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Alaska State Legislature

House of Representatives
Community & Regional Affairs

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HOUSE BILL 257

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FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to fourth class boroughs."
 Sponsor: Representative Shultz
 Requestor: _____

Agency Affected: Community & Regional Affairs
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attachment.

Jim Plasman

Prepared by: Jim Plasman, Deputy Director Phone: 465-4750
 Division: Municipal & Regional Assistance Date: 4/24/89
 Approved by Commissioner: *Yvonne G. Johnson* Date: 4-25-89
 Agency: Community & Regional Affairs

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requester
 Office of Management and Budget
 Impacted Agency(ies)

FISCAL NOTE CONTINUATION

House Bill 257

The department has taken the position of zero fiscal impact from this bill because this bill does not mandate the creation of any new boroughs. However, it should be noted that any fourth class boroughs that are created pursuant to this legislation would be entitled to receive financial assistance from the state through a number of different programs. As any other new borough, a fourth class borough would be entitled to organizational grants under AS 29.05.190 in the amounts of \$300,000 the first year, \$200,000 the second year, and \$100,000 the third year. The borough would be entitled to participate in various tax sharing programs, such as the fish tax revenue sharing program. These impacts would fall upon the state. Any new borough would also be entitled to participate in the state revenue sharing and municipal assistance programs. The financial impact in these programs would fall predominately on other recipients (mainly municipalities) unless the state put in additional funds to compensate for the new participants.

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

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April 24, 1989

POSITION PAPER

RE: House Bill 257

SPONSOR: Representative Shultz

Program Effects of the Bill

This legislation would create a new form of borough which would have only one areawide power, the power to assess taxes. The fourth class borough could exercise other powers on a service area basis, except that it would be prohibited from the exercise of education powers.

Comments

The department does not support this legislation in its present form. While the department supports the voluntary creation of regional local governments, it is also concerned that the overall structure of local government be consistent with the constitutional framework and be fair and equitable both to new and existing local governments. The department feels the limitations on the exercise of powers by the fourth class borough are too extreme to warrant the recognition of such an institution as a form of local government in Alaska. This is especially true of the failure to provide for either assumption of education powers or a formal transition to such assumption.

While education is a responsibility of the state at large, the department feels that education should also be viewed as a function of general local government in that a borough assembly should have oversight of all borough needs and functions, including education, and should be able to decide how funds should be allocated among these needs. By removing education from the borough's powers, this legislation would separate out an essential function of local governance from borough government.

Clearly, education is the largest responsibility undertaken by most boroughs. We believe that every borough in the state, with the exception of the North Slope Borough, spends the majority of its funds in support of education. In the current fiscal year, boroughs will contribute in excess of \$120,000,000 under the public school foundation formula in support of education. They will contribute many more millions of dollars in support of other educational efforts (e.g., debt service for capital construction).

Regional Education Attendance Areas are, however, not required to provide any financial support for local education. Allowing the incorporation of new boroughs without assumption of education powers would have the effect of continuing this dichotomy. By allowing one class of borough to escape the local contribution requirement, this legislation will further call into question the justification for such preferential treatment, and may well lead to the demand from other regional governments to either be similarly treated or to be allowed to "down-class" to fourth class borough status to avoid the financial burdens associated with other classes of boroughs.

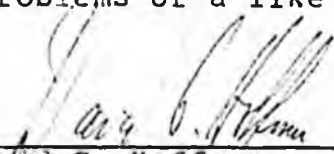
Additionally, while escaping any responsibility for education, it appears that a fourth class borough would be entitled to most types of municipal aid from the State and Federal governments. Examples of such aid include municipal land entitlements, municipal assistance, state revenue sharing, state shared raw fish taxes and federal payments in lieu of taxes (PL 97-258). With no mandatory powers, fourth class boroughs could potentially generate considerable revenue without imposing any tax burden. These areas would drain far greater financial resources from the State than they do presently as regional educational attendance areas.

In addition, consideration of the third class form of borough government can shed light on other potential problems. A third class borough differs from the fourth class borough only in that it is required to provide areawide education. Like the proposed fourth class borough it is neither obligated nor permitted to provide any other municipal power on an areawide or non-areawide (outside of cities) basis. Additional powers may only be exercised on a service area basis.

This unique limitation has the potential to cause difficulty in the coordination and delivery of services. By having severe limitations on areawide and non-areawide powers, a third class borough structure would, in many instances, result in a plethora of service areas. For example, rather than having one planning commission to address planning issues throughout the borough, a third class borough could conceivably have dozens of planning commissions, each serving its own service area. Needs and desires of one service area may conflict with the needs and desires of an adjacent area, and there would be no overall coordination.

