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Chenoweth

IN THE SENATE

BY THE COMMUNITY AND
REGIONAL AFFAIRS

SENATE BILL NO. __

IN THE LEGISLATURE OF THE STATE OF Alaska
ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act establishing unorganized boroughs, defining their duties and powers, amending the responsibilities of state agencies to unorganized borough assemblies under the Fiscal Procedures Act and in the construction of public facilities, authorizing preparation of home rule charters in unorganized boroughs, and amending the responsibilities of the Department of Community and Regional Affairs with respect to unorganized boroughs; and providing for an effective date.

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

* Section 1. PURPOSE. The purpose of this Act is to provide for the division of the state's single unorganized borough into unorganized boroughs and to authorize, through the election of a representative body within each unorganized borough, exercise of public planning functions and the review and comment on state programs-and services affecting residents of the unorganized boroughs.

* Sec. 2. AS 44.47 is amended by adding new sections to read:

ARTICLE 9. UNORGANIZED BOROUGHES.

Sec. 44.47.400. ESTABLISHMENT OF UNORGANIZED BOROUGHES. except as the boundaries are adjusted as provided in AS 44.47.410, the geographical. area within each regional educational attendance area created under AS 14.0&.031 is, effective January 1, 1981, established as an unorganized borough.

Sec. 44.47.410. COMBINING OF SERVICE AREAS TO ESTABLISH UNORGANIZED BOROUGHES. The commissioner may, after public hearings in the areas affected, constitute the geographic area within two or more regional educational attendance areas as a single unorganized borough. The commissioner shall consider the standards applicable to the incorporation of boroughs under AS 29.18.030 and shall combine regional educational attendance areas into a single unorganized borough if he

determines that the combination secures representation from and participation by all areas reasonably necessary to review and comment on provision of state services on a regional basis without unnecessarily reducing the ability of residents of all areas to be represented on an unorganized borough assembly. the commissioner may not combine regional educational attendance areas which are within the territory of more than one Native regional corporation established under the Alaska Native Claims Settlement Act.

Sec. 44.47.420. ASSEMBLY FOR UNORGANIZED BOROUGH. (a) Provision for the election of an assembly for an unorganized borough may be initiated by

(1) submission to the commissioner of a petition for an election signed by the number of registered voters equal to 15 per cent of the number of voters voting within the unorganized borough at the last state general election; or

(2) submission to the commissioner of a resolution requesting an election and approved by the city councils or traditional governing bodies of not less than 25 per cent of the number of cities and villages within the unorganized borough.

(b) Not less than 60 or more than 90 days after receipt of a proper petition or resolution by the commissioner, the lieutenant governor shall conduct an election on the question of whether an assembly shall be elected in an unorganized borough. The lieutenant governor shall submit to the voters of the unorganized borough at a special election the following question:

"Shall _____, an unorganized borough,
have an unorganized borough assembly?

Yes

No

(c) If a majority of the votes cast at an election under (b) of this section is in the negative, the lieutenant governor shall certify that the proposal to constitute the unorganized borough as an unorganized borough with an assembly has been rejected. A petition or resolution calling for the election of an assembly for an unorganized borough involving the same territory may not be presented within six months of the certification of the lieutenant governor under this sub-section.

(d) If a majority of the votes cast at an election under (b) of this section is in the affirmative, the lieutenant governor shall certify that the proposal to constitute the unorganized borough as an unorganized borough with an assembly has been approved. The lieutenant, governor shall promptly call for the nomination and election of members of the initial assembly of the unorganized borough.

Sec. 44.47.430. UNORGANIZED BOROUGH ASSEMBLY. (a) An unorganized borough in which a majority of the voters has approved election of an assembly shall elect an assembly of 11 members. Assembly members shall be elected at large by the qualified voters of the unorganized borough.

(b) Members of an unorganized borough assembly serve overlapping three-year terms. Members serve until their successors are elected and have qualified. Nothing in this section prohibits the reelection of an unorganized borough assembly member.

(c) Elections of members of the assembly of an unorganized borough shall be held annually on the date of election of members of regional educational attendance area school boards under AS 14.08 071(b).

(d) If a vacancy occurs on the assembly of an unorganized borough, the remaining members shall, within 30 days, fill the vacancy. The person selected to fill the vacancy shall serve until the next regular election, when a successor will be elected to serve the balance of the term.

