

ALASKA STATE LEGISLATURE
SENATE COMMUNITY & REGIONAL AFFAIRS COMMITTEE

April 4, 2001
1:45 p.m.

MEMBERS PRESENT

Senator John Torgerson, Chair
Senator Alan Austerman
Senator Randy Phillips

MEMBERS ABSENT

Senator Georgianna Lincoln
Senator Pete Kelly

COMMITTEE CALENDAR

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 16
"An Act relating to cities incorporated under state law that are home rule communities; and providing for an effective date."
HEARD AND HELD

PREVIOUS COMMITTEE ACTION

No previous action recorded

WITNESS REGISTER

Representative Fred Dyson
Alaska State Capitol, Room 104
Juneau, AK 99801-1182
POSITION STATEMENT: Bill sponsor

Kevin Ritchie
Alaska Municipal League
217 2nd Street
Juneau, AK 99801
POSITION STATEMENT: Testified on HB 16

Glen Marunde
P.O. Box 192
Tok, AK 99780
POSITION STATEMENT: Testified on HB 16

John Pearson

Hyder Community Association
No address provided
POSITION STATEMENT: Testified on HB 16

John Kunik
Glennallen, AK 99588
POSITION STATEMENT: Testified on HB 16

Tamara Cook
Director
Legislative Affairs Agency
Legislative Legal and Research Services
State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Answered questions on HB 16

ACTION NARRATIVE

TAPE 01-12, SIDE A
Number 001

CHAIRMAN JOHN TORGERSON called the Senate Community & Regional Affairs Committee meeting to order at 2:10 p.m. Present were Senators, Lincoln, Austerman, Phillips and Chairman Torgerson.

There was one item on the agenda.

#HB 16

HB 16-HOME RULE COMMUNITIES

REPRESENTATIVE FRED DYSON, bill sponsor, introduced the bill. When he first was elected to the legislature, Vic Fischer told him that this was an important issue that needed addressing.

Article 10 in the Alaska Constitution encourages self-determination in Alaska's communities. HB 16 allows existing second class cities, or unincorporated areas, to form a home rule community. This is similar to a second class city but the community is able to write their own charter, which allows them flexibility in determining the scope of their governing powers and the services that will be provided.

It is his hope that this will remove some of the disincentives associated with organizing. It should also allow communities the ability to organize a form of government that they are comfortable with and is more traditional and culturally appropriate.

He called member's attention to the final pages of the "Achieving

Alaska Native Self-Governance" report by The Economics Resource Group, Inc. and The Institute of Social and Economic Research, University of Alaska, Anchorage dated May 1999. There are also letters of support from the Southeast Conference, Hyder and several individuals including Vic Fischer and Richard Burton.

SENATOR LINCOLN asked how HB 16 coincides with SB 48.

REPRESENTATIVE DYSON said his bill only addresses what are presently second class cities and they should still be able to write their own charter if they are located in an area that is incorporated into a borough. However, he would defer part of the question to Tamara Cook when she arrives.

CHAIRMAN TORGERSON asked which disincentives this bill is trying to correct.

REPRESENTATIVE DYSON said communities wouldn't be required to have an audit of their books every year as is now required of second class cities.

CHAIRMAN TORGERSON said whether a second class city could get out of the audit requirement with public dollars.

REPRESENTATIVE DYSON said yes, if they switched to a home rule community.

CHAIRMAN TORGERSON asked if that was in the bill or just a result of the bill.

REPRESENTATIVE DYSON said the requirement that they do not have to have an audit is in the bill but "it doesn't say to second class cities you can now switch. And of course in order to become a home rule community it's got to go through the boundary commission and that whole process."

In the last few years, there have been nearly as many communities dissolving themselves as organizing under state law.

A question that arose when similar legislation was introduced last year is, "Are you trying to keep communities from organizing as tribes?" His answer is no; he's hoping many communities will do both.

SENATOR LINCOLN asked about the economic benefits and drawbacks to the bill.

Number 128

REPRESENTATIVE DYSON said the major benefit is to make it easier for individuals to organize for self-determination. Also, communities will be able to organize in ways that are culturally and traditionally familiar.

SENATOR LINCOLN asked for economic benefits and drawbacks.

REPRESENTATIVE DYSON said the advantage is that a state organization is provided that Community and Regional Affairs can communicate with and funnel monies and programs through. It gives the community status in state law so bonding is possible; a property tax of up to 2 mills may be imposed if so desired.

The only disadvantage he can think of is the disadvantage of self-determination because responsibility is always uncomfortable.

CHAIRMAN TORGERSON asked whether this would be available to just second class cities and not first class cities.

