SCOMM

140:3

Alaska State Legislature

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Advisory Commission on Local Government

~~~Draft agenda~~~

November 9 - 10, 2005
Anchorage LIO ~ 716 W. 4th Ave. Suite 200

November 9th 1:30 – 4:30 p.m.
November 10th 8:30 a.m. – 12:00 and 1:30 p.m. – 3:00 p.m. *and*
3:30 – 4:30 AML/ACLG session at Hilton AML Conference

(Teleconference: 1-800-395-5073)

Wednesday, November 9, 2005

1. Roll Call
2. Approval of Minutes
3. Public Comment
4. Work Session: Administrative Borough Concept

Thursday, November 10, 2005

5. Work Session: Community Dividend/Revenue Sharing Concept
6. Report structure
7. Adjourn
8. 3:30 – 4:30 AML/ACLG session at **Hilton AML Conference** (Community Dividend/ Revenue Sharing Rally -- Alaska/Denali Ballroom)

Discussion Draft based on discussions by the Advisory Commission on local government and other state and local officials.

Why a Community Dividend is good for Alaskan citizens and business

1. Creates a **sustainable benefit to Alaskan citizens and business.** Avoids using too much of current oil revenue surpluses on capital projects that increase long-range operating costs.

2. **Uses oil revenue to offset significantly higher local government and school costs caused by higher oil prices.** (Each $1 increase in a barrel of oil provides $60 million of new revenue to the State buts costs communities, schools, businesses $20 million.

3. Promotes the **delivery of key local public services** critical to business and community quality of life, especially in the poorest communities in the state that currently have no other options.

4. Provides a **sustainable level of property tax relief** to citizens and businesses.

5. **Funds the state mandated senior citizen/disabled veteran property tax exemption.**

6. Promotes **local economic development and job creation.**

7. Promotes "maximum local self-government" and **local responsibility and accountability** as mandated by the constitution.

Discussion Draft based on discussions by the Advisory Commission on local government and other state and local officials.

"An Act relating to the community dividend program; regional economic development and job creation; and providing for an effective date."

Finding:
When Alaska achieved statehood it was widely recognized that Alaska (with sparse population and high transportation costs) required resource revenues to maintain government public services at both the state and local government levels.

Purposes:

8. Develop a **sustainable plan** to provide needed financial support to communities, especially remote communities that have very small local tax bases.
9. Promote the **delivery of key local public services** critical to business and community quality of life.
10. Provide a **sustainable level of property tax relief** to citizens and businesses.
11. Promote **local economic development and job creation.**
12. Promote "maximum local self-government" and **local responsibility and accountability** as mandated by the constitution.

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

*** Section 1.** AS 29.60 is amended by adding new sections to read:

Article 10. Community Dividend Program.

Sec. 29.60.800. Community dividend fund. There is established in the department the community dividend fund consisting of money transferred to the fund under AS 37.13.145(e). Subject to appropriations for the purpose, the amount transferred to the fund shall be distributed each fiscal year by the department as dividends to cities, boroughs; and unorganized boroughs as may be created by the state for improved service delivery, economic development, and local responsibility.

Sec. 29.60.810. Community dividends.

(a) **Option # 1 - Straight per capita option:** The amount of a community dividend for a fiscal year equals $250 for each resident of the municipality or unorganized borough.

OR

(a) **Option # 2 - Provide support for key public services:** The amount of a community dividend for a fiscal year equals up to $250 for each resident of the municipality or unorganized borough depending of the local services provided the previous year as documented by an audit or financial report, or a new service budgeted for the coming fiscal year and detailed in a resolution by the council or assembly. Funds will be allocated as follows:

i. Police - $75 per resident
ii. Road and Public Works Maintenance - $75 per resident
iii. Fire Protection/Emergency Medical Services - $50 per resident

iv. Economic Development planning and implementation of job creation projects - $25 per resident
v. Basic municipal administration or local contribution to schools - $25 per resident

or

(a) **Option # 3 - Encourage local services but do not specify amounts:** The amount of a community dividend for a fiscal year equals $250 for each resident of the municipality or unorganized borough. Community Dividends received by a municipality, above the minimum prescribed for that population in (c) of this section, must be used for one or more of the following public services:

i. Professional financial audit
ii. Local property tax relief
iii. Public safety including police, fire protection, emergency medical services or other related public safety services.
iv. Capital improvements and community infrastructure maintenance
v. Local contribution to schools

Annually, each municipality must submit a report to the department detailing how funds under this section were spent supported by a professional financial audit.