Advocates of third class boroughs have, in the past, pointed to that structure as a means to limit the size and growth of the government. They note that any power other than education and taxation must be specifically authorized by the voters. Yet, the one existing third class borough in the state has in the past or is presently providing a museum, cultural facility center and community library; all under the guise of education. Historically, it has also constructed recreational trails. Further, while the one existing third class borough receives raw fish taxes from the State (arguably, to offset impacts from the local commercial fishing industry), it lacks the authority to use those funds for any direct expense concerning the fishing industry. These facts demonstrate some of the more practical problems of a third class borough.

While proponents of the existing third class borough in the State feel comfortable with that form of government, it should be noted that the legislature, in the extensive 1985 Municipal Code revision, repealed provisions for incorporation of new third class boroughs and for the formation of new third class boroughs through merger or consolidation. We believe that such action was taken in recognition of the limitations inherent in that form of government as discussed above. Creation of a fourth class borough along the lines contemplated in this legislation would only create problems of a like nature.



David G. Hoffman
Commissioner

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 13, 1989

SUBJECT: Fourth class boroughs
(Work Order No. 6-0229A)

TO: Senator Jack Coghill

FROM: Tamara Brandt Cook ^{TPC}
Director
Division of Legal Services

Here is the sectional analysis that you requested of the draft bill relating to fourth class boroughs.

Sec. 1. Fourth class boroughs are to be included into educational service areas.

Sec. 2. Deletes a reference to the unorganized borough, since service areas will include fourth class boroughs under this legislation.

Sec. 3. First class and home rule cities in a fourth class borough are city school districts, as is the case now with those types of cities located in the unorganized borough. Makes some technical, but not substantive changes, to properly identify all classifications of municipalities and their powers with respect to education.

Sec. 4. Adds the fourth class borough as a class of general law municipality.

Sec. 5. Permits a fourth class borough to reclassify as a first or second class borough in the manner that reclassification is currently permitted for other types of boroughs.

Sec. 6. Establishes standards for incorporation of a fourth class borough that are identical to those for other boroughs.

Sec. 7. Identifies boroughs that are school districts. A fourth class borough is not included. Under existing law all boroughs are school districts.

Sec. 8. Sets out powers of a fourth class borough which are similar to those of the third class borough, except a fourth class borough may not function as a school district.

Sec. 9. Requires a home rule city and first class city in a fourth class borough to provide for planning, platting and land use regulation, as is the case for those types of cities in the third class borough. Permits a second class city to do so.

Sec. 10. Provides that a home rule or first class city in a fourth class borough is a school district, as is the case for such cities located in the unorganized borough.

Sec. 11. Permits a fourth class borough to exercise in a service area any power not otherwise prohibited, as is the case for the third class borough.

Sec. 12. Treats fourth class boroughs the same as second and third class boroughs with respect to service areas containing only vacant land.

Sec. 13. Provides that in areas of the unorganized borough where no city exercises the power of land use regulation the division of land shall exercise the zoning power. This provision treats fourth class and third class boroughs alike, but neither type can provide land use regulation except on a service area basis. Perhaps the provision should be modified to allow the division of lands to zone in any area where no municipal land use regulation is being exercised, including within third class and fourth class boroughs and certain second class cities. This, however, would go beyond the scope of this bill.

Sec. 14. Fourth class boroughs are treated like the third class borough with respect to the power of the division of lands to exercise zoning power in areas covered by the Alaska coastal management program.

Sec. 15. Fourth class boroughs are treated like the third class borough with respect to subdivisions of state land. Like the provision dealt with in Section 13, this provision does not now appear to adequately recognize the existing scheme for municipal exercise of land use regulation, but to correct the provision would be beyond the scope of this bill.

Sec. 16. Fourth class boroughs are treated like the third class borough with respect to the platting authority of the

Senator Jack Coghill
Page 3
January 13, 1989

Department of Natural Resources. Like the provision dealt with in Sections 13 and 15, this provision does not now appear to adequately recognize the existing scheme for municipal exercise of land use regulation, but to correct the matter would be beyond the scope of this bill.