REPRESENTATIVE DYSON said first class cities may now form their own charters. This bill extends the privilege to current second-class cities.

CHAIRMAN TORGERSON asked what powers might be lost if a community organized as home rule.

REPRESENTATIVE DYSON said nothing that can presently be done as a second-class city would be lost under home rule. Basically, the bill adds "or home rule community" after "second class city" to sections of Title 29.

CHAIRMAN TORGERSON asked for questions. There were none.

KEVIN RITCHIE, from the Alaska Municipal League, views this as a positive bill that allows second class cities to write their own charter. Community discussion and decision about effective self-government is a positive event and to the extent that it would be an enticement to organize, this too is viewed as a benefit.

Another benefit is that a home rule community may be reclassified as a home rule city. It is a reasonable step that doesn't change the requirements or responsibilities of communities; it allows second class cities to determine what will make their city operate better through formation of a charter.

CHAIRMAN TORGERSON asked for an interpretation of the difference between home rule community and home rule city.

MR. RITCHIE said, "You can have this charter but you don't have the broad powers of a home rule city. A home rule city, obviously, has any power not prohibited to it. A second class city has only powers not restricted by its charter"

CHAIRMAN TORGERSON said, "You're saying it would have to do with charter with the home rule community also. I don't see the difference. Can't a second class city petition for a home rule city now?"

MR. RITCHIE said it could. "The difference between a home rule city and a home rule community would be the whole class of responsibility that comes with being a first class or a home rule city."

CHAIRMAN TORGERSON responded that it's limited by their charter.

MR. RITCHIE said, "As limited by the charter, right."

CHAIRMAN TORGERSON said you could do that now. He wanted that on the record.

REPRESENTATIVE DYSON said there are two things; to be a home rule city there must be land planning and they must become their own school district. Those are two significant responsibilities that some communities don't want to or aren't prepared to accept.

"Another classification, and Tam will be able to speak to it, they are a general law community unless they choose to organize, and we end up being their government. So they have the chance to have their own and not have to be governed by the general law rules, right?"

SENATOR PHILLIPS asked Mr. Ritchie why there wasn't a letter from the Alaska Municipal League although he assumes they endorse the idea.

MR. RITCHIE said the letter is forthcoming.

SENATOR AUSTERMAN asked about joint insurance.

MR. RITCHIE said that second class cities are now eligible to be a member of the joint insurance association. If you weren't a city and then became a home rule community you would be a municipality under the definition of the state law and you would be eligible to be served.

GLEN MARUDE of Tok testified in support of HB 16. He views HB 16 as a stepping-stone toward borough formation.

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JOHN PEARSON, Economic Development Planner for the Community of Hyder, testified in support of HB 16. This may be a major factor in the further development of the community. The community currently has their own fire department, emergency services, library, visitor center, museum, provides snow removal, operates a cable TV service, maintains a landfill, oversees a state owned boat harbor, was recently approved by the FCC for a low power FM radio station and operates a one room school. Also, there is a bottled water plant that employees 26 people and should increase to employ 41 people by the end of August.

This bill will give the community the opportunity to participate in state bonding programs and they could also take advantage of opportunities such as the ferry authority. Several years ago Hyder was denied this opportunity because of the organization of the community. Under home rule community status, they would be able to participate. There is incentive to participate with Prince of Wales to become a member of the authority. There are, in fact, a number of state programs that they would like to participate in but are currently denied because of the community status.

Currently, Hyder is doing reasonably well economically because of the bottled water project, a small community project that was started by residents that were looking beyond unemployment and welfare. Two years ago, with their own money and help from the Economic Development Administration (EDA) they located a market and developed a plant. They are able to blow their own bottles and manufacture their own shipping pallets thus providing more employment opportunities. It is because of this prosperity they fear annexation by the Ketchikan borough.

What they are doing in Hyder is an example of what could be done in many communities around the state. In Southeast there are 13 communities that could take advantage of HB 16 and realistically, three will do so. "We see passage of HB 16 as giving Hyder the opportunity to become a bigger player in the scheme of things in the State of Alaska."

CHAIRMAN TORGERSON asked why they don't form a second class city.

MR. PEARSON said that the high cost of surveying and platting has been a drawback. He doesn't know how the school would be affected

but the community didn't think they were ready to form a second class city.

SENATOR LINCOLN said that the testifier from Tok called this a stepping-stone toward formation of a borough. She wondered whether Mr. Pearson viewed it the same way.

MR. PEARSON said it would give Hyder the breathing room it needs as a community and if the Ketchikan borough annexes the area around Hyder that wouldn't be a problem. They are not objecting to living in the neighborhood of a borough but they are not prepared to be included in a borough.