(e) The assembly of an unorganized borough convenes on the first Monday following certification of the annual election of members of the borough assembly. At the meeting, the members shall elect one of their number to serve as assembly chairman. The person elected shall serve as chairman for one year and until his successor has been elected. A chairman who remains a member of the assembly of the unorganized borough assembly may be renominated and reelected as chairman without limit on the number of years of service.

Sec. 44.47.440. DUTIES OF THE UNORGANIZED BOROUGH ASSEMBLY.

The assembly of an unorganized borough shall

- (1) make and publish rules for the conduct of its meetings;
 - (2) provide for the election of other officers of the assembly, and define the duties of each;
 - (3) define the duties of the chairman of the assembly of the unorganized borough;
- and
- (4) meet to receive, review, and provide written comments and recommendations with respect to proposed capital improvements and agency programs and services which involve legislative appropriations and which affect the people and resources of the unorganized borough.

Sec. 44.47.450. POWERS OF THE UNORGANIZED BOROUGH ASSEMBLY.

The assembly of an unorganized borough may

(1) prepare studies of the resources of the unorganized borough;

(2) serve as a clearinghouse for information, data, and other materials which may be helpful or necessary to government agencies in the discharge of their responsibilities or in obtaining technical or financial assistance;

(3) prepare and maintain a regional planning report which

(A) establishes the goals for the unorganized borough;

(B) assesses and reports the needs of residents of the unorganized borough;

and

(C) analyzes alternative ways of meeting the needs of the residents of the unorganized borough; and

(4) provide for the preparation and submission of a charter for a home rule borough in accordance with AS 29,19.010 - 29.19.090.

Sec. 44.47.460. COMPENSATION AND EXPENSES. Members of the assembly of an unorganized borough receive no salary, but are entitled to per diem and travel expenses authorized by law for state boards and commissions, unless a different per diem rate is approved by a majority of the members of the unorganized borough assembly.

Sec. 44.47.470. MISCELLANEOUS PROVISIONS. (a) A member of the assembly of an unorganized borough is subject to recall on the same grounds and in the same

manner as provided for the recall of municipal officials in AS 29.2S.130 - 29.28.250, except that the lieutenant governor is responsible for the receipt and review of all recall petitions and the conduct of all recall elections.

(b) Elections under AS 44.47.400 - 44.47.470, including recall elections authorized by (a) of this section, shall be conducted by the lieutenant governor consistent with the provisions of the Alaska Election Code (AS 15.05 - 15.60). The state shall pay all election costs.

Sec. 44.47.480. RELATIONSHIP OF UNORGANIZED BOROUGHS TO MUNICIPALITIES AND OTHER UNORGANIZED BOROUGH SERVICE AREAS. (a) The powers and duties of an assembly of an unorganized borough may not be exercised or performed in a manner which causes a conflict with the exercise or performance of the powers and duties of the council of a city located within the unorganized borough, whether those powers and duties are conferred by statute or are assumed and exercised in accordance with the provisions of a home rule charter of the city.

(b) Nothing in AS 44.47.400 - 44.47.480 may be construed to limit the authority of

(1) the school board of a regional educational attendance area established under AS 14.08 to provide for the operation and maintenance of public schools in the unorganized borough;

(2) the coastal area board of a coastal resource service area established under AS 46.40.110 - 46.40.180 to prepare and submit a district coastal management program for the unorganized borough or portion of the unorganized borough.

* Sec. 3. AS 44.47.050(8) and (9) are amended to read:

(8) administer state funds appropriated for the operation [BENEFIT] of unorganized boroughs established under AS 44.47.400 - 44.47.480 [REGIONS WITHIN THE STATE], allowing for maximum participation by unorganized borough assemblies in the allocation and use of funds appropriated [LOCAL ADVISORY COUNCILS AND SIMILAR BODIES];

(9) assist the assemblies of unorganized boroughs to carry out their duties under AS 44.47.440 and their responsibilities under AS 44.47.450 and, where no assembly for an unorganized borough has been authorized by the residents of the unorganized borough, carry out those administrative functions in unorganized boroughs that the legislature may prescribe;

* Sec. 4. AS 37.07.080(b) and (c) are amended to read:

(b) Each state agency shall prepare an annual plan for the operation of each of its assigned programs except for programs that are exempted from this requirement by the division. The operations plan shall be prepared in the form and content and be transmitted on the date prescribed by the division. If the plan involves an appropriation for a service or program which affects residents of an unorganized borough which has elected an unorganized borough assembly, the division shall require the agency to prepare a narrative summary of the service or program and to transmit the summary and

the annual plan to the assembly of the unorganized borough for the assembly's review and comment. Appropriations for a service which affects residents of the unorganized borough of the state having an unorganized borough assembly may not be expended until the comments and recommendations of the assembly of the affected unorganized borough have been returned to the division for transmittal to the applicable state agency.