(b) **Resident Population determination:** The population of each municipality or unorganized borough shall be determined annually by using the latest numbers of permanent fund dividend recipients or other population data that, in the judgment of the department, is reliable. In determining the population of a borough, or unorganized borough, the population of all cities in the borough and of all municipalities described under (g) of this section in the borough shall be deducted from the total population of the borough.

(c) **Base funding for small communities:** Notwithstanding (a) of this section, the minimum amount of a community dividend for each municipality or unorganized borough, with a population 150 or less is $50,000, and the minimum amount of a municipal dividend for each municipality with a population 151 or more is $100,000. Notwithstanding (a) of this section, the first $50,000 received by a municipality may be used for basic administrative costs such as a municipal clerk, accounting services, and office expenses including heat.

(d) **Reimbursement of senior citizen/disabled veteran property tax exemption mandated by AS 29.45.030 (e)-(l):** If a municipality has a property tax, at least the amount of the loss of revenue from the senior citizen/disabled veteran property tax exemption mandated by AS 29.45.030 (e)-(l) must be used for direct property tax mill rate reduction.

(e) **Improving the sustainability of small communities and promoting regional economic development:** (a-d) of this section,

in addition to any other distribution of funds for a borough, each borough, and unorganized borough created by the state, shall receive $200,000 that must be used to provide administrative assistance and support to cities and unorganized communities within the borough, and regional economic development services. Administration includes services such as training, direct assistance on an interim basis such as providing an interim municipal clerk or accountant, support or capital grants performing financial or performance audits and evaluations, and joint services such as bill collection, utility maintenance, or accounting. Regional economic development services shall be provided by or jointly with an ARDOR, if a functioning ARDOR exists in the opinion of the department. Regional economic development services includes those specified for ARDORS in AS ----. Such services and assistance may be provided to cities or, outside of cities, to tribal governments or community organizations that in the opinion of the borough provide public services to their community.

(f) If the amount appropriated is not sufficient to fully fund municipal dividends for a fiscal year under (a) and (b) of this section, the amount of each dividend shall be reduced on a pro-rata basis.

(g) In this section, "municipality" includes a municipality organized under federal law as an Indian reserve that existed before enactment of 43 U.S.C. 1618(a)and is continued in existence under that subsection.

*** Sec. 2.** AS 37.13.145 is amended by adding a new subsection to read:

(e) **Funding:** After the transfers under (b) and (c) of this section, on June 30 of each year, the corporation shall transfer from the earnings reserve account to the municipal dividend fund established under AS 29.60.800 the amount needed to fund municipal dividends for the next fiscal year, or the balance in the earnings reserve account, whichever is less.

Or

(e) **Funding:** Funding from Amerada Hess as sustainable funding plus an X % share of current oil revenues when oil prices rise above Y $ per barrel to offset higher costs driven by higher fuel prices.

OR

(e) **Funding:** Funding from General Fund for the next one (or two) years to allow the communities, taxpayers, and business to see if program should be made sustainable in conjunction with a POMV management of the Permanent Fund

*** Sec. 3.** This Act takes effect June 30, 2006.

Conceptual Guidelines for Drafting Bill Creating New Type of Organized Borough

Recommended Classification: General law, administrative borough.

A threshold question regarding the broad classification of the proposed new type of borough is whether it should be home rule or general law.

Both are municipal corporations and political subdivisions of the State of Alaska. A home rule borough is one that has adopted a home rule charter; it has all legislative powers not prohibited by law or charter. (AS 29.04.010). A general law borough has no charter; it has legislative powers conferred by the State legislature. (AS 29.04.020)

DCCED recommends general law status for the proposed new type of borough for four principal reasons.

1. The distinction between the powers available to home rule and general law boroughs is nominal.[1] Alaska's Constitution, statutes, and case law extend what can be reasonably described as home-rule like powers to general law boroughs. For example, AS 29.35.200 allows a first class general law borough to acquire "any power not otherwise prohibited by law."[2] Commerce is unaware of any greater capacity of a home rule borough over a general law borough to cooperate with Native American Tribes (as the home-rule Northwest Arctic Borough does under Section 1.12.010 of its Charter). Moreover, Commerce is unaware of any greater power of a home rule borough to share revenues with unincorporated communities (as the home-rule Lake and Peninsula Borough does under Section 15.11 of its Charter), or to provide for nonvoting representatives of communities not represented by

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[1] A more meaningful distinction between the two types exists in terms of the ability of the voters to place restrictions on borough powers. For example, AS 29.45.670 provides that a sales tax by a general law borough is subject to approval by a majority of the voters at an election. A home rule borough, however, is not subject to that limitation. Thus, a home rule borough may be, and some actually are, restricted by charter from implementing a sales tax unless approved by a "super majority" of the voters.

