

OPTIONS FOR A NEW TYPE OF ORGANIZED BOROUGH

Presented to the Advisory Commission on Local Government by
The Alaska Department of Commerce, Community, and Economic Development
Division of Community Advocacy
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I. Legislature Determines Borough Classifications and Functions.

Alaska's Constitution does not specify the types of boroughs or their functions. Instead, the Alaska Legislature has a duty under the Constitution to establish classifications, powers, and functions of organized boroughs. Article X, Section 3 of Alaska's Constitution provides in relevant part that, "The legislature shall classify boroughs and prescribe their powers and functions."

II. Five Classes of Organized Boroughs Have Been Established; Existing Boroughs Fall into Three of Those Classifications.

Current classifications of organized boroughs and the classifications of the 16 existing organized boroughs are listed below.¹

CLASSIFICATION	EXISTING ORGANIZED BOROUGHS
Home-Rule (unified)	<ul style="list-style-type: none">▪ City and Borough of Juneau▪ City and Borough of Sitka▪ Municipality of Anchorage
Home-Rule (non-unified)	<ul style="list-style-type: none">▪ North Slope Borough▪ Northwest Arctic Borough▪ Lake and Peninsula Borough▪ Denali Borough▪ City and Borough of Yakutat▪ Haines Borough
First-Class (general law)	(none)
Second-Class (general law)	<ul style="list-style-type: none">▪ Bristol Bay Borough▪ Ketchikan Gateway Borough▪ Kodiak Island Borough▪ Fairbanks North Star Borough▪ Matanuska-Susitna Borough▪ Kenai Peninsula Borough▪ Aleutians East Borough
Third-Class (general law)	(none)

¹ Unified and non-unified home-rule boroughs are characterized above as two distinct classifications of organized boroughs. This is done in recognition of the technical differences between the two types of boroughs and to address the widespread misunderstanding that a "unified municipality" (i.e., a unified home-rule borough) is a city government. Details regarding such are provided in *The Nature of a Unified Municipality in Alaska*, Local Boundary Commission Staff, August 2004.

III. State Law Imposes Identical Fundamental Areawide Duties on All Existing Organized Boroughs.

State law requires that each existing organized borough exercise only three fundamental duties. Those must be exercised on an “areawide” basis (i.e., throughout the borough).² Those three duties are:

FUNDAMENTAL AREAWIDE DUTY	STATUTE IMPOSING DUTY
1. Establish, maintain, and operate a system of public schools as provided in AS 14.14.060	AS 29.35.160
2. Assess and collect property, sales, and use taxes that are levied in the borough’s boundaries, subject to AS 29.45	AS 29.35.170
3. Provide for planning, platting, and land use regulation (general law boroughs must do so in accordance with AS 29.40; home-rule boroughs need not follow AS 29.40).	AS 29.35.180

IV. Many Discretionary (Non-Mandatory) Powers are Available to Boroughs.

Beyond the mandatory duties noted above, organized boroughs may (in some cases subject to voter approval) exercise a full range of public services within any of three formally defined geographic areas of the boroughs.

Those geographic areas are (1) “areawide” (i.e., throughout the entire borough); (2) “nonareawide” (i.e., in the area of the borough outside of the boundaries of city governments); or (3) “service area” (i.e., some portion of the borough other than the areawide or nonareawide portions that is specifically defined by the borough ordinance creating the particular service area).

² Not included in the above discussion are numerous general duties of organized boroughs, many of which apply to city governments as well. Five such examples are the requirement to (1) cooperate with the Alaska Department of Corrections in establishing and maintaining an automated victim notification system required under AS 12.61.050; (2) adopt a conflict of interest ordinance (AS 29.20.010); (3) determine the composition and form of representation of the assembly (AS 29.20.070); (4) prepare a journal of the official proceedings of the assembly (AS 29.20.160); and (5) prepare an annual independent audit of the accounts and financial transactions.

V. Alaska Previously Experimented with a “Light Borough” Option.

Following three unsuccessful attempts to incorporate a first-class or second-class borough in the greater Haines region, the 1968 Legislature provided for a new type of borough – a third-class borough. An ensuing fourth attempt to incorporate a Haines Borough – this time as a third-class borough – was successful.

The third-class borough was distinct from other organized boroughs in that its duties were limited to areawide education and tax assessment and collection. Moreover, third-class boroughs were prohibited by law from exercising any power other than education and tax assessment/collection on an areawide basis (AS 29.35.220(b)). Third-class boroughs could, with voter approval, exercise other powers within a service area (AS 29.35.220(d)).³

Thus, unless voters authorized a third-class borough to take on additional functions within service areas, it was nothing more than an areawide school district with taxing powers.