(c) The division shall

(1) review each operations plan to determine that it is consistent with the policy decisions of the governor and appropriations by the legislature, that it reflects proper planning and efficient management methods, that appropriations have been made for the planned purpose and will not be exhausted before the end of the fiscal year, and that the agency has reviewed the comments and recommendations to the annual plan made by an unorganized borough assembly and has considered these comments and recommendations in the provision of services under the plan;

(2) approve the operations plan if satisfied that it meets the requirements under (1) of this subsection; otherwise, the division shall require revision of the operations plan in whole or in part;

(3) (repealed).

* Sec. 5. AS 35.30.010(a) and (c) are amended to read:

(a) Except as provided in (b) of this section, before commencing construction of a public project,

(1) if the project is located in a municipality, the department shall submit the plans for the project to the planning commission of the municipality for review and approval;

(2) if the project is located in an unorganized borough in which an assembly has been elected or is located within two miles of a village, the department shall submit the plans to the assembly of the unorganized borough or to the village council for review and comment.

(c) If final disapproval by resolution of the governing body of the affected municipality or final comment from the assembly of an unorganized borough or village council is not received within 90 days from the date the project was submitted to the municipality, assembly of an unorganized borough, or village, the department may proceed with the project.

* Sec. 6. AS 29.03.010 is amended to read:

Sec. 29.03.010. ESTABLISHMENT. Areas of the state which are not within the boundaries of an organized borough shall be included within unorganized boroughs [CONSTITUTE A SINGLE UNORGANIZED BOROUGH].

* Sec. 7. AS 29.03.020 is amended to read:

Sec. 29.03.020. SERVICE AREAS. Allowing for maximum local participation, the legislature may establish, alter, or abolish service areas within [THE] unorganized boroughs [BOROUGH] to provide special services, which may include, but are not

limited to schools, utilities, land use regulations, and fire protection. A new service area may not be established if the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city.

* Sec. 8. AS 29.08.010 is amended to read:

Sec. 29.08.010. HOME RULE. A home rule municipality is a municipal corporation and political subdivision and is a borough of the first class, a borough incorporated directly from an unorganized borough in accordance with AS 29.19, or a city of the first class which has adopted a home rule charter. It has all legislative powers not prohibited by law or charter.

* Sec. 9. AS 29 is amended by adding 2 new chapter to read:

CHAPTER 19. INCORPORATION OF A HOME RULE BOROUGH
FROM AN UNORGANIZED BOROUGH.

Sec. 29.19.010. INCORPORATION. The assembly of an unorganized borough may apply for the incorporation of a home rule borough. The petition for borough incorporation shall be filed with the Department of Community and Regional Affairs and include all information and signatures required by AS 29.18.050. The provisions of AS 29.18.060 - 29.18.09G are applicable to petitions for incorporation filed under this section.

Sec. 29.19.020. CHARTER ELECTION. The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of a petition requesting direct incorporation of a home rule borough presented under this chapter. Within 30 days after receipt of notification the lieutenant governor shall order an election within the proposed home rule borough to determine whether the voters shall elect a charter commission of 11 members, and to determine the persons elected to serve on the charter commission. The lieutenant governor shall provide not less than 20 or more than 30 days during which candidates for the charter commission may present nominating petitions. The election on the question of election of a charter commission and the determination of persons elected to serve on the charter commission shall be held not less than 60 or more than 75 days after the date of the election order.