SENATOR PHILLIPS asked about the process whereby they decided on a water bottling plant. This seems to be an excellent example of making something out of nothing.

MR. PEARSON said it began with a call from a woman who needed 100,000 gallons of water delivered to Detroit on a daily basis. Charlie Northrip from the Juneau Economic Development Council had referred her saying this was a man who would be interested in such a project. At that time, there was no place in Alaska that could deliver that volume of bottled water but he said he'd come up with a solution.

He approached the Economic Development Administration and was told they would help with funding if he would develop and oversee the development of the project. He was familiar with Hyder and knew they had a real need for economic development so that's where he began. With \$800,000, lots of volunteer help and no Davis Bacon requirements they were able to build the plant and begin operation.

JOHN KUNIK from Glennallen said he knew that a home rule community would not constitute a school district but wondered whether a home rule city would constitute a school district.

CHAIRMAN TORGERSON said it would.

JOHN KUNIK testified via teleconference from Glennallen and asked whether his community could tax the pipeline if the ad valorem tax a home rule community or second class city could levy was four percent of assessed value rather than two percent.

CHAIRMAN TORGERSON responded that they could do whatever was in the charter. The pipeline can be taxed up to the amount all other residents are taxed, which is up to 20 mills.

CHAIRMAN TORGERSON asked Tamara Cook whether any powers would be

automatically granted to a home rule community that would not be granted to an unincorporated community or would it depend on their charter.

TAMARA COOK, Director of Legislative Legal Services, said basically it would be what is in their charter although the power to tax would be granted to them and is not granted to a community. Essentially, home rule communities would operate as a second class city with more or less the same restraints. The main distinguishing points between operating as second class city and a home rule community are that when the charter is written, it could be written in a way that is more restrictive and that a second class city may elect to take on the provision of various services and exercise various powers. If a home rule community has a strict charter, it takes the power to make decisions about the kinds of service to provide away from the governing body and places it in the hands of the people and a charter cannot be expanded without a vote of the people.

In Alaska, we look upon a charter as the sort of thing that a sophisticated community would utilize and in this case, a charter could act as a shield, and create a form of government that is more restrictive than a typical second class city.

CHAIRMAN TORGERSON asked what automatic powers would be included in addition to taxation, land entitlement and boundary determination.

MS. COOK said when they file their incorporation petition they must file the same type of information.

CHAIRMAN TORGERSON asked whether there was a land grant that would automatically go to the community.

MS. COOK thought they are included.

CHAIRMAN TORGERSON said, "10 percent unreserved, unappropriated land like anybody else forming up." He thought this would be the case unless they are precluded by the legislature.

MS. COOK thought they would be treated the same as a second class city.

CHAIRMAN TORGERSON said, "If Hyder wanted to go right over and take right up to Ketchikan they could, right?" With a chuckle, he said this would be an opposite land grab.

He said he knows the Local Boundary Commission (LBC) is involved but who determines the boundaries? Is it a petition to LBC?

MS. COOK said, yes, there's a petition process. The LBC ultimately approves a petition for incorporation of any class of municipality and it may also recommend changes to a petition before approval is granted.

CHAIRMAN TORGERSON returned to the question of taxation powers that a community could or could not charter itself out of.

MS. COOK agreed that they could charter themselves into a limit if they chose to.

CHAIRMAN TORGERSON said if taxation is a power that is automatically granted, what about zoning powers?

MS. COOK said that second class cities are currently permitted but not required to zone. It depends upon whether they are in a borough that is exercising the zoning power.

Assuming you are dealing with a second class city that is not in that situation, it is not obligated to zone, and because of the way HB 16 is drafted, neither would home rule communities. The charter of a home rule community could say it was or was not going to zone.

CHAIRMAN TORGERSON said schools would not be an issue.

MS. COOK agreed there couldn't be a school district.

CHAIRMAN TORGERSON asked whether a mayor and council or some form of leadership would be required.

MS. COOK said yes, the Alaska Constitution requires a city to have a council and a borough have an assembly.

CHAIRMAN TORGERSON asked whether there is a potential problem with elections if the leadership is able to choose their own titles.

MS. COOK does not see selecting a name as a legal problem. Home rule communities created under HB 16 are subject to the existing provisions that apply to home rule municipalities and they are also subject to limitations that apply to second class cities.

CHAIRMAN TORGERSON asked whether they would be responsible for their own elections.

MS. COOK said they would operate their own elections.

CHAIRMAN TORGERSON said that is just like a second class city does

now.

