

LBC

Recommend

to Title 29



Alaska State Legislature

SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Senator Randy Phillips, Chair
Senator Robin Taylor, Vice Chair
Senator Rick Halford
Senator Al Adams
Senator Fred Zharoff

SESSION:
State Capitol
Juneau, Ak 99801-1182
(907) 465-4989

INTERIM:
P O. Box 142
Eagle River, Ak 99577
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AGENDA

9:00 am

March 11, 1993

1. Call to Order (time and members present)
2. Discussion of Local Boundary Commission recommendations relating to incorporation, reclassification and dissolution changes in Title 29
3. Motion to introduce the draft as a CRA committee bill.
4. Adjourn

WORK ORDER REQUEST FORM

W.O. [18] LS-0837

KEYWORDS: BOUNDARIES ASSIGNED: Cook

MUNICIPALITIES

REQUEST FOR: New Bill TAKEN BY: Imbsen

SUBJECT: Municipal Incorporation, Reclassification & Dissolution

REQUESTED FOR: SC SCRA BY: S. Armstrong PHONE: 465-2661

DELIVER TO: Sen. Randy Phillips, Attn: Shirley, Cap 103

INSTRUCTIONS: Prepare draft duplicating 7-LS2032\A, dated 2/18/92 - 17th legislature, relating to municipal incorporation, reclassification, and dissolution.

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED []
AUTHORIZED TO CONFER WITH _____

RETURN _____
_____ TO REQUESTOR

APPROVED: X DIRECTOR, LEGAL SERVICES

REVIEWED _____

IN 03/10/93 DUE _____

TYPED: Draft _____ Date _____

Final _____ Date _____

PROOFED _____ DELIVERED _____

SPECIAL INSTRUCTIONS to TYPING/PROOFING

Request for DRAFT

IV. SPECIAL ISSUES

Suggested Changes to Title 29

The LBC and its DCRA staff work with many of the state's municipalities each year. As a result, the Commission routinely confronts requirements and procedures which appear, in practice, to have a different result for municipalities or the state than the legislature probably intended when enacting the statute. The following are some suggested changes to Title 29 which the Commission believes would be in Alaskans' best interest.

- Allow direct incorporation of home rule cities and unified municipalities.
- Provide state oversight in the reclassification of 2nd class cities in the unorganized borough.
- Technical amendments to laws relating to municipal dissolution.

→ Amend AS 29.05.011 to Permit Incorporation of Home Rule Cities - Currently, residents of an unincorporated community may not directly incorporate as a home rule city. Instead, the community must first incorporate as a first or second class city, and then go through the process of adopting a charter. In 1985, the Legislature amended state law to allow home rule boroughs to form directly. The LBC believes it would be sensible and more cost-efficient to allow an unincorporated city with a least 400 permanent residents (the minimum number of residents required for first class city status) to incorporate directly as a home rule city in a one-step process.

→ Amend AS 29.04.040 and AS 29.10.010 to Require LBC Approval of Reclassification of a Second Class City in the Unorganized Borough - State law currently allows a second class city with a population of at least 400 to reclassify as a first class city without approval from the state. A second class city with 3,500+ residents and an area of at least 35 square miles may also become a home rule city without approval from the state. Such a reclassification in the unorganized borough is an event of major state interest because first class and home rule cities in the unorganized borough must operate municipal school districts. Although AS 14.17.139 requires Department of Education approval for the formation of any new district with less than 250 students, DOE has indicated that it and the Attorney General's office have doubts about the enforceability of that requirement. Without state approval being required for reclassification, the state faces the prospect of a sharp increase in the number of small city school districts. Presently, there are 24 second class cities in the unorganized borough which could, under the current rules, reclassify to first class status. There are also six unincorporated communities with enough population to incorporate and then reclassify to first class. The LBC recommends that these reclassifications be treated similarly to direct incorporation of first class cities, requiring a petition to the LBC.

→ **Amend AS 29.06.190 to Allow Direct Incorporation of Unified Municipality** - Residents of a number of regions in Alaska's unorganized borough have expressed an interest in being permitted to incorporate unified municipalities. Currently, only incorporated cities and an organized borough may unify. The Commission believes it would be beneficial to allow the direct incorporation of unified municipalities in regions with multiple communities, whether or not those communities or a borough were incorporated prior to unification.

