



DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Division of Community Advocacy

Frank H. Murkowski, Governor
William Noll, Commissioner
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December 22, 2005

Ms. Melanie Lesh
Office of Senator Gary Stevens
State Capitol, Room 103
Juneau, AK 99801-1182

Dear Ms. Lesh:

The Department of Commerce, Community, and Economic Development (Commerce) has had the opportunity to review the November 9, 2005 memorandum from Tamara Brandt Cook and draft legislation providing for administrative boroughs. Commerce offers its sincere compliments to Ms. Cook on her artful effort to draft the legislation and raise important questions in her memorandum. Commerce offers the following comments on those materials for consideration.

1. Contradiction in existing law regarding the area within REAAs. Section 5 (page 2) of the draft bill.

There is a contradiction in existing statutes regarding the area within REAAs. AS 14.08.031(a) requires Commerce to “**divide the unorganized borough** into educational service areas . . .” However, AS 14.12.010(3) states, “the area outside organized boroughs **and outside home rule and first class cities** is divided into regional educational attendance areas.”

That contradiction is not remedied in the proposed legislation. Commerce reconciles the contradiction by interpreting AS 14.08.031(a), AS 14.12.010(3), and AS 29.35.260(b) such that each home rule and first class city in the unorganized borough is within the boundaries of an REAA, but that an REAA does not have jurisdiction within the territory inside the boundaries of a home rule or first class city that operates a city school district.

It is important to recognize that it is conceivable, probably even likely that at some point there will be home rule or first class cities in the unorganized borough that do not have authority to operate city school districts. For example, last year the first-class City of Pelican operated a city school district in which only 11 students were enrolled. If enrollment drops below eight students, the school board may declare the district inoperative for the school year(s) in which fewer than eight students are enrolled (See AS 14.14.120). In such a case, jurisdiction over education would revert to the regional educational attendance area.

More significantly, AS 14.12.025 prohibits the formation of new school districts with fewer than 250 students (absent a determination by the Commissioner of the Department of Education and Early Development that a smaller district would serve the public interest). While a community with 400 or more residents may incorporate as a first class or home rule city and a second class city with 400 or more residents may reclassify as a first class city, communities at that population threshold would typically have far fewer than 250 students. Generally, the student population comprises about 20 percent of the general population. Thus, a community of 400 residents would typically have only about 80 students. Thus, there is potential that a community with far fewer than 250 students will form a first class or home rule city in the unorganized borough, yet the city will be prohibited from operating a city school district.

The following alternative language for Section 5 is offered as a way in which the contradiction might be eliminated.

Sec. 5. AS 14.12.010 is amended to read:

Sec. 14.12.010. Districts of state public school system. The districts of the state public school system are as follows:

(1) **except where otherwise provided,** each home rule and first class city in **an administrative borough or in** the unorganized borough is a city school district;

(2) **except for an administrative borough,** each organized borough is a borough school district;

(3) **each regional educational attendance area created under AS 14.08.031 is a school district that has jurisdiction outside city school districts within its boundaries**[THE AREA OUTSIDE ORGANIZED BOROUGH AND OUTSIDE HOME RULE AND FIRST CLASS CITIES IS DIVIDED INTO REGIONAL EDUCATIONAL ATTENDANCE AREAS].

2. Reclassification of Administrative Boroughs. Section 10 (pages 3-4) of the draft bill.

Commerce recommends that provisions be made for reclassification of an administrative borough to be subject to approval by the Local Boundary Commission. As currently conceived, when an administrative borough is formed, no analysis will have been made of the region's fiscal capacity to operate schools.

Currently, the LBC is required to review petitions for reclassification of city governments, but not boroughs. In part, that distinction exists because all boroughs are required to operate municipal school districts but not all cities are required to do so. By requiring, for example, the LBC to review a petition for reclassification of a second class city in the

unorganized borough, the LBC makes a determination whether the city has the fiscal capacity to operate a city school district.

3. Prospect for proliferation of petitions to incorporate small administrative boroughs. Section 12 (pages 4 – 5) of the proposed bill.

Commerce is hopeful that the opportunity to incorporate a new type of borough – particularly one without the duty to provide education – will result in the creation of several new boroughs.

However, absent clear guidance in any new law, Commerce is concerned that a proliferation of proposals to form inappropriately small administrative boroughs will result. Therefore, it is recommended that the bill include provisions to guide petitions for incorporation with boundaries encompassing large, natural regions as was intended by the Constitution.

The following example is offered as one way this objective might be accomplished by amending AS 29.05.031.

Sec 29.05.031. Incorporation of a borough or unified municipality.