MS. COOK agreed. For example, if a home rule community said, in their charter, the community may not conduct an election, the state has no requirement to do it for the community so such a charter would be self defeating because there would be no one to conduct an election.

SENATOR LINCOLN asked Ms. Cook to outline the economic benefits and drawbacks in having a home rule community.

MS. COOK asked if she wanted a comparison between other kinds of communities or as opposed to non-incorporated status.

SENATOR LINCOLN said either.

MS. COOK said the great economic benefit would be that once you have an organized municipality, that municipality qualifies for a number of programs for municipal aid. There is also aid given to unincorporated communities and it is possible that they would have to give up that aid but, overall, they would probably qualify for more aid programs if they were incorporated. Most programs that provide aid to unincorporated communities have an offsetting program that provides aid to a municipality of the same size. In some cases, a community would be substituting its unincorporated aid for its city aid. Generally though, it would be in a position to get more aid.

To the extent that the state is more involved in contracting for the provision of services with local governments, an unincorporated city with municipal standing would be in a better situation to take advantage of some of those contract opportunities.

CHAIRMAN TORGERSON asked whether home rule communities would be able to vote to bond themselves or enter into revenue bonding.

MS. COOK said they would; a municipality of the state has the right to incur formal debt, both revenue bonds and bond anticipation notes and general obligation bonds upon a vote of the people.

SENATOR PHILLIPS added that they would also participate in the municipal bond band.

MS. COOK agreed.

CHAIRMAN TORGERSON remarked that those were all positive aspects.

He asked whether there were differences between a charter that

would create a home rule city and a charter that would create a home rule community or does the difference arise from the powers that are adopted in the charter.

MS. COOK said it's just the powers they adopt in their charter that will create the difference. "However, there are some things in the statutes that now are required of home rule cities that have exempted these communities from those provisions in this draft." Examples are, being a school district and the requirement of providing for planning and zoning which now applies to home rule municipalities but will be permitted but not mandatory for these types of communities.

CHAIRMAN TORGERSON asked who would settle planning and zoning disputes in Hyder since it would be a community without overlapping governmental powers from a borough.

MS. COOK said that if they have no planning and zoning powers, there are no planning and zoning issues.

SENATOR LINCOLN asked about any disadvantages to the state as a whole to having home rule communities.

MS. COOK could not think of any disadvantages. Most communities that might elect to become a home rule community could already become a second class city if they so elected. Therefore, the state would not be in a different position with respect to setting up home rule communities than it is right now.

SENATOR LINCOLN asked why the committee wouldn't want to adopt HB 16 after hearing the testimony that was heard today.

MS. COOK asked if the question was directed at her.

SENATOR LINCOLN said, "If you've got an answer to that that'd be fine."

CHAIRMAN TORGERSON didn't know that it was a question, it sounded like a statement.

MS. COOK said she represents a policy neutral agency.

CHAIRMAN TORGERSON asked whether home rule community formation might lead to conflicts with prior LBC determinations.

Side B

MS. COOK thought the LBC would look at an incorporation petition

the same way they do now, which is on a case-by-case basis. There would be a requirement to submit the proposed home rule charter with the incorporation petition so the LBC will know what the charter would look like before they must decide whether or not the incorporation question should be presented to the people for a vote. They would be able to decide whether the community has the economic ability and social cohesiveness to provide some form of valuable municipal local government.

CHAIRMAN TORGERSON asked how revenue sharing would be determined for an unincorporated community located in a borough that wanted to change and has either a high raw fish tax or high payment in lieu of taxes (PILT) payment from the federal government.

MS. COOK presumes that it would be the same way as with a second class city. This bill directs the drafting of an additional bill that brings all other statutes into conformity and also gives direction to treat home rule communities as second class cities in any provision addressing second class cities.

CHAIRMAN TORGERSON isn't sure there is a determination on unorganized boroughs distributing PILT money but home rule communities would have a claim on any shared revenues from any source.

MS. COOK'S understanding of PILT money is that it is going to organized cities in the unorganized boroughs. Communities that are in the unorganized borough would qualify for PILT money because they would become organized cities.

CHAIRMAN TORGERSON is assuming the LBC won't let these communities take in a great deal of federal land but asked whether there is a way to keep a community from filing for more land than is feasible for them to manage.

MS. COOK said the only thing she is aware of is the LBC process of accepting, rejecting or rewriting a petition. She isn't sure how the LBC reaches their decisions.

CHAIRMAN TORGERSON said he is more comfortable with the bill than at the beginning of the meeting but it will be held in committee until a few more questions are answered.

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The meeting was adjourned at 3:00 p.m.