

Argument in Support of Repealing 3 AAC 110.270(e)

(Prepared for submission under Administrative Order 360 — Regulatory Reform Initiative)

I. Administrative Order 360 and the State's Regulatory Review Mandate

Administrative Order 360 directs all state agencies and commissions to review existing regulations and recommend repeal or revision of any provisions that are unnecessary, duplicative, inconsistent with statute, exceed statutory authority, or impede constitutional or economic objectives. It expressly requires agencies to identify regulations no longer necessary to fulfill a legitimate state purpose, examine rules that impede economic opportunity or local autonomy, and repeal or amend regulations that conflict with statutory or constitutional intent.

Under this framework, 3 AAC 110.270(e) warrants repeal because it fails all three AO 360 review criteria: it serves no continuing necessity, obstructs maximum local self-government, and exceeds the authority delegated to the Local Boundary Commission (LBC).

II. The Regulation's Defect Under AO 360 Standards

A. Lack of Necessity and Practical Utility

3 AAC 110.270(e) requires that a petition for detachment and simultaneous incorporation propose a borough encompassing a substantially larger population and area than the detaching territory. The term 'substantially larger' was inserted in Register 185 (April 2008) without legislative mandate or factual justification. In the fifteen years since its adoption, no recorded LBC decision has applied or relied on this subsection, demonstrating that it is functionally obsolete.

B. Inconsistency with Statutory and Constitutional Intent

Under AS 44.33.812 and AS 29.06.040, the LBC's authority is limited to setting standards and procedures for boundary changes consistent with Article X of the Alaska Constitution. Article X § 1 establishes dual, co-equal aims—maximum local self-government and a minimum number of local government units—to be liberally construed in favor of local autonomy. Section 3 directs that boroughs be formed around population, geography, economy, transportation, and common interests, not arbitrary size ratios. Subsection (e) transforms that flexible balancing test into a categorical prohibition that elevates the 'minimum-units' aim above the 'maximum-self-government' aim, thereby reversing the constitutional hierarchy.

III. Exceeding Delegated Authority (Ultra Vires Rulemaking)

Neither Title 29 nor AS 44.33.812 delegates to the LBC the power to set quantitative population or area thresholds for detachment-plus-incorporation. The statutes instruct the Commission to evaluate petitions based on feasibility, fiscal capacity, community of interests, and service delivery, not by mathematical comparison of size. By creating an additional 'substantially larger' prerequisite, 3 AAC 110.270(e) adds a condition that the

Legislature did not enact, violating AO 360's requirement that agencies repeal rules not reasonably necessary to implement statutory purpose.

IV. Conflict with Article X and Internal Regulatory Framework

The LBC's own balancing regulations—3 AAC 110.981 (maximum local self-government) and 3 AAC 110.982 (minimum number of units)—apply context-by-context and require the Commission to weigh both aims. Section 270(e) displaces that balancing by imposing an automatic veto based solely on relative population or area. This creates an internal inconsistency within Title 3 AAC 110 and a direct conflict with the Constitution's adaptive, case-by-case approach.

V. Arbitrary and Regressive Effects

3 AAC 110.270(e) disproportionately penalizes communities—like Chugiak–Eagle River—that are geographically constrained yet economically and demographically viable for borough status. By conditioning eligibility on size rather than functional criteria (service delivery, fiscal integrity, community of interests), it locks smaller regions into unified municipalities indefinitely, defeating Article X's design for evolving local government forms that respond to changing conditions. The rule thus acts as a barrier to constitutional self-determination, contrary to AO 360's directive to remove unnecessary impediments to civic and economic development.

VI. Narrower and Constitutionally Sound Alternatives Exist

Existing subsections already protect the State's interests:

- 3 AAC 110.270(a) — 'best interests of the state' balancing test;
- 3 AAC 110.270(c) — prohibition on enclaves or noncontiguous remnants;
- 3 AAC 110.270(d) — deterrent to detachment to the unorganized borough.

These provisions provide adequate safeguards without any categorical population or area threshold. AO 360 favors retention only of regulations that are necessary and non-duplicative; subsection (e) meets neither condition.

VII. Recommended Action Under AO 360

A. Repeal

Pursuant to AO 360 § 3(c)–(d), the Department of Commerce, Community, and Economic Development and the Local Boundary Commission should jointly recommend full repeal of 3 AAC 110.270(e).

B. Alternative Language (if amendment preferred)

In evaluating detachment petitions that also propose incorporation, the Commission shall consider whether the proposed boundaries promote a minimum number of local government units without materially diminishing maximum local self-government, giving due regard to community of interests, geography, economy, transportation, education, and service delivery.

VIII. Conclusion

Under the review standards established by Administrative Order 360, 3 AAC 110.270(e) should be repealed because it:

1. Lacks continuing necessity and has never been applied;
2. Conflicts with the Alaska Constitution's Article X and with Title 29's enabling statutes;
3. Exceeds delegated rulemaking authority; and
4. Obstructs legitimate local-government formation contrary to the public interest.

Repeal would restore constitutional equilibrium, regulatory coherence, and consistency with AO 360's mandate to eliminate unnecessary and unconstitutional barriers to local self-government.

Respectfully submitted,

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