(a) An area that meets the following standards may incorporate as a home rule, first class, [OR] second class, or administrative borough, or as a unified municipality:

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

(2) the boundaries of the proposed borough or unified municipality encompass a natural region that promotes service delivery to multiple communities on an efficient and cost effective basis, conform generally to natural geography and include all areas necessary for full development of municipal services;

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

(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government.

(b) [AN AREA MAY NOT INCORPORATE AS A THIRD CLASS BOROUGH] In setting boundaries of a borough or unified municipality, consideration shall be given to boundaries of regional

educational attendance areas, census areas, a Native regional corporation established under 43 U.S.C. 1606 (Alaska Native Claims Settlement Act), state house election districts, model boroughs defined by the local boundary commission, and large drainage basins and other identifiable large regional geographic features.

4. Areawide powers of administrative boroughs. Section 13 of the proposed bill (pages 5 – 6).

Page 1 of the November 9 memo states that “Administrative boroughs do not exercise areawide powers normally.” It is Commerce’s perception that the principal distinction between administrative boroughs and other types of organized boroughs would relate to the following:

1. mandatory duties (i.e., administrative boroughs would not be required or even allowed to operate school districts; would not be required but would be allowed to provide planning, platting, and land use regulation, and would not be required to assess and collect property taxes.);
2. taxing powers (i.e., an administrative borough would be allowed only to levy and collect sales and use taxes).

Other than the restrictions on education and taxation noted above, Commerce recommends that an administrative borough be allowed to exercise any areawide power if the authority to do so is generally obtained in the manner required for second class boroughs under AS 29.05.060 and AS 29.05.110(c), or AS 29.35.300. Consequently, Commerce recommends that Section 13 of the draft bill be modified such that AS 29.05.060 is amended to read:

Sec. 29.05.060. Petition. Municipal incorporation is proposed by filing a petition with the department. The petition must include the following information about the proposed municipality:

- (1) class;
- (2) name;
- (3) boundaries;
- (4) maps, documents, and other information required by the department;
- (5) composition and apportionment of the governing body;
- (6) a proposed operating budget for the municipality projecting sources of income and items of expenditure through the first full fiscal year of operation;
- (7) for a borough or unified municipality, based on the number who voted in the respective areas in the last general election, the signature and resident address of 15 percent of the voters in

- (A) home rule and first class cities in the area of the proposed borough or unified municipality; and
- (B) the area of the proposed borough or unified municipality outside home rule and first class cities;
- (8) for a first class borough or unified municipality, a designation of areawide powers to be exercised;
- (9) for a second class **or administrative** borough, a designation of areawide and nonareawide powers to be exercised;
- (10) for a first class, second class, or home rule city, a designation of the powers to be exercised;
- (11) for a first class or home rule city, based on the number who voted in the area in the last general election, the signatures and resident addresses of 50 voters in the proposed city or of 15 percent of the voters in the proposed city, whichever is greater;
- (12) for a second class city, based on the number who voted in the area in the last general election, the signatures and resident addresses of 25 voters in the proposed city or of 15 percent of the voters in the proposed city, whichever is greater;
- (13) for a home rule city, home rule borough, or unified municipality a proposed home rule charter.

5. Prohibition on establishment of an administrative borough through merger or consolidation. Section 18 (pages 6 – 7) of the proposed bill.

Commerce takes the view that a home rule, first class, and second class borough and unified municipality should be prohibited from becoming an administrative borough through merger or consolidation. Consequently, Commerce recommends that Section 18 of the draft bill be modified so that AS 29.06.090(a) is amended to read:

Sec. 29.06.090. Merger and consolidation.

(a) Two or more municipalities may merge or consolidate to form a single general law or home rule municipality, except **an administrative** [A THIRD CLASS] borough may not be formed through merger or consolidation.

6. Prohibition on establishment of an administrative borough through concurrent dissolution and incorporation. Section 19 (page 7) of the proposed bill.

Commerce recommends that a home rule, first class, and second class borough and unified municipality be prohibited from dissolving and concurrently incorporating as an administrative borough. Consequently, Commerce suggests that Section 19 of the draft bill be modified so that AS 29.06.470 is amended to read:

Sec. 29.06.470. Standards.

(a) Except as provided in (b) **and (c)** of this section, voters of a municipality may petition for dissolution when the municipality is free of debt, or, if in debt, each of its creditors is satisfied with a method of repayment and

(1) the municipality no longer meets the minimum standards prescribed for incorporation by AS 29.05[, OR FORMER AS 29.18.030 IF IT IS A THIRD CLASS BOROUGH];

(2) the municipality ceases to use each of its mandatory powers; or

(3) the dissolution petition filed under AS 29.06.460 is signed by a number of voters of the municipality proposed to be dissolved greater than 50 percent of the number of votes cast in the last regular election in that municipality.