[2] Regarding the broad constitutional provisions, see Article X, Section 1 of Alaska's Constitution, for example. Regarding powers conferred by the Legislature to general law municipalities, see, for example, AS 29.35.200(a) and (c); AS 29.35.210(c) and (d); AS 29.35.220(d); AS 29.35.250(a); AS 29.35.260(a); AS 29.35.400 and AS 29.35.410. For favorable court rulings, see *Liberati v. Bristol Bay Borough*, 584 P.2d 1115, 1120 (Alaska 1978) and *Gilman v. Martin*, 662 P.2d 120, 124 (Alaska 1983), for examples. These examples and other information regarding the broad powers of general law municipalities are discussed in *Local Government in Alaska*, Local Boundary Commission Staff, March 2004.

an elected person on the Assembly (as provided under Section 15.12 of the Lake and Peninsula Borough Charter).

2. Preparation of a home rule charter is a time consuming and expensive proposition. For example, the Deltana Home Rule Charter Commission has reportedly spent approximately two years developing its proposed charter. That effort required extensive funding. In that particular case, federal funds to mitigate impacts from the Fort Greely missile defense project were used to support the activities of the Deltana Charter Commission. Funding for the development of charters is not available generally.
3. Because home rule boroughs have all legislative powers not prohibited by law or charter, it would be much more involved to list all of the prohibited powers of this new type of borough. (See AS 29.10.200 for a current list of limitations in AS 29 that apply to home rule boroughs.) In contrast, since general law boroughs only have those powers conferred by law, granting of narrow powers (much more than now exists for other types of general law boroughs) is more easily accomplished.
4. Constitutionally, home rule boroughs are the highest form of local self-government in Alaska. To create a new class of home rule borough that is far more restricted than any class of general law borough turns the constitutional principle of home rule on its head.

A subsidiary question regarding classification of the proposed new type of borough is what should the new class of general law borough be called. There are three classes of existing general law boroughs. Those are first class, second class, and third class. It is proposed to deviate from the system of giving numerical designations to the classifications of boroughs in order to emphasize the distinction between the proposed new type of borough and existing classes of borough. In this case, it is proposed to call the new class of borough an "administrative borough."

Recommended duties (mandatory powers): The mandatory fundamental powers of administrative boroughs should be limited to the following:[3]

(1) Receive, review, and provide written comments and recommendations with respect to proposed capital improvements and agency programs and

[3] Administrative boroughs would also be subject to the various general duties of organized boroughs. These include, for example the requirement to (1) cooperate with the Alaska Department of Corrections in establishing and maintaining an automated victim notification system required under AS 12.61.050; (2) adopt a conflict of interest ordinance (AS 29.20.010); (3) determine the composition and form of representation of the assembly (AS 29.20.070); (4) prepare a journal of the official proceedings of the assembly (AS 29.20.160); and (5) prepare an annual independent audit of the accounts and financial transactions.

services that involve legislative appropriations and that affect the people and resources of the borough.

(2) Serve as a clearinghouse for information, data, and other materials that may be helpful or necessary to government entities in the discharge of their responsibilities or in obtaining technical or financial assistance.

(3) Prepare and maintain a regional planning report that establishes goals for the borough; assesses and reports the needs of residents of the borough; and analyzes alternative ways of meeting the needs of the residents of the borough.

Thus, administrative boroughs should be expressly exempt from the **duty** to:

1. establish, maintain, and operate a system of public schools as provided in AS 14.14.060 (AS 29.35.160);
2. assess and collect property, sales, and use taxes that are levied in the borough's boundaries, subject to AS 29.45 (AS 29.35.170);
3. provide for planning, platting, and land use regulation (general law boroughs must do so in accordance with AS 29.40; home-rule boroughs need not follow AS 29.40) (AS 29.35.180).

Discretionary powers (voluntary powers): While the duties of administrative boroughs would be limited, DCCED is unaware of any argument for limiting the discretionary powers of such boroughs, except as noted herein such as in the case of the power to tax oil and gas property taxed by the State of Alaska. For example, if an administrative borough wanted to provide for areawide education, assessment and collection of property, sales, and use taxes, or provide for planning, platting, or land use regulation, it should be allowed to do so.

Commerce perceives a significant public policy benefit from the State's perspective in promoting boroughs as the principal representative for the region within the boundaries of the borough. Boroughs should be encouraged to take responsibility for local government issues within their regions, including coordination and engineering of public works projects, communicating on behalf of communities to agencies, elections, etc. To encourage such, provisions might be made for eligibility of boroughs to receive State financial aid to be passed through to communities in the borough.

Expand the duties of existing organized boroughs: Existing general law boroughs are required by AS 29.40.030 to adopt a comprehensive plan. That requirement addresses the third recommended duty outlined for administrative

boroughs. However, there is no requirement that existing borough carry out the first two recommended duties. Therefore, it is recommended that the legislation extend those duties to all organized boroughs.

