

HB
81

TO: Mr. Miller, Chairman
House Local Government Committee

DATE: March 8, 1971

FROM: James B. Rhode
Administrative Assistant

SUBJECT: Local Government in the Unorganized Borough
HB 81, Introduced 1/19/71 by Whittaker
HB 161, Introduced 2/9/71 by Request of the Governor

Both of these bills establish quasi-municipal governments in the Unorganized Borough. They differ sharply on the boundaries, governing body, powers, and financing these new entities shall or may have.

Representative Whittaker's bill directs the commissioner of a new "Department of Regional and Community Affairs" to divide the Unorganized Borough into "regional unorganized boroughs", although the residents of the proposed borough can petition for an election on the boundaries. The commissioner will abide by the result unless it would be "...inconclusive, arbitrary, capricious, or inconsistent with the standards laid down..." in the act. Under the Governor's bill, the boundaries of "regional service areas" will be drawn by the Director of the Local Affairs Agency, period. (The Local Boundary Commission is not mentioned in either bill.)

Under the Whittaker bill, each of the boroughs will vote on whether to have an elected "regional council" whose members will have staggered terms. Under the Governor's bill, each regional service area will have a "commission". The residents can have an elected commission through petition and referendum procedure or a commission will be appointed from among them.

As to the powers of these quasi-governments, there is, first, some doubt as to whether the Legislature is free, under Art. X, Sec. 6 of the State Constitution, to delegate any powers to them, as distinct from delegating administration of a power. Under Sec. 6, "Unorganized Boroughs. The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It [the legislature] may exercise any power or function which the assembly may exercise in an organized borough."

Regardless, both of these bills call on their quasi-governments to initiate projects to foster economic growth. The Whittaker bill expressly permits the regional boroughs the same functions as service areas have in an organized borough. The Governor's bill merely implies this.

As to other powers, the bills differ in that Whittaker authorizes his councils to select lands as the organized boroughs do today and to zone. The Governor's bill omits these powers. Another difference is that Whittaker permits his councils to request the department he creates to prepare and/or administer council budgets, subject to local approval. When a borough does not want a council the department, of course, will bear all responsibility for the budget. The Governor's commissioner, on the other hand, will act on their own, though with State assistance.

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But the greatest difference in these bills is that Whittaker requires his councils to "review and approve [emphasis added] all state agency plans which affect the development and welfare of the borough". (Page 5, lines 21-22) This gives these councils a veto over virtually all state policy in their areas. This is a power without precedent in the history of local government in Alaska.

Finally, neither of these bills provides for these councils/commissions to sign agreements with the Federal Government. And there does not appear to be a simple way to do so. The legal status of these entities is not clear. Would the Federal Government have recourse against them or the State for breach of agreements, wrongdoing, and the mismanagement of Federal funds or property. The Committee is reminded that the Federal Government required villages wishing to participate in the rural REA program to become fourth class cities.

As for the revenues of these quasi-governments, both of these bills permit them to receive State aid. (No discussion will be offered here on the plan in the Whittaker bill to share 40% of all State revenues from natural resources, apart from taxes on such resources, between the Unorganized Borough and the organized boroughs and cities.) State aid for the Unorganized Borough raises two legal questions. First, are these new entities eligible for existing State aid to local governments? The answer would seem to be "No, except as these aid programs are amended." Secondly, could there be different amounts or kinds of aid to different regional boroughs/service areas? The answer would appear to be "Yes, so long as the differences are based on 'reasonable distinctions' of need".

There remains the question as to whether these new entities can lay and collect taxes. The Whittaker bill forbids it; the Governor's bill is silent on this, although it might be construed as implying it. The State Constitution and the minutes of the Convention appear to be on the side of the Whittaker bill: "...The State may delegate taxing powers to organized boroughs and cities only..." Art. X, Sec 2. It would seem the Legislature can either lay taxes on the Unorganized Borough directly or have the Executive do so provided that some kind of limits are placed on the Executive. In short, the Legislature sits as the assembly of the Unorganized Borough, but no assembly is free to allow service areas to lay and collect taxes on their own.