(b) Voters of a city in a borough may petition for dissolution of the city if the borough consents to assume the city's rights, powers, duties, assets, and liabilities. The consent must be ratified by a majority of borough voters voting on the question.

(c) Voters of a unified municipality, or home rule, first class or second class borough may not petition for dissolution of the unified municipality, or home rule, first class or second class borough if the area proposed for dissolution is included in a concurrent petition to incorporate an administrative borough.

7. Prohibition on establishment of an administrative borough through reclassification.

While the bill does not expressly allow a unified municipality, or home rule, first class, or second class borough to reclassify as an administrative borough; local governments powers are construed broadly (see, for example, AS 29.35.400 – 420). Unless Ms. Cook concludes that such is unnecessary, Commerce recommends that the provisions of AS 29.04 be amended to expressly prohibit a unified municipality, or home rule, first class, or second class borough from reclassifying as an administrative borough.

8. Planning, platting, and land use regulation. Section 24 (page 9) of the draft bill.

In discussions regarding the concept of an administrative borough, this agency and others have often stressed the advantage of creating a regional entity to provide for greater coordination in the delivery of public services and construction of capital improvements. Additionally, in concept, the administrative borough would serve as a solitary voice for a region in terms of official dealings with the State and federal governments. The power of planning is a critical aspect of carrying out those functions. Therefore, Commerce takes the view that areawide planning (but not platting, and land

use regulation) should be required of each administrative borough. Moreover, Commerce recommends that an administrative borough be permitted, but not required, to exercise areawide platting, and land use regulation.

Like first class and second class boroughs, however, administrative boroughs should be permitted to delegate those powers and functions to cities within the borough. Commerce recommends consideration of the following alternative language to the current provisions in AS 29.35.180 and 29.40.010:

Sec. 29.35.180. Land use regulation.

(a) A first or second class borough shall provide for planning, platting, and land use regulation in accordance with AS 29.40. **An administrative borough shall provide for planning in accordance with AS 29.40 and may, by ordinance, provide for platting and land use regulation in accordance with AS 29.40.**

(b) A home rule borough shall provide for planning, platting, and land use regulation.

Sec. 29.40.010. Planning, platting, and land use regulation.

(a) A first or second class borough shall provide for planning, platting, and land use regulation on an areawide basis. **An administrative borough shall provide for planning on an areawide basis and may, by ordinance, provide for platting, and land use regulation on an areawide basis.**

(b) If a city in a borough consents by ordinance, the assembly may by ordinance delegate any of its powers and duties under this chapter to the city. The assembly may by ordinance, without first obtaining the consent of the city, revoke any power or duty delegated under this section.

9. Areawide powers of an administrative borough. Section 26 (page 9) of the draft bill.

Section 26 expressly prohibits an administrative borough from exercising a power areawide unless it was obtained under AS 29.35.300. If Commerce's earlier recommendations are accepted, should this provision be amended to reflect the fact that an administrative borough may exercise areawide powers also if granted by the legislature (e.g., areawide planning as discussed above) or approved by the voters under AS 29.05.110(c).

10. Nonareawide powers of an administrative borough. Section 27 (page 9) of the draft bill.

Section 27 expressly prohibits an administrative borough from exercising a nonareawide power unless the nonareawide voters have authorized such. Since the draft bill provides that an administrative borough may exercise some powers on a nonareawide basis (e.g., pollution control) the language in Section 27 should be modified.

11. Apparent typographical error in existing law. Section 28 (page 9).

It appears that a word is missing in the existing AS 29.34.220(e) that should be corrected since Section 28 makes other changes to that section of the statutes. Commerce recommends that the word “the” be inserted between “exercise” and “power” on line 23 of the draft.

12. Planning, platting, and land use regulation by cities within an administrative borough. Section 29 (pages 9-10) of the draft bill.

If Commerce’s earlier recommendation regarding planning, platting, and land use regulation are accepted, Section 29 of the draft bill will have to be modified accordingly.

13. Transfer of powers by a city. Section 31 (page 10) of the draft bill.

If Commerce’s earlier recommendation regarding planning, platting, and land use regulation are accepted, Section 31 of the draft bill should be modified to remove the prohibition on transfer of land use regulation powers.

14. Differential tax zones. Section 38 (page 11) of the draft bill.

Since the levy of property taxes under AS 29.45.010 – 570 is a limitation on the powers of home rule municipalities, the provisions of Section 38 of the bill might imply that the assembly of a unified municipality or home rule borough could not “establish, alter, and abolish differential tax zones.”

15. Land disposal. Section 43 (page 13) of the draft bill.

If Commerce’s previous recommendation to require administrative boroughs to provide areawide planning is accepted, Section 43 should not be necessary.

