Report of the Alaska Local Boundary Commission to the First Session of the Twenty-Fourth Alaska State Legislature

Commemorating the 50th Anniversary of the Convening of the Alaska Constitutional Convention

1955 - 2005

"We the people of Alaska, grateful to God and to those who founded our nation and pioneered this great land, in order to secure and transmit to succeeding generations our heritage of political, civil, and religious liberty within the Union of States, do ordain and establish this constitution for the State of Alaska."

The report cover includes a montage of three photographs. The "rifle range" photo at the upper left was a reminder to the Local Government Committee of its goal to refine the local government proposal (termed "Committee Proposal No. 6/a" (hereafter "Proposal 6/a")) by January 19, 1956 (a goal which, incidentally, was met). The photo to the right of the "rifle range" is the Local Government Committee in a meeting. The bottom photo shows deliberations by Convention Delegates.

The Local Government Article of Alaska's Constitution was introduced as Committee Proposal No. 6 and had its first reading on December 19, 1955. It was returned to Committee on January 4, 1956. It was then introduced as Proposal 6a and had a first reading on January 18, 1956, and ultimately adopted on January 30, 1956. Victor Fischer describes the task facing the different committees at the Constitutional convention as follows:

> The nature and difficulty of substantive responsibilities differed widely among committees. In come cases, the basic structure of the article under committee jurisdiction was fairly clear, and the committee was primarily concerned with specific provisions.
>
> . . . .
>
> . . . Other committees, in particular Natural Resources and Local Government, had major need for innovation: the former because of the vital role of resources for the future of the state and lack of precedent of constitutional treatment in other states; the latter because of the absence of developed structures of local government in Alaska.
>
> . . . .
>
> . . . [T]he Local Government Committee, on which the author served, became involved in what appeared at times to be an almost interminable task. As there never had been any well-developed local government system outside the few urban areas in Alaska, the committee was in a position to learn from the mistakes and successes in other areas and develop new approaches suited to Alaska. Accordingly, the members not only undertook a thorough study of the structure of local government in other states, but also examined the situation in Canada, South America, Finland and the Scandinavian countries, and other parts of the world. In addition, the committee studied Alaskan needs and conditions, using in part consultant George W. Roger's analysis of Alaska's socioeconomic and geographic division. They also used the services of consultant Professor of political Science Weldon Cooper, associate director of the Bureau of Public Administration, University of Virginia. Professor Cooper assisted the committee with research and preparation of discussion drafts based on tentative committee conclusions. Owing to lack of precedent for most of the ideas being developed, however, evolution of constitutional language proved to be an extremely difficult task. As a result, the committee proceeded through numerous drafts of the local government article. In order to have a proposed article available for discussion by other delegates and by the public during recess hearings, the committee reported out a tentative draft in mid-December. After reconvening in January, however, the committee requested that the proposal be returned to committee for further consideration and rewriting. At this time, the committee had available the services of consultant John Bebout, then assistant director of the National Municipal League. After two more weeks of work, the committee reported the total rewritten article out on January 18 - one and half months after the judiciary; article had been presented do the convention.

Victor Fischer, *Alaska's Constitutional Convention* (1975), pp. 50-51 (footnotes omitted, emphasis added).

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This report is also available on the Local Boundary Commission website at:

http://www.commerce.state.ak.us/dca/lbc/lbc.htm

Report of the Local Boundary Commission to the First Session of the Twenty-Fourth Alaska Legislature

January 19, 2005

Local Boundary Commission

Darroll Hargraves, Chairman
Georgianna Zimmerle, First Judicial District
Robert Harcharek, Second Judicial District
Robert Hicks, Vice-Chairman, Third Judicial District
Tony Nakazawa, Fourth Judicial District

Frank Murkowski, Governor

Report prepared with assistance from:

Department of Commerce, Community and Economic Development
Edgar Blatchford, Commissioner

Division of Community Advocacy
Mike Black, Director

For further information:

Local Boundary Commission Staff
550 W. 7th Avenue, Suite 1770
Anchorage, AK 99501-3510
Telephone: 907-269-4560
Fax: 907-269-4539

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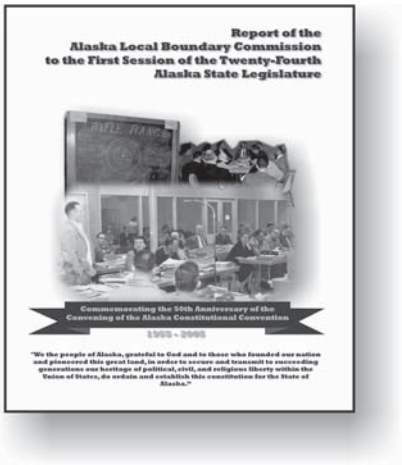
Executive Summary



The report of the Local Boundary Commission (LBC) to the 2005 Legislature consists of three chapters. The first two chapters provide background information that is helpful in understanding and considering the important public policy issues raised in Chapter 3. The report is summarized below.

Chapter 1 – Background

Chapter 1 provides information about the LBC. It notes, for example, that the framers of Alaska's Constitution concluded that a "grave need" existed for an independent, objective body to foster implementation of the constitutional framework of local government through municipal boundary determinations that reflect statewide and regional perspectives. Thus, the framers mandated the creation of the LBC, one of just five boards and commissions named in the Constitution (among 121 active boards and commissions).

Chapter 1 also notes that the LBC has a duty to study local government boundary problems. That duty serves as the foundation for the issues raised in Chapter 3.

Chapter 2 – Activities and Developments During 2004

Chapter 2 summarizes activities during 2004 relating to municipal boundary issues. Some activities are routine, but others involve critical public policy issues of statewide importance. One example of the latter, a

Constitution of Alaska
Article X, Section 12

A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

prospective proposal to reclassify the City of Dillingham, is discussed below.

On the surface, it may seem that a proposal to reclassify the City of Dillingham is a matter of limited interest and concern. However, the prospective Dillingham proposal represents a microcosm of the entire state in terms of the growing debate over local government boundary matters. It has potentially far-reaching implications.

Dillingham High School/Middle School

In December 2004, a group of Dillingham residents announced plans to petition for reclassification of the City of Dillingham from a first-class city to a second-class city. The City of Dillingham was incorporated as a second-class city in 1963. Under a 1972 law, the City of Dillingham was reclassified by legislative fiat as a first-class city.

As a first-class city in the unorganized borough, Dillingham is obligated by State law to operate a city school district. In the current fiscal year, the City of Dillingham will pay $1,000,000 to support its schools. Of that, $569,155 (more than $1,100 per student) will be spent just to restore formula cuts to State education aid paid to Dillingham (i.e., the so-called "local contribution" required by AS 14.17.410(b)(2)). While such contributions are required from many school districts, an exception is made for more than one-third of Alaska's 53 school districts.[I] In effect, the required "local contribution" is a State tax imposed on selected areas without regard to capacity to pay.

Adding to the debate is the fact that City of Dillingham schools are in serious disrepair. The condition of local

[I]The City of Dillingham is one of 18 cities and 16 organized boroughs that are required to make such "contributions." In total, those 34 local governments were required under AS 14.17.410(b)(2) to "contribute" $171,057,616 in FY 2005 (and more than $800 million over the last five years). The amount of State aid for education to those districts was reduced by the amount of the required "local contribution." In contrast, the 17 Regional Educational Attendance Areas (REAAs) and 2 Federal Transfer REAAs are not subject to the requirement for local contributions and, thus, do not suffer such cuts in State aid.

school facilities raises significant concerns pertaining to both health and safety issues (e.g., mold, electrical problems, and troubles regarding the structural integrity of the Dillingham High School/ Middle School). Faced with the prospect of significant increases in local taxes to support schools, last month, Dillingham voters overwhelmingly rejected a proposition to authorize the City of Dillingham to issue up to $25 million in bonds to remedy the problems.[II]

Comparison of Dillingham and Bethel

Factor	Dillingham	Bethel
City Classification	First-Class	Second-Class
Population	2,373	5,899
Median Household Income	$51,458	$57,321
Median Family Income	$57,417	$62,431
Percentage in Poverty	11.7 percent	11.2 percent

Population data from State Demographer (2003). Income and poverty data from 2000 Federal Census.

Reclassification proponents question why Dillingham is saddled with local responsibility for schools while many other areas of the state are not. Advocates of reclassification in Dillingham specifically cited Bethel as an example. They note that Bethel has an economy similar to Dillingham and that Bethel's population is 2.5 times greater than that of Dillingham. Based on the latest federal census, the median household income and median family income in Bethel are, respectively, 11.4 percent and 8.7 percent higher than is the case in Dillingham. Further, the percentage of Dillingham residents living in poverty is slightly higher compared to Bethel.

The circumstances in Dillingham raise questions that warrant thoughtful consideration.

- Should Dillingham be allowed to abrogate its responsibility for schools?
- Should Bethel and the other 30 second-class cities in the unorganized borough with populations of 400 or more residents be compelled to reclassify, as was the case 33 years ago for Dillingham and other second-class cities with at least 400 residents?[III]

[II] AS 14.11.100 provides that the City of Dillingham would have been entitled to reimbursement of 60 to 70 percent of principal and interest costs associated with repairs or new construction. However, if funds appropriated by the Legislature for such reimbursement for all municipal school districts are insufficient, the available funds would be distributed pro rata among the eligible municipalities. Thus, partial reimbursement in the amount set out in statute was not guaranteed.

[III] Chapter 2 notes that officials of the City of Bethel explored the prospect of reclassification of the city government in 1981 and again in 1997. Chapter 2 notes further that the Mayor of the City of Bethel inquired about the matter last year.

- Should the 11 unincorporated communities in the unorganized borough with populations of 400 or more residents be compelled to incorporate home-rule or first-class cities?

- How would reclassification of the City of Dillingham and the City of Bethel affect delivery of education services in their respective regions? In other words, is it better to organize school districts at the community level or regional level?[IV] For example, should the regions encompassing Dillingham and Bethel become borough governments?[V]

- If Dillingham and Bethel are included in boroughs, what boundaries should be drawn for each?[VI]

- In a broader sense, why are communities and regions that have no local responsibility for schools, *but have the capacity to take on such responsibility*, not required to do so?

[IV]Eighteen city school districts and two Federal Transfer REAAs are organized at the community level. Alaska's other 33 school districts (16 boroughs and 17 REAAs) operate schools on a regional basis. In 2004, the LBC, with cooperation from the Department of Education and Early Development, addressed issues relating to school district consolidation. That effort is addressed in Chapter 3.

[V]Regarding Bethel, Chapter 2 notes that a study conducted 24 years ago by a private consultant concluded that borough incorporation was a "financially viable" option for the Calista region, which encompasses roughly 58,000 square miles and has a contemporary population in excess of 23,000 residents. A prospective borough for the Calista region would, presumably, be rendered more economically viable if the Donlin Creek mineral deposit is developed into an operating mine. That deposit, estimated to hold 27.8 million ounces of gold, is one of the world's largest undeveloped deposits of gold.

Regarding Dillingham, Chapter 2 notes that interest was expressed during 2004 in forming the so-called Bristol Bay "Super Borough," which would encompass the Dillingham Census Area, Lake and Peninsula Borough, and Bristol Bay Borough. Here again, the prospect for mineral development is a consideration. Specifically, the Pebble gold-copper-molybdenum deposit located in the Lake and Peninsula Borough, which holds an estimated $28 billion in minerals, has sparked interest in borough boundary changes in the greater Bristol Bay region.

[VI]The Donlin Creek mineral deposit is located in the Kuspuk REAA, a subregion of the Calista region. Officials and residents of the Kuspuk REAA have expressed a strong desire to limit any borough encompassing the Kuspuk area just to that subregion. In 2003, the Kuspuk REAA was inhabited by an estimated 1,573 residents. Similarly, strong interest exists among officials and residents in the Lake and Peninsula Borough in maintaining the existing boundaries of the Lake and Peninsula Borough, which encompasses the Pebble gold-copper-molybdenum deposit.

- Should the State promote the extension of borough government to areas of Alaska that have the capacity to operate boroughs, and if so, how?

- If the State does not create enough inducements for voluntary incorporation of boroughs, should it compel areas to organize as it did in 1963 for regions that encompass nearly 84 percent of all Alaskans?

The Table of Contents at the beginning of the report and the Index at the end provide a guide to readers for particular communities, regions, and topics addressed in the report.

Chapter 3 – Policy Issues and Concerns

In Chapter 3, the LBC brings public policy issues and concerns to the attention of the 2005 Alaska Legislature. The most significant of those concerns relates to key provisions of the Local Government Article of Alaska's Constitution that remain unexecuted after 46 years of Statehood. The Legislature is the appropriate body to address these concerns because of its duties set out in Article X of Alaska's Constitution.

Alaska Constitution
Article X - Local Government

Section 1. Purpose and Construction
The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Section 2. Local Government Powers
All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

Section 3. Boroughs
The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

Section 4. Assembly
The governing body of the organized borough shall be the assembly, and its composition shall be established by law or charter. [Amended 1972]

Section 5. Service Areas
Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by

Lack of Incentives for Creation and Expansion of Boroughs.

Foremost among the LBC's concerns is the lack of incentives for borough incorporation and annexation. Borough government is the cornerstone of the Local Government Article of Alaska's Constitution. Chapter 3 describes compelling public policy arguments for establishment of organized borough governments throughout Alaska.

The benefits of borough government led Eben Hopson, a prominent Native leader, member of the Territorial Legislature, and State Senator, to take the following position more than 30 years ago:

Eben Hopson

> If I were governor, organization of regional borough government would become one of my primary goals, and I would ask the legislature to fashion special revenue sharing legislation to finance their operation until sufficient tax base was developed for local financing.

As outlined in Chapter 3, the framers of Alaska's Constitution clearly anticipated that the State would make

borough government an appealing option. However, statistics provide convincing evidence that the framers' vision has not been fulfilled.

In fact, incentives to form boroughs today are virtually non-existent. Chapter 3 outlines six specific measures that the LBC believes will create significant incentives for the extension of borough government.

Clearly, one of the greatest barriers to borough formation is the requirement that boroughs must pay the State school tax in the form of the so-called "local contribution" required by AS 14.17.410(b)(2). While repealing the tax would eliminate the disincentive, doing so would have significant adverse fiscal impact on the State (at the current level, more than $850 million over five years).

A better alternative, in the LBC's view, is to eliminate the disincentive by levying taxes on the unorganized borough. Four different tax options are explored in the report. For example, a head tax on the unorganized borough equivalent to the school tax under AS 14.17.410(b)(2) paid by residents of organized boroughs would generate between $15 million and $23 million annually, depending on policy decisions regarding applicability of the tax.

Five other incentives are addressed in Chapter 3. They relate to financial aid for critical borough services; organization grants; calculation of required local contributions for schools where boroughs do not levy property taxes on oil and gas exploration, production, and pipeline transportation property; municipal land grants; and payment of National Forest receipts and shared fisheries fees and taxes.

Standards for Unorganized Boroughs.

Another major concern of the LBC is the lack of standards for the establishment of unorganized boroughs. Alaska's Constitution requires the entire state to be divided into boroughs – organized or unorganized. The Constitution imposes a duty upon the Legislature to enact standards and procedures for

Constitution of Alaska
Article X, Section 3 - Boroughs

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

establishment of organized and unorganized boroughs. Each borough must embrace a large, natural region reflecting social, cultural, economic, geographic, and other characteristics.

The framers of our Constitution allowed for unorganized boroughs because they believed that, at least initially, some boroughs might lack the fiscal and administrative capacity to operate as organized boroughs. Presumably, the distinctions in terms of standards for unorganized and organized boroughs would be limited to fiscal and administrative capacity.

Without enacting standards and procedures for establishment of unorganized boroughs, the 1961 Legislature simply grouped all unorganized regions into a single unorganized borough. As has long been recognized, doing so has significantly impeded the natural evolution of borough government. Division of today's single unorganized borough into regional unorganized boroughs would foster a number of benefits as outlined in Chapter 3.

Other Issues.

In addition to the foregoing, the LBC raises four other issues in Chapter 3. Those relate to funding for borough feasibility studies, the need to refine a 2001 amendment dealing with local contributions for schools, the 2004 school consolidation study, and staff resources needed to support the LBC.

Chapter 1 - Background

Section I. Local Boundary Commission.

Subsection A. Constitutional Foundation of the Commission.

The framers of Alaska's Constitution adopted the principle that, "unless a grave need existed, no agency, department, commission, or other body should be specified in the constitution." (Victor Fischer, *Alaska's Constitutional Convention*, 1975, p. 124.) Thus, by providing for the Local Boundary Commission (LBC) in Article X, section 12 of the Constitution, the fifty-five elected delegates who drafted Alaska's Constitution five decades ago recognized that establishment of municipal governments and alteration of their boundaries was of crucial importance to the future State of Alaska.[1]

The LBC is one of only five State boards and commissions established in the Constitution (among a current total of 121 active boards and commissions).[2] The Alaska Supreme Court, in the fourth year of statehood, characterized the framers' purpose in creating the LBC as follows:

[1]Article X, section 12 states, in full:

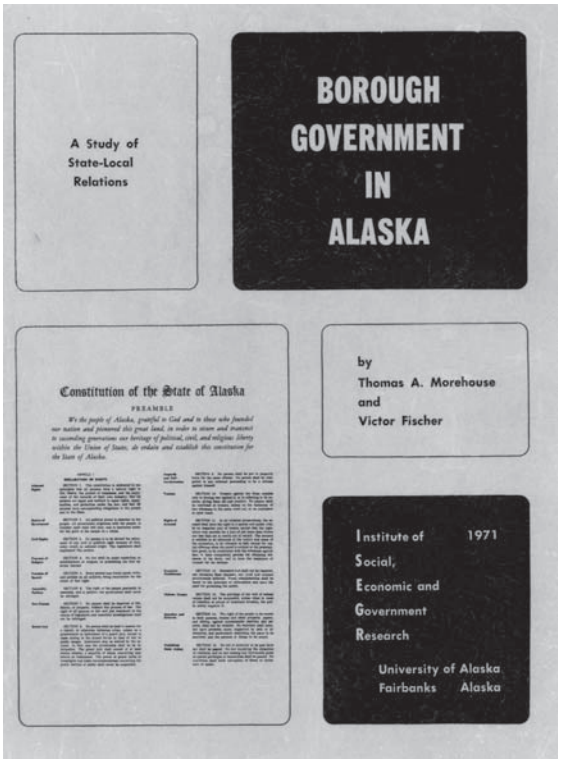
A local boundary commission or board shall be established by law in the executive branch of state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the Legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

[2]The other four boards or commissions named in the Constitution are the Judicial Council, the Commission on Judicial Conduct, the University of Alaska Board of Regents, and the Redistricting Board for apportionment of the Alaska Legislature.

> An examination of the relevant minutes of [the Local Government Committee of the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee:
>
> > . . . lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third party, arguments for and against boundary change can be analyzed objectively.

Fairview Public Utility District v. City of Anchorage, 368 P.2d 540, 543 (Alaska 1962).

A 1971 study of state and local relations by the Institute of Social, Economic and Government Research (ISEGR)[3] provides additional background concerning the constitutional foundation of the LBC. The study noted:



The Local Government Committee and the convention concluded that establishment and revision of local government boundaries should be primarily a state responsibility. Several considerations led to this conclusion: first, the delineation of boroughs required a statewide analysis of pertinent considerations; second, the state had a direct interest, since the borough was to serve not only as a local government but also as a unit for the provision of state services; third, it was generally believed that an objective analysis of relationships between ad-

[3] ISEGR is now the Institute of Social and Economic Research (ISER). ISEGR was a division of the University of Alaska Fairbanks. ISER is part of the University of Alaska Anchorage.

jacent local units could only be made at a higher level; and fourth was the belief that strictly local political decisions do not usually create proper boundaries.[4] Because similar considerations applied, city boundaries were also included under the jurisdiction of a boundary commission or board to be established in the executive branch of the state government. Boundary changes under this system could be made by the commission upon petition or on its own initiative.[5]

Convention delegates from the beginning considered it appropriate that boundary changes proposed by the commission be subject to legislative veto. In addition, there was some feeling on the part of the Local Government Committee "that the citizens of a local unit should have some check upon any proposed revision."[6] The issue was again raised on the convention floor,[7] but no requirement for a referendum was included in the constitution.

Initially, the Local Government Committee draft article stipulated that proposed changes be submitted to the legislature during the first ten days of any session and that they would "become effective at the end of the session unless disapproved by a resolution concurred in by a majority of all members of each house."[8] Subsequently, it was further provided that a change would be "effective forty-five days after presentation or at the end of the session, whichever is earlier . . . "[9] This amendment was adopted so

[4]Footnote 50 in original. *Minutes,* 18th Meeting; *General Discussion,* pp. 6-7. (Note: "Minutes" refers to *Minutes of the Committee on Local Government,* Alaska Constitutional Convention (1955 -1956). "General Discussion" refers to *General Discussion of Local Government Under Proposed Article,* Committee on Local Government, Alaska Constitutional Convention (December 19, 1955).)

[5]Footnote 51 in original. *Minutes,* 19th Meeting; *General Discussion,* p. 6.

[6]Footnote 52 in original. *Minutes,* 18th Meeting.

[7]Footnote 53 in original. *Proceedings,* pp. 2667, 2752. (Note: "Proceedings" refers to *Alaska Constitutional Convention Proceedings,* November 1955 to February 1956 (Juneau, 1965).)

[8]Footnote 54 in original. *Committee Proposal/6/a.*

[9]Footnote 55 in original. *Constitution,* Article X, section 12.

In recent years, the Legislature has directed the LBC to study matters relating to borough incorporation, school district consolidation, and other boundary issues.

that acceptable changes would not be unnecessarily delayed because of prolonged legislative sessions.

While the legislature is thus given the veto power over boundary revisions and is also required to prescribe standards and methods for establishment of boroughs, the constitution does not grant it authority over Boundary Commission activities[10] or over the manner in which boundary changes are effected. The Boundary Commission in addition has the authority, subject to law, to "establish procedures whereby boundaries may be adjusted by local action."[11]

Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, 1971, pp. 51 - 53.

Subsection B. Duties and Functions of the Local Boundary Commission.

The LBC acts on proposals for seven different municipal boundary changes. These are:

- incorporation of municipalities;[12]
- reclassification of city governments;
- annexation to municipalities;
- dissolution of municipalities;
- detachment from municipalities;
- merger of municipalities; and
- consolidation of municipalities.

In addition to the above, the LBC has a continuing obligation under statutory law to:

[10]Footnote 56 in original. *Proceedings,* p. 2750.

[11]Footnote 57 in original. *Constitution,* Article X, section 12. It would appear questionable, therefore, whether the legislature has any direct or implied constitutional power to authorize annexation or other boundary changes by local action, since this power rests in the boundary commission.

[12]The term "municipalities" includes both city governments and borough governments.

- make studies of local government boundary problems;
- adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution; and
- make recommendations to the Legislature concerning boundary changes under Article X, section 12 of Alaska's Constitution.

Further, the LBC is routinely assigned duties by the Legislature. For example, in February 2003, the LBC produced the 216-page report entitled *Unorganized Areas of Alaska that Meet Borough Incorporation Standards.* That report was prepared in response to the directive in Section 3 Chapter 53 SLA 2002. In February 2004, the LBC and Department of Education and Early Development published a 330-page joint report entitled *School Consolidation: Public Policy Considerations and a Review of Opportunities for Consolidation.* That report was prepared in response to the duty assigned in Section 1 Chapter 83 SLA 2003. The 2004 Legislature called for "a Local Boundary Commission project to consider options for forming a separate local government, independent of the Municipality of Anchorage, for the community of Eagle River" (Section 48 Chapter 159 SLA 2004).

Subsection C. LBC Decisions Must Have a Reasonable Basis and Must Be Arrived at Properly.

LBC decisions regarding petitions that come before it must have a reasonable basis. That is, both the LBC's interpretation of the applicable legal standards and its evaluation of the evidence in the proceeding must have a rational foundation.[13]

[13] *See Keane v. Local Boundary Commission,* 893 P.2d 1239, 1241 (Alaska 1995). When an administrative decision involves expertise regarding either complex subject matter or fundamental policy formulation, the court defers to the decision if it has a reasonable basis, *Lake and Peninsula Borough v. Local Boundary Commission,* 885 P.2d 1059, 1062 (Alaska 1994); *Mobil Oil Corporation v. Local Boundary Commission,* 518 P.2d 92, 97-8 (Alaska 1974). Where an agency action involves formulation of a fundamental policy the appropriate standard on review is whether the agency action has a reasonable basis; LBC exercises delegated legislative authority to reach basic policy decisions; acceptance of the incorporation petition should be affirmed if the court perceives in the record a reasonable basis of support for the LBC's reading of the standards and its evaluation of the evidence. *Rose v. Commercial Fisheries Entry Comm'n*, 647 P.2d 154, 161 (Alaska 1982) (review of agency's exercise of its discretionary authority is made under the reasonable basis standard) cited in *Stosh's I/M v. Fairbanks North Star Borough*, 12 P.3d 1180, 1183 nn. 7 and 8 (Alaska 2000); *see also Matanuska-Susitna Borough v. Hammond*, 726 P.2d 166, 175-76 (Alaska 1986).

LBC Chair Darroll Hargraves speaking with residents after a LBC hearing in rural Alaska.

The LBC must, of course, act within its jurisdiction; conduct a fair hearing; and avoid any prejudicial abuse of discretion. Abuse of discretion occurs if the LBC has not proceeded in the manner required by law or if the evidence does not support its decision.

Subsection D. Limitations on Direct Communications with the LBC.

When the LBC acts on a petition for a municipal boundary change, it does so in a quasi-judicial capacity. LBC proceedings regarding a municipal boundary change must be conducted in a manner that upholds the due-process and equal-protection rights of those involved.

Ensuring that communications with the LBC concerning municipal boundary proposals are conducted openly and publicly preserves rights to due process and equal protection. To regulate communications, the LBC adopted 3 AAC 110.500(b), which expressly prohibits private (ex parte) contact between the LBC and any individual, other than its staff, except during a public meeting called to address a municipal boundary proposal. The limitation takes effect upon the filing of a petition and remains in place through the last date available for the LBC to reconsider a decision. If a decision of the LBC is appealed to the court, the limitation on ex parte contact is extended in the event that the court requires additional consideration by the LBC.

In that regard, all communications with the LBC must be submitted through its staff. The LBC Staff may be contacted at the following address, telephone number, facsimile number, and e-mail address.

Local Boundary Commission Staff
550 West Seventh Avenue,
Suite 1770
Anchorage, Alaska 99501-3510
Telephone: (907) 269-4559 or 269-4594
Fax: (907) 269-4539
Alternate fax: (907) 269-4563
E-mail: LBC@commerce.state.ak.us

Subsection E. LBC Membership.

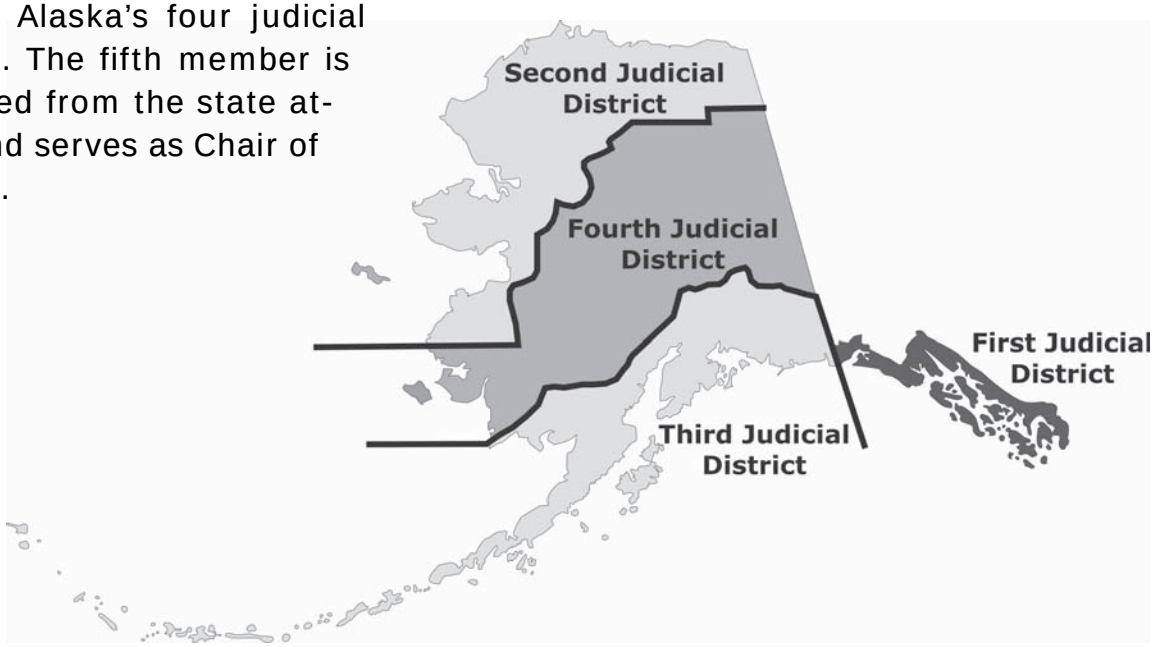
The LBC is an autonomous commission. The Governor appoints members of the LBC for five-year overlapping terms. (AS 44.33.810.) Notwithstanding the prescribed length of their terms, however, members of the LBC serve at the pleasure of the Governor. (AS 39.05.060(d).)

The LBC is comprised of five members. One member is appointed from each of Alaska's four judicial districts. The fifth member is appointed from the state at-large and serves as Chair of the LBC.

State law provides that LBC members must be appointed "on the basis of interest in public affairs, good judgment, knowledge and ability in the field of action of the department for which appointed, and with a view to providing diversity of interest and points of view in the membership." (AS 39.05.060.)

LBC members receive no pay for their service. However, they are entitled to reimbursement of travel expenses and per diem authorized for members of boards and commissions under AS 39.20.180.

The following is a biographical summary of the current members of the LBC.



Darroll Hargraves, Chair, At-Large Appointment. Governor Murkowski appointed Darroll Hargraves of Wasilla Chair of the LBC in March 2003. Commissioner Hargraves holds a Masters degree and an Education Specialist degree from the University of Alaska Fairbanks. Additionally, Oakland City University awarded him the Doctor of Humane Letters. Commissioner Hargraves has been school superintendent in Nome, Ketchikan, and Tok. He was the Executive Director of the Alaska Council of School Administrators from 1998 to 2002. He is currently a management/communications consultant working with school districts and nonprofit organizations. Commissioner Hargraves previously served as Chair of the LBC from 1992-1997 under Governors Hickel and Knowles. His current term on the LBC ends January 31, 2008.

Georgianna Zimmerle, First Judicial District. Georgianna Zimmerle serves from the First Judicial District. She is a resident of Ketchikan. Governor Murkowski appointed Commissioner Zimmerle to the LBC on March 25, 2003. An Alaska Native, Commissioner Zimmerle is Tlingit and Haida. She is currently the General Manager for the Ketchikan Indian Community. She worked for the Ketchikan Gateway Borough for 27 years, serving five years as the Borough Manager and 22 years in the Borough Clerk's Office. Her current term on the LBC ends January 31, 2006.

The Local Boundary Commission during a recent hearing.

Robert Harcharek, Second Judicial District. Robert Harcharek serves from the Second Judicial District. Then-Governor Knowles appointed him to the LBC on July 18, 2002. Governor Murkowski reappointed him to the LBC on March 24, 2004.