→ **Amend AS 29.06.470 & AS 29.06.500 to Clarify Dissolution Standards** - In 1988, the Legislature amended sections .470 and .500 to authorize the dissolution of a municipality if more than 50% of the voters in the last general election petitioned for dissolution and if the LBC determined that dissolution was in the best interests of the state. However, when the dissolution laws are read as a whole, it appears that the LBC, regardless of the state's best interests, may have no discretion to reject a dissolution petition when the municipality is free of debt or has satisfied its creditors with a method of repayment, and either a) ceases to use each of its mandatory powers or b) no longer meets the standards for incorporation. The LBC believes it should have the discretion to consider the state's best interests in all dissolutions, and recommends that the language be clarified.

In addition, AS 29.06.470 refers to the last "general" election in the municipality when describing how to determine the required number of signatures on a dissolution petition filed under AS 29.06.470(a)(3). However, AS 29.06.460 uses last "regular" election as the basis for determining the required number of signatures on a dissolution petition filed under its provisions. Under state law, municipal elections are called "regular" elections, while "general" election usually refers to a state election. If the Legislature intended that the number of required signatures required under AS 29.06.470 be based upon the turnout in the last municipal election, then, to be clear, the term should be changed from "general" to "regular."

MEMORANDUM

State of Alaska

Department of Community
and Regional Affairs

TO: Senator Randy Phillips

DATE: Tuesday, March 2, 1993

FILE NO: S RPhillips/3-2

THRU:

TELEPHONE:(907) 465-4700

FROM: Bruce R. Geraghty *B.R.G.*
Deputy Commissioner

SUBJECT: Legislative Issues
Important to DCRA

You have asked for "one liners" describing current legislative issues that concern the department. The following is the short list. I have not included all the bills, or issues, the department is tracking. This list represents items the department supports.

1. Local Boundary Commission.

- A. City of Cordova annexation of 68.23 square miles.
- B. City of Haines annexations of 4.75 and 7 square miles.
- C. City of Hoonah annexation of 7.25 square miles.
- D. City of Palmer annexation of 7.5 acres.
- E. Suggested changes to Title 29.

1. Amend AS 29.05.011 to permit direct incorporation of Home Rule Cities.

2. Amend AS 29.04 040 and AS 29.10.010 to require LBC approval of reclassification of a Second Class City in the Unorganized Borough.

3. Amend AS 29.06.190 to allow direct incorporation of Unified Municipalities.

4. Amend AS 29.06.470 and AS 29.06.500 to clarify dissolution standards.

2. SB 57 reauthorization of the State Training and Employment Program (STEP).

3. SB 102/HB 66 creating an optional municipal property tax exemption for senior citizens and disabled veterans, and repealing the renter's rebate program.

4. Funding reductions to the municipal assistance and revenue sharing programs, recommended by the economic summit, while at the same time exempting small communities with little or no present means to replace "across the board" style reductions. Reduction proposed 25 percent and implementation of \$25,000 base amount in municipal assistance program.

5. SB 88 and SB 89, creation of Capital Matching Grant Program.

Staff at the Department of Community and Regional Affairs have completed their review of the work draft (dated 2/18/92) of a bill entitled "An Act relating to municipal incorporation, reclassification, and dissolution." Generally, the draft does an excellent job of addressing the changes to Title 29 of the Alaska Statutes suggested by the Local Boundary Commission on pages 26-27 of its 1991 Annual Report.

The following comments are offered for consideration:

I. RECLASSIFICATION OF CITIES.

A. Include Provisions for Reclassification of First Class and Home Rule. On February 11, members of the Senate C&RA Committee (particularly Senator Sturgulewski) expressed the need to provide standards and procedures for reclassification of home rule or first class cities. Currently, the law makes no provision for such reclassification. The Local Boundary Commission, a majority of whom were present at the February 11 meeting of the Senate C&RA Committee, informally agreed that provisions allowing such reclassifications are needed. The Department of Community and Regional Affairs also feels that such provisions are necessary.