Organization grants. Because of their limited duties, administrative boroughs should be entitled to an organization grant under AS 29.05.190 that is less than that which is available to other types of boroughs. Currently, new boroughs are entitled to $600,000 over three years. That figure should be substantially increased for newly formed home rule, first class, and second class boroughs. The figure seems more than adequate for an administrative borough.

Municipal land entitlement. Again, because of their limited duties, administrative boroughs should not be entitled to general grant lands under AS 29.65.030. Existing boroughs that do not qualify for an entitlement under AS 29.65.010 or 29.65.020 are entitled to 10 percent of the maximum total acreage of vacant, unappropriated, unreserved land within the boundaries of the borough between the date of its incorporation and two years after that date.

State Financial Aid. State financial aid for administrative boroughs would be most appropriately addressed in the context of any new revenue sharing proposal. Options for such might include graduated funding based upon particular responsibilities such as schools, planning, tax assessment and collection, police, road maintenance, et cetera. Alternatively, the State might make a direct grant annually to each administrative borough.

Incentives to reclassify to another type of general law or home rule borough. Significantly increased organization grants, municipal land entitlements, enhanced revenue sharing, and other options should be used to encourage administrative boroughs to reclassify to other types of existing boroughs.

Standards and procedures for incorporation: The standards and procedures set out for incorporation of existing boroughs set out in AS 29.05 are suitable for the creation of administrative boroughs.

Procedures and requirements for reclassification of administrative boroughs. Procedures should be established in AS 29.04 for reclassification of administrative boroughs to second class or first class boroughs.[4]

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[4] It is noted that the provisions in AS 29.06.190 would allow the proposed new administrative borough to become a home rule unified borough. Additionally, the provisions in AS 29.10.010 would allow an administrative borough to adopt a charter.

However, beyond the issue of procedures, a key question is whether an administrative borough should be required to reclassify when it gains the fiscal capacity to assume local responsibility for education, planning, platting, land use regulation, and the assessment and collection of property, sales, and use taxes. Appropriate measures of such capacity might include specific thresholds for per capita value of taxable property, per capita income, poverty levels, employment, or other reasonable and objective measures. It might also include reasonably anticipated resource development (e.g., Pogo mine).

While any requirement for reclassification of an administrative borough is likely to make passage of legislation more difficult, without such a requirement the creation of administrative boroughs will not likely advance the legitimate and long-standing public policy concerns over equity.[5] Neither will it likely promote efficiencies in the delivery of essential public services.[6]

Should the entire unorganized borough be divided into administrative boroughs?

Another key question is whether the legislation should provide for the division of the entire unorganized borough into administrative boroughs. Here again, any requirement for such is likely to make passage of legislation more difficult. However, absent such a requirement, history suggests that a strong likelihood would exist that much of the unorganized borough will not take advantage of the opportunity to form an administrative borough.

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[5] For example, more than 80 percent of Alaskans live in boroughs that were formed by legislative mandate more than four decades ago. Residents of those boroughs have had no choice in whether their boroughs incorporated or whether they operate areawide school districts. Moreover, boroughs receive millions of dollars less each year in State aid for schools as a result of the local contribution of 4-mill/45 percent of basic need as set out in AS 14.17.410(b)(2).

[6] For example, to increase the quality of education in school districts with fewer students, some legislators have long advocated consolidation of small school districts. School districts in the unorganized borough comprise about 70 percent of all school districts in Alaska. About 40 percent of the school districts in the unorganized borough have fewer than 250 students. In 1986, the Legislature enacted a law (AS 14.12.025) prohibiting the formation of new school districts with fewer than 250 students (barring a best interest determination). However, existing small districts were not required to consolidate.

A majority of the school districts in the unorganized borough have difficulty meeting a 1998 State law (AS 14.17.520) that requires each school district to spend a minimum of 70 percent for instruction. If a district is unable to comply "due to circumstances beyond the control of the district," the State Board of Education and Early Development may grant a waiver. For the most recent year on record, the State Board granted waivers to more than two-thirds of the school districts in the unorganized borough.

Discussion items:

Would a borough be able to begin assuming powers at some point, or do they have to move towards reclassification to another form of borough government?

Taxing powers?. Expressly limit the taxing powers of administrative boroughs to the following ?:

1. a general sales tax;
2. a specific sales tax (e.g., "bed tax", vehicle rental tax, tobacco tax, fuel sales tax, or tax on utilities); and
3. a property tax subject to the same limitations as those for a second class city (i.e., require voter approval and limit the tax to 20 mills); additionally, prohibit an administrative borough from levying a property tax on oil and gas property taxed by the State under AS 43.56.