Mr. Harcharek has lived and worked on the North Slope for more than 25 years. He has been a member of the Barrow City Council since 1993 and a member of the North Slope Borough School Board since 1999. He is currently the Community and Capital Improvement Projects (CIP) Planner for the recently created North Slope Borough Department of Public Works. Mr. Harcharek earned a Ph.D. in International and Development Education from the University of Pittsburgh in 1977. He has served as North Slope Borough Senior Planner and Social Science Researcher, CIP and Economic Development Planner, Community Affairs Coordinator for the North Slope Borough Department of Public Safety, Director of the North Slope Higher Education Center, Socio-cultural Scientist for the North Slope Borough Department of Wildlife Management, Director of Technical Assistance for Upkeagvik Inupiat Corporation, and Dean of the Inupiat University of the Arctic. Mr. Harcharek served for three years as a Peace Corps volunteer in Thailand and was also a Fulbright-Hays Professor of Multicultural Development in Thailand. He is a member of numerous boards of directors, including the Alaska Association of School Boards and the Alaska School Activities Association. His current term on the LBC ends January 31, 2009.

Bob Hicks, Vice-Chair, Third Judicial District. Governor Murkowski appointed Bob Hicks to the LBC from the Third Judicial District in March 2003. His fellow commissioners elected him as Vice-Chair of the LBC. Commissioner Hicks is a graduate of Harvard Law School. From 1972 - 1975, he served as Executive Director of the Alaska Judicial Council. He practiced law in Alaska from 1975 - 2001. One of the fields in which he specialized as an attorney was the field of local government, including LBC matters. Since 2001, Commissioner Hicks has served as the Director of Corporate Affairs and the Dive Officer at the Alaska SeaLife Center in Seward. Commissioner Hicks' current term on the LBC ends January 31, 2007.

Dr. Anthony Nakazawa, Fourth Judicial District. Anthony "Tony" Nakazawa serves from the Fourth Judicial District and is a resident of Fairbanks. He was appointed to the LBC on February 14, 2003.

Commissioner Nakazawa is employed as the State Director of the Alaska Cooperative Extension Service, USDA/ University of Alaska Fairbanks, which includes district offices in ten communities throughout Alaska. He previously served as the Director of the Division of Community and Rural Development for the Alaska Department of Community and Regional Affairs under Governor Walter J. Hickel. Commissioner Nakazawa, an extension economist and UAF professor, has been with the Cooperative Extension Service since 1981 and with the Hawaii Cooperative Extension system in 1979-1980. From 1977-1979, he served as the Economic Development Specialist for the Ketchikan Gateway Borough. His past activities include board service with the Alaska Rural Development Council, RurAL CAP, Alaska Job Training Council, and Asian-Alaskan Cultural Center. Commissioner Nakazawa received his B.A. in economics from the University of Hawaii Manoa in 1971 and his M.A. in urban economics from the University of California Santa Barbara in 1974. He received his M.S. (1976) and Ph.D. (1979) in agriculture and resource economics from the University of California Berkeley. His current term on the LBC ends January 31, 2005.

Section II. Alaska Department of Commerce, Community, and Economic Development.

Subsection A. Constitutional Origin of the Local Government Agency.

As noted in the preceding discussion (Chapter 1 Section 1-A – Constitutional Foundation of the Commission), the framers of Alaska's Constitution followed a principle that no specific agency, department, board, or commission would be named in the Constitution "unless a grave need existed" for such. In addition to the five previously noted boards and commissions named in the Constitution, the framers provided for just one State agency: an agency to "advise and assist local governments . . . review their activities, collect and publish local government information, and perform other duties prescribed by law." The basis for the constitutionally-mandated local government agency is described in the previously noted 1971 ISEGR study of state and local relations as follows:

The prominence that the convention gave to the state role in local affairs is evidenced by the fact that the "local government agency" is the only administrative agency specifically required under the constitution. Delegates generally subscribed to the principle that, unless a grave need existed, no agency, department, commission, or other body be specified in the constitution. As one delegate stated in regard to the local government agency, "Unless there is some very, very compelling reasons given for including such an agency as proposed in Section 14 in the constitution, I think we're violating the principles and policies we've already adopted here."[14] However, in view of the general belief that success of the local government plan was dependent upon existence of an effective agency at the state level, provision for a mandatory agency was included in the constitution.

Thus, section 14 of Article X, establishing the local government agency, provides:

> An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law.

Local Government Committee meeting during the Alaska Constitutional Convention.

The general intent was to establish an administrative agency that would help assure that the new local government system became operative and that state responsibility for local affairs was properly discharged. The final language was carefully drawn to be as broad and open-ended as possible. The convention specifically avoided designating the organizational location of the agency. While at various times references were

[14]Footnote 58 in original. *Proceedings,* p. 2670.

made to it being a state department,[15] this question was left to legislative determination.

The convention also did not stipulate the functions of the agency, but the record is replete with references to the types of activities that might properly fall within its scope:

— help the people and local officials in various parts of the state obtain by their own efforts the kind of local self-government they need and can afford;[16]

— assist in establishing and organizing local government and in changing of classifications;[17]

— provide assistance and advice to cities, boroughs, service areas, etc.;[18]

— provide assistance in home rule charter drafting to boroughs and cities;[19]

— provide assistance and overview with respect to local debt and obligations, particularly since no debt ceiling was established in the constitution;[20]

— provide assistance and advice to unorganized boroughs, other unorganized areas, and small communities;[21]

— represent the state in local government affairs; provide coordination between state and local government; and assist in reconciling conflicts between local

[15]Footnote 59 in original. *Minutes,* 12th, 18th, 19th Meetings.

[16]Footnote 60 in original. *Commentary,* p. 3. (Note: "Commentary" refers to *Commentary on Local Government Article,* Committee on Local Government at Alaska's Constitutional Convention (January 16, 1956).)

[17]Footnote 61 in original. *Proceedings,* pp. 2670, 2758.

[18]Footnote 62 in original. *Proceedings,* p. 2758; *Minutes,* 9th Meeting.

[19]Footnote 63 in original. *Minutes,* 12th Meeting; *Proceedings,* pp. 2671-73; 3614-15.

[20]Footnote 64 in original. *Proceedings,* pp. 2757-58.

[21]Footnote 65 in original. *Proceedings,* p. 3621; *Minutes,* 23rd Meeting.

home rule and state control;[22]

— collect and supply data that would help the local boundary commission in the formulation of boundaries;[23]

— collect and publish information relating to local government;[24] and

— carry on continuing studies to assist the people and the legislature in determining what changes may be necessary from time to time in the interests of better local government.[25]

While suggesting several kinds of activities for the local government agency, the constitutional record is totally silent about the manner in which it was to discharge its responsibilities. The same is true generally of the agency's relationship to local government units. Several references are made to state services being provided along local unit (i.e., borough) lines,[26] but there is no explanation of the purpose of this intent nor of the manner in which it is to be accomplished. The convention assumed that the purposes of such an agency were sufficiently self-evident.

Borough Government in Alaska, pp. 53 – 55.

Of the six boards, commissions, and agencies mandated by Alaska's Constitution, two deal with the judicial branch, one deals with the legislative branch, one deals with the University of Alaska, and the remaining two - the LBC and the local government agency - deal with city and borough governments. The constitutional standing granted to the LBC and the local government agency reflects the framers' strong conviction that successful implementation of the local government principles laid out in the Constitution was dependent, in large part, upon those two entities.

[22]Footnote 66 in original. *Proceedings,* p. 2757; *Minutes,* 16th Meeting.

[23]Footnote 67 in original. *Minutes,* 24th Meeting.

[24]Footnote 68 in original. *Proceedings,* p. 2757; *Committee Proposal/6a/Enrolled.*

[25]Footnote 69 in original. *Commentary,* p. 3.

[26]Footnote 70 in original. For example, *Minutes,* 9th Meeting.

The framers recognized that deviation from the constitutional framework for local government would have significant detrimental impacts upon the constitutional policy of maximum local self-government. Further, they recognized that the failure to properly implement the constitutional principles would result in disorder and inefficiency in terms of local service delivery.

The duty to serve as the constitutional local government agency is presently delegated to the Department of Commerce, Community, and Economic Development (Department).[27]

Subsection B. Local Government Agency Serves as Staff to the LBC.

Within the Department, the Division of Community Advocacy carries out the duty to advise and assist local governments. The Department also serves as staff to the LBC pursuant to AS 44.47.050(a)(2). The LBC Staff component is part of the Division of Community Advocacy.

As staff to the LBC, the Department is required by 3 AAC 110.530 to investigate each municipal boundary proposal and to make recommendations regarding such to the LBC. As previously noted, LBC decisions must have a reasonable basis (i.e., a proper interpretation of the applicable legal standards and a rational application of those standards to the evidence in the proceeding). In recognition of such, the LBC Staff adopts the same viewpoint for itself in developing recommendations regarding matters pending before the LBC. That is, the LBC Staff is committed to developing its recommendations to the LBC based on what it deems to be the proper interpretation of the applicable legal standards and a rational application of those standards to the evidence in the proceeding. The LBC Staff takes the view that due process is best served by providing the LBC with a thorough, credible, and objective

[27]AS 44.33.020 provides that the Department "shall (1) advise and assist local governments." The constitutional duties were originally established in the Division of Local Affairs. The name was later changed to the Local Affairs Agency in the Office of the Governor. In 1972, a separate department, the Department of Community and Regional Affairs (DCRA), was created to carry out the constitutional mandate. In 1999, DCRA was consolidated with the Department of Commerce and Economic Development as the Department of Community and Economic Development (the Department). On September 2, 2004, the Department was renamed as the Department of Commerce, Community, and Economic Development (the Department).

analysis of every municipal boundary proposal.

LBC Staff during a presentation to residents of the Eagle River-Chugiak area.

The recommendations of the LBC Staff are not binding on the LBC. As noted previously, the LBC is an autonomous commission. While the LBC is not obligated to follow the recommendations of the LBC Staff, it has, nonetheless, historically considered the analyses and recommendations of the LBC Staff to be critical components of the evidence in municipal boundary proceedings. Of course, the LBC considers the entire record when it renders a decision.

The LBC Staff also delivers technical assistance to municipalities, residents subject to impacts from existing or potential petitions for creation or alteration of municipal governments, petitioners, respondents, agencies, and others.

Types of assistance provided by the LBC Staff include:

- conducting feasibility and policy analysis of proposals for incorporation or alteration of municipalities;
- responding to legislative and other governmental inquiries relating to issues on municipal government;
- conducting informational meetings;
- providing support during LBC hearings and other meetings;
- drafting decisional statements of the LBC;
- implementing decisions of the LBC;
- certifying municipal boundary changes;
- maintaining incorporation and boundary records for each of Alaska's 162 municipal governments;
- drafting reports, correspondence, public notices, legislation, or regulations as requested by the LBC;

- coordinating, scheduling, and overseeing public meetings and hearings for the LBC;
- developing orientation materials and providing training for new LBC members;
- maintaining and preserving LBC records in accordance with the public records laws of the State; and
- developing and updating forms and related materials for use in municipal incorporation or alteration.

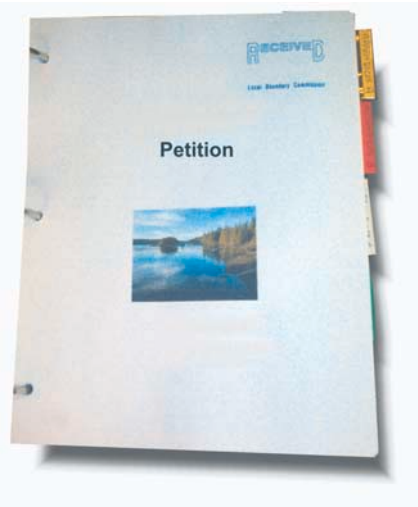
Given other Department work assignments, there are less than two full-time equivalent positions currently assigned to work on LBC matters.

Section III. Procedures of the LBC.

Procedures for establishing and altering municipal boundaries and for reclassifying cities are designed to secure the reasonable, timely, and inexpensive determination of every proposal to come before the LBC. The procedures are also intended to ensure that decisions of the LBC are based on analysis of the facts and the applicable legal standards, with due consideration of the positions of interested parties. The procedures include extensive public notice and public review, analysis, public informational meetings, public hearings, a decisional meeting of the LBC, and opportunity for reconsideration by the LBC. A summary of the procedures follows.

Subsection A. Preparation and Filing of the Petition.

The LBC Staff offers technical assistance, sample materials, and petition forms to prospective petitioners. The technical assistance may include feasibility and policy analysis of prospective proposals. LBC Staff routinely advises petitioners to submit petitions in draft form in order that potential technical deficiencies relating to petition form and content may be identified and corrected prior to circulation of the petition for voter signatures or formal adoption by a municipal government sponsor.



Once a formal petition is prepared, it is submitted to LBC Staff for technical review. If the petition contains all the information required by law, the LBC Staff accepts the petition for filing.

Subsection B. Public Notice and Public Review.

Once a petition is accepted for filing, extensive public notice is given. Interested persons are typically given at least seven weeks to submit responsive briefs and comments supporting or opposing a petition. The petitioner is typically provided at least two weeks to file one brief in reply to responsive briefs.

Subsection C. Analysis.

Following the public comment period, the LBC Staff analyzes the petition, responsive briefs, written comments, reply brief, and other materials as part of its investigation. The petitioner and the LBC Staff may conduct informational meetings. At the conclusion of its investigation, the LBC Staff issues a preliminary report for public review and comment. The report includes a formal recommendation to the LBC for action on the petition.

The preliminary report is typically circulated for public review and comment for a minimum of four weeks. After reviewing the comments on its report, the LBC Staff issues its final report. The final report includes a discussion of comments received on the preliminary report and notes any changes to the LBC Staff's recommendations to the LBC. The final report must be issued at least three weeks prior to the hearing on the proposal.

Subsection D. Commission Review of Materials and Public Hearings.

Members of the LBC review the petition, responsive briefs, written comments, reply brief, and the LBC Staff reports. If circumstances permit, LBC members also tour the area at issue prior to the hearing in order to gain a better understanding of the area. Following extensive public notice, the LBC conducts at least one hearing in or near the affected territory.

The LBC must act on the petition within ninety days of its final public hearing.

The LBC may take any one of the following actions:

- approve the petition as presented;

- amend the petition (e.g., expand or contract the proposed boundaries);
- impose conditions on approval of the petition (e.g., voter approval of a proposition authorizing the levy of taxes to ensure financial viability); or
- deny the petition.

Swearing-in ceremony for city council members of the newly incorporated City of Gustavus.

While allowed 90 days following its last hearing on a petition, the LBC typically renders its decision within a few days of the hearing. Within thirty days of announcing its decision, the LBC must adopt a written statement setting out the basis for its decision. Copies of the statement are provided to the petitioner, respondents, and others who request it. At that point, the decision becomes final, but is subject to reconsideration. Any party may ask the LBC to reconsider its decision. Such requests must be filed within eighteen days of the date that the decision becomes final. If the LBC does not approve a request for reconsideration within twenty days of the date that the decision became final, the request for reconsideration is automatically denied.

Subsection E. Implementation.

If the LBC approves a petition, the proposal is typically subject to approval by voters or the Legislature. A petition that has been granted by the LBC takes effect upon the satisfaction of any stipulations imposed by the LBC. The action must also receive favorable review under the Federal Voting Rights Act. The LBC Staff provides assistance with Voting Rights Act matters.

Chapter 2 - Activities and Developments During 2004

Section I. City Incorporation

City incorporation activities occurred in the following localities during 2004:

- ★ Anchor Point
- ★ Chitina
- ★ Gravina Island
- ★ Gustavus
- ★ Healy
- ★ Hope
- ★ Iliamna
- ★ Naukati
- ★ Willow

Subsection A. Anchor Point.

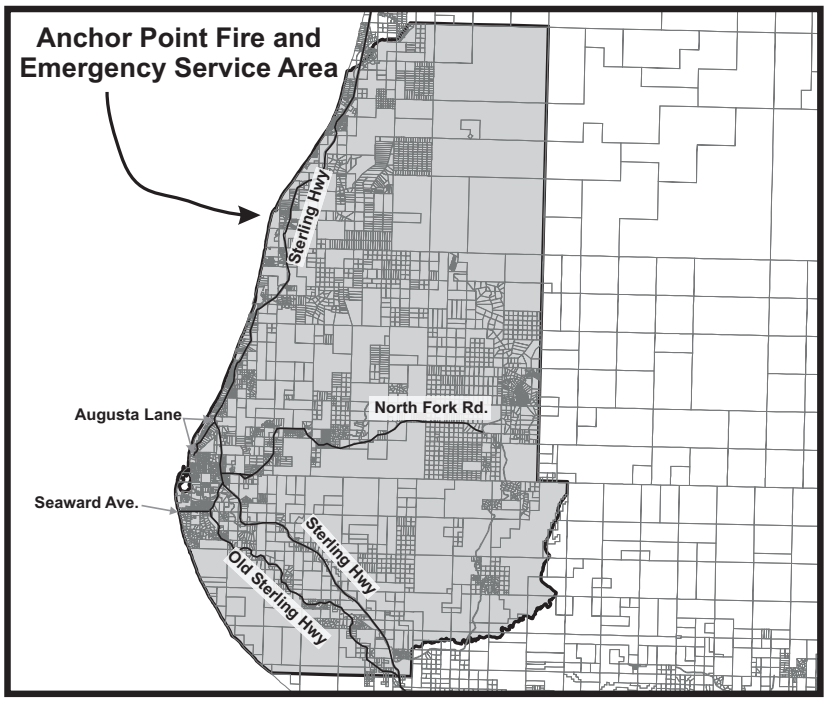
Anchor Point is located at the junction of the Anchor River and its north fork, 14 miles northwest of Homer. It lies at mile 156 of the Sterling Highway. Anchor Point is an unincorporated community in the Kenai Peninsula Borough. It has an estimated population of 1,826 persons.[28] While Anchor Point has no taxing authority due to its unincorporated status, the Borough levies both sales and property taxes in Anchor Point.

In December 2003, LBC Staff spoke to the Anchor Point Chamber of Commerce regarding the prospect of forming a city government to serve Anchor Point residents. Local interest in forming a city government continued during 2004.

The Anchor Point Chamber of Commerce distributed 200 surveys regarding the prospect of city incorporation. The results of the survey were announced in May 2004. Responses to the survey were received from 49 individuals, with 86 percent of those

[28]The population figures used in this Chapter are 2003 Alaska State Demographer estimates.

respondents supporting incorporation under one of three proposed boundary scenarios.



The Chamber subsequently formed a committee to pursue city incorporation. In September 2004, LBC Staff provided the Chamber of Commerce with printed materials regarding city incorporation for use by the committee members. LBC Staff also responded to questions about technical aspects of city government.

No petition for incorporation of the City of Anchor Point has yet been filed with the LBC.

Subsection B. Chitina.

Chitina is located on the west bank of the Copper River at its confluence with the Chitina River, at mile 34 of the Edgerton Highway, 53 miles southeast of Copper Center. It lies outside the western boundary of the Wrangell-St. Elias National Park and Preserve, 66 miles southeast of Glennallen. Chitina is an unincorporated community in the unorganized borough. It has an estimated population of 132 persons. Due to its unincorporated status, the community has no taxing authority.

In July 2004, a resident of Chitina wrote to the Department indicating that several residents of the community were interested in forming a second-class city. In response to the inquiry, LBC Staff provided extensive background materials and forms to petition for incorporation. Further, residents were encouraged to work with LBC Staff in the development of any city incorporation petition.

Chitina

No petition for incorporation of a City of Chitina has yet been filed with the LBC.

Subsection C. Gravina Island.

Gravina Island is located across the narrows from Ketchikan, extending 21 miles in length and about 9.5 miles in width. The Ketchikan International Airport is located on Gravina Island. An official population estimate for Gravina Island does not exist.

Gravina Island and Ketchikan's airport

In April 2004, LBC Staff provided information to the Manager of the Ketchikan Gateway Borough regarding the prospect of forming a city government to serve residents of Gravina Island. A planned bridge would provide road access from Ketchikan to Gravina Island.

No petition for incorporation of a city on Gravina Island has yet been filed with the LBC.

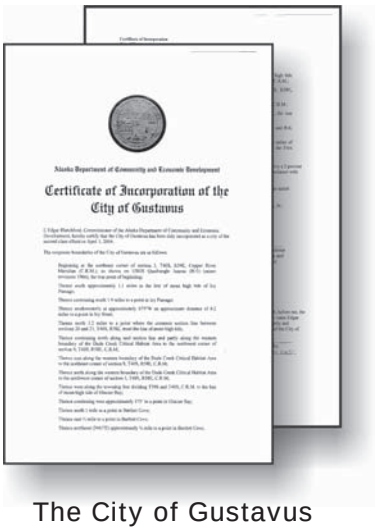
Subsection D. Gustavus.

Gustavus lies on the north shore of Icy Passage at the mouth of the Salmon River, 48 air miles northwest of Juneau in the St. Elias Mountains. It is surrounded by Glacier Bay National Park and Preserve on three sides and the waters of Icy Passage on the south. Gustavus was incorporated as a second-class city on April 1, 2004. It is in the unorganized borough. Gustavus has an estimated population of 438 persons. The City levies both a 2 percent sales tax and a 4 percent accommodations tax.

In November 2003, the LBC approved a petition to form a second-class city to serve the residents of Gustavus. Following the scheduling of the incorporation election, in accordance with Section 5 of the Federal Voting Rights Act, LBC Staff submitted a request to the U.S. Justice Department for preclearance for the incorporation election of the City of Gustavus.

On March 16, 2004, the State Division of Elections conducted the election on the question of forming a second-class city to serve the residents of Gustavus. As a condition of incorporation, voters also had to approve two other questions on the ballot: the levying of a proposed 2 percent sales tax and the levying of a proposed 4 percent bed tax. The election was

conducted by mail, and 309 of the 465 registered voters in Gustavus voted, a 66.5 percent voter turnout. All three questions passed, with 182 voters supporting incorporation and 127 voters opposing incorporation.



The City of Gustavus was incorporated on April 1, 2004, becoming Alaska's 146th city government.

The incorporation of Gustavus as a second-class city was certified on April 1, 2004. LBC Staff issued notice of the incorporation.

Subsection E. Healy.

Healy lies at the mouth of Healy Creek on the Nenana River, 78 miles southwest of Fairbanks. It is located on a 2.5-mile spur road, just north of the entrance to Denali National Park and Preserve on the George Parks Highway. Healy is an unincorporated community in the Denali Borough. It has an estimated population of 1,022 persons. The Borough levies a 7 percent accommodations tax and a severance tax on gravel and minerals.

In November 2004, LBC Staff provided information to a former Denali Borough Assembly member residing in Healy regarding standards and procedures for incorporation of a city government. At issue was the lack of adequate emergency services in the Healy area.

Governor Hails Gustavus Incorporation Vote

Governor Frank H. Murkowski today hailed the decision by voters in Gustavus to assume the responsibilities of self-government by voting to incorporate as a second-class city, and to tax themselves to pay for basic local government services.

On Thursday, the state Division of Elections certified results of a mail-in election in March that created the City of Gustavus and selected a mayor and seven city council members who'll take office Monday. Voters also approved measures to levy a 2 percent sales tax, and a 4 percent tax on overnight accommodations. The incorporation vote was 182-127, and voter turnout was 66.5 percent.

"**One of the clear expectations of statehood was the idea that local communities would organize themselves into towns, cities or boroughs, so Alaskans could be responsible for themselves, and enjoy the benefits of direct local government," the governor said. "The people of Gustavus have demonstrated an admirable willingness to step up to the responsibilities of self-government. I applaud their confidence and civic spirit."**

. . . .

Excerpt from Governor Murkowski's April 2, 2004, Press Release, No. 04-058 (Juneau), emphasis added.

The alternative of establishing a service area in the Denali Borough community was also addressed.

LBC Staff advised the former Assembly member that several circumstances, including the relatively large territory under consideration, suggested that creating a borough service area might be a better alternative than city incorporation. LBC Staff noted that city governments are subject to the "limitation-of-community doctrine," which restricts the geographic size of city governments.[29] Staff also noted that service areas could be created much more quickly than is the case with city governments. Given the lack of adequate emergency services in this case, a quick resolution might be warranted.

Also noted was the constitutional principle calling for a minimum of local government units. It was pointed out, in that regard, that a borough encompassing a large, natural region without city governments is the constitutionally ideal form of local government in Alaska. Currently, 82.9 percent of organized borough residents rely exclusively on borough governments for all municipal services. The remaining 17.1 percent receive municipal services from both a borough and a city government.

Subsection F. Hope.

Hope is located on the northern end of Kenai Peninsula, on the south shore of Turnagain Arm of Cook Inlet. The community lies at the terminus of the 17-mile Hope Highway, northwest of the Seward Highway, near the mouth of Resurrection Creek. Hope is an unincorporated community in the Kenai Peninsula Borough. Hope has an estimated population of 161 persons. The Borough levies both sales and property taxes.

In May 2004, LBC Staff met with a resident of Hope to discuss boundaries of the community of Hope. Staff also briefly outlined procedures for city incorporation. In a follow-up communication, LBC Staff furnished additional information regarding city incorporation as well as a map of the Hope Census Designated Place boundaries.

[29] In *Mobil Oil (*at 100), the court recognized that, while cities may not encompass lands that receive no benefit from the city government, boroughs may do so. That concept is reflected in the State laws governing city boundaries which, subject to narrow exceptions, must be limited to a "local community," and may not include "entire geographical regions or large unpopulated areas." *See* 3 AAC 110.040(b) and (c) and 3 AAC 110.130(c) and (d). Borough boundaries are not limited in this way.

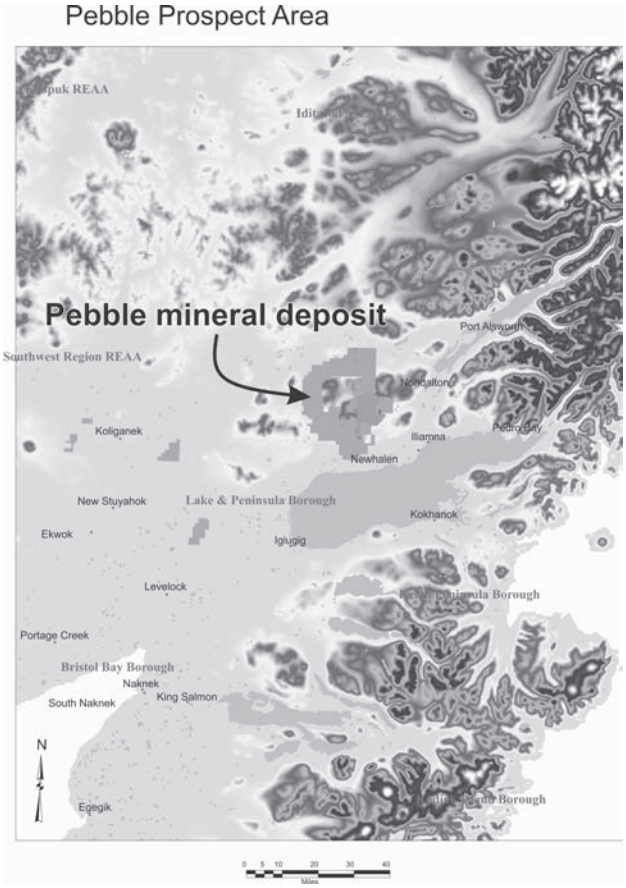
Subsection G. Iliamna.

Iliamna is located on the northwest side of Iliamna Lake, 225 miles southwest of Anchorage. It is near Lake Clark Park and Preserve. Iliamna is an unincorporated community in the Lake and Peninsula Borough. It has an estimated population of 92 persons. At this time, Iliamna has no taxing authority due to its unincorporated status. However, the Borough levies a 2 percent raw fish tax and a 6 percent accommodations tax.

Officials of the Lake and Peninsula Borough advised LBC Staff that some residents of Iliamna have expressed interest in forming a city government as a means to better cope with the anticipated development of the Pebble mineral deposit.

The Pebble deposit is estimated to contain at least 26.5 million ounces of gold, 16.5 billion pounds of copper, and 900 million pounds of molybdenum. At current mineral prices, the deposit reportedly has an estimated value of approximately $28 billion.

Iliamna is a base for many of the biologists, soil scientists, hydrologists, and others working for Northern Dynasty Minerals Ltd. on the Pebble site. While 86 workers were at the site this summer, it is projected that 2,000 workers would be employed during construction if the mine is developed. It is also estimated that 1,000 workers would be employed long term to run the operation.



Northern Dynasty reportedly projects that construction at the Pebble mine site will be completed and production underway by 2010. Others, however, have taken the position that the plan is too optimistic.

In November 2004, Department staff was contacted by a resident of Iliamna inquiring about city government incorporation and, in particular, types and forms of local government. The resident explained that the community's

current level of organized services, some offered by tribal programs, may not meet future needs of residents and private industry.

No petition for incorporation of a City of Iliamna has yet been filed with the LBC.

Subsection H. Naukati Bay.

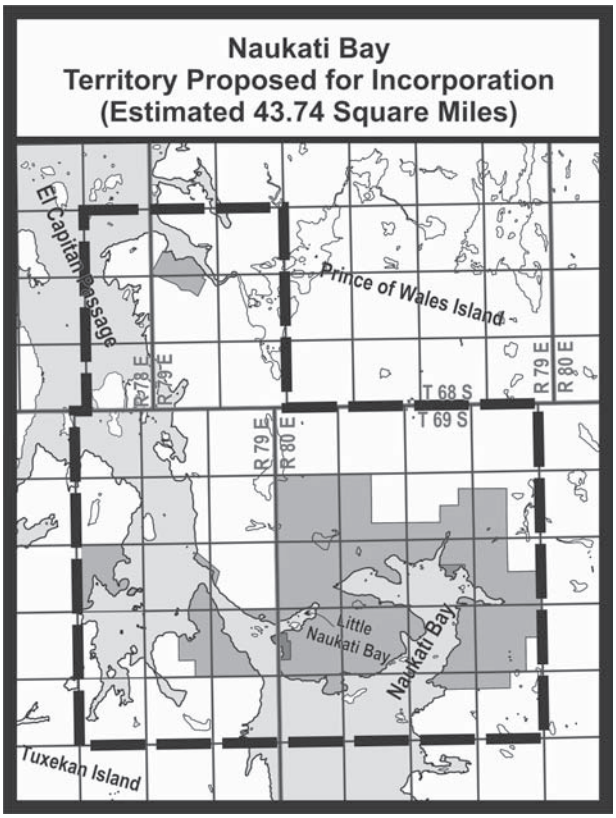
Naukati Bay is located on the west coast of Prince of Wales Island in southeast Alaska. It was a logging camp at one time, but later was settled as a Department of Natural Resources land disposal site. Naukati Bay is an unincorporated community in the unorganized borough. It has an estimated population of 109 persons. Due to its unincorporated status, the community has no taxing authority.

A petition to incorporate a second-class city was filed by voters in Naukati in January 2004. The Petition proposed to incorporate a second-class city encompassing approximately 44 square miles of land and water. The boundaries of the proposed City of Naukati extended from the Naukati East Subdivision on the east to the shellfish farming bays and coves on the west and from Naukati Bay on the south to the Sarkar Subdivision and El Capitan Lodge on the north.