It would appear that the work draft could be readily modified to accommodate this desired change. This could be done by either eliminating specific references to second class cities in the Section 1 - 3 of the work draft, or alternatively adding appropriate references to first class and home rule cities. Other provisions of AS 29.04.040 which do not appear in the work draft would also have to be modified (e.g. modification of the section title "Reclassification of second class cities").

B. Add Regulatory Authority. The Department recommends that consideration be given to adding language which explicitly grants authority to the Local Boundary Commission to adopt regulations concerning reclassifications. However, care should be taken to ensure that the effect of doing so does not adversely impact the Commission's authority in other areas.

The Commission has clear authority to adopt regulations to provide standards and procedures for "changing local boundary lines" (AS 44.47.567). The term "changing local boundary lines" has long been interpreted by the Commission, this agency and the Attorney General's office to include municipal incorporations.

As was discussed with the Senate C&RA Committee on February 11, questions have recently arisen concerning the Commission's authority to adopt regulations concerning municipal incorporation. This issue is included in the pending appeal concerning the proposed incorporation of the Valleys Borough (see pages 24-25 of 1991 Annual Report).

Post-it brand fax transmittal memo 791	# of pages 10
From Don Bryhorst	To Shirley Armstrong
cc Dept	cc Shirley Armstrong
Phone # 219-4500	Dept.
Fax # 219-4500	Fax

The Department is concerned that by explicitly providing authority to the Commission to adopt regulations to reclassify municipalities, it may somehow weaken the case that the Commission has authority to regulate incorporations. Perhaps the best manner to address this concern would be to also provide explicit authority for the Commission to adopt regulations for incorporation in the fashion which has been done for annexations, detachments, mergers, consolidations and dissolutions (AS 29.06.040(c), 29.06.090(b)(1), 29.06.450(a)(1)).

Provisions explicitly authorizing the Commission to adopt municipal incorporation regulations would not seem at all out of place in the draft bill (e.g. Section 4).

C. Modify Requirement for Council Hearings. Section 3 of the draft retains the requirement in existing law that the city council hold a hearing on the proposed reclassification. However, the draft amends AS 29.04.040(c) to require the city council to conduct the hearing after the LBC has accepted the petition. There is little point in the council holding a hearing and "then evaluat[ing] the ability of the city to assume first class status" after the Commission has already approved a petition for reclassification.

The Department believes that there is merit in promoting public deliberation on any proposed reclassification before a petition is filed. Consequently, the Department recommends that AS 29.04.040(c) be repealed, but that Section 2 of the draft be amended at line 8 to read to the effect of the following: "(2) the council may propose reclassification if it determines, on the basis of at least one public hearing, that the city has the human and financial resources necessary to assume the classification proposed."

Additionally, AS 29.04.040(d) should be modified to reflect any change of the requirement for the hearing by the council.

II. INCORPORATION OF UNIFIED MUNICIPALITIES.

A. Scope. It should be clear that a unified municipality could form whether or not city government(s) or borough government(s) exist prior to incorporation of the unified municipality. Perhaps it would be best to explicitly state such in the bill.

B. Effect. It should also be clear that incorporation of a unified municipality dissolves all cities and boroughs within its boundaries. Again, perhaps it would be best to make an explicit statement to this effect in the bill. Language similar to that in AS 29.06.370 would seem to be suitable.

C. Assistance. Sections 8 and 9 of the bill concerning organizational grants and transitional assistance contain language that exempts the application of these provisions to "a unified municipality that occupies the area formerly occupied by a borough." The Department supports appropriate limitations to avoid abuse of the opportunity for such assistance. However, it would be ideal to craft language which does not preclude such assistance where it may be truly warranted.

For example, an area within a borough might wish to join with a large unincorporated region to form a single borough or unified municipality (e.g. the 25,000 square mile Lake and Peninsula Borough and the 22,000 square mile Dillingham Census Area). Since a substantial portion of such a new municipality would include territory which was previously part of the unorganized borough, it would seem appropriate to extend the organizational grant and transitional assistance to the municipality. Obviously, some standard would have to be developed to determine the circumstances under which this provision would apply.

Further, a borough or unified municipality which encompasses previously unincorporated territory should be eligible to receive a municipal land entitlement under AS 29.65 for that portion of the municipality not previously within a borough.

