records the votes, and assists the moderator.

Voting. Although most matters are settled with simple voice votes, there are times when a voice vote is not sufficient. If the vote is questioned, the moderator may appoint tellers and then ask for a rising vote or a show of hands to be counted by the tellers. On matters which require an unusual majority — such as a two-thirds vote to borrow money — the vote must be counted unless it is unanimous.

Some towns — like Marblehead — have in their by-laws a provision that upon request of a specified number of voters the vote shall be taken by ballots collected by the tellers. Other towns — like Provincetown — go one step further and provide a formal balloting if 25 percent of the voters present and voting so request. The voting list is used and each voter is checked as he casts his ballot.

In towns with representative town meetings the procedure is similar to that in the open town meetings. The Watertown by-law section quoted here describes the general pattern.

When a question is put, the sense of the meeting shall be determined by the voices of the Town Meeting members and the Moderator shall declare the vote as it appears to him. If the Moderator is unable to decide the vote by the sound of the voices, or if his decision is immediately questioned by seven or more Town meeting members rising in their places for that purpose, he shall determine the vote by ordering a show of hands or standing vote and he may appoint tellers to make and return the count. A roll call of the Town meeting members shall be ordered by the Moderator if thirty members shall by a showing of hands favor such motion.

A few of the towns with representative town meetings — Amherst, Fairhaven, and Swampscott for example — have provisions for the use of

TOWN MEETINGS

secret ballots. In other towns, as in Stoughton, the use of secret ballots is prohibited.

The Legislature has prohibited the use of a secret ballot in any representative town meeting "unless two-thirds of the town meeting members present and voting thereon" vote for it.

Variations and Adaptations

The separation of the elections from other business is but one of several variations or adaptations which have been developed to meet changing conditions and the problems of larger populations. The most striking variation has been the development of the *Representative Town Meeting*. The most recent, made possible by modern electronics, is the conduct of the same meeting in two or more separate halls in some large towns still holding open town meetings. This is done by using a public address system and having an assistant moderator appointed to the moderator to preside in each meeting place where the moderator is not present.

Brewster is authorized by special legislation to hold town meetings in a regional school building in neighboring Orleans for all business except elections. Elections must still be held within the town.

Separation of Elections and Other Business. In these days, when most towns hold their elections separate from the annual business meeting, it is easy to lose sight of the fact that they are both parts of the annual town meeting.

Instead of an annual town meeting, some towns have now provided in their by-laws or charters for two regular business meetings each year. The meeting held at the usual time in the early part of the year is devoted primarily to financial matters. The second meeting, in October, is devoted primarily to zoning, subdivision control, and other by-laws. Any urgent matter can of course be included in the warrant for either meeting.

Representative Town Meetings

Towns have a way of outgrowing the old-fashioned town meeting. As population increases, the number of voters increases, and it is no longer possible for them all to get into the largest hall in town. For many years the only alternative was to give up the town meeting and organize as a city. To change to a city meant that citizens would elect a few men to a city council to exercise most of the power which the town meeting had held. It has been with great reluctance that townspeople have made this major change.

The idea of keeping the town form of government and having a representative town meeting was discussed in the years when the Town of Boston was considering a change prior to 1820. It was first tried in Newport, Rhode Island, in

1906, but it was not until 1915 that Brookline became the first town to adopt it in Massachusetts. Methuen followed in 1916.

The first representative town meetings were created by the Legislature utilizing the authority of the Amendment of 1820 which authorized the creation of "municipal or city governments" in any towns with 12,000 or more inhabitants. In 1926 the voters adopted an amendment of the 1820 Article to authorize the Legislature to establish a representative town meeting in any town with a population over 6,000. The 1966 Home Rule Amendment repealed the earlier language but retained the same population minimum to prohibit the establishment of a representative town meeting by a town with a population of less than 6,000.

There is only one major difference between the government in a town with the town meeting open to every voter and the government in a town with a representative (or limited) town meeting. The difference is just what the name implies. In the towns with representative town meetings the only people who may vote on town business other than the election of officers are the members of the town meeting who have been elected by the inhabitants to represent them.