The experiment with the third-class borough option met with limited success. In practice, the education power of the third-class borough was interpreted very broadly to include functions well beyond the traditional role of school districts. Under its broadly construed education powers, the third-class Haines Borough operated a cultural facility center, public museum, and public library. It even funded the promotion of tourism. Additionally, the legal restrictions on areawide and nonareawide powers of third-class boroughs could be readily circumvented through the creative drawing of service area boundaries.⁴

Moreover, the third-class borough option failed to overcome borough incorporation disincentives in any other unorganized area of Alaska. From 1968 to 1985, no unorganized region other than Haines took advantage of the third-

³ Third-class boroughs were later permitted to exercise a single power on a nonareawide basis (i.e., contain, clean up, or prevent the release of hazardous substances).

⁴ As noted above, a service area is some geographic area of the borough that is less than the entire borough. Nonetheless, a third-class borough could, in effect, exercise an areawide power by simply creating, subject to voter approval, a service area encompassing all inhabited and taxable territory and activities within the borough. For example, such a service area might be drawn to encompass the entire borough with the exception of the peak of the highest mountain in the borough.

The borough could, in effect, exercise nonareawide services through similar creative drawing of service area boundaries.

class borough option. The 1985 Alaska Legislature ended the option for incorporation of new third-class boroughs (AS 29.05.031(b)).⁵

VI. Options for a New Type of “Light Borough.”

There are almost boundless options for a new type of borough government. However, the lack of enthusiasm for a borough that could be nothing more than an areawide school district with taxing powers reflects the extent to which responsibility for education appears to be a deterrent to borough incorporation.⁶

The Department of Commerce, Community, and Economic Development suggests an alternative approach. The suggested alternative is one that fulfills the need for the following functions on a regional basis:

- (1) Receive, review, and provide written comments and recommendations with respect to proposed capital improvements and agency programs and services that involve legislative appropriations and that affect the people and resources of the borough.
- (2) Serve as a clearinghouse for information, data, and other materials that may be helpful or necessary to government entities in the discharge of their responsibilities or in obtaining technical or financial assistance.
- (3) Prepare and maintain a regional planning report that establishes goals for the borough; assesses and reports the needs of residents of the borough; and analyzes alternative ways of meeting the needs of the residents of the borough.

If the duties of a new type of borough were limited to the three essential functions listed above, and if the State provided a modest amount of general financial aid for each borough, arguments about the fiscal viability of new boroughs would seem to be eliminated.

⁵ The Haines Borough was not required to reclassify under the 1985 law. However, in 2002, voters in the Haines Borough adopted a home-rule charter, thus eliminating Alaska's only third-class borough.

⁶ A 1984 study by the Institute of Social and Economic Research noted public policy makers have long recognized that, "School district officials [in the unorganized borough] wanted to avoid loss of autonomy . . . and Alaskans living outside cities and school districts wanted to preserve their tax-free status while receiving school and other state services." *Alaska's Urban and Rural Governments*, p. 43.

To deal with legitimate and long-standing public policy concerns over equity,⁷ and to promote efficiencies in the delivery of essential public services,⁸ some provision should be made for transition from the new type of borough to more traditional forms of borough government. One approach to such could be to reinstate a State revenue sharing program for all boroughs (not just the new type of borough) based on services provided (e.g., education, planning, taxation, police, fire protection, road maintenance, etc.). That approach was discussed at the Commission's September 1, 2005 meeting.

Another approach could be to require a borough to reclassify when the area within its boundaries reaches a particular threshold. Thresholds might relate to per capita value of taxable property, per capita income, or other relevant and objective criteria.

⁷ For example, more than 80 percent of Alaskans live in boroughs that were formed by legislative mandate more than four decades ago. Residents of those boroughs have had no choice in whether their boroughs incorporated or whether they operate areawide school districts. Moreover, boroughs receive millions of dollars less each year in State aid for schools as a result of the local contribution of 4-mill/45 percent of basic need as set out in AS 14.17.410(b)(2).

⁸ For example, to increase the quality of education in school districts with fewer students, some legislators have long advocated consolidation of small school districts. School districts in the unorganized borough comprise about 70 percent of all school districts in Alaska. About 40 percent of the school districts in the unorganized borough have fewer than 250 students. In 1986, the Legislature enacted a law (AS 14.12.025) prohibiting the formation of new school districts with fewer than 250 students (barring a best interest determination). However, existing small districts were not required to consolidate.

A majority of the school districts in the unorganized borough have difficulty meeting a 1998 State law (AS 14.17.520) that requires each school district to spend a minimum of 70 percent for instruction. If a district is unable to comply "due to circumstances beyond the control of the district," the State Board of Education and Early Development may grant a waiver. For the most recent year on record, the State Board granted waivers to more than two-thirds of the school districts in the unorganized borough.