16. Air quality control. Section 44 (pages 13-14) of the draft bill.

If Commerce's previous recommendation to generally allow administrative boroughs to provide areawide services is accepted, Section 44 should be modified to remove the limitation imposed by that section.

17. Sport Facilities Grants and Human Services Community Matching Grants.

The November 9 memorandum asks whether the provisions of AS 05.35.050, dealing with sports facilities grants, and the provisions of AS 29.60.650(2), concerning human services community matching grants, need to be addressed. Commerce takes the position that no change to those laws is necessary.

18. Regional Resource Development Authorities.

The November 9 memorandum asks whether the provisions in existing law concerning regional resource development authorities needs to be revised in the context of administrative boroughs. Commerce is unaware of any such need.

19. National Forest Income

The November 9 memorandum asks what should be done with National Forest income in the context of administrative boroughs. Commerce recommends that since administrative boroughs will not have education powers and the majority (roughly 70 percent) of National Forest revenues is currently used for education in city school districts and REAAs in the Tongass National Forest, the current provisions for distribution of National Forest receipts in the unorganized borough be extended to administrative boroughs. Doing otherwise, in Commerce's view, will greatly diminish the attraction of the option to form administrative boroughs in Southeast Alaska.

20. Coastal Zone Management

The November 9 memorandum asks whether changes to the statutes concerning the Alaska Coastal Management Program are warranted in the context of administrative boroughs. If Commerce's recommendation to require an administrative borough to exercise areawide planning is adopted, it would seem that no change to the Coastal Management Program would be necessary.

21. Federal Payments in Lieu of Taxes.

The federal government provides a Payment in Lieu of Taxes (PILT) program (31 U.S.C 6901-6902), which offers payments to local governments that contain certain federally-owned lands known as "entitlement lands". PILT payments are intended to

help offset losses in property taxes due to nontaxable federal lands within municipal boundaries. The U.S. Department of Interior administers PILT payments to boroughs in Alaska, and Commerce administers federal PILT payments to cities within the unorganized borough.

It is Commerce's interpretation of the law that the PILT funding would have to be paid to administrative boroughs, unless the Alaska Legislature uniformly provided for distribution of funds to city governments within all organized boroughs. Consequently, Commerce recommends that administrative boroughs receive PILT funding.

22. Shared Business Fisheries Taxes.

AS 43.75.130 provides for refunds of State fisheries business taxes to local governments. Generally, each city located in the unorganized borough receives 50 percent of the amount of tax revenue collected in the city and each city located within a borough receives 25 percent of the amount of tax revenue collected in the city. Further, each borough generally receives 50 percent of the amount of tax revenue collected in the area of the borough outside cities and 25 percent of the amount of tax revenue collected in cities located within the borough.

Commerce believes that the Legislature would have the discretion to make exceptions to the manner in which business fisheries taxes are distributed within administrative boroughs. Therefore, to maximize incentives to form administrative boroughs, Commerce recommends that provisions be made to allocate to administrative boroughs 50 percent of the amount of tax revenue collected in the area of the borough outside cities, but none of the tax revenue collected in cities located within the borough.

23. Municipal Entitlement Lands.

AS 29.65.030 provides that a newly incorporated municipality is entitled to 10 percent of the maximum total acreage of vacant, unappropriated, unreserved land within the boundaries of the municipality. To promote formation of administrative boroughs, Commerce recommends that no provision be made to alter that entitlement for administrative boroughs.

24. Unified Municipalities.

Alaska's Constitution provides for only two types of local government – cities and boroughs. Yet, there are nearly 50 references in existing statutes to “unified municipality” or “unified municipalities.” Generally, those references create the misperception that a unified municipality is something other than a borough or city. For example, AS 01.10.060(a)(4) states:

"municipality" means a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality;

The misperception created by the statutes results in considerable widespread confusion among Alaskans regarding the structure of local government. For that reason, Commerce has long felt that the matter should be addressed. Commerce's view is shared by Vic Fischer, expert in local government, former Constitutional Convention delegate, and former State Senator. Mr. Fischer recently urged this agency to propose the change.

The legislation regarding administrative boroughs seems to provide an appropriate context in which the change might be made. Therefore, Commerce urges the following changes throughout State law:

- "unified municipality" be changed to "unified home rule borough"
- "unified municipalities" be changed to "unified home rule boroughs"
- "home rule borough" be changed to "non-unified home rule borough"
- "home rule boroughs" be changed to "non-unified home rule boroughs"

If you have any questions or desire clarification of any of the points raised in this letter, please contact me.

Cordially,

A handwritten signature in black ink, appearing to read "Michael Black", written in a cursive style. The signature is positioned above the printed name and title.

Michael Black
Director

cc: William C. Noll, Commissioner
Local Boundary Commission