The men and women who vote in the representative town meeting are elected by their fellow voters in the precincts where they live. Each plan creating a town meeting sets up a procedure for establishing and changing the geographical areas, called *precincts*, and each fixes the number of town meeting members to be elected by each precinct. The number of precincts depends on the area of the town, geographic features, and population. There may be as few as three, but some towns are divided into ten or more.

The number of elected town meeting members varies from 45 to more than 250. The number, 240, which is the number of members in the Massachusetts House of Representatives, is a popular one. In all towns the members are elected for three-year terms, and the terms are arranged so that one-third of the members are elected each year. In addition, most of the plans name certain town officials to be members-at-large.

In setting up representative town meetings, townspeople have been careful not to vote away all their rights to have the final say on important items of town business. In every case they have stipulated that the representative town meeting will have no power to "commit the town to any measure affecting its municipal existence or substantially changing its form of government" without giving all the voters an opportunity to vote on it with ballots. In all these towns, there is also a provision for the voters to override the representative town meeting. If a specified number of voters sign and file a petition, there must be a

YOUR MASSACHUSETTS GOVERNMENT

special election and a ballot vote on certain actions to see whether the town will support the action of the town meeting members. Such an election is called a *referendum*.

Business of the Town Meeting

We have already listed the most important types of business that come before town meetings. Some of them are treated in detail in later chapters on elections, organization for town administration, and budgeting. We need to discuss here mainly the *law-making* power of the town meeting and its broad *policy-making* function.

By-laws. The Legislature has enumerated about seventy different subjects upon which towns may adopt by-laws. These cover a wide range. At one extreme there is the simple provision specifying how the notice of town meetings shall be given. At the other extreme there are zoning by-laws often published as separate books. As a result of the Home Rule Amendment of our State Constitution, it appears that towns have more latitude in enacting by-laws and are not limited to the subjects specifically authorized by the Legislature.

The different kinds of by-laws may be arranged in five groups according to subject as follows:

1. Regulating the government of the town, i.e., the conduct of town meetings
2. Regulating the organization and procedures for administration of town business
3. Regulating the conduct of citizens
4. Regulating the use of land.
5. Regulating certain occupations.

Most by-laws must be submitted to the Attorney-General of the state for his approval but take effect after 90 days if he has not disapproved them. By-laws are also required to be published, but several alternative means of meeting the publication requirement are provided.

Town Votes. Should the chief of police be under civil service? Should the police have one day off in eight? or seven? or should they work a forty-hour week? Should the town treasurer act as tax collector? Should the town accept an established private way as a public way? Should town offices be closed on Saturdays? These are just a few of the many questions which the Legislature has authorized town meetings to decide. Sometimes all that is needed is a simple vote. In other cases, such as the acceptance of a street, a detailed and carefully written description is required in the motion and vote.

Town Committees. "Let's have a special committee to study the matter and report back to the

next meeting." Just as a small neighborhood club sets up *special committees*, so do town meetings when some special problem arises which cannot be settled in the meeting. It may be to select the location for a new school, or to draft a special by-law on a new subject, or to revise an old by-law, or to study whether the town should have centralized purchasing, or a public works department, or an aerial map or to consider any one of the hundreds of questions with which town meetings are faced at one time or another. Voters realize that they cannot decide some of these questions when first brought up, so they do the sensible thing: authorize the moderator to appoint a committee.

Standing Committees. To improve its functioning, the representative town meeting in Framingham has adopted a practice common among legislative bodies. It has created standing committees. There are five: public works, planning and zoning, recreation, personnel, and ways and means. Each committee is composed of ten members, each representing one of the ten precincts. Each member is elected by a majority vote of the representative town meeting members in his precinct.

The Town Finance Committee

The one move which has contributed more than any other to make the town form of government practicable in the present day is the development of the town finance (or advisory, or warrant) committee as a budgeting agency. All but the smallest towns are required by law to have such a committee, and many of the small ones do. All that the law says is that some towns shall and others may have a by-law which provides for the appointment or election and sets forth the duties of such a committee, that such committees shall study any or all municipal questions and make reports and recommendations to the town.

Because the law leaves the way open for towns to experiment, the finance committees vary in size and composition. Most by-laws provide for appointment by the moderator.

