

LEGAL SERVICES

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MEMORANDUM

April 2, 2015

SUBJECT: Amendments regarding areawide v. nonareawide power
(CSHB 118(CRA); Work Order No. 29-GH1021\E)

TO: Representative Cathy Tilton
Chair of the House Community and Regional Affairs Committee
Attn: Heath Hilyard

FROM: Susie L. Shutts
Legislative Counsel

Enclosed is the Community and Regional Affairs Committee Substitute for HB 118 that you requested.

I want to bring to your attention that the amendments incorporated into CSHB 118(CRA) that were adopted by the committee conflict.

Amendment H.1 adds establishment of an energy improvement assessment program under AS 29.49 to the list of powers that a first class borough and second class borough may exercise on an areawide basis.

The second amendment amends AS 29.49.050 so that a borough may establish a program under AS 29.49 on an areawide basis only. But the second amendment also provides that a city within a borough can opt out or opt back into a program established in the borough under AS 29.49, permits a city to establish a program under AS 29.49, which must be applied on a citywide basis, and states that if a borough establishes a program under AS 29.49 after a city within the borough establishes a program under AS 29.49, then the borough succeeds to all rights, powers, duties, assets, and liabilities of the city existing under the city's program.

If a city "opts out" of a program that is established by a borough on an areawide basis, then the borough will only be exercising its authority to establish a program on a nonareawide basis. "Nonareawide" means "throughout the area of a borough outside all cities in the borough."¹ A power that is exercised by a borough on a nonareawide basis is exercised throughout the borough, except for within cities that are within the borough. "Areawide" means "throughout a borough, both inside and outside all cities in the

¹ AS 29.71.800(14).

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borough."² A power that is exercised by a borough on an areawide basis is exercised throughout the entire borough, including within cities that are within the borough.

It is contradictory to both require that a borough exercise its authority only on an areawide basis and allow a city to opt out, leaving the borough the ability to exercise its authority only on a nonareawide basis. I have therefore made the inconsistent provisions notwithstanding the other contrary provisions in the bill. You may, however, wish to review the amendment as incorporated into the CS to determine whether the result is as the committee intended.

In addition, under AS 29.35.250, a city inside a borough may exercise any power that is not otherwise prohibited by law, but, when a borough adopts an ordinance to exercise a power on an areawide basis a city may not exercise the power "unless the borough ordinance provides otherwise or the borough by ordinance ceases to exercise the power." Under AS 29.35.340(a), once a first or second class borough acquires an areawide power, the first or second class borough "succeeds to all of the rights, powers, and duties of any city or service area with respect to that power." Once a first or second class borough acquires an additional areawide power, the borough must, "in consultation with the city or service area personnel [. . .] arrange for an orderly and equitable transfer of rights, assets, liabilities, powers, duties, and other matters related to acquisition of the areawide powers." However, this committee substitute does not allow for the possibility of a city to provide an energy improvement assessment program under AS 29.49 even if a borough ordinance permitted a city to provide a program under this chapter.

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Enclosure

² AS 29.71.800(1).