As part of the Petition to incorporate, the Petitioner also sought authorization for the proposed city to levy a 4 percent bed tax to support the provision and operation of community emergency response service, road and harbor maintenance, a shellfish nursery, and water and sewer service.

In early March 2004, the Department completed its technical review of the Petition, determining that two aspects of the Petition required correction. First, the Petitioner's Representative did not sign and date the Petition. Second, the legal description of the boundaries of the proposed City of Naukati contained errors and needed to be corrected to reflect the boundaries on the map.

By mid-April 2004, the Department completed its technical review of the corrected Petition to incorporate the



City of Naukati. A letter formally accepting the Petition for filing was issued April 16, 2004.

July 16, 2004, was set as the deadline for filing responsive briefs and comments regarding the Petition. A 25-page responsive brief, along with nine appendices totaling 100 pages, was filed on behalf of the owner and operator of the El Capitan Lodge, a wilderness lodge within the Sarkar Subdivision. In addition to the comments and brief, five letters commenting on the proposal were received.

LBC Staff received the Petitioner's reply brief on August 23, 2004. In general, the Petitioner restated a commitment to the incorporation of Naukati as a second-class city and responded to arguments made against such by respondent El Capitan Lodge and commentors. The Petitioner asserted that the information relied on by the respondent was outdated and incorrect. Further, the Petitioner stated that many of the comments were unsound and unjust and that Naukati was a viable community that embraced Sarkar.

The Department is currently analyzing the petition, briefing materials, and comments for preparation of its preliminary report.

Subsection I. Willow.

Willow is located in the Matanuska-Susitna Borough, between miles 60 and 80.7 of the George Parks Highway, north of Houston. Its western boundary is the Susitna River. The community got its start when gold was discovered on Willow Creek in 1897. Willow is an unincorporated community. It has an estimated population of 1,838 persons. Although Willow has no taxing authority, Willow residents pay a Borough property tax and an accommodations tax.

In July 2004, LBC Staff received requests from the office of then-Representative Masek and two residents of Willow to provide information about forming a city government to serve Willow residents. In response, LBC Staff provided information about city government in Alaska and the process and standards for city incorporation.

With an estimated population of 1,838 residents, Willow is eligible to petition for any class of city government (i.e., second-class, first-class, or home-rule city).

No petition for incorporation of a City of Willow has yet been filed with the LBC.

Section II. City Annexation.

Annexation activities occurred with respect to the following city governments during 2004:

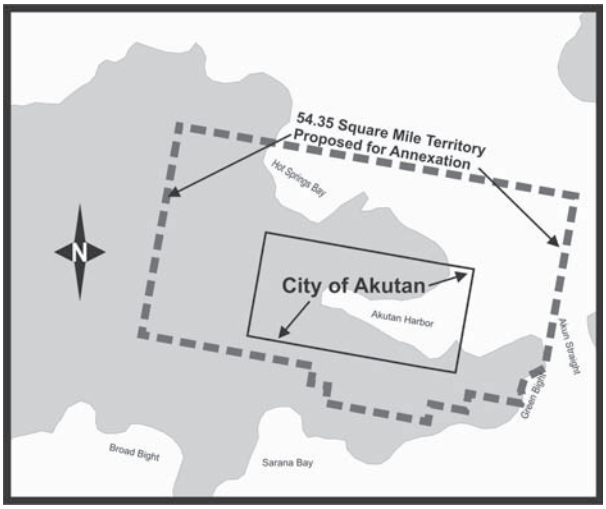
- ★ Akutan
- ★ Bethel
- ★ Eagle
- ★ Homer
- ★ Kivalina
- ★ Kodiak
- ★ Nome
- ★ Petersburg
- ★ Seward
- ★ Valdez
- ★ Wasilla

Subsection A. Akutan.

Akutan is located on the Akutan Island in the eastern Aleutian Islands. It is 35 miles east of Unalaska and 766 air miles southwest of Anchorage. The City of Akutan was incorporated on October 23, 1979. It is a second-class city in the Aleutians East Borough. Akutan has an estimated population of 787 persons. The City levies a 1 percent raw fish tax, and the Borough levies a 2 percent raw fish tax.

On February 6, 2004, the City of Akutan filed a Petition to annex approximately 48 square miles of land for purposes of long-term planning and development, including an airport and geothermal project, and provision of emergency medical services to the territory. LBC Staff completed the technical review of the Petition and determined that there were several aspects of the Petition that were deficient and required correction.

LBC Staff worked with the consultant for the City of Akutan to correct Petition deficiencies. On April 29, 2004, the consultant submitted a working draft of the revised Petition for annexation for a preliminary review by LBC Staff. The review was completed on May 6, 2004.



On September 30, 2004, the City of Akutan filed a revised Petition to annex approximately 54.35 square miles of territory (32.17 square miles of land and 22.18 square miles of tidelands and submerged lands). With the annexation, the City's new boundaries would encircle the City's current boundaries, encompassing approximately 70 square miles.

Following completion of its technical review of the Petition, LBC Staff accepted it for filing on November 15, 2004, subject to certain clarifications re legal descriptions and the resolution authorizing the filing of the Petition. A letter of notification to that effect was sent to the Petitioner's Representative. The LBC Chair set February 25, 2005, as the deadline for filing responsive briefs and comments.

Bethel

Subsection B. Bethel.

Bethel is located near the mouth of the Kuskokwim River, 40 miles inland from the Bering Sea. It lies in the Yukon Delta National Wildlife Refuge, 400 air miles west of Anchorage. The City of Bethel was incorporated on August 28, 1957. It is a second-class city in the unorganized borough. It has an estimated population of 5,899 persons. The City of Bethel levies a 5 percent sales tax, a 5 percent alcohol tax, a 3 percent hotel/bed and breakfast tax, a 6 percent gaming tax, a fuel tax, and a vehicle registration tax.

On September 20, 2004, the City Manager of Bethel inquired about standards and procedures for annexation. Interest in such stemmed from the prospective construction in Bethel of support facilities for the Donlin Creek mine near Crooked Creek. In particular, interest was expressed in possible annexation of territory that might be developed as a port facility to support construction and operation at the mine. LBC Staff provided written materials to the City Manager concerning annexation standards and procedures.

In addition to the activities described above regarding the prospective annexation proposal, developments regarding interest in reclassification of the City of Bethel are addressed in this Chapter at Section IV-B.

Eagle

Subsection C. Eagle.

Eagle is located on the Taylor Highway, six miles west of the Alaska-Canadian border. Eagle is on the left bank of the Yukon River at the mouth of Mission Creek. The existing boundaries of the City encompass an estimated one square mile of land. The City of Eagle was incorporated on January 8, 1901. It is a second-class city in the unorganized borough. It has an estimated population of 126 persons. The City of Eagle does not levy any taxes.

In November 2004, officials of the City of Eagle advised LBC Staff that the City was developing a petition for annexation. The prospective annexation proposal under consideration would create two enclaves. The LBC Staff provided information to the City officials regarding standards and procedures for annexation. LBC Staff emphasized that the standards include a specific presumption against the creation of enclaves.

Subsection D. Homer.

Homer is located on the north shore of Kachemak Bay on the southwestern edge of the Kenai Peninsula. It is 227 road miles south of Anchorage, at the southern-most point of the Sterling Highway. The City of Homer was incorporated on March 31, 1964. It is a first-class city in the Kenai Peninsula Borough. It has an estimated population of 4,893 persons. The City levies a 3.5 percent sales tax and a property tax. Additionally, the Borough levies a 2 percent sales tax and a property tax.

On December 26, 2001, the LBC approved an annexation of 4.58 square miles to the City of Homer. Following tacit legislative approval, the annexation took effect on March 20, 2002.

The annexation was appealed to superior court. On December 4, 2003, the superior court ordered a remand to the LBC to discuss the effect of the annexation on the Kachemak Emergency Service Area (KESA) created by the Kenai Peninsula Borough. The court indicated that such discussion was warranted to ensure that annexation was in the best interests of the State.

On December 15, 2003, the LBC requested reconsideration of the court's decision. The court issued an order on December 23, 2003, denying the Commission's request for reconsideration.

Procedures and notice regarding the remand were approved by the LBC at its public meeting on May 18, 2004. The order and notice setting out the procedures and schedules for the proceeding were published May 20, 2004. The order also addressed the convening of one or more public hearings in Homer following the issuance of the Department's final report and set out procedures for witness lists and hearing procedures.

Former Constitutional Convention Delegate Victor Fischer testifying at the November 20, 2004, LBC hearing.

By June 24, 2004, the deadline for filing comments regarding the superior court remand, 19 sets of written comments had been filed with the Commission. The volume of comments consists of approximately 500 pages of material. The deadline for the City of Homer to reply to those initial comments was July 15, 2004.

On August 12, 2004, the LBC Staff timely issued its preliminary report on remand in the proceeding. The report consisted of 204 pages. The LBC Staff recommended that the Commission affirm the December 26, 2001, Homer decision granting annexation of 4.58 square miles to the City. Additionally, the preliminary report urged the Commission to reject as unconstitutional and otherwise unlawful the new court-imposed standard that the effect of city annexation on existing or prospective borough service areas must be considered in determining the best interests of the state.

The deadline for filing comments on the preliminary report was September 2, 2004. By that deadline, LBC Staff had received nine sets of comments. Two sets of comments endorsed the conclusions in the report, while the other seven did not.

On September 23, the LBC Staff issued its final report. The final report reaffirmed the conclusions and recommendations outlined in the preliminary report.

On Saturday, November 20, the LBC toured the 4.58-square mile territory annexed to the City of Homer. Following the tour, the LBC convened a public hearing in the Homer City Council chambers to address the impact of

the annexation on KESA. The hearing lasted from 10 a.m. to approximately 4:30 p.m. During the hearing, LBC Staff presented its report and recommendations to the LBC. Constitutional Convention Delegate Victor Fischer testified on behalf of the City of Homer. Respondents also called witnesses.

Following the preparation of the 166-page transcript of the hearing, the LBC met on January 5, 2005, to render a decision regarding the matter. After considering the impact of the Homer annexation on KESA, the LBC affirmed the December 26, 2001, decision of the LBC granting annexation of 4.58 square miles to the City Homer.

Subsection E. Kivalina.

Kivalina is at the tip of an eight-mile long barrier reef located between the Chukchi Sea and Kivalina River, located 80 air miles northwest of Kotzebue. Due to severe erosion and wind-driven ice damage, residents of Kivalina intend to relocate to a new site. Kivalina incorporated as a city government on June 23, 1969. It is a second-class city within the Northwest Arctic Borough. It has an estimated population of 388 persons. The City of Kivalina levies a 2 percent sales tax.

In November 2004, a Northwest Borough official inquired about boundary options with respect to the anticipated relocation of the community of Kivalina. The Borough official expects that, within three years, Kivalina will begin a ten- to fifteen-year process of relocating to an area three to ten miles outside the current corporate boundaries of the City of Kivalina. LBC Staff discussed options of city annexation and incorporation of a new city.

Beyond the actions noted above regarding the prospect of annexation, activities regarding interest in dissolution of the City of Kivalina are addressed in this Chapter at Section III-C.

Subsection F. Kodiak.

Kodiak is located near the northeastern tip of Kodiak Island in the Gulf of Alaska, approximately 252 air miles southwest of Anchorage. The City of Kodiak was incorporated on September 11, 1940. It is a home-rule city within the Kodiak Island Borough. It has an estimated population of 6,138 persons. Residents pay a 6 percent sales tax. Both the City of Kodiak and the Kodiak Island Borough also levy property and accommodations taxes in the community.

In January 2004, the Kodiak City Manager advised LBC Staff that the City of Kodiak was exploring the prospects of annexing as much as 12 square miles of uninhabited territory. The local Native Corporation, Natives of Kodiak, owns approximately two square miles of the territory. Natives of Kodiak approached the City about the possibility of annexation to

Kodiak

receive utilities and other services. The territory also includes the community's watershed, owned by the Kodiak Island Borough, State of Alaska, and the Bureau of Land Management. A private party owns a small portion of the watershed. Also included in the territory is an electrical facility owned by the local electrical cooperative, Kodiak Electric.

LBC Staff provided petition forms and instructions to the City of Kodiak. Information was also provided about time schedules and LBC activities in terms of the possibility for action on the proposal by the LBC in time for presentation of a recommendation to the 2005 Legislature.

In February 2004, the Kodiak City Manager reported that the City of Kodiak was proceeding with plans to file the annexation proposal. In June, the Kodiak City Manager advised LBC Staff that the City was continuing to develop a petition for annexation of the City's watershed. The City was attempting to obtain the endorsement of all property owners in the territory contemplated for annexation in order that the City may seek the boundary change under local option method that allows abbreviated procedures. Some property owners have reportedly balked at this endorsement.

In September 2004, the Kodiak City Manager advised LBC Staff that the prospective annexation proposal was before the Assembly of the Kodiak Island Borough. Some officials of the Borough apparently raised concerns about the boundaries of the prospective annexation proposal. The City Manager advised Borough officials that she hopes to proceed with development of an annexation petition.

At this point, no petition for annexation of territory to the City of Kodiak has been filed with the LBC.

Subsection G. Nome.

Nome is located on the south coast of the Seward Peninsula, facing Norton Sound. It is located 539 air miles northwest of Anchorage. The City of Nome incorporated on April 12, 1901. It is a first-class city in the unorganized borough. It has an estimated population of 3,448 persons. The City of Nome levies a 5 percent sales tax, a 4 percent accommodations tax, and a property tax.

The April 22, 2004, edition of the *Nome Nugget* included an editorial advocating expansion of the boundaries of the City of Nome. Entitled "The Bigger Picture," the editorial noted that there has been substantial development outside the boundaries of the City of Nome and that the prospect of further development existed due to "developments associated with proposed future mining activities."

The editorial noted that while the City of Nome does not have a legal obligation to provide fundamental services, it does have a moral obligation to do so. Also noted was the fact that residents were not enfranchised and lacked the protections offered by municipal planning and land use regulation.

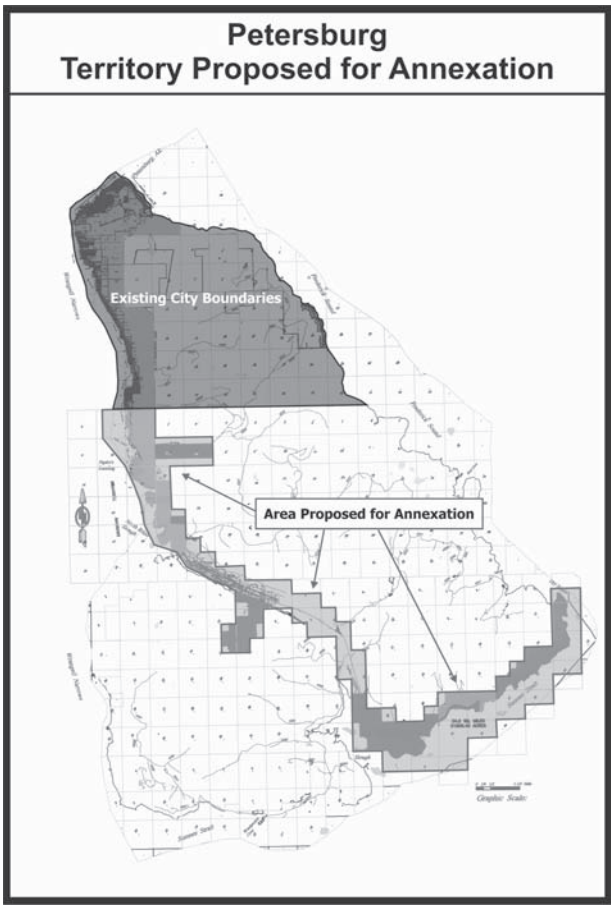
Front Street in Nome

In November 2004, the City of Nome requested information about annexation. LBC Staff provided information to officials of the City of Nome regarding standards and procedures for annexation.

Subsection H. Petersburg.

Petersburg is located on the northwest end of Mitkof Island, where the Wrangell Narrows meets Frederick Sound. It lies midway between Juneau and Ketchikan, about 120 miles from either community. Petersburg was incorporated as a city government on April 11, 1910. It is a home-rule city in the unorganized borough. It has an estimated population of 3,060 persons. The City of Petersburg levies a 6 percent sales tax, a 4 percent accommodations tax, and a property tax.

In February 2004, at the request of the City of Petersburg, LBC Staff prepared forms to Petition for Annexation to a City in the Unorganized Borough using the election-by-aggregate-voter method of annexation. That method of annexation is authorized under Article X, section 12 of the Constitution of the State of Alaska, AS 29.06.040(a) and (c),



AS 44.33.812(a)(2), and 3 AAC 110.600(c). LBC Staff also provided an updated 14-page publication containing fundamental background information regarding city annexation.

In August 2004, LBC Staff was advised that the City Council was expected to adopt an ordinance on September 7, 2004, authorizing a petition for annexation of 34.2 square miles. The method of annexation proposed was the local option process requiring approval from the aggregate voters in the territory proposed for annexation and the territory within the existing boundaries of the City.

On October 14, 2004, the City of Petersburg filed a Petition for annexation of the estimated 34.2 square miles. According to the Petition, approximately 162 residents live within the area proposed for annexation. An estimated eleven businesses are in the territory. The value of taxable real property in the territory is estimated to be $14,575,000.

The Petition seeks annexation subject to approval by the LBC and the combined voters in the territory proposed for annexation and the territory within the existing boundaries of the City of Petersburg.

In October, LBC Staff responded to an inquiry from a resident of the 34.2 square-mile territory proposed for annexation by the City of Petersburg. The individual requested a copy of the documents relating to a 1978 proposal by the City of Petersburg to annex all of Mitkof Island. Information about the timing and process for filing responsive briefs and comments was also provided.

On December 13, 2004, LBC Staff completed its technical review of the Petition. The content of the Petition was determined to be substantially complete and the form was determined to be proper. The Petition was accepted for filing. The LBC Chair set April 18, 2005, as the deadline for fil-

ing responsive briefs and written comments in support of or opposition to the annexation proposal.

Subsection I. Seward.

Seward is situated on Resurrection Bay on the east coast of the Kenai Peninsula, 125 highway miles south of Anchorage. It lies at the foot of Mount Marathon and is the gateway to the Kenai Fjords National Park. The City of Seward was incorporated on June 1, 1912. It is a home-rule city within the Kenai Peninsula Borough. An estimated 2,733 persons live in Seward. The City of Seward levies a 4 percent sales tax, a 4 percent accommodations tax and a property tax. In addition, the Kenai Peninsula Borough levies property and sales taxes in Seward.

In January 2004, an elected official of the City of Seward contacted LBC Staff for background information about annexation. The official indicated that interest existed in expanding the boundaries of the City of Seward to include Lowell Point and Bear Creek subdivisions.

In February 2004, at the request of a Council member of the City of Seward, LBC Staff prepared forms to petition for annexation to a city in an organized borough using the election-by-aggregate-voter method of annexation. In addition to the forms, LBC Staff also provided the Council member with a 14-page publication containing fundamental background information regarding city annexation.

In May 2004, LBC Staff was advised that the Seward City Manager had been directed to explore the prospect of annexation. LBC Staff provided information and materials regarding methods, standards, and procedures for annexation. Staff also provided the Seward City Manager with a copy of the 3,700-page record relating to the 2000 City of Homer annexation petition.

In June 2004, LBC Staff responded to a number of inquires about annexation from local residents of the area immediately outside the boundaries of the City of Seward. On June 29, LBC Staff met with a group of these residents to discuss an anticipated proposal by the City of Seward to annex those territories. The group met again on July 7, 2004, to further discuss the anticipated annexation proposal.

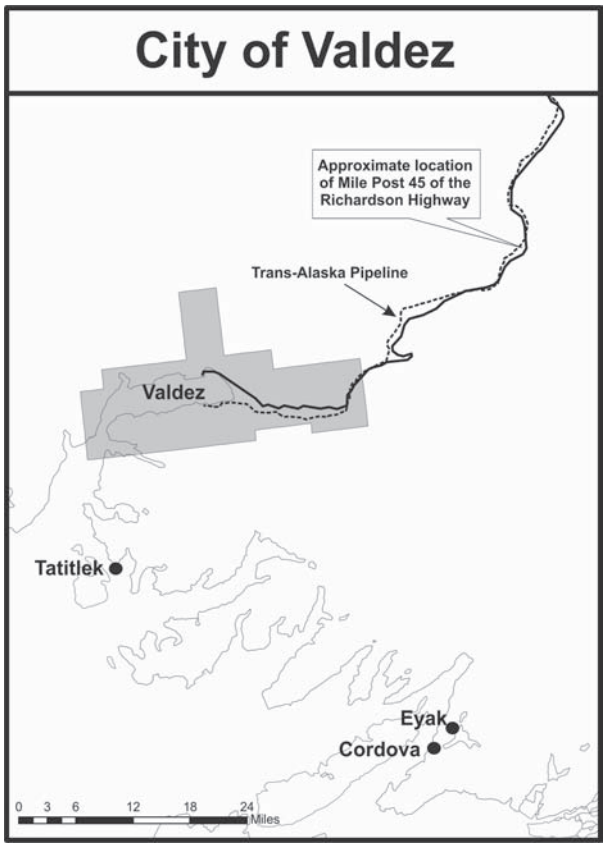
At its meeting of October 25, 2004, the Seward City Council discussed the prospect of annexation. City officials announced plans at the meeting to conduct a survey regarding annexation.

No petition for annexation has yet been filed by the City of Seward.

Subsection J. Valdez.

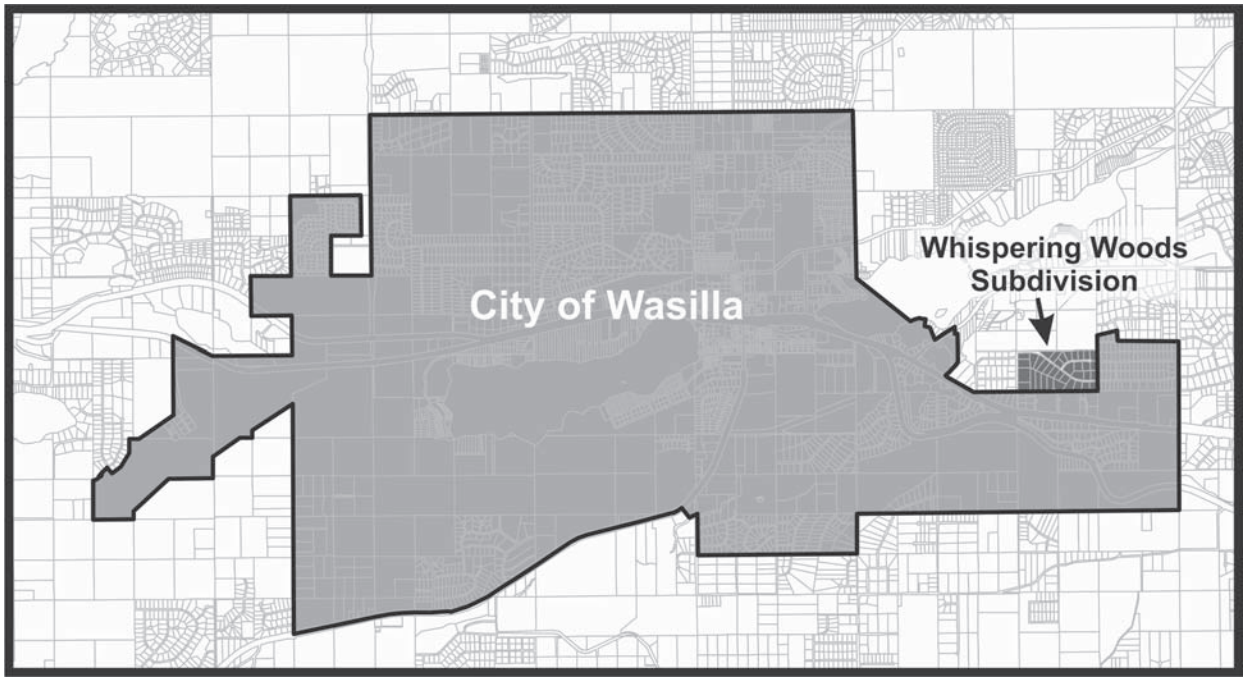
Valdez is located on the north shore of Port Valdez, a deep water fjord in Prince William Sound. Valdez has multiple transportation links to adjoining areas. They include the Richardson Highway, regularly scheduled air service, and Alaska Marine Highway connections. Valdez is the southern terminus of the Trans-Alaska oil pipeline. The City of Valdez was incorporated in 1901. It is currently classified as a home-rule city.

In December 2004, a consultant representing the City of Valdez inquired about the prospect of annexation. The consultant indicated that the area under consideration for annexation to the City of Valdez extends to milepost 45 of the Richardson Highway. Officials of the City of Valdez reportedly estimate that 50 individuals live in the area in question. Information was provided to the consultant about the legislative-review method of annexation, particularly whether the prospective proposal might be acted upon by the LBC in time for submission of the annexation proposal to the 2006 Legislature. Discussion also occurred with respect to whether consideration of a City of Valdez annexation proposal might be impeded by the prospective proposal for incorporation of a Prince William Sound Borough. Information concerning the prospective borough proposal is provided in Section V-H of this Chapter.



Subsection K. Wasilla.

Wasilla is located midway between the Matanuska and Susitna Valleys, on the George Parks Highway. It lies between Wasilla Lake and Lucille Lake, 43 miles north of Anchorage. The community was established in 1917 as a supply base for gold and coal mining in the region. The City of Wasilla was incorporated on March 27, 1974. It is a first-class city in the Matanuska-Susitna Borough. An estimated 6,715 persons live in Wasilla. The City levies a 2.5 percent sales tax and a property tax. In addition, the Borough levies a 5 percent accommodations tax and a property tax.



In May 2004, LBC Staff provided information regarding annexation to the Wasilla City Planner. She indicated that, recently, approximately six separate inquires had been made expressing interest in annexation to the City of Wasilla.

In September 2004, officials of the City of Wasilla advised LBC Staff that property owners and registered voters of the Whispering Woods subdivision, a subdivision that was contiguous to the existing boundaries of the City of Wasilla, had expressed interest in annexation. That interest, in part, was reportedly spurred by the level of City services, including police protection and potential access to water utility service, sewer, sewer utility service and street paving, in combination with lower property taxes inside the City limits. LBC Staff has provided the City of Wasilla with petition forms for annexation.

In November 2004, LBC Staff provided information about annexation to representatives of a business in Wasilla. The representatives were contemplating construction of a new facility on property adjoining the boundaries of the City of Wasilla adjacent to the Seward Meridian Highway. LBC Staff provided details about standards and procedures for annexation and the effects of annexation.

Beyond the activities noted above regarding the prospect of annexation, actions regarding interest in reclassification of the City of Wasilla as a home-rule city are addressed in this Chapter at Section IV-D.

Section III. City Dissolution

City dissolution activities occurred in the following localities during 2004:

- ★ Holy Cross
- ★ Hughes
- ★ Kivalina
- ★ Nikolai

Subsection A. Holy Cross.

Holy Cross is located in Interior Alaska on the west bank of Ghost Creek Slough off the Yukon River. It is 40 miles northwest of Aniak and 420 miles southwest of Fairbanks. The City of Holy Cross was incorporated on April 18, 1968. It is a second-class city in the unorganized borough. The City has an estimated population of 209 persons. Local operating revenues are generated from sources other than taxes (e.g., service charges).

In July 2004, the City Clerk of Holy Cross contacted LBC Staff regarding a petition requesting that a proposition to dissolve city government be placed on the ballot in the fall. The petition stated, "Requesting a special ballot be placed in the forth coming [sic] election before the public voters of Holy Cross. For or Against: 'To dissolve the city council of Holy Cross.' Should the above ballot pass, we will recognize only the Tribal Council as our governing body. We will then have control of the city buildings, utilities, and land, which rightfully belong to the Holy Cross Tribe." Fifty-six people signed the petition.

When asked about the petition, the City Clerk revealed that utility management was recently signed over to the Yukon Kuskokwim Health Corporation because the previous mayor did not enforce utility service payments.

LBC Staff noted that the Department has a duty under the law to investigate potentially inactive city governments.

Holy Cross, August 2, 1898
Anchorage Museum of History and Art,
B89.24.061

In 2004, the Department requested advice from the State Attorney General regarding whether it is permissible for city governments to delegate their responsibilities to non-municipal organizations. In the opinion request, the Department noted that this custom has been fostered by this agency to some degree in years past. The Department also noted that the practice of such delegations may be escalating both in terms of the scope of the delegations and nature of municipalities involved. The Department cited recent delegations, or proposed delegations, of municipal functions on the part of the City of Kiana and the City of Hydaburg.

Subsection B. Hughes.

Hughes is located on a 500-foot bluff on the east bank of the Koyukuk River, about 115 air miles northeast of Galena and 210 air miles northwest of Fairbanks. Hughes was used as a trade center between Athabascans and Eskimos. Hughes served as a riverboat landing and supply port for the Indian River gold fields until 1915 when the local mining industry declined. The City of Hughes was incorporated on October 30, 1973. It is a second-class city in the unorganized borough. It has an estimated population of 65 persons. Local operating revenues are generated from sources other than taxes (e.g., service charges).

Hughes

On March 8, 2004, Department staff responded to a request for information from the City Council of Hughes on the pros and cons of dissolving the city government and turning management of essential services over to the tribe. Interest in such reportedly stemmed from the elimination of the State Revenue Sharing program.

No petition for dissolution of the City of Hughes has yet been filed.

Subsection C. Kivalina.

Kivalina is at the tip of an eight-mile barrier reef located between the Chukchi Sea and Kivalina River, located 80 air miles northwest of Kotzebue. Due to severe erosion and wind-driven ice damage, the City of Kivalina intends to relocate to a new site 7.5 miles away. The City of Kivalina incorporated on June 23, 1969. It is a second-class city in the Northwest Arctic Borough. It has an estimated population of 388 persons. The City of Kivalina levies a 2 percent sales tax.

In March 2004, LBC Staff responded to a call from the Acting Administrator for the City of Kivalina. He requested information regarding city dissolution. He stated that the City Council had held an emergency meeting and that the City was bankrupt and on a downhill slide. The Council decided that perhaps the tribal government would be of more help than the City, and the Council wished to pursue dissolution of the city government. He further stated that he would proceed with filling out the paperwork for dissolution and would call Department staff if he had questions.

No petition for dissolution of the City of Kivalina has yet been filed. In addition to the activities noted above regarding the prospect of dissolution, actions regarding interest in annexation to the City of Kivalina are addressed in this Chapter at Section II-E.

Subsection D. Nikolai.

Nikolai is located in Interior Alaska on the south fork of the Kuskokwim River, 46 air miles east of McGrath. Nikolai is an Upper Kuskokwim Athabascan village, and has been relocated at least twice since the 1880s. The present site was established around 1918. The City of Nikolai was incorporated July 9, 1970. It is a second-class city in the unorganized borough. It has an estimated population of 127 persons. The City of Nikolai does not levy any taxes.

Nikolai

On July 30, 2004, LBC Staff responded to an inquiry from the Denali Commission with regard to the status of the city government of Nikolai. According to the Commission, they designated funding for the design of a community clinic in Nikolai, but Denali Commission staff was concerned that the city government had been deactivated. LBC Staff reported that no petition for dissolution of the city government had been filed with the LBC. LBC Staff noted, however, that other Department staff reported in April 2004 that an effort was underway in Nikolai to render the City of Nikolai government inactive. That same Department staff indicated, at that time, that the City of Nikolai has contracted out all City services. LBC Staff noted that the Department has a duty under the law to investigate potentially inactive city governments.