TBC:kb
wkk1/033

RAYMOND R. MENAKER

POST OFFICE BOX 118

HAINES, ALASKA 99827

25 February 1988

Rep. Henry Springer, Chairman
House Committee on Community & Regional Affairs
P.O. Box V
Juneau, AK 99811

Re: 2nd SSHB 1:

Dear Rep. Springer:

I am serving my ninth year as a member of the Haines Borough Assembly/School Board, and have lived in Alaska since territorial days. I have watched municipal government in the state change in that time, and am prompted to comment on the proposed changes in the Unorganized Borough in HB 1 and its substitutes. I have read the minutes of the teleconferences of 29 January and 17 February, as well as House CRA staff report of 12 December and the DCRA Regional Government Study of January 1988.

It seems anomalous to me that no further consideration is being given to using the third class borough as the vehicle for change in the unorganized borough. The third class borough has been in existence since 1968, has operated successfully since then, and is financially solvent. The Haines Borough is the only third class borough; its origin is unique; its existence has disturbed the folks in DCRA (and its predecessor Local Affairs Agency) since its inception; it has provided what the local people have wanted since its inception; and it has been relegated to remaining unique by being grandfathered when the Legislature in its wisdom declared no further third class boroughs would be formed.

Because the Haines Independent School District was the only such district that was eliminated from the original mandatory borough act of the 1960s (by some legislative horse-trading), the Haines area was the only one with an independent school district that was not forced to become a borough. A local committee (of which I was a member) advocated creating a first class borough by local option, which was overwhelmingly defeated at the polls. Two further attempts to create a second class borough were also defeated. The local people, particularly those who lived outside the first class City of Haines, did not want mandatory planning and zoning, but were more than willing to pay taxes to maintain the schools of the area. The Haines Independent School District disappeared 1 July 1964 to be replaced by the Haines-Port Chilkoot Special School District authorized under a 1930s law that was still on the books from territorial days. When the education laws were recodified, Haines lost its statutory power to tax as a special school district, the schools closed for a week, and confusion reigned. A short period of city school operation followed, and the Legislature came to the rescue by passing a third class borough law which the local folks requested. Haines became a third class borough with the support and

Handwritten notes:
H. CRA
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last account

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active participation of those who had been most vehemently opposed to borough status because of the mandatory requirement for areawide planning, platting and zoning.

Many people in this borough have long advocated borough power to plan, plat and zone, and the law governing third class boroughs was eventually changed to permit using that power only after approval by vote of the entire borough electorate, and only in service areas created for that purpose. One such service area is in the process of formation now.

The third class borough is the simplest form of municipal government. It ought to be the ideal form with which to begin organizing an unorganized community. People with no experience in municipal government will have had experience operating schools through REAAs. Areas with widely separated communities will well understand an areawide school district. In a third class borough, residents will easily understand taxation that applies to the school district. Assessment for taxation will be new, but should not be difficult to understand. These are the only areawide powers that the newly organized third class borough has, and probably needs. If there is need for planning, platting and zoning, the provision exists for its exercise (though not areawide), and if the area includes a first class city, that city already has the planning, platting and zoning power which need not necessarily be applied to more rural areas until the need is expressed.

There is much to be said for home rule boroughs, but for areas where there has been no community organization, it seems to me that a relatively simple, cut-and-dried general law borough organization--the third class borough--would be more desirable than a home rule arrangement which requires mandatory planning, platting and zoning. Any borough can upgrade when the need is felt. Starting off with a third class borough should be inexpensive: the school board and borough assembly are combined, office staff can consist of a clerk and perhaps an assessor, although for starters an outside assessor can be contracted to do the initial and even yearly follow-up work.

In some respects, having the state write the home rule charter for the local people to accept is not the same as having the local people write the charter, which is the main value of the home rule charter. What you are really doing is re-inventing the wheel. The requirements of the state mandated charter are the requirements set down in Title 29 for third class boroughs except that the state is mandating planning, platting and zoning in the home rule charter while the third class borough makes that power available in service areas when people want it.

It is true that with a home rule charter one can set up special requirements regarding taxation and other matters, but I suspect that deciding on such special aspects will be better handled after an area has had some experience in municipal government.

I think your committee would be wise to look more carefully again at the third class borough, even though many planners look aghast at it. It works.

I appreciate your having taken enough time to read these remarks and hope they will help in your committee's deliberations. I should be happy to respond at greater length if there are questions about the operation of the Haines Borough.

Sincerely yours,


Raymond R. Menaker

copies to: Rep. Peter Goll
 Sen. Dick Eliason
 Rep. Ron Larson
 Rep. Curt Menard
 Rep. Dave Donley
 Rep. Bette Cato
 Rep. Virginia Collins
 Rep. Adelheid Herrmann
 Rep. Jim Zawacki