CONCLUSION

We appreciate the opportunity to review and comment on the working draft at this time. We look forward to the opportunity to provide further comments as this matter progresses.

7-LS2032A ✓
Cook
2/18/92

Sen. Frank

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to municipal incorporation, reclassification, and dissolution."**

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

3 *** Section 1. AS 29.04.040(a) is amended to read:**

4 (a) A second class city may be reclassified as a first class city [BY HOLDING AN
5 ELECTION ON THE QUESTION,] if it meets the standards for incorporation as a first class
6 city under AS 29.05.011(a). Reclassification is proposed by filing a petition with the
7 department. The department shall investigate the proposal and report its findings to the
8 Local Boundary Commission with its recommendations. The commission shall hold at least
9 one public hearing in the city on the proposal. If the commission determines that the city
10 meets the standards for incorporation as a first class city and that reclassification is in the
11 best interests of the state, it shall accept the petition. If the commission determines that the
12 city does not meet the standards or that reclassification is not in the best interests of the
13 state, it shall reject the petition. The decision may be appealed under the Administrative
14 Procedure Act (AS 44.62) [THE DEPARTMENT DETERMINES FROM THE BEST FIGURES

1 AVAILABLE THAT THE POPULATION OF THE CITY HAS REACHED 400 PERMANENT
2 RESIDENTS].

3 * Sec. 2. AS 29.04.040(b) is amended to read:

4 (b) A petition proposing [AN ELECTION ON THE QUESTION OF] reclassification
5 may be filed by [INITIATED IN TWO WAYS:]

6 (1) a number of voters equal to 15 percent of the number of votes cast in the city
7 at the preceding regular election [MAY FILE A PETITION WITH THE COUNCIL]; or

8 (2) the council may propose reclassification.

9 * Sec. 3. AS 29.04.040(c) is amended to read:

10 (c) If the Local Boundary Commission accepts a petition for reclassification, the
11 [THE] council shall hold at least one public hearing in the city on the question of reclassification.
12 The council shall then evaluate the ability of the city to assume first class status and make its
13 findings public.

14 * Sec. 4. AS 29.05.011(a) is amended to read:

15 (a) A community that meets the following standards may incorporate as a first class or
16 home rule city:

17 (1) the community has 400 or more permanent residents;

18 (2) the boundaries of the proposed city include all areas necessary to provide
19 municipal services on an efficient scale;

20 (3) the economy of the community includes the human and financial resources
21 necessary to provide municipal services; in considering the economy of the community, the Local
22 Boundary Commission shall consider property values, economic base, personal income, resource
23 and commercial development, anticipated functions, and the expenses and income of the proposed
24 city, including the ability of the community to generate local revenue;

25 (4) the population of the community is stable enough to support city government;

26 (5) there is a demonstrated need for city government.

27 * Sec. 5. AS 29.05.031(a) is amended to read:

28 (a) An area that meets the following standards may incorporate as a home rule, first
29 class, or second class borough, or as a unified municipality:

30 (1) the population of the area is interrelated and integrated as to its social,
31 cultural, and economic activities, and is large and stable enough to support borough government;

1 (2) the boundaries of the proposed borough or unified municipality conform
2 generally to natural geography and include all areas necessary for full development of municipal
3 services;

4 (3) the economy of the area includes the human and financial resources capable
5 of providing municipal services; evaluation of an area's economy includes land use, property
6 values, total economic base, total personal income, resource and commercial development,
7 anticipated functions, expenses, and income of the proposed borough or unified municipality;

8 (4) land, water, and air transportation facilities allow the communication and
9 exchange necessary for the development of integrated borough government.