Section IV. City Reclassification

City reclassification activities occurred in the following localities during 2004:

- ★ Angoon
- ★ Bethel
- ★ Dillingham
- ★ Wasilla

Subsection A. Angoon.

Angoon is the only permanent settlement on Admiralty Island, located on the southwest coast at Kootznahoo Inlet. Angoon is 55 miles southwest of Juneau and 41 miles northeast of Sitka. The City of Angoon was incorporated on May 7, 1963. It is a second-class city in the unorganized borough. It has an estimated population of 505 persons. The City levies a 3 percent sales tax and a 3 percent accommodations tax.

In February 2004, Department staff received a general inquiry from a community member in Angoon about reclassifying to a first-class city. No further interest was expressed regarding the topic.

Angoon

Subsection B. Bethel.

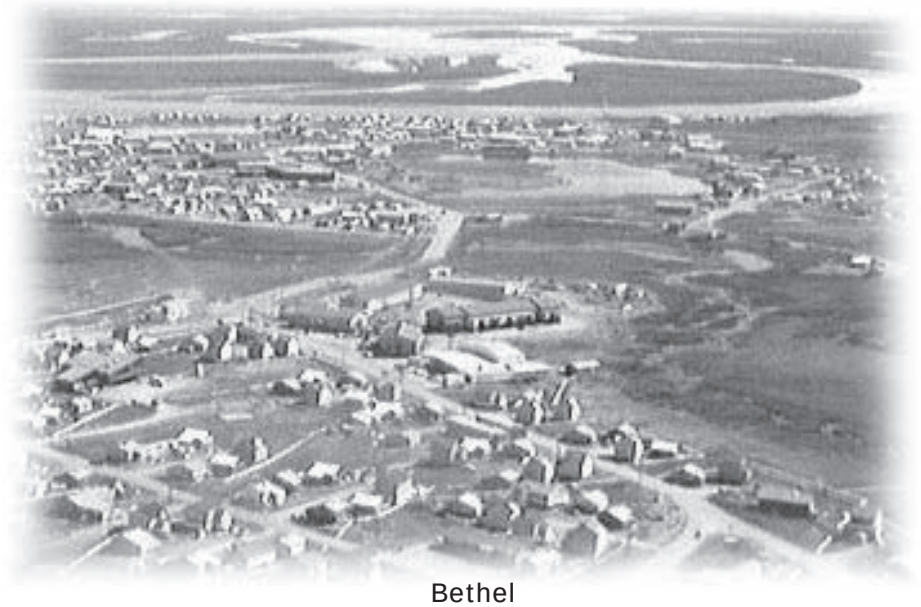
Bethel is located at the mouth of the Kuskokwim River, 40 miles inland from the Bering Sea. It lies in the Yukon Delta National Wildlife Refuge, 400 air miles west of Anchorage. Bethel was incorporated on August 28, 1957. It is a second-class city in the unorganized borough. It has an estimated population of 5,899 persons. The City of Bethel levies a 5 percent sales tax, a 5 percent alcohol tax, a 3 percent hotel/bed and breakfast tax, a 6 percent gaming tax, a fuel tax, and a vehicle registration tax.

On April 21, 2004, LBC Staff met with the Mayor of the City of Bethel. During the meeting, the Mayor expressed interest in exploring the prospect of reclassifying the second-class city government to a first-class or home-rule city. Reclassification would require the City of Bethel to establish a city school district.

The issue of reclassification of the City of Bethel has been explored previously. In 1981, a private consultant prepared

an extensive report on reclassification. LBC Staff also addressed the matter in 1997.

LBC Staff provided the Mayor with information about the prior studies, standards for reclassification, and procedures. The effects of reclassification were also addressed.



Bethel

Beyond the activities noted above regarding the prospect of reclassification, actions regarding interest in annexation to the City of Bethel are addressed in this Chapter at Section II-B.

Subsection C. Dillingham.

Dillingham is located at the northern end of Nushagak Bay in the northern portion of Bristol Bay. It is located 327 miles southwest of Anchorage. The City of Dillingham was incorporated on July 12, 1963. It is a first-class city in the unorganized borough. It has an estimated population of 2,373 persons. The City levies a 6 percent sales tax, a 10 percent accommodations tax, a 10 percent alcohol tax, and a 6 percent gaming tax. It also levies a property tax at the rate of 13.0 mills.

In December 2004, LBC Staff received a number of inquiries from a group of Dillingham residents about reclassifying the City of Dillingham, a first-class city in the unorganized borough, to a second-class city. LBC Staff provided materials relating to standards and procedures for reclassification, the effects of reclassification, and fundamental public policy issues involved. The group also requested forms to petition for reclassification of the City of Dillingham. Further, the group reportedly plans to engage the services of an attorney to assist in its efforts to reclassify the City of Dillingham.

Interest in reclassification stems from concerns regarding the financial burden placed by State law (AS 29.35.260(b)) on the City of Dillingham to operate a city school district. That burden would be trans-

ferred to the State if the City of Dillingham were reclassified as a second-class city.

Particular concern was expressed by the group over the proposition placed before voters at the December 14, 2004, special election to authorize the City of Dillingham to issue general obligation bonds in an amount not to exceed $25 million to finance the planning, design, and construction of school and related capital improvements. The City of Dillingham Education Committee described the need for the improvements as follows:

> The Dillingham City Schools are in disrepair. Over the years there have been additions, patches and a lack of money to keep up with repairs. Last summer, the high school gymnasium floor was destroyed by moisture that had been entering the building through a leaking roof. A subsequent evaluation by engineers uncovered a long list of serious problems with the school buildings that need attention. Through public involvement and process—the City has brought a vote to the people on whether to bond to pay for renovation of the schools.

Officials of the City of Dillingham had hoped to develop a means to fund the critically needed improvements "without bankrupting the city and driving its residents out of town." (*Bristol Bay Times*, October 14, 2004.) However, voters rejected the bond proposition at the December election.

The group of residents promoting reclassification emphasized the distinction between Dillingham and Bethel in terms of local responsibilities for schools. In that respect, it was noted that Bethel has a population that is two and one-half times that of Dillingham and an economy that is similar. The City of Bethel is a second-class city in the unorganized borough. The Lower Kuskokwim Regional Educational Attendance Area provides educational services in Bethel.

Dillingham

Subsection D. Wasilla.

Wasilla is located midway between the Matanuska and Susitna Valleys, on the George Parks Highway. It lies between Wasilla Lake and Lucille Lake, 43 miles north of Anchorage. The community was established in 1917 as a supply base for gold and coal mining in the region. The City of Wasilla was incorporated March 27, 1974. It is a first-class city in the Matanuska-Susitna Borough. An estimated 6,715 persons live in Wasilla. The City levies a 2.5 percent sales tax and a property tax. In addition, the Borough levies a 5 percent accommodations tax and a property tax.

In July 2004, LBC Staff conferred with the City of Wasilla Clerk, Deputy Clerk, and Planning Director regarding the effects of city reclassification from a first-class city to a home-rule city. City officials posed questions regarding police powers, and fire service areas. Charters of existing home-rule cities were requested. LBC Staff provided a copy of the publication "Home Rule, Maximum Local Self-Government," which had been prepared by LBC Staff in February 2000.

LBC Staff made a presentation on the topic of home-rule to the Mayor and City Council on July 26, 2004. Information was provided by LBC Staff regarding procedures for adopting a home-rule charter and the effects of such in terms of the City's relationship with the Matanuska Susitna Borough.

On September 13, LBC Staff spoke again on the topic to the Wasilla Mayor, City Council, Planning Commission, Parks and Recreation Commission, and members of the public. LBC Staff provided a 12-page publication addressing home-rule in general and issues regarding the City of Wasilla in particular. LBC Staff followed-up with a written response to new questions raised during the meeting.

It appears that City officials have decided not to pursue home-rule status in the immediate future.

Beyond the activities noted above regarding the prospect of reclassification, actions regarding interest in annexation to the City of Wasilla are addressed in this Chapter at Section II-K.

Wasilla City Hall

Section V. Borough Incorporation

Borough incorporation activities occurred in the following areas during 2004:

- ★ Bristol Bay
- ★ Copper River Basin
- ★ Delta-Greely
- ★ Glacier Bay
- ★ Holy Cross
- ★ Lower Kenai Peninsula
- ★ Nenana
- ★ Prince William Sound
- ★ Western Alaska
- ★ Wrangell

Subsection A. Bristol Bay.

In January 2004, Northern Dynasty Mines, Inc., announced the results of mineral exploration tests that had been carried out in the Pebble gold-copper-molybdenum prospect over the previous two years. The announcement indicated that the 1,440-acre (2.25 square miles) Pebble prospect is one of the largest gold and copper deposits in North America. It is projected to contain at least 26.5 million ounces of gold, 16.5 billion pounds of copper, and 900 million pounds of molybdenum. The deposit reportedly has an estimated value of approximately $28 billion.

Geologists believe that the region contains other similar-sized deposits. Consequently, mineral claims have now been staked for approximately 570 square miles adjoining the 2.25 square-mile Pebble prospect.

The Pebble prospect is located in the northwest portion of the Lake and Peninsula Borough, approximately 17 miles north of Iliamna. The claims adjoining the Pebble prospect extend to within approximately five miles of the boundary dividing the Lake and

Petition Submitted to State Local Boundary Commission for

Annexation of the
Dillingham-Nushagak-Togiak
Territory
to the Lake and Peninsula Borough

respectfully submitted by
City of Aleknagik
City of Dillingham

June 1997

In 1997, a petition was filed to annex the 20,271 square-mile Dillingham Census Area to the Lake and Peninsula Borough. The petition was later abandoned.

Peninsula Borough and the Dillingham Census Area portion of the unorganized borough.

News of the extent of the region's resource potential has fostered consideration of borough boundary changes. The prospect of forming the so-called "Bristol Bay Super Borough" surfaced at the Bristol Bay Land and Resources Conferences in Dillingham on March 2-4, 2004. As envisioned, that borough would encompass the Dillingham Census Area, the Lake and Peninsula Borough, and the Bristol Bay Borough. According to Census 2000 data, 4,922 residents inhabit the Dillingham Census Area. The Lake and Peninsula Borough is inhabited by 1,823 residents, and the Bristol Bay Borough is inhabited by 1,258 residents.

In April 2004, a representative of the Lake and Peninsula Borough contacted LBC Staff regarding concerns over the prospect of such boundary changes. Borough officials are mindful of the June 1997 petition by the City of Dillingham and the City of Aleknagik to annex the 20,271 square mile Dillingham Census Area to the Lake and Peninsula Borough. The Lake and Peninsula Borough vehemently opposed the 1997 petition, viewing it as a "hostile takeover bid."[30]

In September 2004, LBC Staff met with a representative of the Lake and Peninsula Borough regarding standards and procedures for borough boundary changes. The following month, LBC Staff provided the Lake and Peninsula Borough representative with details regarding the determination by the LBC to exclude the Dillingham Census Area from among those identified in the *2003 Unorganized Borough Report* [31] as meeting the standards for borough incorporation.

LBC Staff noted that, in making the determination, the LBC considered various economic measures such as per-capita household income, average household income, unemployment, percentage of adults not working, percentage in poverty, and value of owner-occupied housing. While the LBC noted that the Dillingham Census Area ranked just above the median in terms of economic factors, the LBC also noted that the area faced significant economic challenges at the time.

[30]Policymakers of the former Department of Community and Regional Affairs imposed a number of procedural requirements on the petitioner that ultimately led to the abandonment of the proposal.

[31]*Unorganized Areas of Alaska That Meet Borough Incorporation Standards*, Local Boundary Commission, February 2003.

Moreover, the LBC was not prepared to address various boundary scenarios given the time available for the 2003 study.

Subsection B. Copper River Basin.

In April 2004, the Mel-Nel Community Corporation, serving the residents of Nelchina and Mendeltna in the Copper River region, requested LBC Staff to conduct a public informational meeting regarding borough formation. LBC Staff agreed to conduct such a meeting, but the Mel-Nel Community Corporation has yet to schedule a time for such.

Subsection C. Delta-Greely.

The City of Delta Junction established a commission early in 2004 to draft a home-rule charter and prepare a petition for incorporation of a borough encompassing the Delta-Greely portion of the Upper Tanana Basin model borough. That area encompasses the 5.6-million ounce Pogo gold deposit in the Goodpaster District.

Delta Junction

The "Delta Junction Charter Commission" met for the first time on February 18, 2004, and has since continued to meet on a monthly basis. A consultant funded through a federal grant to the City of Delta Junction is assisting the Charter Commission.

In August 2004, officials of the City of Delta Junction projected that the home-rule charter would be completed in October and that a borough incorporation petition would be filed with the LBC before the end of 2004.

In late October, LBC Staff provided the City of Delta Junction consultant with forms to incorporate a unified home-rule borough using the local-option method. Formation of a unified municipality would result in concurrent formation of a borough and dissolution of the City of Delta Junction.

Fort Greely

Among the measures being considered to fund the borough are a 10 percent "energy tax" and a 3 to 5 percent seasonal sales tax.

News media reported in early November that officials of the Fairbanks North Star Borough were exploring the prospect of annexation to the Goodpaster River area. According to a report in the November 23, 2004, edition of the *Delta Wind,* the Delta Junction Mayor observed that "[w]e have to realize the free ride is over."

"We have to realize the free ride is over."

Delta Junction Mayor Roy Gilbertson

Subsection D. Glacier Bay.

In July 2004, a consultant that had been retained by the City of Hoonah in 2003 to prepare a Glacier Bay Borough incorporation proposal advised LBC Staff that the proposal was dormant. The dormancy was attributed, in part, to the defeat of a legislative proposal (Senate Concurrent Resolution No. 12), which would have initiated proceedings for incorporation of that region by the legislative review method.

Subsection E. Holy Cross.

In March 2004, the Mayor of the City of Holy Cross requested information from LBC Staff about forming a borough whose inhabitants were limited to residents of Holy Cross. Information was provided about the nature of a borough government compared to a city government. Details about constitutional, statutory, and regulatory standards for borough incorporation were also provided.

Subsection F. Lower Kenai Peninsula.

In March 2004, the *Homer Tribune* reported that City of Homer officials discussed the prospect of forming a Lower Kenai Peninsula Borough. The area in question encompassed the communities of Ninilchik, Nikolaevsk, Anchor Point, Kachemak, Homer, Nanwalek, Seldovia, and Port Graham.

LBC Staff provided information to the Homer Tribune about constitutional, statutory, and regulatory standards and procedures for detachment of territory from a borough and incorporation of the detached territory as a new

borough. Information was also provided about the unsuccessful 1963 effort to incorporate a Homer-Ninilchik Borough, prior to the incorporation of the Kenai Peninsula Borough. Information about prior efforts to detach territory from existing boroughs, including the Nikiski and Eagle River proposals, was also provided.

Nenana

Subsection G. Nenana.

In January 2004, the Mayor of the City of Nenana requested LBC Staff to make a presentation on borough formation in Nenana. He indicated that he was interested in considering borough formation for the area from Nenana west, perhaps as far as Ruby. LBC Staff agreed to make a presentation at a time chosen by the City.

In May 2004, the Nenana Native Council also asked LBC Staff to visit Nenana to make a presentation regarding borough government. Council representatives indicated that the prospect for development of oil and gas deposits in the Nenana basin render Nenana an attractive prospect for annexation by either the Denali Borough or the Fairbanks North Star Borough.

On October 5, 2004, LBC Staff made a presentation to residents of Nenana regarding borough government. The presentation, including a question and answer session, lasted nearly two hours. Approximately 25 people were present, including officials of the City of Nenana School District. Those in attendance proposed that the group meet once a month on various topics pertaining to borough formation.

Subsection H. Prince William Sound.

As noted below, the City of Whittier initiated proceedings in 2004 for consideration of a proposal to incorporate a Prince William Sound borough using the legislative review method (i.e., subject to approval by the LBC and the Legislature).[32] Discussion about the particular action by the City of Whittier

[32]The "legislative review method" of municipal boundary changes, set out in Article X, section 12 of Alaska's Constitution, has been used more than 125 times. Those who have used the method include all three of the city governments in the Prince William Sound region (City of Whittier, City of Valdez, and City of Cordova).

William Egan, Thomas Harris, Irwin Metcalf, and John Rosswog represented the Prince William Sound region at the Constitutional Convention.

is prefaced with extensive relevant background information to put the matter in context.

The Prince William Sound region was well represented at Alaska's Constitutional Convention. Convention delegates elected from the region included William Egan,[33] Thomas Harris of Valdez (representing Valdez, Chenega Bay, and Tatitlek), Irwin Metcalf representing Whittier, and John Rosswog of Cordova. John Rosswog was Chair of the Local Government Committee and William Egan was President of the Convention.

Thus, it is not surprising that interest in forming a Prince William Sound borough has existed since the beginning of Statehood. The LBC held a series of hearings from November 1959 to January 1960 throughout Alaska on the issue of borough boundaries and standards and procedures for establishment of boroughs. Hearings sites included Cordova and Valdez.

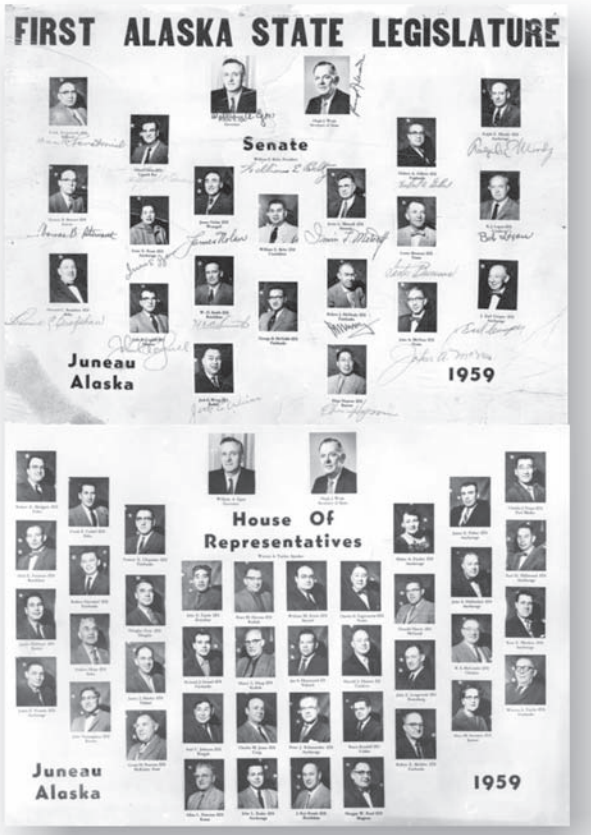
Approximately ninety citizens attended the hearing in the Cordova High School Auditorium on the evening of January 6, 1960. That hearing was summarized as follows:

> A clear majority recommended that borough boundaries in this area include Prince William Sound, east to the Canadian border, south along the border to Yakutat, then west to Prince William Sound: that this area be unorganized until borough standards are established so that a decision on "home rule" or so-

[33]Mr. Egan was from Valdez and represented the Third Judicial Division, which encompassed the entirety of Prince William Sound.

> called "general law" boroughs can be made. They felt that although they are probably not ready for "home rule" at this time, there is a real need for organized borough government in this area as soon as possible. There was a definite feeling of tie-in with all of Prince William Sound, the "highway communities" and the Copper River Valley when that road is finished. They definitely desire that the fishing areas on the west side of Prince William Sound be included in this area. Yakutat should be included if such is the wish of that community.

First Report to the Second Session of the First Alaska State Legislature, Local Boundary Commission, February 2, 1960, pp. 2-4.



First Alaska State Legislature

Approximately 150 individuals attended the hearing in Valdez in the evening of January 8, 1960. Among those present were "representatives from almost every 'highway community' south of Big Delta." *Id.,* pp. 2-22. The Valdez hearing was summarized as follows:

> This area had been given much serious thought and study by these people who had held numerous meetings on the borough problem. The individual representatives from the areas mentioned were unanimous that one large unorganized borough for the area be recommended at this time. This area would include Valdez and Cordova. The eastern boundary being on the United States-Canadian border as far north as Eagle, thence, in a [southwesterly] direction crossing the highway just north of Big Delta, continuing on to the Talkeetna Range thence southerly following the mountains to Prince William Sound, thence, easterly to Mount Fairweather.

> They were unanimous that they not be included with the Fairbanks area, for they feel they have more common interests and ties among themselves, and with the Valdez and Cordova areas, from a transportation and economic standpoint. They were also interested in analyzing the possibility of an organized borough in this area, but felt they could do nothing until the State Legislature established standards for such and they better understand the borough problem.
>
> They felt that it would be desirable to include Cordova even though Cordova did not wish to be included with them.[34]

William Egan, the first Governor of the State of Alaska, expressed the view that boroughs represented a "better form of local government." Governor Egan urged the First Alaska Legislature to implement the borough concept in a fashion that was faithful to the vision of the framers of Alaska's Constitution.

> Given the real desire to create workable boroughs, and given the necessary time and effort, I am sure that we will achieve that better form of local government that is possible through the Constitution.

Remarks to the Second Session of the First Alaska Legislature, William Egan, Governor, January 26, 1960.

Governor Egan's hopes regarding borough government were never entirely realized. The 1960 Legislature was unable to agree on any proposal for establishment of boroughs. The 1961 Legislature established a process for borough incorporation by *local action* (i.e., one initiated by voters and subject to voter approval) which, from the beginning, was recognized as being generally ineffective in terms of promoting borough incorporation. (*See Chapter 3,* Section I of this report.)

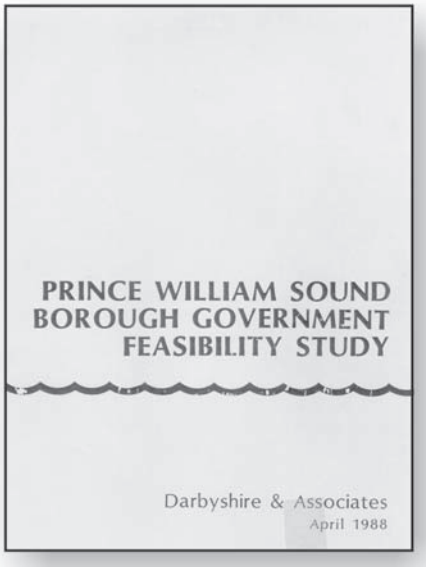
In 1963, Governor Egan signed the Mandatory Borough Act into law. That Act mandated the incorporation of boroughs in each of eight regions. Today, those eight boroughs encompass an estimated 542,443 of Alaska's 648,818 residents (83.6 percent).

[34]The summary of the Cordova hearing indicates that two of the 90 individuals present "expressed the views that the initial borough in this area, if organized, should be small, and if large should remain unorganized until standards are prescribed." However, as noted above, the summary also states that a "clear majority recommended borough boundaries in this area include Prince William Sound."

The prospects of forming a Prince William Sound borough have been contemplated for many years. The region has been the subject of at least three borough feasibility studies. The first, written in June 1980, concluded that the region met all applicable standards for borough incorporation. *See Establishing a Borough Government in the Prince William Sound Area: A Discussion of the Need, Costs, and Possible Structures of a Regional Government*, Lamar Cotten.

Eight years later, another study was conducted. As reflected in the following introduction to the second study, interest in borough formation had already existed for many years at that point:

> Over the past several years, residents from throughout the Prince William Sound Region have questioned the feasibility of formally organizing a borough government for the area. Accordingly, the Alaska Department of Community and Regional Affairs provided funds for a complete and objective study of the advantages and disadvantages of borough incorporation for the area.
>
> Upon receipt of the state grant, the City of Valdez organized a Prince William Sound Borough Feasibility Study Group. The group, composed of planning commission members from the cities of Cordova, Valdez, and Whittier, is to oversee the study project. The group in turn, retained Darbyshire & Associates to complete the more technical analyses associated with the project.



Prince William Sound Borough Government Feasibility Study – A Summary, Darbyshire & Associates, introductory letter (April 1, 1988).

Among the conclusions reached by the 1988 study were the following:

- **A basic borough** exercising only the mandatory powers (education, taxation, and planning, platting, and land use regulatory control powers) **at basic need education funding levels is a very viable**

proposition for residents of the area. According to our calculations:

– a borough encompassing the Chugach REAA area would have to levy a 0.92-mill, 3.23-mill and 4.10-mill real property tax in FY's 89, 90, and 93 respectively, to raise the required local money for borough operations; or

– a borough encompassing the Chugach REAA area would have to levy a 1.52%, 4.99%, and 5.14% sales tax in FY's 89, 90, and 93, respectively, to raise the required local money for borough operations.

- **A basic borough** exercising only the mandatory powers (education, taxation, and planning, platting, and land use regulatory control powers) **at maximum education funding levels is not an unreasonable proposition for residents of the area**. According to our calculations:

  – a borough encompassing the Chugach REAA area would have to levy a 0.92-mill, 5.28-mill and 6.18-mill real property tax in FY's 89, 90, and 93 respectively, to raise the required local money for borough operations;

  – this would allow the borough to expend an additional $2,000,000 on education over and above the basic need level set by the state.

Id., at 20.

In 1992, the LBC defined model borough boundaries for the Prince William Sound region. In the course of the model borough boundaries review, the LBC rejected a proposal by the Municipality of Anchorage to include Whittier in the model boundaries of the Anchorage borough. The LBC defined model boundaries of the Prince William Sound to conform to those of the Chugach Regional Educational Attendance Area (including the City of Cordova and the City of Valdez).

Renewed interest in forming a Prince William Sound borough was expressed in 1996. The catalyst for such was the filing of a petition by the adjoining Yakutat borough to expand its west-

LBC members during a break in proceedings in Cordova during the 1996 hearings on the Yakutat Annexation.

ern boundary from the 141st Meridian to Cape Suckling. The area proposed for annexation encompassed approximately 3,200 square miles.

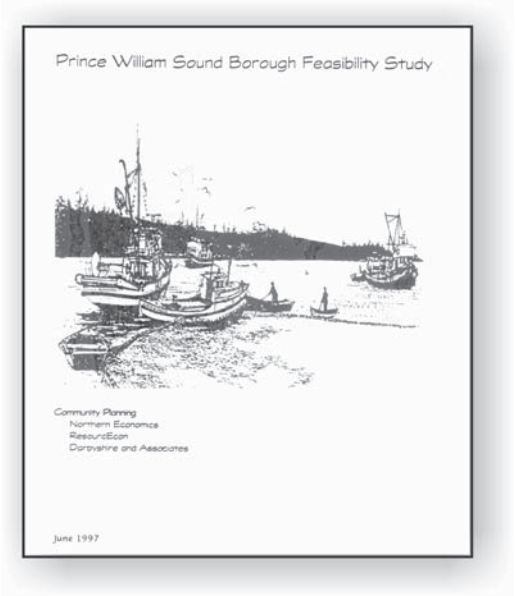
The LBC held three hearings on the Yakutat annexation proposal, two in Prince William Sound and one in Yakutat. *Statement of Decision in the Matter of the February 7, 1996, Petition of the City and Borough of Yakutat to Extend Its Western Corporate Boundary from the 141st Meridian to Cape Suckling,* Local Boundary Commission, December 19, 1996, pp. 6 – 7.

Testimony given to the LBC indicated that there was wide support among Prince William Sound groups for borough formation. The City of Valdez was a notable exception. The testimony indicated further that a petition to form a Prince William Sound borough was imminent. However, because the City of Valdez opposed a Prince William Sound borough, the LBC recognized that the prospects for incorporating such through *local action* were limited.

> [R]epresentatives of the Prince William Sound region testified before the LBC in this proceeding that a petition for incorporation of a Prince William Sound borough may be filed in as few as four to six months. Expressions of support for a Prince William Sound borough have been given by the City of Cordova, the Chugach Alaska Corporation, City of Whittier, Chenega Bay IRA Council, and others. The LBC views such expressions as credible interest in creating an organized borough to serve the region. However, it is noteworthy that the City of Valdez "does not support the formation of a Prince William Sound Borough at this time." (May 9, 1996 letter from David Dengel, Assistant City Manager, City of Valdez). Given the lack of municipal support for borough formation by the City of Valdez, the prospect of forming a Prince William Sound borough – with or without Valdez – is limited. If Valdez is included in a proposal to form a Prince William Sound borough, its voters may oppose the proposal in sufficient numbers to defeat it. If Valdez is excluded from a Prince William Sound borough, the proposal may fail to meet the applicable standards for borough formation.

Id., at 9.

The LBC granted Yakutat's petition for annexation. Following the Yakutat annexation, another study of borough formation of the Prince William Sound region was initiated. The study, carried out by three private consulting firms, was prompted by four fundamental issues: 1) the lack of a coastal



management program for the entire Prince William Sound region; 2) Yakutat borough annexation;[35] 3) mandatory borough legislation; and 4) the "need to strengthen areawide representation."

Prince William Sound Borough Feasibility Study, Northern Economics, ResourcEcon, and Darbyshire and Associates, June 1997, p. 1.

The 1997 study addressed various boundary scenarios including: 1) one borough encompassing all communities in Prince William Sound; 2) one borough encompassing all communities in Prince William Sound except Valdez; 3) two boroughs, one encompassing Valdez and Tatitlek and the other encompassing Chenega Bay, Cordova, and Whittier. *Id.,* at 2. The study concluded that a "single Prince William Sound Borough is the most acceptable choice between these options." *Id.,* at 4.

In terms of fiscal viability, the 1997 study concluded that, "It would take additional taxes beyond the four mils [sic] and three percent sales tax to make this option viable." *Id.,* at 5.

The 1997 Prince William Sound Borough study concluded as follows:

> While the preceding financial information is important, it should not be the only consideration in borough formation. There are additional tax sources available and the postulated mix of a property tax and sales tax could be adjusted in several different ways to yield more revenue.
>
> The people in Prince William Sound would be better served by leaders who are proactive in the matter of borough formation rather than waiting to react to other borough annexation requests or state legislation. The further pursuit of incorporation

[35]The study noted that the annexed area "included some areas of historical use and economic importance to Cordova residents and some Chugach Alaska Corporation lands." The study also characterized the annexation as "premature for the LBC to rule on this request."

> is the difference between deciding your own future and having it decided for you.

Id., at 6.

In 1999, officials of the City of Cordova expressed growing disappointment over the State's failure to provide a readily available alternative to the local action method of borough formation. In doing so, they became the latest in a long line of public officials to recognize that the local option method of borough incorporation provided in the 1961 Borough Act was generally ineffective.

> The City of Cordova, and many other smaller Alaskan Cities have been frustrated in previous attempts to establish borough governments. The current process is cumbersome and self-defeating, and yet in many unorganized areas of the State regional governments (boroughs) would help to more fairly apportion costs of services. . . .
>
> The City of Cordova is seeking a legislative remedy to problems with the borough formation process. These changes could have a positive impact on our region, and other areas of the state that may be considering borough formation.

"The further pursuit of incorporation is the difference between deciding your own future and having it decided for you."