Sec. 29.19.030. PREPARATION OF CHARTER. (a) If, at the election called by the lieutenant governor under AS 29.19.020, a majority of the voters favors election of a charter commission, the 11 persons receiving the highest number of votes cast at that election shall constitute the charter commission. The commission shall initiate organization of a home rule borough by preparing a proposed charter and submitting it to the Department of Community and Regional Affairs. The proposed charter shall be submitted within one year of the first meeting of the charter commission. The commissioner of community and regional affairs shall review the proposed charter for compliance with provisions of law applicable-to home rule municipalities and, if it meets these requirements, request the lieutenant governor to submit the proposed borough

incorporation petition and proposed home rule charter to resides of the proposed home rule borough. If the proposed charter does not comply with the applicable provisions of law, the commissioner shall return the proposed charter to the charter commission with a statement of the legal deficiencies.

(b) Within 90 days of the receipt of comments from the commissioner of community and regional affairs with respect to provisions of a proposed home rule charter which are not in conformance with provisions of law applicable to home rule municipalities, the charter commission may prepare and submit to the commissioner an amended charter which meets the objections in the original proposed charter.

Sec. 29.19.040. LIMITATION ON SUBMISSION OF PROPOSED CHARTERS.

No more than one original and one amended charter may be submitted to the commissioner of community and regional affairs under AS 29.19.030.

Sec. 29.19.050. RATIFICATION OF CHARTER. The lieutenant governor shall provide for an election within the proposed home rule borough on the question of whether or not the area shall be incorporated as a home rule borough in accordance with the provisions of the charter submitted to and approved by the commissioner of community and regional affairs. The election shall be preceded by a publication and posting of the proposed charter throughout the proposed borough by the lieutenant governor. The election shall be held not less than 60 or more than 90 days following the election order.

Sec. 29.19.060. RESULTS OF RATIFICATION ELECTION. (a) If a majority of the votes cast by the qualified voters of the proposed home rule borough is against the incorporation of a borough under the proposed home rule charter, the proposal is defeated.

(b) If a majority of the votes cast by the qualified voters of the proposed home rule borough favors incorporation of the borough under the proposed home rule charter, the lieutenant governor shall declare that the area in which the election was held is incorporated as an organized borough and a municipal corporation in accordance with provisions of the home rule charter. The lieutenant governor shall provide for the election of the officers provided for in the charter.

(c) The election and qualification of officers under (b) of this section shall be completed by the lieutenant, governor in conformance with AS 29.18.120 and the provisions of the home rule charter of the borough.

Sec. 29.19.070. VOTERS, ELECTIONS AND COSTS. (a) A person is qualified to vote in an election authorized by AS 29.19.010 - 29.19.070 if he is qualified to vote in state elections and if he is a resident of the area proposed for incorporation as a home rule borough.

(b) The lieutenant governor shall conduct elections authorized by AS 29.19.010 - 29.19.060 substantially in the manner provided in the Alaska Election Code (AS 15.05 - 15.60), and shall certify the results of all elections under this chapter. Costs of elections under this chapter shall be assumed by the Office of the Lieutenant Governor.

(c) Costs of charter preparation under this chapter shall be assumed by the Department of Community and Regional Affairs.

Sec. 29.19.080. TRANSITION. The provisions of AS 29.18.130 29.18.180 apply to home rule boroughs incorporated under this chapter.

* Sec. 10. TRANSITIONAL PROVISIONS RELATING TO THE ELECTION AND TERMS OF OFFICE OF INITIAL MEMBERS OF THE ASSEMBLY OF AN UNORGANIZED BOROUGH. (a) The call for nomination and manner of election of members of the assembly of an unorganized borough first elected under AS 44.47.420(d)S added in sec. 2 of this Act, shall be completed substantially in accordance with provisions of law providing for the nomination and election of members of the school board of a regional educational attendance area.

(b) The members of the first assembly of an unorganized borough elected in accordance with AS 44.47.430, added by sec. 2 of this Act, shall meet on the third Monday following certification of their election by the lieutenant governor at a place designated by the commissioner of the Department of Community and Regional Affairs within the unorganized borough. The commissioner, or his authorized representative, shall convene the meeting. The members of the assembly of the unorganized borough who are first elected shall determine, by lot, the length of their respective terms of office, with

(1) three members to serve until the election designated in AS 44.47.430(c) next following one full year after the date of certification of their initial election;

(2) four members ,o serve until the election designated in AS 44.47.430(c) next following two full years after the date of certification of their initial election;

(3) four members to serve until the election designated in AS 44.430(c) next following three full years after the date of certification of their initial election.

* Sec. 11. This Act takes effect immediately in accordance with AS 01.10.070(c).