10 * Sec. 6. AS 29.05.060 is amended to read:

11 Sec. 29.05.060. PETITION. Municipal incorporation is proposed by filing a petition with
12 the department. The petition must [SHALL] include the following information about the
13 proposed municipality:

14 (1) class;

15 (2) name;

16 (3) boundaries;

17 (4) maps, documents, and other information required by the department;

18 (5) composition and apportionment of the governing body;

19 (6) a proposed operating budget for the municipality projecting sources of income
20 and items of expenditure through the first full fiscal year of operation;

21 (7) for a borough or unified municipality, based on the number who voted in
22 the respective areas in the last general election, the signature and resident address of 15 percent
23 of the voters in

24 (A) home rule and first class cities in the area of the proposed borough
25 or unified municipality; and

26 (B) the area of the proposed borough or unified municipality outside
27 home rule and first class cities;

28 (8) for a first class borough or unified municipality, a designation of areawide
29 powers to be exercised;

30 (9) for a second class borough, a designation of areawide and nonareawide powers
31 to be exercised;

1 (10) for a first class, [OR] second class, or home rule city, a designation of the
2 powers to be exercised;

3 (11) for a first class or home rule city, based on the number who voted in the
4 area in the last general election, the signatures and resident addresses of 50 voters in the proposed
5 city or of 15 percent of the voters in the proposed city, whichever is greater;

6 (12) for a second class city, based on the number who voted in the area in the last
7 general election, the signatures and resident addresses of 25 voters in the proposed city or of 15
8 percent of the voters in the proposed city, whichever is greater;

9 (13) for a home rule city, home rule borough, or unified municipality a
10 proposed home rule charter.

11 * Sec. 7. AS 29.05.110(d) is amended to read:

12 (d) A home rule charter included in an incorporation petition under AS 29.05.060(13)
13 is considered to be part of the incorporation question. The home rule charter is adopted if the
14 voters approve incorporation of the city, borough, or unified municipality.

15 * Sec. 8. AS 29.05.190 is amended to read:

16 Sec. 29.05.190. ORGANIZATION GRANTS TO BOROUGH AND UNIFIED
17 MUNICIPALITIES. (a) For the purpose of defraying the cost of transition to borough
18 government and to provide for interim governmental operations, each borough or unified
19 municipality incorporated after December 31, 1985, is entitled to organization grants as follows:

20 (1) \$300,000 for the municipality's [BOROUGH'S] first full or partial fiscal
21 year;

22 (2) \$200,000 for the municipality's [BOROUGH'S] second fiscal year; and

23 (3) \$100,000 for the municipality's [BOROUGH'S] third fiscal year.

24 (b) The department shall disburse the first organization grant to a borough or unified
25 municipality within 30 days after certification of the [INCORPORATION] election favoring
26 incorporation [OF A BOROUGH], or as soon after that as money is appropriated and available
27 for the purpose. The second grant shall be disbursed within 30 days after the beginning of the
28 municipality's [BOROUGH'S] second fiscal year, or as soon after that as money is appropriated
29 and available for the purpose. The third grant shall be disbursed within 30 days after the
30 beginning of the municipality's [BOROUGH'S] third fiscal year, or as soon after that as money
31 is appropriated and available for the purpose.

1 (c) This section does not apply to a borough incorporated by consolidation or to a unified
2 municipality that occupies the area formerly occupied by a borough.

3 * Sec. 9. AS 29.05.210 is amended to read:

4 Sec. 29.05.210. TRANSITIONAL ASSISTANCE TO BOROUGHS AND UNIFIED
5 MUNICIPALITIES. (a) Within 30 days after the date of incorporation of a borough or unified
6 municipality incorporated after December 31, 1985, the department shall determine the
7 population of the borough or unified municipality.

8 (b) The department shall provide assistance to each borough and unified municipality
9 incorporated after December 31, 1985, in

10 (1) establishing the initial sales and use tax assessment and collection department
11 if the borough or unified municipality has adopted a sales or use tax;

12 (2) determining the initial property tax assessment roll if the borough or unified
13 municipality has adopted a property tax, including contracting for appraisals of property needed
14 to complete the initial assessment.

15 (c) This section does not apply to a borough incorporated by consolidation or to a unified
16 municipality that occupies the area formerly occupied by a borough.

17 * Sec. 10. AS 29.06.470(a) is amended to read:

18 (a) Except as provided in (b) of this section, voters of a municipality may petition for
19 dissolution when the municipality is free of debt, or, if in debt, each of its creditors is satisfied
20 with a method of repayment and

21 (1) the municipality no longer meets the minimum standards prescribed for
22 incorporation by AS 29.05, or former AS 29.18.030 if it is a third class borough;

23 (2) the municipality ceases to use each of its mandatory powers; or

24 (3) the dissolution petition filed under AS 29.06.460 is signed by a number of
25 voters of the municipality proposed to be dissolved greater than 50 percent of the number of
26 votes cast in the last regular [GENERAL] election in that municipality.