1997 Prince William Sound Study

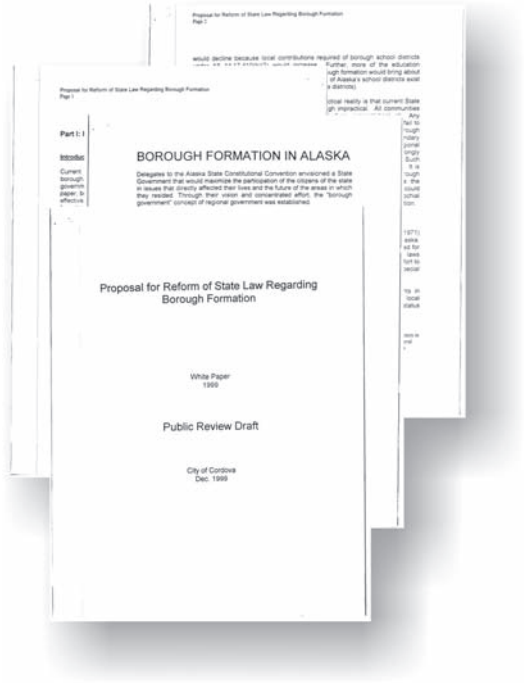
Ed Zeine, Mayor, City of Cordova, letter to the LBC, December 20, 1999.

The Cordova City Council adopted a resolution in December 1999 urging "the executive and legislative branches of the government of the State of Alaska to review and amend the borough formation process." *Resolution 12-99-83*, Council of the City of Cordova, December 1, 1999.

A policy paper accompanying City of Cordova *Resolution 12-99-83* stated the following:

> Current State law renders it extremely difficult, if not impossible, to form a borough. This paper calls on the executive and legislative branches of State government to work cooperatively to reform the law. As is discussed in this paper, borough formation laws that were first written in 1961 have never proven effective. As Alaska en-

Proposal for Reform of State Law Regarding Borough Formation, City of Cordova


BOROUGH FORMATION IN ALASKA

Proposal for Reform of State Law Regarding Borough Formation

White Paper
1999

Public Review Draft

City of Cordova
Dec. 1999

ters the 21st century, a fresh approach to borough formation is warranted. The State laws should encourage rather than obstruct borough formation.

A borough is an important — *if not essential* — tool to respond to impacts of recent education funding reform (ch 83, SLA 1998). It also provides a method of dealing with continued substantial cuts in State funding for local governments (e.g., State Revenue Sharing and Safe Communities programs). Further, borough formation is viewed by a number of citizens as the most effective means to address important regional planning and economic development issues. In addition to community and regional benefits, borough formation represents good public policy from a statewide perspective in several important respects.

1) It fosters greater compliance with the equal protection clause of Article I, Section 1 of the Constitution of the State of Alaska. Specifically, it would increase the extent to which citizens in Alaska have comparable obligations to support local services.

2) As noted in Mobil Oil v. Local Boundary Commission, 518 P.2d 92 (Alaska 1974), Article X, Section 1 of Alaska's Constitution encourages borough formation. The constitutional concept of municipal government in Alaska is predicated upon the presumption that organized boroughs will exist wherever areas are capable of supporting them.

3) In Kasayulie, et al. v. State of Alaska, (Sept. 1, 1999) the superior court found that the state is discriminating against "non-municipal" school districts and is in violation of the "equal provisions" section of the constitution as it relates

to education facilities funding. Statewide borough governments have the potential of resolving issues related to this decision.

4) The creation of additional boroughs would dramatically ease the financial burdens of the State of Alaska. For example, education costs for the State would decline because local contributions required of borough school districts under AS 14.17.410(b)(2) would increase. Further, more of the education dollars would be available for instruction as borough formation would bring about significant consolidation of school districts (70% of Alaska's school districts exist in the unorganized borough, many are single-site districts).

When borough formation is considered, the practical reality is that current State law renders any local initiative to form a borough impractical. All communities within a given geographic area must be a part of any regional borough. Any proposal to exclude specific communities from a regional borough would fail to meet the constitutional, statutory, and regulatory standards governing borough formation. Similar views have long been expressed by the Local Boundary Commission and the former Alaska Department of Community and Regional Affairs. Because of parochial interests, local officials of some areas are strongly opposed to being included with other communities in regional boroughs. Such views are likely to be shared by many of the voters in the areas as well. It is reasonably assumed, therefore, that the signature requirements for a borough incorporation petition set out in AS 29.05.060(7) will, in effect, raise the signature requirements for voters in interested areas.[36] Even if voters could obtain sufficient signatures to petition for borough formation, voters in parochial and special interest areas would most times dictate the outcome of the election.

[36]Footnote 1 in original. The law requires that a borough incorporation petition must be signed by 15 percent of the number of voters in home rule and first class cities in the borough based on the number who voted in the last State general election. (The petition must also be signed separately by 15 percent of the voters in the proposed borough outside of home rule and first class cities.)

Cordova

Proposal for Reform of State Law Regarding Borough Formation, City of Cordova, December 1999, pp. 1-2.

The City of Cordova expressly urged the executive and legislative branches of the State of Alaska to:

> . . . develop and implement legislation to require the Local Boundary Commission to initiate action to require the extension of borough government to those areas which the Commission deems are ready and capable to assume responsibility for such. Local officials feel that this process would recognize the direct ties between communities and combine them to form a regional borough that met the constitutional intent of borough government.

Id., pp. 4 – 5.

Senate Bill No. 48 was introduced in the 2001 Legislature to implement the reform sought by the City of Cordova. The bill required the LBC to make determinations as to which areas of the unorganized borough meet standards for borough incorporation. Those areas were then subject to borough incorporation under the legislative review method. The bill passed the Senate by a vote of 11 to 8 (one Senator was excused). The bill, however, languished in the House Community and Regional Affairs Committee.

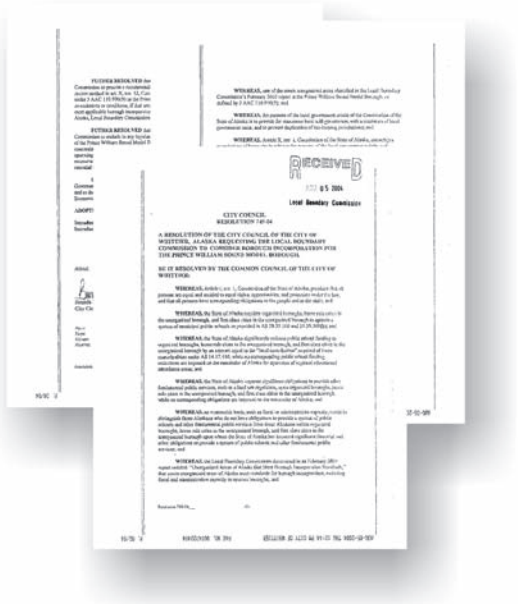
In 2002, the Legislature enacted *House CS for CS for Senate Bill No. 359(FIN).* Then-Governor Knowles subsequently signed the legislation into law as Chapter 53 SLA 2002. Section 3 of the law provided as follows:

> NEW BOROUGH INCORPORATION. The Local Boundary Commission shall review conditions in the unorganized borough. By the 30th day of the First Regu-

lar Session of the Twenty-Third Alaska State Legislature, the commission shall report to the legislature the areas it has identified that meet the standards for incorporation. No portion of the report under this section constitutes a Local Boundary Commission proposal for purposes of art. X, sec. 12, Constitution of the State of Alaska.

The LBC fulfilled its duty under the legislative directive in February 2003. The LBC concluded that seven areas of the unorganized borough, including the Prince William Sound region, meet the standards for borough incorporation. *See,* transmittal letter of the 2003 *Unorganized Borough Report*, February 2003.[37]

In 2003, the Cordova City Council renewed its endorsement for the incorporation of a Prince William Sound borough. The Council adopted a resolution stating, "the City Council of the City of Cordova, Alaska, supports the formation of a Prince William Sound Borough and directs staff to work with the Local Boundary Commission to consider the borough formation." *Resolution 01-03-05*, Council of the City of Cordova (January 8, 2003).



City of Whittier Resolution 745-04

On August 2, 2004, the Whittier City Council adopted Resolution 745-04, requesting the LBC to formally consider incorporation of a Prince William Sound Borough by legislative review. As a political subdivision of the State, the City of Whittier has authority under AS 44.33.812(a)(3) to initiate such proceedings.

LBC Staff received Resolution 745-04 on August 5 and provided a copy to each member of the LBC. The LBC considered the matter at its meeting on September 1, 2004.

At its September 1 meeting, the Commission directed its staff, pursuant to 3 AAC 110.410(d), to ask the Depart-

[37]Analyses and references to the Prince William Sound region are found on the following pages of the 2003 report: pp. 30 – 31, 53, 66, 78, 101-104, 135-136, and 207.

ment to exercise the authority granted to it by AS 44.33.812(a)(3) to prepare a petition for incorporation of a Prince William Sound Borough. The Commission requested that staff and attorneys other than those persons currently assigned to working with the LBC develop the Petition. The Commission stressed that such arrangements were necessary to isolate the Commission's staff and the Commission's attorneys from the process of developing the Petition in order to preserve the integrity of the quasi-judicial role of the Commission and its staff in later investigations, analyses, hearings and reports pertaining to the Petition, responsive briefs, comments, and reply briefs.

A petition for incorporation of a Prince William Sound borough has not yet been filed with the LBC.

Subsection I. Western Alaska.

In January 2004, LBC Staff provided information to a consultant for NovaGold Resources and its partner, Placer Dome, regarding the prospects for city and borough incorporation of the area encompassing the Donlin Creek mineral deposit. The deposit lies approximately 12 miles north of Crooked Creek and about 150 miles northeast of Bethel.

The Donlin Creek site is estimated to hold 27.8 million ounces of gold, making it one of the world's largest undeveloped deposits of gold.

On April 21, 2004, LBC Staff traveled to Crooked Creek to discuss borough formation with local residents and officials of both the Kuspuk and larger Calista regions. Several at the Crooked Creek meeting, including representatives of the Kuspuk REAA, expressed a strong desire to limit any borough to the 11,441 square-mile Kuspuk REAA boundaries. In 2003, that area was inhabited by an estimated 1,573 residents. The Kuspuk region is part of the larger Calista region, which encompasses roughly 58,000 square miles and more than 23,000 residents.

PREFACE

Regional government in Alaska consists of a system of organized and unorganized boroughs. In general, an organized borough is a regional government formed for the purpose of providing services to its residents. Currently 11 organized boroughs cover about 40 percent of the state's area. The remaining area is considered a single unorganized borough.

DARBYSHIRE & ASSOCIATES
community planning and management services

December 7, 1981

Mr. Eddie Hoffman, Sr., Chief
Mr. Gene Peltola, Chairman of Regional Government
Study Steering Committee
Members
Association of Village Council Presidents
Box 219
Bethel, Alaska 99559

Ladies and Gentlemen:

It is with a great deal of pleasure that we submit this AVCP Regional Government Study. The eight reports in this volume identify and evaluate the important concerns relating to borough incorporation. Accordingly, they should be closely studied.

Significantly, this study concludes that borough incorporation is a financially viable alternative for residents of the AVCP region. That should not be taken to mean that it is necessarily a politically viable alternative. This can only be measured after you have had a chance to travel to each community in the region and present the findings of the study.

In preparing this study, we have been guided closely by the desires of the AVCP Regional Government Study Committee. Messrs. Harold Napoleon, Showalter Smith and Gene Peltola were, of course, extremely helpful throughout the duration of this project. For their help and other help we received, we are very grateful and wish to extend our sincere thanks.

Respectfully submitted,

Ralph R. Darbyshire
President

George Canseco
Vice President, Planning

A 1981 study concluded that a Calista region borough would be viable.

A 1981 study concluded that a borough encompassing the 58,000 square-mile Calista region was feasible. *See AVCP Regional Government Study,* Darbyshire and Associates, Inc. (December 1981).

A steering committee to address the prospects of incorporating a borough encompassing the entire Calista region was established at the AVCP-Calista Regional Economic Summit held in Bethel on March 2-4, 2004. However, it appears that the effort to consider borough formation for the Calista region has waned. More recently, interest among some has turned to considering the merits of forming a regional port authority.

Subsection J. Wrangell Area.

In February 2004, the City of Wrangell expressed interest in amending AS 29.05.060(7) to remove the requirement that a local action borough incorporation petition include the signatures of 15 percent of the voters in home-rule and first-class cities in the area of the proposed borough and, separately, the area of the proposed borough outside home-rule and first-class cities. The City of Wrangell had developed a borough incorporation petition but had been unable to obtain the requisite petition signatures in the area of the proposed borough outside the existing boundaries of the City of Wrangell.

LBC Staff discussed the matter with legislative staff. LBC Staff noted that there was an alternative to amending the law whereby the City of Wrangell could petition the LBC to incorporate a borough under AS 44.33.812.

Section VI. Borough Annexation

Annexation activities occurred in the following boroughs during 2004:

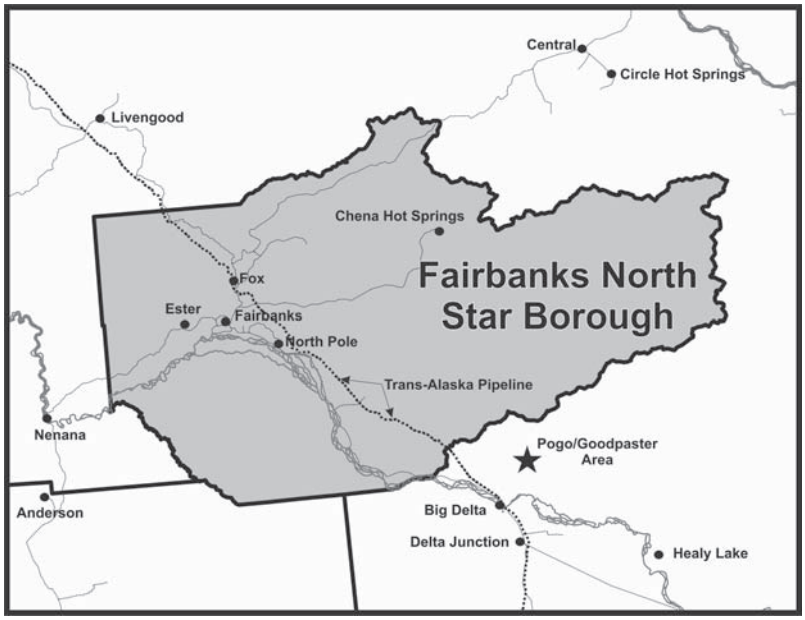
- ★ Fairbanks North Star Borough
- ★ Ketchikan Gateway Borough

Subsection A. Fairbanks North Star Borough.

The Fairbanks North Star Borough (FNSB) is located in the heart of Interior Alaska. It is the second-largest population center in the state. The FNSB incorporated on January 1, 1964, under provisions of the Mandatory Borough Act. It is a second-class borough.

The boundaries of the FNSB originally included an additional 11,054 square-mile area encompassing Delta Junction, Tok, and other communities to the southeast as far as the Canadian border. That area was detached from the FNSB in March 1964.

Eielson Air Force Base and Fort Wainwright military reservations were originally enclaves within the Borough. Fort Wainwright was annexed by the Borough on April 8, 1973, and Eielson Air Force Base was annexed on January 24, 1983. The Borough has an estimated population of 82,214 persons. Two home-rule cities are within the Borough's boundaries: North Pole and Fairbanks. The Borough levies an 8 percent accommodations tax, a 5 percent liquor tax, an 8 percent tobacco distribution excise tax, and a property tax.



In November 2004, news media reported that FNSB officials were exploring the prospect of expanding the Borough's boundaries north to the Yukon River and south to the Goodpaster River.

The area from the southern boundary of the FNSB to the Goodpaster River includes a substantial portion of the Trans-Alaska Pipeline System as well as the Pogo mineral deposit. The area from the northern boundary of the FNSB to the Yukon River includes the communities of

Livengood, Central, and Circle Hot Springs. Like the area to the south, it, too, includes part of the Trans-Alaska Pipeline System.

The accounts by the news media reported that Borough officials had estimated that annexation could increase FNSB property tax revenues by approximately $8 million annually. Borough officials reportedly indicated that a feasibility analysis of the proposal would be concluded by the end of 2004.

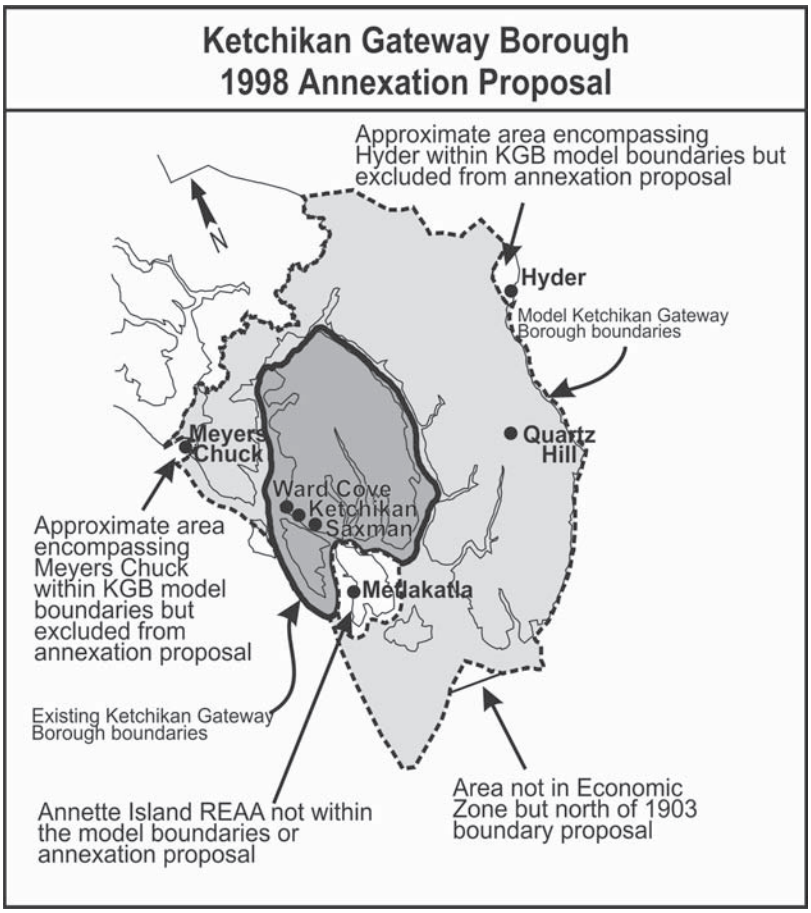
Trans-Alaska Pipeline

LBC Staff provided officials of the FNSB with information and materials relating to borough annexation. The materials included details about standards and procedures for borough annexation, prior LBC decisions regarding annexation efforts by the FNSB and other boroughs, and forms to petition for annexation using the election-by-aggregate-voter-method.

Subsection B. Ketchikan Gateway Borough.

The Ketchikan Gateway Borough (KGB) is located near the southernmost boundary of Alaska, in the Southeast Panhandle. The KGB incorporated as a second-class borough on September 6, 1963. It was one of eight regions required under the Mandatory Borough Act to incorporate a borough. The KGB has an estimated population of 13,548 persons. The KGB assesses a 2.5 percent sales tax, a 4 percent accommodations tax, and a property tax at an areawide mill rate of 7.5 mills and a non-areawide mill rate of 1.2 mills.

In 1998, the Ketchikan Gateway Borough petitioned the LBC to annex an estimated 5,524 square miles. The proposal encompassed all of the area within the Borough's model boundaries, with two exceptions. The proposal omitted 17.9 square miles in and around Hyder and 3.5 square miles in and around Meyers Chuck. The petition was denied by the LBC in 1999,



A 1998 proposal for annexation excluded the communities of Hyder and Meyers Chuck. The proposal authorized by the Borough Assembly in 2003, and again in 2004, would include those communities.

principally because the proposed annexation would have created two enclaves within the proposed expanded boundaries of the Borough. *See Statement of Decision in the Matter of the February 28, 1998, Petition of the Ketchikan Gateway Borough for Annexation of 5,524 Square Miles*, Local Boundary Commission, April 16, 1999.

On October 6, 2003, the Ketchikan Gateway Borough Assembly authorized a petition for annexation of the entire estimated 5,545 square miles within the Borough's model boundaries, including Hyder and Meyers Chuck.

Following the October 2004 election of new Assembly members, the Assembly of the Ketchikan Gateway Borough affirmed its 2003 position to proceed with a proposal for annexation of the 5,545 square miles in question.

The Assembly's 2004 affirmation called for the annexation petition to include provisions for sharing of National Forest Receipts and Payment in Lieu of Taxes with Hyder and Meyers Chuck. Borough officials plan to meet with representatives in Hyder and Meyers Chuck to discuss possible revenue sharing programs prior to holding public hearings on the new petition. The Borough plans to pursue annexation using the legislative review method of annexation.

In addition to the above activities regarding the prospective annexation proposal, developments regarding a petition to consolidate the Ketchikan Gateway Borough and the City of Ketchikan are addressed in this Chapter at Section VIII-B.

Section VII. Borough Detachment

Borough detachment activities occurred in the following communities during 2004:

- ★ Eagle River-Chugiak Region
- ★ Girdwood
- ★ Tyonek

Subsection A. Eagle River-Chugiak Region.

The northern portion of the Municipality of Anchorage includes Fort Richardson Army Base, Elmendorf Air Force Base, Eagle River, Chugiak, Birchwood, Peters Creek, Thunderbird Falls, and Eklutna. Except for the two military bases, this northern area was part of the Greater Anchorage Area Borough (GAAB) formed under the 1963 Mandatory Borough Act. Both Fort Richardson and Elmendorf were enclaves within the GAAB but were annexed in 1973 and 1975, respectively. All of this northern area then became part of the Municipality of Anchorage when it formed as a unified home-rule borough in 1975.

The 2000 Census counted approximately 22,000 residents in Eagle River, and an additional 8,000 in Chugiak, Birchwood, Peters Creek, Thunderbird Falls, and Eklutna.

The Municipality of Anchorage levies a property tax, an 8 percent bed tax, an 8 percent rental car tax, an excise tax of $1.30 per pack of cigarettes, and an excise tax of 45 percent on other tobacco products.

In January, Department staff provided information to citizens in Eagle River regarding standards and procedures by which the Municipality of Anchorage could be de-unified.

Proponents of de-unification are attracted by the opportunity it would provide to eventually establish city governments in outlying areas of the Anchorage borough. In the past, residents of those areas have contemplated and, in one case, temporarily achieved detachment. De-unification may offer a more palatable option for all.

At the request of Senator Fred Dyson, LBC Staff conducted an informational meeting in Eagle River on Saturday, March 20, 2004, regarding local government options. Approximately 60 people were in attendance. During the meeting, LBC Staff outlined 44 alternative local government options involving detachment from the Municipality of Anchorage, incorporation of a new borough, merger, consolidation, annexation, and de-unification. Written materials were

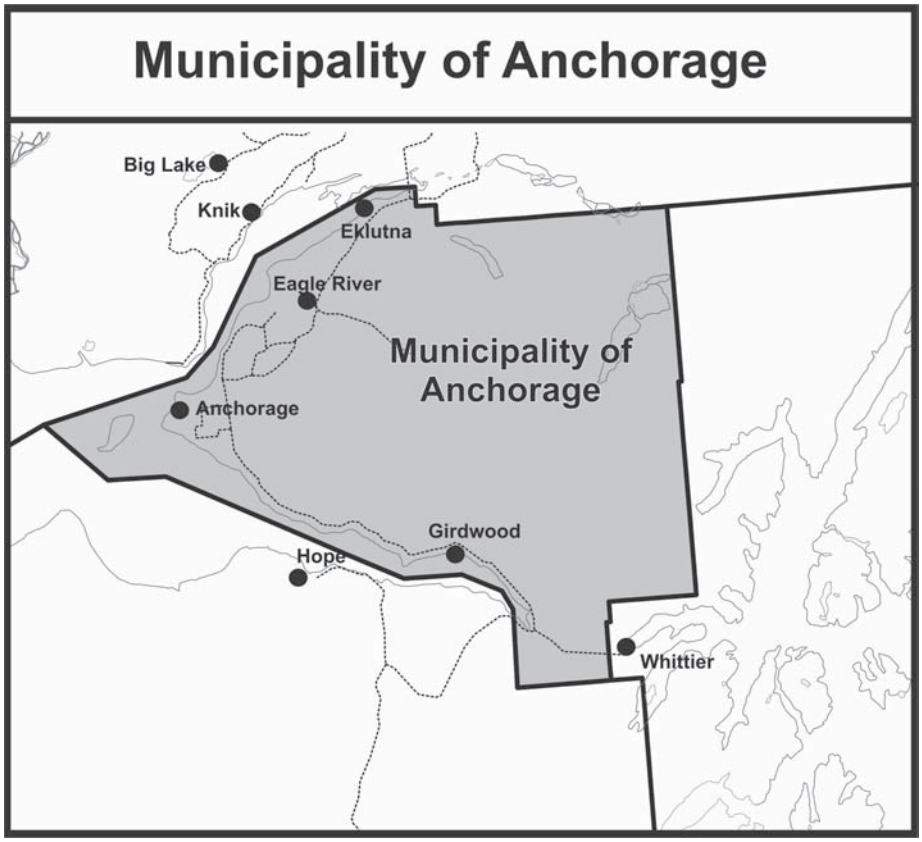
March 20, 2004, Eagle River-Chugiak public information meeting.

provided to meeting attendees regarding the various local government options and were also posted on the LBC Web site.

In June, the Legislature appropriated up to $30,000 to the Department for an LBC project to consider options for forming a separate local government, independent of the Municipality of Anchorage, for the community of Eagle River (Section 48 Chapter 159 SLA 2004).

At its meeting of September 1, 2004, the LBC addressed the scope, schedule, and process to carry out the legislative appropriation for the LBC project to consider options for forming a local government for the community of Eagle River. The LBC asked the Department to retain a competent and independent outside consultant to analyze the fiscal viability of the Eagle River-Chugiak region becoming a borough government separate from the Municipality of Anchorage. The Commission also specified that the analysis must examine the fiscal impacts upon the viability of the hypothetical residual Municipality of Anchorage. Finally, the Commission stipulated that the LBC Staff should cooperate fully in providing data, information and prior reports to the independent consultant but without expressing positions or opinions.

LBC Staff drafted a scope of work for the Commission project, which would involve analysis of the fiscal viability of the Eagle River-Chugiak region becoming a borough government separate from the Municipality of Anchorage. The scope also required examination of the fiscal impacts upon the viability of the hypothetical residual Municipality of Anchorage. Staff worked with the Chief Fiscal Officer for the Municipality of Anchorage and with Senator Dyson in delineating the scope of work for the study. LBC Staff provided the draft to members of the LBC, Senator Dyson, and officials of the



Municipality of Anchorage, including the Anchorage School District, for their review.

On October 15, the Department published the request for proposals. In addition to publication, notice of the request for proposal was provided to 17 potentially interested contractors. The deadline for receipt of proposals was November 2, 2004, at 3 p.m. By that deadline, no proposals were received. Two firms filed statements that the amount available for the contract was insufficient to perform the scope outlined in the RFP.

On November 9, a revised solicitation of proposals for the Eagle River-Chugiak borough study was issued. While the original solicitation required 14 components to be addressed, the revised solicitation required that at least the first six components be addressed. Under the revised solicitation, if a proposal addressed any of the remaining eight components, additional points would be awarded to that proposal as outlined in the revised request for proposals. The 14 components were:

1. Existing Services by Location and Amount Budgeted

2. Fiscal Impacts on Existing Services That Would Result from Incorporation of an Eagle River-Chugiak Borough

3. Revenues by Source

4. Fiscal Impacts on Revenues That Would Result from Incorporation of an Eagle River- Chugiak Borough

5. Assessed Value of Taxable Property
6. Required Local Contribution in Support of Schools
7. Existing and Projected Municipal Property Tax Levies
8. Major Capital Projects by Location and Amount Budgeted
9. Fiscal Impacts on Major Capital Projects That Would Result from Incorporation of an Eagle River-Chugiak Borough
10. Bonded Indebtedness
11. Ratio of Bonded Indebtedness to Assessed Value
12. Statement of Major Assets
13. Utility Certificates
14. Contracts

The deadline for receipt of proposals in response to the revised request was December 14, 2004. One firm filed a statement that the amount available for the contract was insufficient to perform the scope outlined in the revised request for proposals. One firm from California submitted a proposal; however, it was deemed to be non-responsive.

Subsection B. Girdwood.

Girdwood is located on Turnagain Arm, in the Municipality of Anchorage, 35 miles southwest of downtown Anchorage. The area is accessed by the Seward Highway. The Chugach State Park and Chugach National Forest border Girdwood on three sides. A city government was formed in Girdwood during the 1960s, however, the city government was dissolved through formation of the Municipality of Anchorage in 1975. The 2000 census counted 1,850 residents of Girdwood. As part of the Municipality of Anchorage, Girdwood has no taxing authority of its own. The Municipality levies a property tax, an 8 percent bed tax, an 8 percent rental car tax, an excise tax of $1.30 per pack on cigarettes, and an excise tax of 45 percent on other tobacco products.

In January 2004, the Department provided information to citizens in Girdwood regarding standards and procedures by which the Municipality of Anchorage could be de-unified.

Proponents of de-unification are attracted by the opportunity it would provide to eventually establish city governments in outlying areas of the Municipality.

On April 27, 2004, LBC Staff made a presentation to residents of Girdwood regarding local government options.

Approximately 45 persons were in attendance. The presentation addressed a broad range of hypothetical boundary options, including shifting Girdwood into the unorganized borough, shifting Girdwood into the future Prince William Sound Borough, annexing Girdwood to the Kenai Peninsula Borough, and allowing Girdwood to form a city government if the Municipality of Anchorage were de-unified.

A representative of the office of the Mayor of the Municipality of Anchorage was present at the meeting. Also present was former Assemblyman Dan Kendall from Eagle River, who has expressed interest in pursuing local government options for the Eagle River area.

Girdwood residents were scheduled to meet again concerning the matter.

Subsection C. Tyonek.

Tyonek is situated on a bluff on the northwest shore of Cook Inlet, 43 miles southwest of Anchorage. Tyonek has an estimated population of 193 persons. While Tyonek has no taxing authority due to its unincorporated status, the Borough levies both a 2 percent sales tax and a property tax.

In September 2004, a resident of Tyonek had asked the Department for information about standards and procedures for detachment of Tyonek from the Kenai Peninsula Borough. The resident asserted that the Borough does not provide help to Tyonek. The resident also asserted that the Borough is uncooperative with respect to K-12 educational services for the community.

Section VIII. Consolidation

Consolidation activities occurred in the following localities during 2004:

- ★ Haines Borough
- ★ Ketchikan Gateway Borough
- ★ Northwest Arctic Borough

Subsection A. Haines Borough.

The Haines Borough is located on the shores of the Lynn Canal, between the Chilkoot and Chilkat Rivers, 15 miles southwest of Skagway and 80 miles northwest of Juneau. It is just south of the Canadian border at British Columbia. The Haines Borough formed as a third-class borough on August 29, 1968. In 1974, it annexed 420 square miles to the south, including Excursion Inlet. In 1978, it annexed the former military petroleum distribution facility at Lutak Inlet. The City of Haines and the Haines Borough were consolidated on October 17, 2002, resulting in the establishment of a home-rule borough. The Borough has an estimated population of 2,327 persons. The Haines Borough levies a 1.5 percent areawide sales tax (5.5 percent in the community of Haines), a 4 percent bed tax, and a property tax.

In April 2004, LBC Staff provided technical assistance to the Haines Borough regarding planning, platting, and land use regulation issues in the context of the transition from a third-class borough to a consolidated home-rule borough.