Except in those towns with by-laws or special Acts giving responsibility for preparation of the annual budget to the selectmen, the primary job of the finance committee in all towns today is the preparation of the town budget. This is described in some detail in the chapter on budgeting. Citizens in Massachusetts towns owe more than they know to the public-spirited men who give most of their spare time for three or four months in the winter to a study of the financial needs and problems of their towns.



'Mrs. Bakerman, at Town Meeting we can tolerate an occasional 'boo' or 'hiss' but one more blast from your damn tuba will warrant your dismissal!'



'The way I look at it, a quorum's a quorum.'

Punchlines

Do not ask for whom the bell tolls,
... and you'll only have to pay
station-to-station. —Atlanta Journal.

Our society is becoming almost
totally electronic. Soon you'll have to
use a computer to count on your
fingers.

When push comes to shove, be sure
you're not leaning out a window.

It's good to have healthy teeth,
they'll fill you with content. If you
don't realize it now, you will when
they have went.

Now that TV is very much a part of
our information system, we throw in
one caveat: "One picture may be
more misunderstood than a thousand
words."

Another view of the election is that
it's really heartless to deprive Billy
Carter of his means of livelihood.

Don't get stuck with a new form of
group insurance. You can't collect
until the entire group gets sick.

Are there too many bowl games? Of
course there are — but science hasn't
come up with a workable vaccine.

Limrix

By LES MOORE

LOVELY SIGHT

Of course, our quadrennial crux
Brought some disappointment, but
shucks!

New hope fairly blooms
As the newest of brooms
Intermingle with lamest of ducks!



"I think it's perfectly legal. There's no mention of huddles in the open-meeting law."



*"We appreciate your concern,
Miss Anson, but we must re-*

*mind you that the town dump is
supposed to be full of garbage."*

Canty ©

Opinion



"Since the town sees fit to cut the library funds in half, I therefore, as head librarian, am obliged to make public the

names of certain town officials who are in possession of overdue books."

In Our View

The secrecy bill

*"...the Legislature's Judiciary Committee
...financial statements in secret"*

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'I still say it's no place to bring a girl on a first date!'

I talking to?"
Buffy: "You're talking to Mrs. Colt."
Agent: "My God, am I being taken for a ride!!" and hung up.

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from the Cuttyhunk Historical Society publication, and with the kind permission of Janet Bosworth, Curator

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The sovereign voters were assembled in the schoolhouse, while the dozen or 15 bright-eyed youngsters who usually occupied the desks, rejoiced in a day of freedom. Plain and simple outside, the interior of the school was a dream of cheer and comfort. Modern desks filled the single room. At a glance it was to be seen that Cuttyhunk had a school as efficient as those of many a larger town on the mainland.

There had apparently been some preliminary understanding about this Town Meeting; perhaps a sort of dress rehearsal, for this was a momentous occasion, with a reporter present to record events for the first time. The 12 voters present felt the significance of the hour and conducted themselves solemnly in consequence. If there had been any caucus, it must have been the little gathering in "Dave" Bosworth's kitchen the night before.

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But first of all came the annual election of officers. One should know that Cuttyhunk has salaried officers. The three selectmen each receive \$28 a year for their services. The public librarian has a real free public library of about 500 books, located in a little wood-shed-like affair in the school yard, and receives \$30 a year. The school committee of three members divides \$30 for its services. The town clerk worries along with his duties on \$30 a year and the town treasurer has a magnificent salary of \$25. Constables each get \$5 a year and registrars \$8. The highest salaried person on the island is the schoolma'am who receives the princely sum of \$360 a year.

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Gruening - STATE OF ALASKA

The complete absence of government authority in the interior was compensated for by the establishment of a frontier democracy embodied in a miner's code. Each camp or diggings organized itself, decided matters of common concern by a majority vote, functioning with only one elected official a recorder, and meted out justice with punishment to fit crime. Murder was punished by hanging, offences of the next gravity such as theft or assault, by banishment or whipping, lesser offenses by fines. With men of all races and creeds mingling on a basis of absolute equality, these pioneers established a simple and workable self-government suited to the time and place.

Naske & Slotnick - ALASKA - HISTORY OF THE 49TH STATE

Boundaries of mining districts, rules for claim staking, elected an official known as recorder to register the site started out by each man, prescribed rules of conduct. . . A Court composed of the miners themselves would sit in judgement and mete out penalties.

memo

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