27 * Sec. 11. AS 29.06.500(a) is amended to read:

28 (a) If the Local Boundary Commission determines that a municipality fails to meet the
29 standards for dissolution, it shall reject the petition. [IF THE COMMISSION DETERMINES
30 THAT THE MUNICIPALITY MEETS THE STANDARDS UNDER AS 29.06.470(A)(1) OR
31 (2), IT SHALL ACCEPT THE PETITION.] If the commission determines that the petition meets

1 the standards under AS 29.06.470(a)(1), (2), or (3) [AS 29.06.470(a)(3)] and that dissolution of
2 the municipality is in the best interest of the state, it shall accept the petition.

3 * Sec. 12. AS 29.10.010(b) is amended to read:

4 (b) A second class city that exceeds 35 square miles in area may adopt a charter for its
5 own government and reclassify as a home rule city if the department determines from the best
6 figures available that the population of the city is at least 3,500 permanent residents.
7 Reclassification is proposed by filing a petition with the department. The department shall
8 investigate the proposal and report its findings to the Local Boundary Commission with its
9 recommendations. The commission shall hold at least one public hearing in the city on the
10 proposal. If the commission determines that the city meets the standards under this section
11 and that reclassification is in the best interests of the state, it shall accept the petition. If
12 the commission determines that the city does not meet the standards or that reclassification
13 is not in the best interests of the state, it shall reject the petition. The decision may be
14 appealed under the Administrative Procedure Act (AS 44.62).

15 * Sec. 13. AS 29.10.010(c) is amended to read:

16 (c) At an incorporation election [FOR BOROUGH INCORPORATION], an area in the
17 unorganized borough may adopt a charter for its own government and incorporate as a home rule
18 city, borough, or unified municipality.

19 * Sec. 14. AS 29.10.010(f) is amended to read:

20 (f) The proposed charter for an unincorporated area [OF THE UNORGANIZED
21 BOROUGH] shall be prepared by the petitioners and filed under AS 29.05.060 with the petition
22 to incorporate a home rule city, borough, or unified municipality.

23 * Sec. 15. AS 29.10.020 is amended to read:

24 Sec. 29.10.020. MODEL CHARTERS. The department shall prepare at least one model
25 home rule charter for a city, borough, and unified municipality. The model charters
26 [CHARTER] shall be made available to persons interested in filing a petition to incorporate a
27 home rule municipality [BOROUGH] under AS 29.05.060.

28 * Sec. 16. AS 29.10.070 is amended to read:

29 Sec. 29.10.070. CHARTER ELECTION. The proposed home rule charter for an existing
30 municipality shall be submitted to the voters at an election held not less than 30 days or more
31 than 90 days after the proposed charter is published. The proposed home rule charter for an

1 unincorporated area [IN THE UNORGANIZED BOROUGH] shall be submitted to the voters
2 at an incorporation election held under AS 29.05.110.

3 * Sec. 17. AS 29.10.080(a) is amended to read:

4 (a) If a majority of those voting in an existing municipality favor the proposed charter
5 or if a majority of those voting in an unincorporated area [IN THE UNORGANIZED
6 BOROUGH] favor incorporation of a home rule municipality [BOROUGH], the proposed charter
7 becomes the organic law of the municipality effective on the date the election is certified.
8 Thereafter, a court shall take judicial notice of the charter. The new home rule municipality shall
9 file the indicated number of copies of the charter with

- 10 (1) the lieutenant governor - two copies;
11 (2) the department - two copies;
12 (3) the district recorder - one copy;
13 (4) the municipal clerk - one copy.

14 * Sec. 18. AS 29.10.090(b) is amended to read:

15 (b) If incorporation of a home rule municipality [BOROUGH] is rejected by the voters
16 in an unincorporated area [IN THE UNORGANIZED BOROUGH], the proposed charter is
17 rejected.