In October, LBC Staff provided the Haines Borough with technical assistance regarding its Charter. The Haines Borough Charter is unique among home-rule municipalities in Alaska in that it lacks a separability clause. The potential consequences of such were addressed. Sample language for a separability clause was provided to the Borough.

Subsection B. Ketchikan Gateway Borough.

The Ketchikan Gateway Borough (KGB) is located near the southernmost boundary of Alaska, in the Southeast Panhandle. The KGB incorporated as a second-class borough on September 6, 1963. It was one of eight regions required under the Mandatory Borough Act to incorporate as a borough. The KGB has an estimated population of 13,548 persons. The KGB assesses a 2.5 percent sales tax, a 4 percent accommodations tax, and a property tax.

In May 2003, a citizens' initiative requiring the preparation and filing of a Petition to consolidate the City of Ketchikan and the Ketchikan Gateway Borough was conceived and drafted.

Approval of the initiative five months later on October 7, 2003, signaled areawide voter support for the concept of consolidating the City of Ketchikan and the Ketchikan Gateway Borough.

In approving this Borough-wide initiative, voters agreed to elect a Ketchikan Consolidation Commission who would be responsible for preparing a proposal to consolidate the City of Ketchikan and the Ketchikan Gateway Borough. Seven members would be elected to this newly formed Commission on January 13, 2004. The initiative also required that the Ketchikan Gateway Borough file the consolidation Petition with the LBC by September 30, 2004.

On January 7, 2004, LBC Staff spoke at a Ketchikan Chamber of Commerce meeting regarding this consolidation effort which was initiated by the Chamber's Ketchikan One Government Committee. LBC Staff provided those in attendance with a 53-page booklet of background materials that was prepared in the interests of promoting greater understanding regarding the impending consolidation effort.

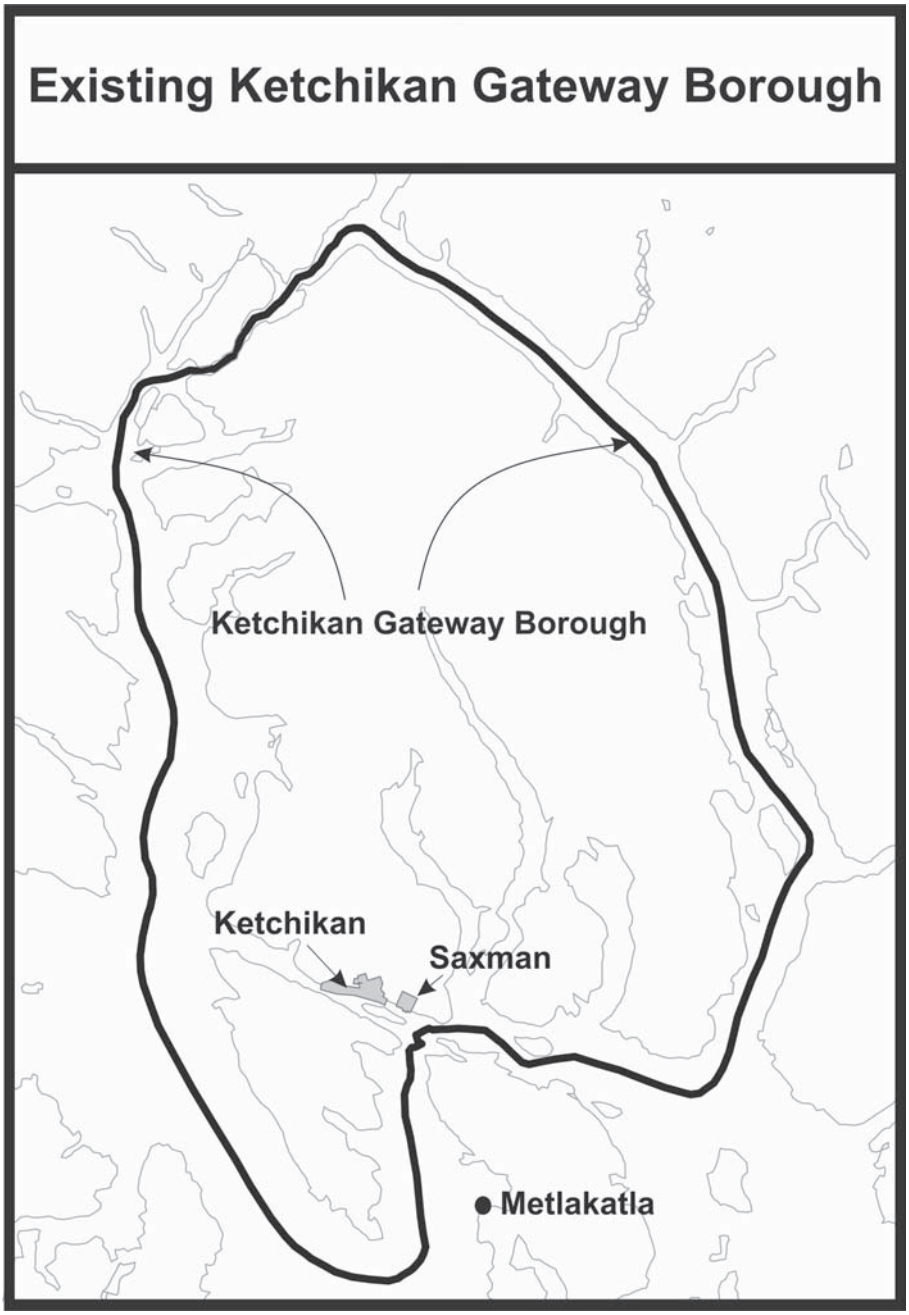
While in Ketchikan, LBC Staff also met with the Managers and Attorneys for the City of Ketchikan and the Ketchikan Gateway Borough regarding consolidation matters. Staff provided those officials with the same background materials that were distributed at the Chamber meeting.

On January 13, voters throughout the Ketchikan Gateway Borough elected seven members to the newly formed Ketchikan Consolidation Commission (KCC). The KCC held its first meeting on January 21. The Commission discussed need for financial support, and plans for public input in the development of the consolidation proposal.

The KCC continued to meet weekly in development of a consolidation charter, with LBC Staff supporting those efforts as requested. In May, LBC Staff reviewed elements of the latest draft Petition for consolidation and provided comments to the KCC.

Aerial view of Front Street in Ketchikan.

LBC Staff encouraged the KCC to work with the staff and elected officials of the Ketchikan area local governments in developing the Petition.



The consolidation effort seemed to be proceeding well. During the week of August 9, the KCC published its draft Petition for Consolidation of the Ketchikan Gateway Borough and the City of Ketchikan to the Municipality of Ketchikan, a Home Rule Borough. The draft was released for public review and comment approximately seven weeks prior to the September 30 deadline for filing the Petition with the LBC.

The KCC held one public hearing on the draft on August 13. Two additional hearings were scheduled for August 20 and 28.

On August 20, the City Manager addressed the KCC noting three major concerns with the draft Petition. The first focused on factual or calculation errors within the documents. The second focused on the Commission's material assumptions and/or the failure to address other conditions known to exist. The third focused on the equity

of the Commission's approach in structuring and funding the proposed Municipality of Ketchikan.

The Manager believed that the draft Petition reflected a minimum funding shortfall for the Municipality of Ketchikan of at least $1,230,000 in the first year, increasing to $1,615,000 by the third year. Likewise, he believed that the Gateway Service Area was under-funded by at least $409,000 in the first year, increasing to $1,194,000 by the third year. The Manager stated that those deficits would further increase as PERS[38] and pending bond issues were factored into the three-year budget plan. The Manager's conclusion was that the draft Petition did not yet meet the standards under AS 29.05.031(a)(3) and 3 AAC 110.055 in that it did not present a feasible and plausible budget.

The draft transition plan called for 45 percent of the City's General Fund assets to be transferred to the proposed consolidated borough's areawide operations. The remaining 55 percent would be reserved for the benefit of the proposed new Gateway Service Area that would be created in place of the City of Ketchikan. The City Manager argued that the money in those funds was provided by City taxpayers and, therefore, should be reserved for the future service area. Some KCC members responded that certain services now provided by the City (e.g., library, hospital, and civic center) would become areawide responsibilities of the consolidated borough government. They noted that funds that were earmarked for those services should transfer to areawide funds as well.

Ketchikan

On August 23, the Ketchikan City Council held a special meeting to address the draft consolidation proposal. Three of the seven members of the Consolidation Commission attended that meeting. City officials expressed hope that the concerns would be resolved.

[38]Public Employees Retirement System.

On September 17, the KCC held its last scheduled public hearing regarding the Petition. Following the hearing, the KCC approved the Petition. Key provisions in the Petition included:

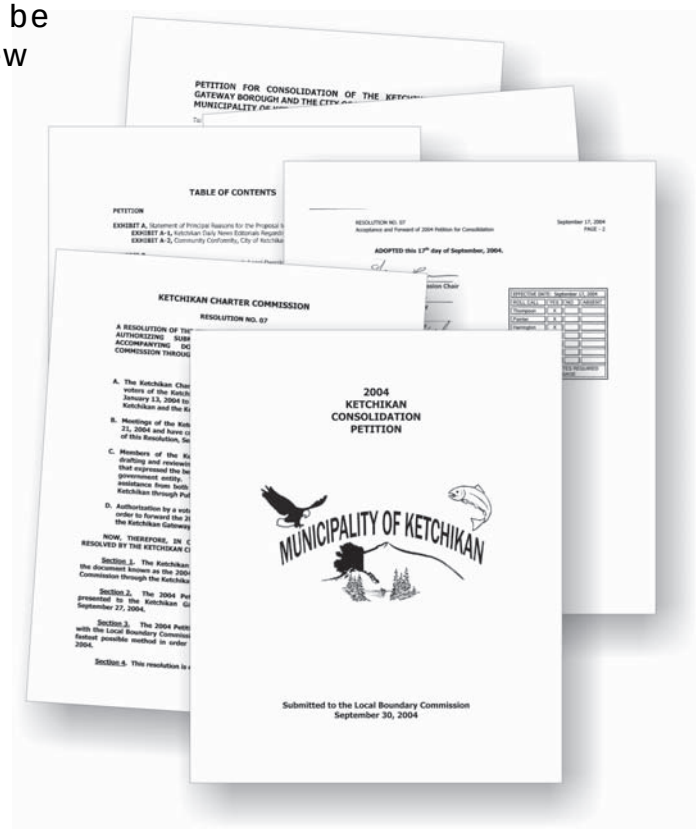
1. Seven assembly members elected at-large
2. Home-rule borough
3. Assembly/manager form of government
4. Ten-mill property tax cap with no proposed increase in property taxes
5. Two-thirds supermajority assembly vote required to raise taxes or fees
6. Areawide decision-making on Ketchikan Public Utilities and hospital issues
7. City of Ketchikan assets to be reserved for benefit of the new Gateway Service Area
8. City of Saxman to remain independent, but part of the consolidated municipality
9. Requirement for complete review of all current Codes and Ordinances.

The Commission was scheduled to present the Petition to the Ketchikan Gateway Borough Assembly on September 27.

On September 30, the KCC submitted to LBC Staff the Petition for technical review of the form and content of the Petition in the manner set out in 3 AAC 110.440.

The Petition was accepted for filing on October 6, 2004. After conferring with officials of the Ketchikan Gateway Borough and the City of Ketchikan, LBC Staff recommended to the LBC Chair that December 27, 2004, be set as the deadline for filing responsive briefs and comments. Such would allow approximately twelve weeks for the filing of responsive briefs and comments. The Chair accepted the recommendation.

Petition for Consolidation of the Ketchikan Gateway Borough and the City of Ketchikan



LBC Staff provided instructions to the Petitioner regarding requirements for notice and service of the Petition. Staff also drafted the public notice of the filing of the Petition and a request for public service announcement of the filing of the Petition. The Petitioner's affidavit of service form, a check list of the Petitioner's duties, and volumes of the laws applicable to the consolidation proposal were also prepared and forwarded to the Petitioner. LBC Staff arranged for publication of the notice of filing in the *Ketchikan Daily News*.

On November 19, 2004, LBC Staff participated in KTKN's radio call-in program regarding the pending Petition to consolidate the City of Ketchikan and the Ketchikan Gateway Borough. Also participating were two members of the KCC (who were subsequently elected to the Borough Assembly), the Ketchikan City Manager, and the Ketchikan Gateway Borough Manager. The discussion centered on procedures and the effects of consolidation. Concerns were expressed by some Ketchikan participants that aspects of the petition were inequitable to certain areas of the proposed consolidated borough. The two KCC members defended the proposal.

The City of Ketchikan filed a timely 28-page responsive brief opposing the consolidation proposal as it is currently crafted. The City's concerns are summarized in the final paragraph of its brief, which is repeated below:

> The Petition should not be approved as written. The proposed budget and financial plan need to be corrected. The expenses and funding of services should be more fairly distributed between City and other taxpayers. Finally, the Petition should use the consolidation process to create those efficiencies which, regardless of tax caps, are the key to controlling tax rates.

In addition to the responsive brief, timely written comments were received from the Ketchikan Gateway Borough Manager and the Mayor of the City of Ketchikan. The Borough Manager wrote an eight-page letter that stated, in part:

> The consolidation petition, Charter, transition plan, and three-year budget, provide an adequate basis for creation of a new consolidated municipality. There are likely innumerable specific policy issues or choices made in the petition which could be debated but never fully resolved to the satisfaction of all because not everyone shares the same opinions. However, we do not believe that any of these

points present legal defects with the petition or the organization proposed.

The Borough Manager's letter encourages the LBC to give particular attention to 24 specific aspects of the Petition. The three-page letter from the Mayor of the City of Ketchikan expressed support for the concept of consolidation, but was critical of the pending proposal. The Mayor characterized the proposal as unfair and harmful to the residents of the City of Ketchikan.

The LBC Chair set February 28, 2005, as the deadline for the Petitioner to file a brief in reply to the responsive brief and written comments.

In addition to the activities described above involving the proposed consolidation, actions regarding a prospective proposal for annexation to the Ketchikan Gateway Borough are addressed in this Chapter at Section VI-B.

Subsection C. Northwest Arctic Borough.

The Northwest Arctic Borough is located 33 miles north of the Arctic Circle along the Kotzebue Sound, and Wullik, Noatak, Kobuk, Selawik, Buckland and Kugruk Rivers. The Northwest Arctic Borough is the second largest borough in Alaska and contains the second-class cities of Ambler, Buckland, Deering, Kiana, Kivalina, Kobuk, Kotzebue, Noorvik, Selawik, and Shungnak and the unincorporated community of Noatak. Kotzebue serves as the regional hub. The Borough was formed on June 2, 1986, and became a home-rule borough in 1987. It has an estimated population of 7,301 persons. While the Borough levies no taxes, it receives a substantial payment in lieu of taxes from the Red Dog Mine.

In April 2004, officials of the Northwest Arctic Borough expressed interest in merging or consolidating city governments within the Borough with the Borough government.

Interest in consolidating governments had also been expressed in 2003.

Section IX. Special Projects

In 2004, the LBC completed the following special project:

★ Study of School Consolidation Opportunities

Subsection A. Study of School Consolidation Opportunities.

As discussed in detail in Chapter 3, Section V of this report, the school consolidation study mandated by the Legislature in 2003 (p. 10, Section 1 Chapter 83 SLA 2003) was completed and filed with the Legislature in February 2004. In view of that extensive discussion, no further details will be supplied here.

Section X. Litigation Involving the Local Boundary Commission

★ Homer Annexation Remand

★ Skagway Borough Incorporation

Subsection A. Homer Annexation Remand.

The City of Homer is located on the north shore of Kachemak Bay on the southwestern edge of the Kenai Peninsula. It is 227 road miles south of Anchorage, at the southernmost point of the Sterling Highway. The City of Homer was incorporated on March 31, 1964. It is a first-class city in the Kenai Peninsula Borough. It has an estimated population of 4,893 persons. The City of Homer levies a 3.5 percent sales tax and a property tax. In addition, the Kenai Peninsula Borough levies a 2 percent sales tax and a property tax.

As reported previously, on December 4, 2003, the superior court ordered a remand to the LBC to discuss the effect on the Kachemak Emergency Service Area (KESA) of the 4.58 square-mile annexation to the City of Homer that occurred March 20, 2002. The court indicated that such discussion was warranted to ensure that annexation was in the best interests of the State.

On December 15, 2003, the LBC requested reconsideration of the court's decision. The court issued an order on December 23, 2003, denying the Commission's request for reconsideration.

Details regarding the procedures for considering the Homer annexation remand are set out in this Chapter in the City Annexation section.

Subsection B. Skagway Borough Incorporation.

Skagway is located 15 miles northeast of Haines and 90 miles northeast of Juneau at the northernmost end of Lynn Canal, at the head of Taiya Inlet. Skagway became the first incorporated city in Alaska on June 29, 1900. It is a first-class city within the unorganized borough and has an estimated population of 845 persons. The City of Skagway levies a 4 percent sales tax and an 8 percent accommodations tax. Additionally, the City levies a property tax using five differential tax rates ranging from 1.58 mills to 8.78 mills.

On January 22, 2001, a group of Skagway voters (Petitioners) submitted a petition to dissolve the City of Skagway and incorporate a Skagway Borough. The proposed Skagway Borough encompassed the same territory as the existing City of Skagway. The Petitioners acknowledged that their proposal would not extend government services to new territory or people. The petition was motivated largely by the perceived concern that another borough might initiate proceedings to combine Skagway with other communities in another borough, without the consent of Skagway voters.

On August 31, 2002, the LBC conducted a hearing on the proposal in Skagway. The LBC convened a decisional session immediately following the hearing. The LBC members voted unanimously to reject the petition to dissolve the City of Skagway and incorporate a Skagway Borough. The LBC reconvened on September 27, 2002, to discuss and adopt a decisional statement.

On November 27, 2002, Skagway filed an appeal with the superior court regarding the LBC's decision. The court initially set April 3, 2003, as the deadline for filing of the appellant's brief. That deadline had been pushed back on several occasions, and the brief was ultimately filed on October 4, 2004.

The State's brief was due by early November. On October 26, the Department of Law filed a motion in Superior Court seeking a 30-day extension of the deadline for filing its brief. The motion was granted, setting a new deadline of December 8, 2004. The State timely filed its brief.

The original deadline for Skagway to file a reply brief was set for January 3, 2005. That deadline was extended to February 15, 2005. Oral argument before the superior court has been scheduled for March 10, 2005.

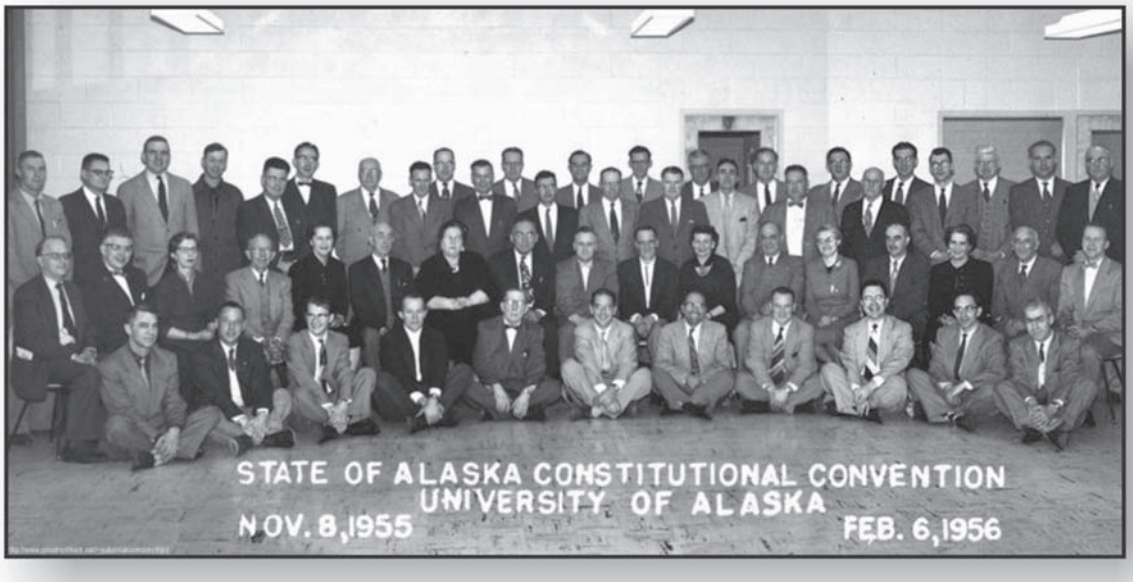
Chapter 3 - Policy Issues and Concerns

Introduction

This year marks the 50th anniversary of the convening of Alaska's Constitutional Convention. From November 8, 1955, to February 5, 1956, fifty-five elected delegates gathered at the University of Alaska campus near Fairbanks to create the framework for Alaska's future state government. Five decades later, the efforts of those delegates continue to be generally regarded as a great success.

One of the biggest challenges facing the framers of Alaska's Constitution was to transform Alaska's anachronistic local government structure into a modern system that would serve the diverse areas of Alaska efficiently and effectively. At the time, local government in the Territory of Alaska was both rudimentary and flawed, as described below.

> Under territorial status, local institutions had undergone only limited development; there was little self-determination at the territorial and even less at the local level. Federal law prescribed the powers of the territorial legislature, severely limiting the scope and types of local government and restricting the powers that could be ex-



> ercised by cities. For example, counties could not be established, bonding criteria were strictly delimited, and home rule could not be extended to cities.

Victor Fischer, *Alaska's Constitutional Convention*, 1975, p. 116.

Over the course of more than 44 meetings, the Committee on Local Government crafted the Local Government Article of Alaska's Constitution. When completed, the framework for local government comprised a mere 833 words.[39] The delegates drafted a strikingly simple, yet effective, framework to provide local services to Alaskans. A copy of the Local Government Article is included with this report as Appendix A.

Regrettably, certain key provisions of the Local Government Article of Alaska's Constitution were poorly implemented. Some say this was because decisions over complex issues were rushed. Of even greater concern is the fact that some constitutional provisions remain unexecuted, even after 46 years of Statehood. This may have been the result of deferring difficult decisions involving controversial matters. Jay Hammond's candid account of the enactment of initial borough legislation, which is discussed in Section I of this Chapter, does nothing to dispel such conjectures.

Victor Fischer

The LBC outlines its concerns in this Chapter regarding these matters in the context of its ongoing duty to study local government boundary problems (*see* AS 44.33.812(a)(1)).[40]

Before discussing those concerns, the Commission acknowledges the contributions made by Victor Fischer, former Constitutional Convention Delegate

[39]The only amendment to Article X occurred in 1972. It eliminated provisions regarding city council members serving on borough assemblies. As amended, the Local Government Article now consists of 784 words.

[40]The views expressed here are strictly those of the LBC, an independent commission with the duty to address "local government boundary problems."

". . . It was our thought there would be enough inducement for them to organize."

Victor Rivers, Committee on Local Government, Alaska Constitutional Convention

and State Senator, and Arliss Sturgulewski, former State Senator. These esteemed statesmen and experts in Alaska local government conferred with the Commission in the development of this report. The Commission and its individual members appreciate their critique of the concerns set out in the report and their endorsement of the importance of resolving the issues raised herein.

Section I. Lack of Adequate Inducements for Incorporation of Organized Boroughs and Annexation to Existing Boroughs

Subsection A. Statement of the Issue:

Those who wrote the Local Government Article of Alaska's Constitution clearly anticipated that the Alaska Legislature would provide sufficient inducements to prompt voluntary borough incorporation. Regrettably, that vision of the framers of Alaska's Constitution – undoubtedly one of the most critical aspects of implementing the Local Government Article of Alaska's Constitution – still awaits fulfillment.

Subsecton B. Background.

1. The Framers of Alaska's Constitution Anticipated That the Legislature Would Provide Adequate Inducements for Borough Incorporation.

During the second reading of the proposed Local Government Article at the Constitutional Convention on January 19, 1956, the members of the Committee on Local Government outlined the proposed local government principles to their fellow delegates. In the following exchange, Local Government Committee members Victor Rivers and Maynard Londborg addressed a concern expressed by Delegate Barrie White that there would be no incentive for unorganized boroughs to organize:

> WHITE: . . . Haven't we here inducement to an area to remain an unorganized borough and to get the state to provide all the necessary functions?
>
> PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: I will try to answer that. **We thought that at the state level it would be the policy as it has been in the past to offer certain inducements to them to organize.** Now, at the present time in incorporated cities there are certain refunds of taxes in the nature of license taxes, liquor taxes, and other taxes that are a percentage, at least, of which reverts back to the organized area. **In the extent that the benefits that the legislature sets up will offset the added cost to the people, and the extent of their desire for home rule will govern how far they go in organizing these boroughs, but it was our thought there would be enough inducement for them to organize and exercise home rule so that as time went on they would gradually all become incorporated boroughs.** That would take a great deal of time in looking at our map. **The thought was that inducements to organize would be offered on the basis of the granting of home rule powers plus certain other inducements that would make it advantageous to them to be boroughs, as we now have that same program of inducement to organize communities.**

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: If I may add a little word to that, Mr. White, and the rest of the delegates, at present the cities that want to incorporate have to assume a certain percentage of their school taxes, and it isn't that they are not willing to do it, but they may find by refunds, etc., they are not able to, so therefore, you have no inducement to incorporate, and the very thing that you mention, they remain unincorporated for that very reason. We felt that it could be handled possibly different ways, but I will mention two: one is to have some state agency that would survey the whole thing and say now is the time you have to incorporate; there is no

way you can get out of it; you have to organize. **I believe the method that Mr. Rivers brought out would be the more desirable, by having skilled men that would study this matter and set it up so that it would come in the form of an inducement so that they can see that they are going to benefit, definitely benefit by organizing, by getting into the picture of local government.** If we do it the other way and force it upon the people, I think you are going to have it taken with resentment and probably a lack of good local government. Now, as far as wanting home rule, I think you will find that that is a common interest. I think people, most citizens, most cities, villages, be they ever so small, really want home rule. They like to feel they are governing themselves, and by making it possible to share responsibility, to share in the work of the local government, even though they be not organized, and then as they see the financial picture where they will be able to do it, I think they will take the step. You may have a further question on that.

WHITE: No, I think I shouldn't take up more time. . . .

Alaska Constitutional Convention Proceedings, Alaska State Legislature, Alaska Legislative Council, November 1963, pp. 2650-2651 (emphasis added).

Later that same day, the issue of organization of boroughs was raised again. The following exchange occurred between Delegates James Hurley and Victor Fischer. Delegate Fischer was the Secretary of the Local Government Committee.

HURLEY: Mr. President, at this time I would like to ask a question. May I do so?

PRESIDENT EGAN: If there is no objection.

HURLEY: One of general intent. Is my idea correct that no organized borough will become effectuated without the voice of the people within the area?

PRESIDENT EGAN: Would you care to comment on that, Mr. Fischer?

V. FISCHER: The answer, I think, would be "no". The borough, as visualized here, is even more than just a unit of local government. It is also a unit for carrying out what otherwise are carried out as state functions; and when a certain area reaches a position where it can support certain services and act in its own behalf, it should take on the burden of its own government. **As was explained earlier today, we don't actually visualize that the state will force boroughs to organize, since we feel that they should be set up on such a basis that there will be enough inducement for each one to organize.** However, just as you have in school districts, the legislature has granted power to, I think, the board of education to incorporate school districts when they reach a certain minimum population so that they would assume their own load.

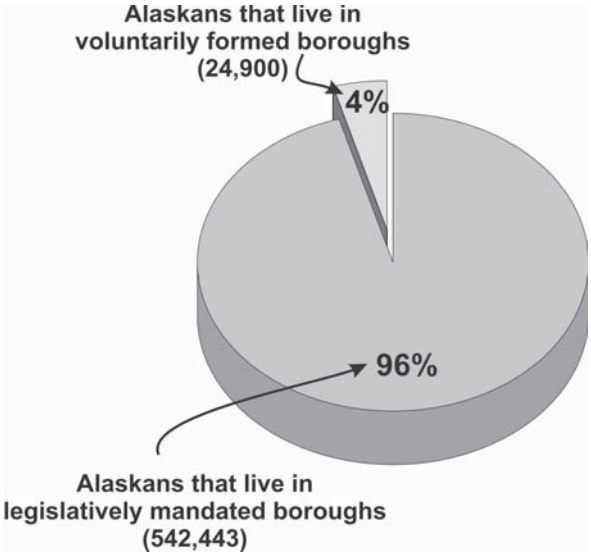
Id., at 2673-2674 (emphasis added).

2. The State of Alaska Has Failed to Provide Inducements to Incorporate Boroughs Voluntarily.

(a) Statistics Offer Compelling Evidence That Inducements for Voluntary Borough Incorporation Have Been Generally Inadequate Over the Course of 46 Years of Statehood.

The failure to achieve the framers' vision that the State of Alaska would offer incentives that would lead to prevalent voluntary incorporation of boroughs is evident from the following statistics:

- Only about 1 in 26 Alaskans (3.8 percent) lives in boroughs that were formed voluntarily.
- In contrast to the above figure, approximately 100 in 120 Alaskans (83.6 percent) live in boroughs that were formed under the 1963 Mandatory Borough Act, which compelled eight particular regions to form boroughs.
- About 100 in every 105 organized borough residents (95.6 percent) live in boroughs formed under the 1963 Mandatory Borough Act.
- Only eight boroughs have formed voluntarily since Alaska became a state.



The chart above reflects just those Alaskans within voluntarily formed and mandatorily formed boroughs. It does not account for the 81,475 Alaskans that live in the unorganized borough.

- More than 12 years have passed since the last borough was organized.
- Approximately 100 of every 175 square miles of Alaska (57.2 percent) lie outside organized boroughs.
- About 100 of every 174 miles of coastline (57.4 percent) lie outside organized boroughs.
- Approximately 1 in 8 Alaskans (12.6 percent) lives outside organized boroughs.

(b) Borough Formation Under the 1961 Borough Act Depended Upon Local Initiative; However, Incentives for Incorporation Were Lacking.

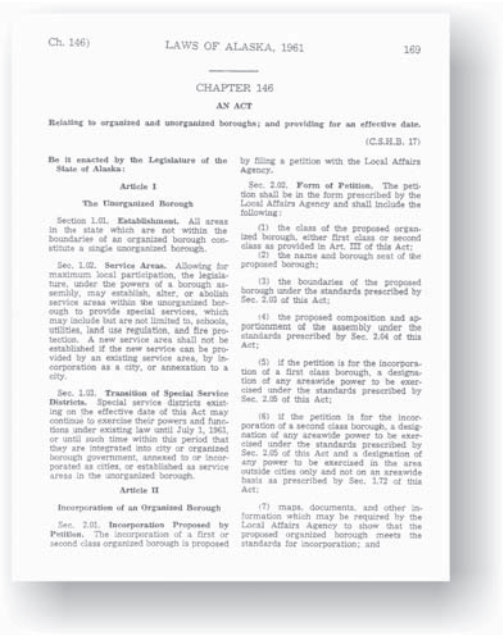
At least five measures were introduced during the First Alaska Legislature (1959 – 1960) to fulfill the constitutional requirement for enactment of standards and procedures for establishment of organized boroughs. However, none was enacted. In the third year of Statehood, the Legislature enacted standards and procedures for incorporation of boroughs. Jay Hammond, a member of the State House of Representatives at the time, related the following candid account of the proceedings leading to the enactment of the 1961 Borough Act:

> Legislators had little enthusiasm for subjecting themselves to heat generated by local school boards, public utility districts and other entrenched local bureaucracies. Not surprisingly, lawmakers chose to move proposed borough legislation to the ever-popular back burner. There it simmered and

stewed until increasing publicity over failure to meet our constitutional mandate compelled us to at least take off the lid and once more sniff the issue.

Still not entranced with the odor, we followed another enshrined governmental tradition: we clapped the lid back on and assigned the whole mess to a "Study Committee."

To head the committee, the Speaker appointed an irascible representative from Cordova named Harold Hansen, known to both friend and foe as "Horrible." A man of caustic wit and an unquenchable thirst for high voltage spirits, "Horrible" loved to flail tormentors on the House floor at the slightest provocation. While seldom actually drunk, "Horrible" was even less often cold sober, and many colleagues hoped the borough study assignment would somehow get lost in the alcoholic haze they presumed befogged "Horrible's" mind. The problem was, "Horrible" drunk was still sharper than most of us sober.



Ch. 146) LAWS OF ALASKA, 1961 169

CHAPTER 146

AN ACT

Relating to organized and unorganized boroughs; and providing for an effective date.

(C.S.H.B. 17)

Be it enacted by the Legislature of the State of Alaska:

Article I

The Unorganized Borough

Section 1.01. **Establishment.** All areas in the state which are not within the boundaries of an organized borough constitute a single unorganized borough.

Sec. 1.02. **Service Areas.** Allowing for maximum local participation, the legislature, under the powers of a borough assembly, may establish, alter, or abolish service areas within the unorganized borough to provide special services, which may include but are not limited to, schools, utilities, land use regulation, and fire protection. A new service area shall not be established if the new service can be provided by an existing service area, by incorporation as a city, or annexation to a city.

Sec. 1.03. **Transition of Special Service Districts.** Special service districts existing on the effective date of this Act may continue to exercise their powers and functions under existing law until July 1, 1963, or until such time within this period that they are integrated into city or organized borough government, annexed to or incorporated as cities, or established as service areas in the unorganized borough.

Article II

Incorporation of an Organized Borough

Sec. 2.01. **Incorporation Proposed by Petition.** The incorporation of a first or second class organized borough is proposed by filing a petition with the Local Affairs Agency.

Sec. 2.02. **Form of Petition.** The petition shall be in the form prescribed by the Local Affairs Agency and shall include the following:

(1) the class of the proposed organized borough, either first class or second class as provided in Art. III of this Act;

(2) the name and borough seat of the proposed borough;

(3) the boundaries of the proposed borough under the standards prescribed by Sec. 2.03 of this Act;

(4) the proposed composition and apportionment of the assembly under the standards prescribed by Sec. 2.04 of this Act;

(5) if the petition is for the incorporation of a first class borough, a designation of any areawide power to be exercised under the standards prescribed by Sec. 2.05 of this Act;

(6) if the petition is for the incorporation of a second class borough, a designation of any areawide power to be exercised under the standards prescribed by Sec. 2.05 of this Act and a designation of any power to be exercised in the area outside cities only and not on an areawide basis as prescribed by Sec. 1.72 of this Act;

(7) maps, documents, and other information which may be required by the Local Affairs Agency to show that the proposed organized borough meets the standards for incorporation; and

1961 Borough Act

Resentful of being handed a hot potato in hopes he would drop it, Hansen fashioned his committee into a pressure cooker. Meeting daily on a grueling schedule, committee members whipped out a remarkably comprehensive piece of legislation in short order and tossed the blistering spud back into our laps. Chagrined, we had little choice but to pass it, earning "Horrible" Hansen the sobriquet, "Father of the Borough Bill," a paternity charge he contended was a blot on the family escutcheon.

Jay Hammond, *Tales of Alaska's Bush Rat Governor*, 1994, pp. 149 – 150.

As summed up in the following thirty-two words by Jay Hammond, the 1961 Borough Act offered little reason for residents to form boroughs:

> Attractive enough on paper, in practice, the organized borough concept had little appeal to most communities. After all, why should they tax themselves to pay for services received from the state, gratis?

Id., at 149.

A 1971 study by the University of Alaska regarding state and local relations recognized the same shortcoming in the 1961 Act:

> [T]he 1961 Borough Act was predicated on the assumption that local desire to establish borough government would supply the force toward incorporation, despite the findings of previous Boundary Commission hearings that there was little enthusiasm in the state for the unknown and untried form of local government. There were also pockets of intense local opposition, particularly in areas outside independent school districts.

Borough Government in Alaska, 1971, p. 73.

A 1984 report by the University of Alaska regarding local governments in Alaska stated the matter even more directly:

> Like the constitution writers, the legislators and administrators who wrote the 1961 act assumed that Alaskans, especially in the urban regions, would want to establish boroughs. And, like the constitution writers, the authors of the 1961 act were wrong. The boundary commission, in its hearings around the state in 1959 and 1960, had already found little support for this unknown and untried form of local government. Along with much apathy, they also found some scattered but intense local opposition in tax-free areas beyond the boundaries of independent school districts.

Thomas A. Morehouse, Gerald A. McBeath, and Linda Leask, *Alaska's Urban and Rural Governments,* 1984, p. 43.

(c) For More Than Four Decades, Experts and Public Policy Makers Have Recognized That Alaska Has Failed to Implement an Effective Policy Regarding Borough Formation.

John L. Rader, Alaska's First State Attorney General, former State Representative, and former State Senator, was among those who recognized early on that the 1961 Borough Act would be generally ineffective in terms of implementing borough government.

> The law (Chapter 146, SLA, 1961) provided for the formation of boroughs on local initiative in much the same manner as State and Territorial law provided for the incorporation of cities on local initiative. The fact remained that local initiative involving serious tax reform would no more work in the instance of boroughs than it had worked in

> the instance of school districts or cities. The result: no boroughs.[41]

John L. Rader, "Legislative History," in Ronald C. Cease and Jerome R. Saroff (eds.), *The Metropolitan Experiment in Alaska, A Study of Borough Government*, Frederick A. Praeger, Publishers, New York, 1968, p. 91.

Mr. Rader characterized the 1961 Borough Act as the latest in a "series of repeated failures" by the Territorial and State governments to form viable regional governments:

> In striving to form viable units of local self-government, the people of Alaska have used the courts, the executive branch of their Territorial Government, and the local subdivisions themselves. It was only after a series of repeated failures that in 1963 the State legislature finally exercised the authority which had previously been delegated to others.

Id., at 81.

It is especially significant in the context of contemporary debate over borough formation that the drafters and supporters of the 1961 Borough Act reportedly recognized at the time that the measure would be generally ineffective in terms of borough formation. Moreover, they allegedly anticipated that the 1963 Legislature would be compelled to enact mandatory borough legislation to eliminate independent school districts and public utility districts that were not recognized under Alaska's Constitution:

> The 1961 legislature had created a curious deadline. It stated that existing school districts and public utility districts could continue to function until July 1, 1963. Unfortunately, the law did not state what would happen if areas did not incorporate into boroughs or cities by that time.[*] It was generally assumed by persons discussing the problem that school districts and public utility district properties would escheat to the State if the districts were abolished, and that the State would then operate the

[41]Footnote 20 in original. A notable exception was the Bristol Bay Borough, located on the Bering Sea, which was created by the enterprising fishermen of Bristol Bay in an attempt to solve an educational problem.

*Editors' Note in original. In reference to this point, Roger W. Pegues, director of the Local Affairs Agency in 1961 and a drafter of the Borough Act, remarks: "There was no intention of letting the time elapse. The deadline was, in a sense, advisory. The legislature was saying that it would brook little further delay. . . . It was generally believed [by the drafters and supporters of the original Borough Act of 1961] that the 1963 legislature would adopt a mandatory incorporation law." Letter from Pegues to Cease.

> schools and possibly perform the functions of the utility districts. This section of the law would have had a disastrous effect if it had been permitted to operate. It would have increased greatly the tax inequity by permitting all of those outside of incorporated cities to escape any contribution to local government. People living outside cities but in the old Territorial school districts would even be relieved of local taxes for their schools.

Id., at 92 – 93.

On the tenth anniversary of the 1961 Borough Act, Thomas Morehouse and Victor Fischer published a seminal 184-page study of borough government. The study concluded as follows:[42]

> The state has never had a sound local affairs policy; nor, until recently, has it shown much interest in developing and implementing one. This first became apparent in the years immediately after statehood, when neither the executive nor the legislature were able to cope effectively with the problems of

[42]*Borough Government in Alaska* has been cited by the Alaska Supreme Court as an authoritative reference in two cases involving the Local Boundary Commission. *See Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 98 (Alaska 1974) and *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1242, (Alaska 1995).

Thomas Morehouse was a full-time faculty member at ISEGR/ISER from 1967 to 1994. He conducted extensive studies of Alaska government and public policy. Mr. Morehouse has written or co-authored numerous books and articles on state and local government in Alaska. Those include *Manpower Needs In Alaska State & Local Government* (1970); *Borough Government in Alaska* (1971); *Institutionalizing Local Government: The Problem of Boroughs in Alaska,* August 1968; *Education and the Borough*, March 1969; *Alaska's Urban and Rural Governments* (1984); *Alaska State Government and Politics* (1987); S*tate and Local Governmental System* (1970); *Issues of Regional Government in Alaska (*1974); and *Alaska Politics and Government* (1994).

Mr. Fischer is recognized by the Alaska Supreme Court as "an authority on Alaska government." (*Keane v. Local Boundary Commission*, 893 P.2d 1239, 1244 (Alaska 1995).) He received a bachelor's degree from the University of Wisconsin in 1948 and a Master's Degree in Community Planning from the Massachusetts Institute of Technology in 1950. In 1955, Mr. Fischer was elected as a delegate to the Alaska Constitutional Convention held in 1955 to 1956. During the convention, Mr. Fischer served on both the Committee on Local Government and the Style and Drafting Committee. He held the position of Committee

Footnote continued on next page

borough formation and the definition of borough roles and purposes.

With its new fiscal leverage, the state is now in a position to effect basic alteration in the existing pattern of local government and state-local relations. The state's objectives should be to encourage certain changes in the structure of local government (e.g., unification and regionalism) and to discourage others (e.g., proliferation of service areas and hardening of local boundaries.) The state can provide financial assistance where it is needed most, and it can itself assume full responsibility for functions that may be performed at the state level.

The policy development problems and tasks identified in this chapter bear directly on the current and future status of borough government in Alaska. The distribution of financial and administrative activities, state financial aid policies, state planning and policy development mechanisms, and state control over boundary setting and change can all profoundly effect the character and functions of borough governments. To guide the state's approach to its local governments, there must be clearer definitions than now exist of the purposes and roles of all levels and units of government in Alaska. Decisions must be made about what functions are to be performed and paid for by whom.

Borough Government in Alaska, pp. 138 – 139.

Footnote continued from previous page

Secretary on the former. In 1961 to 1962, Mr. Fischer received the Littauer Fellowship in public administration from Harvard University. Mr. Fischer has held several planning related positions in Alaska. He has written and co-authored a number of books and publications concerning state and local government in Alaska. These include *The State and Local Governmental System* (1970); *Borough Government in Alaska* (1971); *Alaska's Constitutional Convention* (1975); Testimony before U.S. Congress, Joint Economic Committee *Regional Planning to Solve Social and Economic Problems*, 1970; Victor Fischer in Partnership within the States: Local Self-Government in the Federal System, *Home Rule In Alaska,* University of Illinois, 1976; and *Alaska State Government and Politics* (1987). Mr. Fischer served in Alaska's Territorial House of Representatives (1957-1959) and the Alaska State Senate (1981-1986). He was a member of the faculty of the University of Alaska Fairbanks and of the University of Alaska Anchorage. At the University, he was primarily associated with ISER, where he was director for ten years.

On the twentieth anniversary of the 1961 Borough Act, Alaska's local government agency published a 194-page study regarding borough government in Alaska. The study observed:

> In general, the system of local government in Alaska has not evolved as envisioned initially. Only eleven boroughs have formed since 1959; the rest of the State (nearly 75% of its land area) remains in the unorganized borough and depends primarily on State and federal support for services.

Problems and Possibilities for Service Delivery and Government in the Alaska Unorganized Borough, Alaska Department of Community and Regional Affairs, 1981, p. 3.

Dr. John J. Kirlin, a professor at the School of Public Administration at the University of Southern California, contributed to the study. Dr. Kirlin observed that, "This complex, jury-rigged non-system provides disincentives and barriers to change." *Id.,* at 54.

"This complex, jury-rigged non-system provides disincentives and barriers to change."

Dr. John J. Kirlin

On the thirtieth anniversary of the 1961 Borough Act, the Alaska Legislature adopted *Legislative Resolve No. 40,* providing for the Task Force on Governmental Roles to address state and local relations. The Task Force[43] concluded:

> Key to any rationalization of state and local roles in providing public services is an efficient local delivery system. Compared to other states with their

[43]The Task Force was comprised of 15 members. They were: Scott Burgess (Executive Director of the Alaska Municipal League); Arliss Sturgulewski (State Senator); Steve Frank (State Senator); Ivan Ivan (State Representative); Ron Larson (State Representative); Shelby Stastny (Director of the Governor's Office of Management and Budget); Edgar Blatchford (Commissioner of the Department of Community and Regional Affairs); Jerome Selby (Mayor of the Kodiak Island Borough); Kevin Ritchie (Manager of the City and Borough of Juneau); Caleb Pungowiyi (Manager of the City of Kotzebue); Mark Begich (Assembly Member of the Municipality of Anchorage); Lamar Cotten (former Administrator of the Aleutians East Borough); Lee Sharp ("Public Member" from Palmer); Leo Rasmussen ("Public Member" appointed from Nome); and Roseanne Timber (Alaska Federation of Natives, appointed as "Unincorporated Community Representative").

traditional scheme of counties and cities, development of local government institutions in Alaska after just 33 years of statehood is still in its infancy. Task Force members spent a good deal of time discussing the evolution of the local government organizational scheme envisioned in the state constitution. The tension between the constitutional intent that the state become completely organized into boroughs and the strongly held notion that citizens should only have as much local government as they desire was a dominant theme in Task Force deliberations.

. . . .

Task Force members stopped short of endorsing mandatory borough formation legislation but agreed that continued formation of additional borough governments should be a primary state policy goal.

. . . .

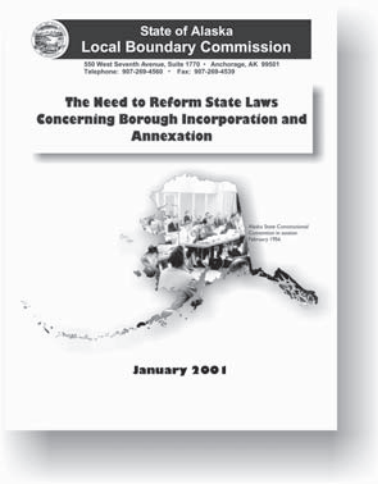
". . . actions by the legislature . . . have removed nearly all of the few remaining incentives to organize boroughs."

1991 Task Force on Governmental Roles

The Task Force recognized that there are large portions of the state that lack the regional resource base to support a borough government. However, there are also a number of areas that have the resource base but are not inclined to organize. Beginning with the establishment of [Regional Educational Attendance Areas] (REAAs), which removed a powerful incentive for borough formation in rural areas – local control of schools, the state has systematically reduced the attractiveness of areawide government to citizens of the unorganized borough. In fact, recent actions by the legislature to share National Forest receipts and Fisheries Business Tax receipts with communities in the unorganized borough have removed nearly all of the few remaining incentives to organize boroughs.

Task Force on Governmental Roles – Final Report, July 10, 1992, pp. 14 – 15 .

On the fortieth anniversary of the 1961 Borough Act, the LBC published a 44-page policy paper advocating reform of State laws regarding the extension of borough government. The LBC concluded, "The deterrents in State law to form boroughs are so pervasive and so overwhelming that they impede successful incorporation of new borough governments." *The Need to Reform State Laws Regarding Borough Incorporation and Annexation,* January 2001, p. 2.



In regard to its ongoing duty under AS 44.33.812(a)(1) to study local government boundary problems, the LBC concluded in its 2001 policy paper that, "the lack of a strong State policy promoting the extension of borough government [is] the most pressing 'local government boundary problem' facing Alaska." *Id.,* at 3.

The preceding review of the perceptions of experts and public policy makers since the early 1960s is by no means comprehensive. It is merely a reflection that those who have examined this important issue fairly over more than the past four decades have all reached similar conclusions.

The Alaska Municipal League is among those who recognize that adequate incentives to form boroughs are lacking. The Municipal League adopted the following 2005 policy statement urging the establishment of incentives:

> The League supports state policies that provide incentives to encourage the formation of boroughs or annexation to boroughs in the unorganized areas of the state, but does not mandate such action. The League urges the legislature to take a more active role as the Assembly of the Unorganized Borough as mandated by the Constitution.

Alaska Municipal League, *2005 Policy Statement*, Part III-E-1.

". . . the lack of a strong State policy promoting the extension of borough government [is] the most pressing 'local goverment boundary problem' facing Alaska."

Local Boundary Commission (2001)

3. Promotion of Borough Formation Is Sound Public Policy.

(a) Boroughs Promote Maximum Local Self-Government With a Minimum of Local Government Units.

Article X, section 1 of Alaska's Constitution sets out the purpose and construction of the Local Government Article.

> The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Referring specifically to section 1 of the Local Government Article, the Alaska Supreme Court observed that Alaska's Constitution encourages the creation of borough governments. *See, Mobil Oil Corporation v. Local Boundary Commission,* 518 P.2d 92, 101 (Alaska 1974).

Eben Hopson, Native leader, member of the Territorial Legislature, and State Senator, offered the following insights concerning maximum local self-government:

> In 1958, when the people of the North Slope area voted overwhelmingly for Alaskan statehood, they did so for the same reason as nearly all Alaskans voted for statehood. They wanted the right to determine for themselves what they would do and when they would do it. . . . We wanted to change this system and we voted for statehood, almost every man and woman. . . . Throughout the eight years work of creating the North Slope Borough, we had the same thing in mind. Through the "maximum of local government," guaranteed us by the Constitution of this State of Alaska, we wanted the maximum of self determination.

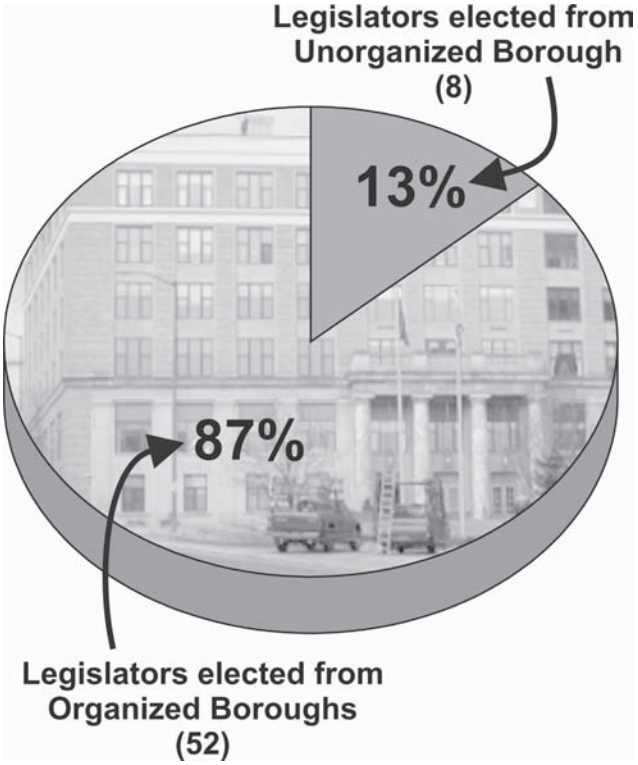
"Through the "maximum of local government," guaranteed us by the Constitution of this State of Alaska, we wanted the maximum of self determination."

Eben Hopson

Eben Hopson, North Slope Borough Mayor, *Official Position Paper: North Slope Borough Re: Proposed Ad Valorem Tax on Oil Properties* (Fall 1973).

Dr. Victor Jones, a professor at the Institute of Governmental Studies at the University of California, concluded as follows in the previously cited 1981 study on the unorganized borough: "The constitutional goal of 'maximum local government' can only be approached when a locality or region is organized." *Problems and Possibilities for Service Delivery and Government in the Alaska Unorganized Borough,* p. 115.

By their general-purpose nature, boroughs serve as a mechanism to achieve "maximum local self-government." They are political subdivisions of the State and have the power to levy taxes, issue debt, enact laws, and otherwise exercise broad responsibilities of general local governments. In contrast, delivery of fundamental services in the unorganized borough is often carried out by single-purpose entities. For example, REAAs and federal transfer regional educational attendance areas (FTREAAs) provide educational services for 100 of every 155 residents of the unorganized borough (64.6 percent).



Organized boroughs also achieve "maximum local self-government" in the sense that they are governed by assemblies comprised of local residents who are elected by local voters. In contrast, the State Legislature wields the power of the assembly for the unorganized borough, with the vast majority of its members elected by voters who do not live in the unorganized borough.[44] Having officials elected largely by one group (i.e., legislators elected by residents of organized boroughs) govern the *local*

[44]Article X, section 6 of the Alaska Constitution provides that:

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 may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

affairs of another group (i.e., residents of the unorganized borough) runs counter to basic democratic principles. In this case, approximately 87 percent (52 of its 60 members) of the assembly of the unorganized borough is elected by voters living within organized boroughs. That circumstance is hardly conducive to maximum local self-government.

The unorganized borough provides for "a minimum of local self-government with a maximum of local government units."

Alaska Municipal League

Organized boroughs promote the constitutional principle of a "minimum of local government units" because of their regional nature and broad powers. Boroughs provide many fundamental powers (e.g., education) to all residents. Moreover, approximately 100 of every 121 residents of the organized boroughs (82.9 percent) rely exclusively on borough governments for all municipal services. The remaining 17.1 percent of the residents of organized boroughs receive municipal services from both a borough and a city government. In contrast, the unorganized borough fosters fragmented service delivery. The Alaska Municipal League characterizes the matter as follows:

Article X of the Constitution also states, "The purpose of this article is to provide for maximum local self government with a minimum of local government units." In the Unorganized Borough the opposite is true. There is currently a minimum of local self-government with a maximum of local government units.

- Alaska is the only state with no local government for a large geographical part of the state.
- In the absence of boroughs, local services are provided by "over 400 governmental and quasi-governmental institutions. These include 150 municipal governments, 35 state sponsored quasi-municipal institutions (REAA's, CRSA's, and ARDOR's), hundreds of tribal institutions, and scores of local and regional non-profit institutions (DCRA, 1996).

Municipal Government in Alaska – WHITE PAPER, Alaska Municipal League, undated, p. 2, published online at <http://www.akml.org/>.[45]

(b) Boroughs Provide a Legal Structure for Service Delivery.

Recognizing that borough governments were needed to provide a formal structure for delivery of services, John Rader expressed the following views leading up to the 1963 legislative session:

> My experience as the Anchorage City Attorney and the State Attorney General led me to believe that the greatest unresolved political problem of the State was the matter of boroughs. As near as I could see, no reasonable solutions were being propounded. A great opportunity to create something of value could be lost. A state of the size, population density, and distribution of Alaska makes State administration of local problems impossible. Anyone who had ever worked in Alaska on the local level or on the State level could see the frustrations of honest attempts repeatedly failing because of the simple fact that there was no governmental structure upon which to hang necessary governmental functions. I therefore decided to do what I could.

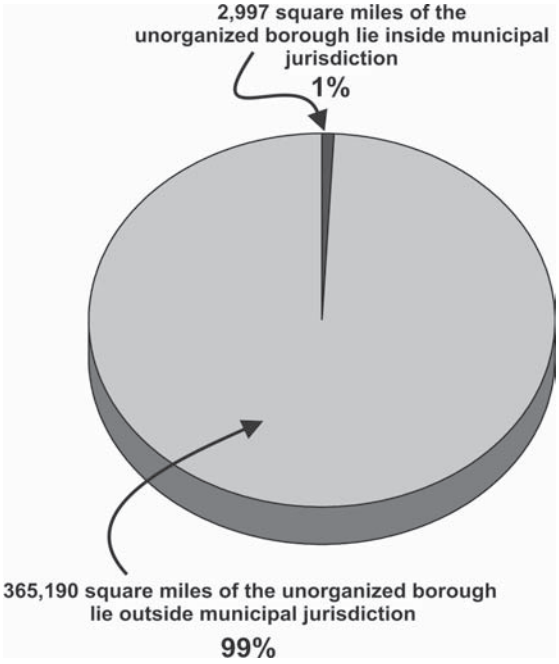
Metropolitan Experiment, p. 93.

In 1974, Eben Hopson expressed his views regarding the critical importance of borough governments in terms of providing essential services:

> If I were governor, organization of regional borough government would become one of my primary goals, and I would ask the legislature to fashion special revenue sharing legislation to finance their operation until sufficient tax base was developed for local financing.
>
> . . . .

Eben Hopson

[45]CRSAs are Coastal Resource Service Areas. ARDORs are Alaska Regional Development Organizations.



> If I can do that [provide for schools and public works] with the North Slope, I don't see why we can't do the same with the rest of the state. . . . There has not been much progress in the last years.

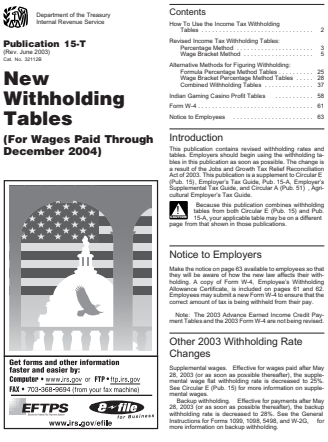
Fairbanks Daily News-Miner, June 17, 1974.

An estimated 365,190 square miles of the unorganized borough (99.2 percent) lie outside the boundaries of city governments. Thus, those areas lack any capacity to provide municipal services. For example, national flood insurance is not available in those 365,190 square-mile portions of the unorganized borough because participation in the flood insurance program requires passage of a municipal ordinance to meet applicable Federal Emergency Management Agency regulations. The lack of flood insurance coverage can have profound economic effects on unprotected areas.

(c) Boroughs Offer Stable and Capable Administrative Capacity to Provide Services.

There are approximately 180 communities in the unorganized borough. Sixty percent of them have fewer than 300 residents. Only seven percent have more than 1,000 residents.

It is often difficult for the smaller communities to maintain a stable and capable administrative capacity. According to the Department, more than 40 communities in the unorganized borough typically have difficulty managing such basic needs as fuel delivery. Many also have problems with respect to such fundamental responsibilities as bookkeeping. Moreover, a number of cities or quasi-public institutions in the unorganized borough are facing sanctions by the U.S. Internal Revenue Service (IRS) because they have either not properly withheld taxes


Department of the Treasury
Internal Revenue Service

Publication 15-T
(Rev. June 2003)
Cat. No. 32113B

New Withholding Tables

(For Wages Paid Through December 2004)

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Introduction

This publication contains revised withholding rates and tables. Employers should begin using the withholding tables in this publication as soon as possible. The change is a result of the Jobs and Growth Tax Relief Reconciliation Act of 2003. This publication is a supplement to Circular E (Pub. 15), Employer's Tax Guide, Pub. 15-A, Employer's Supplemental Tax Guide, and Circular A (Pub. 51) , Agricultural Employer's Tax Guide.

Because this publication combines withholding tables from both Circular E (Pub. 15) and Pub. 15-A, your applicable table may be on a different page from that shown in those publications.

Notice to Employers

Make the notice on page 63 available to employees so that they will be aware of how the new law affects their withholding. A copy of Form W-4, Employee's Withholding Allowance Certificate, is included on pages 61 and 62. Employees may submit a new Form W-4 to ensure that the correct amount of tax is being withheld from their pay.

Note: The 2003 Advance Earned Income Credit Payment Tables and the 2003 Form W-4 are not being revised.

Other 2003 Withholding Rate Changes

Supplemental wages. Effective for wages paid after May 28, 2003 (or as soon as possible thereafter), the supplemental wage flat withholding rate is decreased to 25%. See Circular E (Pub. 15) for more information on supplemental wages.

Backup Withholding. Effective for payments after May 28, 2003 (or as soon as possible thereafter), the backup withholding rate is decreased to 28%. See the General Instructions for Forms 1099, 1098, 5498, and W-2G, for more information on backup withholding.

from employees or neglected to pay the withholdings to the IRS. Regional governments offer the economies of scale to retain qualified administrative talent and efficiently provide for local services.

(d) Boroughs Foster Local Responsibility.

The very first section of Alaska's Constitution, often characterized as the "equal protection clause," also calls for equal responsibility for all Alaskans. Specifically, Article I, section 1 of the Constitution provides as follows:

> This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that **all persons have corresponding obligations to the people and to the State** (emphasis added).

Moreover, the Local Government Article of the Constitution calls for "maximum local responsibility" for the unorganized borough. Article X, section 6 provides as follows:

> 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 may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough (emphasis added).

In his State-of-the-State address to the 1963 Legislature, Governor William Egan, former President of Alaska's Constitutional Convention, reflected on the capacity of boroughs to assume local responsibility for a broad range of services:

> Local government problems continue to be [the] subject of deep and understandable concern. Many areas need improved school systems, sanitation, fire protection, planning and zoning, water and flood control, community water and sewer systems. Organized boroughs can provide these local government services.

Governor Murkowski echoed similar sentiments in his January 2004 State-of-the-State address. He noted that the key to Alaska's future is financial stability. Two components of his plan to achieve that stability relate to issues underlying local responsibility:

The third element of my program is that the costs of government should be borne as much as possible by the direct users of services.

- My fiscal program expects that those who directly benefit from state services pay a fair share - through modest fees and taxes that do not interfere with personal savings and investment.

The fourth cornerstone of my program is local responsibility for local needs. Local governments should look first to local revenue sources to help fund schools, public facilities, fire and safety services.

(e) Boroughs Promote Accountability.

Boroughs are governed by democratically elected local officials. Moreover, boroughs are subject to laws ensuring fundamental safeguards relating to open meetings, ethics, access to public records, and financial record keeping. The State's Open Meetings Act, for example, provides that, "All meetings of a governmental body of a public entity of the state are open to the public except as otherwise provided by this section or another provision of law. . . ."

(f) Boroughs Exercise Planning and Platting Responsibilities.

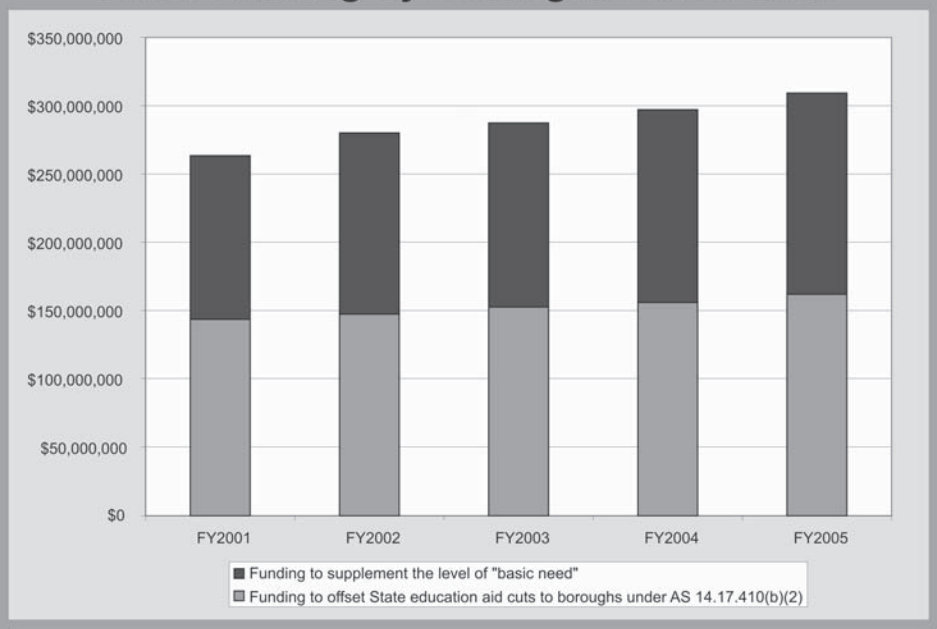
As reflected in the previously noted 1963 remarks of then-Governor Egan, land use planning is a fundamental local service. In the absence of a local planning and platting authority, that responsibility falls on the State.

Moreover, absent a borough government, the State makes decisions regarding platting. Those decisions are, by their nature, less cognizant of local attitudes and concerns. Land use decisions are best rendered at the local level.

Platting in the unorganized borough under AS 29.03.030 is carried out in Anchorage by State employees in the 20-story Robert B. Atwood Building.

Table 3-1

Local Funding By Boroughs for Schools



	Funding to offset State education aid cuts to boroughs under AS 14.17.410(b)(2)	Funding to supplement the level of "basic need"	Total
FY2001	$143,464,749	$119,907,542	$263,372,291
FY2002	$147,227,030	$132,802,598	$280,029,628
FY2003	$152,530,914	$134,856,477	$287,387,391
FY2004	$155,843,584	$141,271,129	$297,114,713
FY2005	$161,827,356	$147,410,700	$309,238,056

(g) Boroughs Provide a Means to Promote Private Ownership of Land.

Newly formed boroughs are entitled to a percentage of State lands within the boundaries of the boroughs. Boroughs can use those lands to promote greater economic development within Alaska. Inadequate private ownership of land can be an impediment to developing a sustainable economy. Local government entitlements of State land put the land resources under the decision-making of local government while providing resources for funding local government services.

(h) Boroughs Have Capacity to Provide Greater Financial Aid to Schools.

REAAs and FTREAAs are entirely dependent upon the State and federal government for operating revenues and capital funding. In contrast, boroughs have the capacity to generate local revenues for schools and capital facilities. This allows local residents to better determine the appropriate level of support for their schools.

As reflected in Table 3-1, in the past five years, organized boroughs have provided more than $1.4 billion in *local funds* to support their schools. More precisely, boroughs contributed $1,437,142,079 in support of schools over the past five years. Of that amount, $760,893,633 was used to offset cuts in State education aid under AS 14.17.410(b)(2) imposed on boroughs but not imposed on REAAs

Table 3-2

	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Number of Districts Given Waivers of Requirement for 70 Percent of Expenditures on Instruction	13	16	24	29	27	32	32
State Aid for Education	$641,945,621	$642,193,474	$638,461,956	$645,468,498	$638,933,278	$667,861,186	$775,398,129
Student Enrollment (ADM)	132,905.	131,696.	132,256	132,670	132,484	131,622	Not Available

and FTREAAs. The remaining $676,248,446 was appropriated by borough assemblies to boost funding for schools beyond the level of "basic need" calculated for schools under AS 14.17.

(i) Boroughs Consolidate School Districts.

Education services are delivered in a fragmented manner in the unorganized borough. The unorganized borough encompasses 37 of the 53 (69.9 percent) school districts in Alaska. However, in Fiscal Year (FY) 2004, the school districts in the unorganized borough served only 18,756 of the 121,582 (15.4 percent) resident students in Alaska.

Fifteen of the thirty-seven school districts in the unorganized borough had fewer than 250 resident students in FY 2004 (a statutory threshold for creation of a new school district).[46]

Beginning in FY 1999, State law (AS 14.17.520) imposed a proportional spending requirement for instruction. The requirement was phased in over a three-year period. In the first year, at least 60 percent of the operating expenditures of each district had to be used for instruction. The following year, the figure was increased to 65 percent. Since FY 2001, each district has been required to use at least 70 percent of its operating expenditures for instruction. The

[46]AS 14.12.025 provides:

Notwithstanding any other provision of law, a new school district may not be formed if the total number of pupils for the proposed school district is less than 250 unless the commissioner of education and early development determines that formation of a new school district with less than 250 pupils would be in the best interest of the state and the proposed school district.

Alaska State Board of Education and Early Development has authority to grant waivers of the proportional spending requirement.[47]

As reflected in Table 3-2 on the previous page, the number of school districts in Alaska that failed to meet the proportional spending requirement increased by 146 percent between FY 1999 and FY 2005. Part of the upsurge may be attributed to the rise in the requirement for instructional spending from 60 percent of operating expenditures in FY 1999 to 70 percent in FY 2001. During that two-year period, the number of districts receiving waivers of the requirement jumped from 13 to 24 (an increase of 84.6 percent). However, since FY 2001, the proportional requirement for instructional spending has not increased, but the number of districts receiving waivers increased by one-third.

As is also reflected in Table 3-2, State aid for education increased by 21 percent between FY 1999 and FY 2005. Moreover, between FY 1999 and FY 2004, student enrollment declined by 1 percent.

Seventy-eight percent of the districts granted waivers by the State Board of Education and Early Development in FY 2005 are in the unorganized borough.[48]

In a press release dated June 6, 2003, Governor Murkowski noted that sacrifices had been made in other parts of the State's FY 2004 budget to fully fund education. The Governor stated, "With full funding, I expect full accountability by the education community in improving student proficiency." In a letter to Alaska's school superintendents the same day, Governor Murkowski noted that although K-12

[47]AS 14.17.520(d) states, in part, "The board may grant the waiver if the board determines that the district's failure to meet the expenditure requirements of this section was due to circumstances beyond the control of the district. The request must also be submitted to the Legislative Budget and Audit Committee, which shall review the district's request and forward the committee's recommendations on it to the board."

[48]Those districts are Alaska Gateway REAA, Aleutian Region REAA, Aleutians East Borough School District, Annette Island REAA, Bristol Bay Borough School District, Chatham REAA, Copper River REAA, Cordova City School District, Haines Borough School District, Hoonah City School District, Hydaburg City School District, Iditarod Area REAA, Kake City School District, Klawock City School District, Kuspuk REAA, Lake and Peninsula School District, Lower Yukon REAA, Nome City School District, North Slope Borough School District, Northwest Arctic Borough School District, Pelican City School District, Pribilof Islands REAA, Saint Mary's City School District, Skagway City School District, Southeast Island REAA, Southwest Region REAA, Tanana City School District, Wrangell City School District, City and Borough of Yakutat School District, Yukon Flats REAA, Yukon-Koyukuk REAA and Yupiit FTREAA.

education was being held "harmless from the budget reductions taking place in this year's operating and capital budgets," the education community was expected to undertake a critical review of school operations so that resources might be shifted from administration to teaching. Specifically, the Governor wrote:

> I am challenging all of Alaska's educators, parents, school board members, community leaders, and residents to take a hard look at how our schools are run. We need to get more dollars from administration into the classroom. Why do some school districts exceed the state requirement of using more than 70 percent of the funds they receive in the classroom, and others do not? . . .

Interest in school consolidation has often been expressed by the Legislature. For example, the 2003 Legislature directed the LBC, in cooperation with the Department of Education and Early Development (DEED), to prepare a study addressing school consolidation. The following news media account summarized the issue and legislative directive:

> Two state agencies are looking at whether Alaska's smallest school districts should be combined with other districts.

Gov. Frank Murkowski and Senate Finance Co-Chairman Gary Wilken, a Fairbanks Republican, are pushing the consolidation idea, which is almost certain to be opposed by many of the communities that would be affected.

"Very frankly, we have too many school districts in this state," Murkowski said at a recent news conference. "I know it's very nice for each community to have its own district, but there are certain limits to how we can best spend our dollars, and we can reduce substantially administrative expenses."

Senator Gary Wilken

Wilken included language in the state budget calling for the Department of Education and Early Development and the Local Boundary Commission to look at opportunities for consolidation, particularly in districts with fewer than 250 students. The agencies are to report to the Legislature in February 2004.

Seventeen of Alaska's 53 school districts have fewer than 250 students, said School Finance Manager Eddie Jeans.

Wilken said the study might lead to legislation combining districts, perhaps as part of a rewrite of the state's overall school funding formula. But he said he's really just looking for information right now.

"This is really a baby step to see if there are some consolidation options out there," Wilken said. "It's always been a bit of concern to me that we have so many school districts for so few children."

In particular, he questions the need for four school districts on Prince of Wales Island - Craig, Klawock, Hydaburg and Southeast Island Schools. All but Craig have fewer than 250 students.

"That's sort of the poster child for consolidation," Wilken said. "Why couldn't school districts get together and use common payroll, common personnel, common purchasing departments?"

Other districts with fewer than 250 students are Pelican, Aleutian Region, Tanana, Chugach, Skagway, Pribilof, Yakutat, Kake, St. Mary's, Hoonah, Nenana, Chatham, Bristol Bay and Galena. Galena and Nenana have larger enrollments if correspondence students are counted.

Several of those districts are in Rep. Albert Kookesh's Southeast Alaska legislative district.

Consolidation threatens local control and raises a community's fears about losing its school, which is often the central gathering place where activities from basketball games to dances take place, said Kookesh, an Angoon Democrat.

Cathy Brown, Associated Press, June 6, 2003.

The school consolidation study was completed and filed with the Legislature in February 2004. Details about the study are provided in Section V of this Chapter.

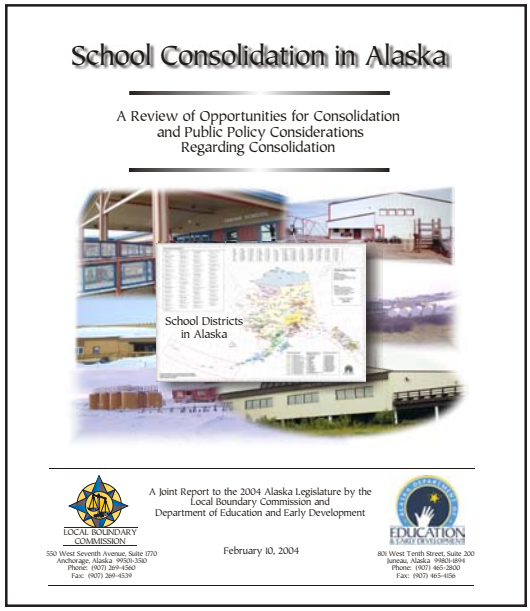


Table 3-3

City School Districts in the Unorganized Borough

District	FY 2004 ADM	Correspondence ADM	Total ADM
City of Pelican	15.00	0	15.00
City of Tanana	62.50	29.50	92.00
City of Hydaburg	86.85	0	86.85
City of Skagway	105.83	0	105.83
City of Saint Mary's	147.50	0	147.50
City of Klawock	147.68	0	147.68
City of Kake	155.15	0	155.15
City of Hoonah	179.40	0	179.40
City of Nenana	207.10	724.22	931.32
City of Galena	222.60	3,667.43	3,890.03
City of Craig	381.75	573.69	955.44
City of Wrangell	391.78	0	391.78
City of Unalaska	398.55	0	398.55
City of Cordova	471.40	0	471.40
City of Dillingham	513.13	0	513.13
City of Petersburg	657.45	0	657.45
City of Nome	715.10	0	715.10
City of Valdez	864.25	1.00	865.25
TOTAL	**5,723.02**	**4,995.84**	**10,718.86**

A number of legislative proposals have been filed in the past to consolidate schools. The latest example is House Bill No. 480 in the 2004 Legislature. That bill would have allowed a home-rule or first-class city in the unorganized borough to operate a school district only if it had at least 1,000 students. As shown in Table 3-3, none of Alaska's 18 city school districts had close to that level of enrollment in terms of resident students during FY 2004.

House Bill No. 480 in the last legislative session would have also required reconfiguration of REAAs (presumably including "FTREAAs"[49]) to encompass

[49]FTREAAs are legally distinct from REAAs but are not often recognized as such. REAAs were established under AS 14.08.031. FTREAAs were carved out of REAAs under ch. 66 SLA 1985 and referred to as FTREAAs in that law.

Beyond education services provided through the four types of districts listed above, in FY 2004, the State also operated two educational facilities. One was Alyeska Central School, a statewide correspondence school serving approximately 412 students. The other was Mt. Edgecumbe High School, a boarding school in Sitka that is attended by approximately 335 students.

Table 3-4

REAA School Districts in the Unorganized Borough

District	FY 2004 ADM	Correspondence ADM	Total ADM
Aleutian Region REAA	41.85	0	41.85
Chugach REAA	77.85	113.25	191.10
Pribilof Islands REAA	124.25	0	124.25
Southeast Island REAA	210.23	9.57	219.80
Chatham REAA	215.00	0	215.00
Annette Island REAA	287.50	0	287.50
Yukon Flats REAA	292.20	0	292.20
Iditarod Area REAA	293.45	82.85	376.30
Kuspuk REAA	424.10	0	424.10
Yukon/Koyukuk REAA	434.05	947.02	1,381.07
Alaska Gateway REAA	438.71	54.55	493.26
Copper River REAA	532.15	126.10	658.25
Delta/Greely REAA	667.30	363.94	1,031.24
Southwest Region REAA	676.95	0	676.95
Bering Strait REAA	1,704.00	0	1,704.00
Lower Yukon REAA	2,031.80	0	2,031.80
Lower Kuskokwim REAA	3,784.60	0	3,784.60
TOTAL	12,235.99	1,697.28	13,933.27

at least 1,000 students. As shown in Tables 3-4 and 3-5, only 3 of the 17 REAAs and 2 FTREAAs had enrollments in excess of 1,000 during FY 2004.

If boroughs were formed in accordance with the model borough boundaries established under 3 AAC 110.990(9), school districts in the unorganized borough would be consolidated, leaving about half the number that exist currently.

FY 2004 enrollment figures for organized borough school districts are provided in Table 3-6 on the following page.

Table 3-5

FTREAA School Districts in the Unorganized Borough

District	FY 2004 ADM	Correspondence ADM	Total ADM
Kashunamiut FTREAA	362.25	0	362.25
Yupiit FTREAA	434.25	0	434.25
TOTAL	796.50	0	796.50

Table 3-6

Borough School Districts

District	FY 2004 ADM	Correspondence ADM	Total ADM
Municipality of Anchorage	48,559.88	705.10	49,264.98
Fairbanks North Star Borough	14,369.36	225.03	14,594.39
Matanuska-Susitna Borough	13,350.19	953.87	14,304.06
Kenai Peninsula Borough	8,992.70	569.25	9,561.95
City and Borough of Juneau	5,356.92	84.95	5,441.87
Kodiak Island Borough	2,620.88	55.75	2,676.63
Ketchikan Gateway Borough	2,346.12	24.30	2,370.42
Northwest Arctic Borough	2,020.75	8.00	2,028.75
North Slope Borough	1,810.45	0	1,810.45
City and Borough of Sitka	1,443.48	23.05	1,466.53
Denali Borough	305.15	266.00	571.15
Lake & Peninsula Borough	415.23	3.00	418.23
Haines Borough	302.99	16.00	318.99
Aleutians East Borough	277.49	1.00	278.49
Bristol Bay Borough	195.35	0	195.35
City and Borough of Yakutat	125.00	0	125.00
TOTAL	**102,491.94**	**2,935.30**	**105,427.24**

Beyond the 53 school districts listed in Tables 3-2 through 3-5, the State of Alaska operated two schools in FY 2004. Enrollment figures for those schools are provided in Table 3-7 on the following page.

(j) Boroughs Have Capacity for Regional Control of Alcohol and Other Substances.

In 1998, then-Governor Tony Knowles created a commission to review the State's relationship with, and responsibility to, rural Alaska.[50] The Alaska Commission on Rural Governance and Empowerment recognized the need to address "a range of land-based jurisdictional issues involving alcohol and other substance abuse control, economic development, environmental management and local governance innovation" in rural Alaska. Alaska Commission on Rural Governance and Empowerment, *Final Report to the Governor*, p. 65.

Borough governments have the capacity to institute regional alcohol control. Currently, bootlegging can occur

[50]The members of the Alaska Commission on Rural Governance and Empowerment were Robert Keith, Byron Mallott, Brad Angasan, Nancy Barnes, Johne Binkley, Arnold Brower, Jr., Niles Cesar, Christopher Cooke, Roy Ewan, Victor Fischer, Steve Ginnis, Chuck Greene, Weaver Ivanoff, Marlene Johnson, Willie Kasayulie, Rosemarie Maher, Will Mayo, Gene Peltola, Margaret Roberts, Gilda Shellikoff, Lee Stephan, Arliss Sturgulewski, and Esther Wunnicke.

outside the relatively constrained boundaries established for alcohol control by cities and villages in the unorganized borough. A regional approach to such matters can promote greater effectiveness in terms of substance abuse.

(k) Boroughs Promote Economic Development.

Virtually every organized borough engages successfully in economic development activities. Establishment of more boroughs could lead to economic development in areas that are currently unorganized. Organized boroughs have the capacity to issue bonds, thereby leveraging State and federal funding. They can promote economic development through better decisions regarding infrastructure, land use, and job-training initiatives than that currently offered through State and federal agencies further removed from the problems of the region.

The previously cited 1999 report by the Alaska Commission on Rural Governance and Empowerment concluded that, "The State of Alaska must invest in its future by ensuring that a strong, stable, and accountable unit of State government carries out rural development functions." *Id.*, at 72. As political subdivisions of the State government, boroughs meet that qualification.

(l) Boroughs Provide a Proper Role for State Government.

The 1991 Task Force on Governmental Roles, cited previously, observed, "Most knowledgeable observers of Alaska's fiscal situation believe that in the near future it will be necessary to devolve responsibility to municipal governments for many public services that are now either provided directly by the state or funded with state revenues." *Task Force Final Report,* p. 7.

Moreover, it is difficult for a State agency to be as sensitive and responsive to local issues as a borough government. The State of Alaska generally applies uniform levels of services and the same service delivery approaches across the State. Well-meaning agencies are not in the best position to understand or recognize local needs and issues. Boroughs have

Table 3-7
State Operated Schools

District	FY 2004 ADM	Correspondence ADM	Total ADM
Alyeska Central School	0	411.78	411.78
Mt. Edgecumbe High School	334.90	0	334.90
TOTAL	334.90	411.78	746.68

the capacity to provide the varying levels of services desired by the region.

(m) Boroughs Promote Equity and Fairness.

Article I, section 1 of Alaska's Constitution calls for equal treatment and equal responsibilities for all Alaskans. The fact that organized boroughs are subject to provisions such as the requirement for local contributions in support of schools, along with mandatory responsibilities for platting, planning, and land use regulation, while the areas of the unorganized borough outside home-rule and first-class cities are not, is a constant concern among many officials of existing boroughs. The 1991 Task Force on Governmental Roles observed that "The inequity in tax burden between residents of first-class cities and general law boroughs and those residing in unorganized areas is a perennial area of conflict in Alaska politics." *Task Force Final Report,* p. 8.

The issue of equity and fairness is also a perennial concern to many legislators. A number of legislative proposals have been introduced in the past to address such matters. Those include Senate Bill No. 30 and Senate Bill No. 337 in the 20th Legislature and House Bill No. 250 and Senate Bill No. 280 in the 19th Legislature. Each of those proposals included the following or similar language:

> [T]he rights, opportunities, and obligations of borough residents are not equal to those of residents in the unorganized borough, particularly in respect to education, taxation, and land use regulation, and that this is not in keeping with art. I, sec. 1, of the Constitution of the State of Alaska, that states in part, ". . . that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State."

The issue of inequity is addressed in greater detail in Section III of this Chapter.

Subsection C. Recommendations.

As it has done in the past, the LBC continues to urge the Legislature to create inducements for voluntary incorporation of organized boroughs in order to achieve the constitutional principles of maximum local self-government.

Six fundamental incentives for borough formation are listed here for consideration by the Legislature. The LBC recognizes that two of those incentives, in particular, are likely to generate intense opposition from those affected. However, as stressed at the beginning of this Chapter, the LBC reminds readers that the current

troubled state of affairs regarding incorporation of boroughs is viewed by some as the product of deferring difficult decisions over challenging issues. If progress is going to be made in that regard, those challenging issues must be addressed.

Senator Sturgulewski remarked in that regard to the LBC at its January 5, 2005, meeting that ". . . about the controversy, it's never easy, but you're also in a position as members of this constitutionally-mandated commission to take the overview and to really identify those areas that need to be taken care of."

1. Tax the Unorganized Borough.

The previously cited Task Force of Governmental Roles established by the 1991 Legislature took the position that, "All citizens should bear a fair portion of the cost of basic health, education and public protection services." *Task Force Final Report*, p. 2. Moreover, the Final Report of the Task Force stated:

> Task Force members stopped short of endorsing mandatory borough formation legislation but agreed that continued formation of additional borough governments should be a primary state policy goal.
>
> . . . .
>
> **Experience has shown establishment of boroughs to be primarily a function of the economic self-interest of residents. While local control is an incentive, it is generally outweighed by residents' aversion to paying local taxes for services (e.g., education in [regional educational attendance areas]) that are currently provided by the state at no cost.** The Task Force position is that the inequity in tax burden between residents of municipalities and residents of the unorganized borough is better addressed via state fiscal policies (taxes, shared revenue programs, education foundation funding and municipal grants) than by imposing areawide government on people who do not want it.

Id., at 15, emphasis added.

An example of such aversion is readily apparent in a bulletin furnished to LBC staff in 2004 and set out on page 117. It is noteworthy that the bulletin opposes borough formation but at the same time acknowledges that the economy of the area (Delta/Greely) is prosperous. A sound economy is one

"All citizens should bear a fair portion of the cost of basic health, education and public protection services."

1991 Task Force on Governmental Roles

of the key reasons supporting borough formation. This issue is well-covered in *Borough Government in Alaska:*

> It was decided that, although voluntary incorporation would be preferable, organized boroughs could be created without the approval of the people within the area. The rationale behind this position of unilateral state actions was that the borough:
>
> > . . . is more than just a unit of local government. It is also a unit for carrying out what otherwise got carried out as state functions; and **when a certain area reaches a position where it can support certain services and act in its own behalf, it should take on the burden of its own government.**

Id., at 61, emphasis added, footnotes omitted.

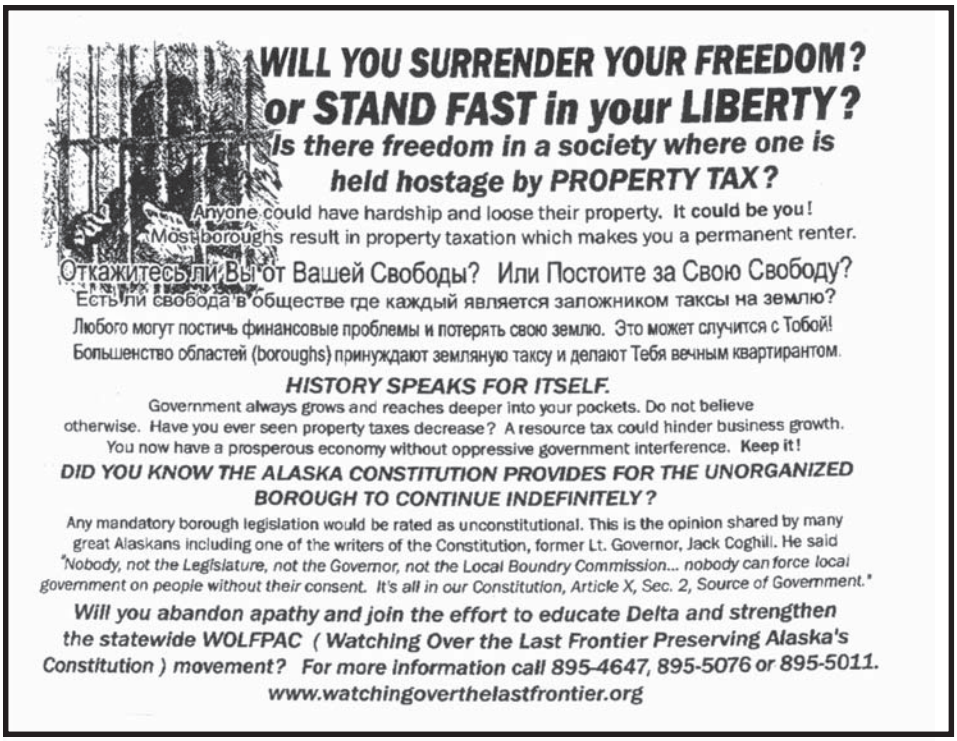
A 1984 study by the University of Alaska concluded that the prospect of taxes was one of the foremost disincentives to borough formation. *See Alaska's Urban and Rural Governments,* p. 43.

The State could eliminate that fundamental deterrent to borough formation by imposing an appropriate tax burden on the unorganized borough. Four options are explored below.

(a) Property Taxes.

Among the various tax options, the LBC anticipates that residents of the unorganized borough might least prefer property taxes, because all residents would not uniformly share the burden of such. That concern, however, exists with respect to property taxes levied by any municipal government in Alaska. (*See* AS 29.45.030 for mandatory exemptions from municipal property taxes.) Thus, the anticipated concern is not unique to the unorganized borough.

Notwithstanding its anticipated unpopularity, imposition of a property tax on the unorganized borough would aid the Legislature and executive branch in planning. (*See* AS 14.17.510(a)). Moreover, establishment of property tax rolls for the unorganized borough would facilitate transition of areas to



WILL YOU SURRENDER YOUR FREEDOM?
or STAND FAST in your LIBERTY?
Is there freedom in a society where one is held hostage by PROPERTY TAX?

Anyone could have hardship and loose their property. It could be you!
Most boroughs result in property taxation which makes you a permanent renter.

Откажитесь ли Вы от Вашей Свободы? Или Постоите за Свою Свободу?
Есть ли свобода в обществе где каждый является заложником таксы на землю?
Любого могут постичь финансовые проблемы и потерять свою землю. Это может случится с Тобой!
Большенство областей (boroughs) принуждают земляную таксу и делают Тебя вечным квартирантом.

HISTORY SPEAKS FOR ITSELF.

Government always grows and reaches deeper into your pockets. Do not believe otherwise. Have you ever seen property taxes decrease? A resource tax could hinder business growth. You now have a prosperous economy without oppressive government interference. Keep it!

DID YOU KNOW THE ALASKA CONSTITUTION PROVIDES FOR THE UNORGANIZED BOROUGH TO CONTINUE INDEFINITELY?

Any mandatory borough legislation would be rated as unconstitutional. This is the opinion shared by many great Alaskans including one of the writers of the Constitution, former Lt. Governor, Jack Coghill. He said *"Nobody, not the Legislature, not the Governor, not the Local Boundry Commission... nobody can force local government on people without their consent. It's all in our Constitution, Article X, Sec. 2, Source of Government."*

Will you abandon apathy and join the effort to educate Delta and strengthen the statewide WOLFPAC (Watching Over the Last Frontier Preserving Alaska's Constitution) movement? For more information call 895-4647, 895-5076 or 895-5011. www.watchingoverthelastfrontier.org

2004 WOLFPAC bulletin opposing borough formation

organized status, since local contributions required of boroughs under AS 14.17.410(b)(2) are based on the taxable value of property.

Given the general lack of property tax rolls for the unorganized borough, the LBC recognizes that an *ad valorem* property tax on the unorganized borough would require an inaugural investment.[51] To pay the cost of establishing the tax, the State could use what would be a relatively small portion of its windfall from recent higher oil prices. Any cost could be recovered through future tax levies on the unorganized borough.

The LBC notes that a property tax on territory, including that which today is the entire unorganized borough, has a precedent. The Territory of Alaska established a territory-wide property tax fifty-six years ago. As noted below, that tax was specifically intended to address the very issue of tax inequity:

[51]The office of the State Assessor, currently staffed by two individuals, has spent considerable time since August 2004 estimating the value of taxable property in the Upper Tanana Basin portion of the unorganized borough (Delta Greely REAA and Alaska Gateway REAA). The effort is designed to give local residents (including those developing a petition for borough incorporation) and State policy makers an up-to-date estimate of the region's tax base. The project does not, however, involve the development of formal tax rolls. The State Assessor projects that the field work will be completed by the end of January 2005 and that the property value estimates will be prepared by mid-February. To undertake similar efforts throughout the remainder of the unorganized borough would require additional resources for the office of the State Assessor.

The 1949 Territorial Legislature eliminated inequities in taxes for schools through a Territory-wide property tax.

Under Territorial law, those who lived in a city or school district were required in all instances to provide a substantial portion of the cost of education. . . .

The Territorial Legislature of 1949, which was controlled by the Democratic Party and operated under the influence of a strong Democratic governor, Ernest Gruening (now United States Senator), made an initial attempt to provide some relief from these inequities by enacting a Territory-wide general property tax. The proceeds were refunded to the local entity if collected in an incorporated city, school district, or public utility district. If the area was not incorporated, the proceeds went into the treasury of the Territory. The merits of a property tax are not germane to this chapter. What is pertinent is that the measure was an attempt to equalize the tax burden by requiring those in the unincorporated areas to contribute something to the cost of the services received. This reform, however, was short-lived.

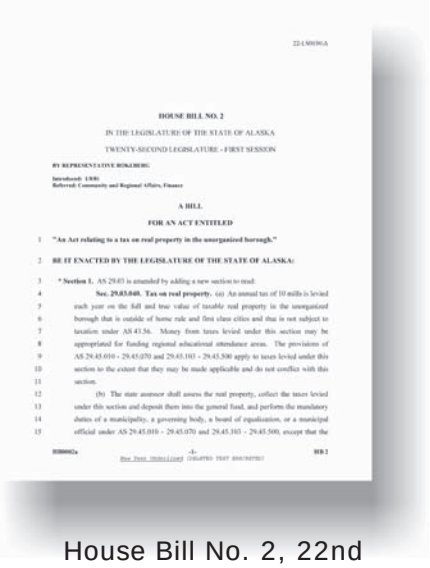
The matter of a Territorial tax became a partisan political issue. The election of a Republican President of the United States and the appointment of a Republican governor for the Territory of Alaska resulted in the repeal of the property tax act by the 1953 Republican-controlled Territorial Legislature. There were substantial mining and fishing interests which were greatly opposed to the tax; as were the homesteaders, trappers, Indians, and Eskimos. This combination firmly re-established the tax inequity

> favoring those who were getting free services from the Territory by refusing and failing to incorporate. It appeared that to equalize taxes in Alaska one would need – and perhaps must create – a vested interest to protect the tax reform and combat the interests which benefited financially from the inequity.

Metropolitan Experiment, pp. 87 - 88.

State Legislators have introduced a number of proposals to impose property taxes on the unorganized borough in the past. None, however, has passed. A recent example of such a proposal is House Bill No. 2 introduced in the 22nd Legislature, which proposed a 10-mill property tax on the unorganized borough outside home-rule and first-class cities.

The provision in House Bill No. 2 exempting home-rule and first-class cities in the unorganized borough presumably stemmed from the fact that those cities have most of the same duties as organized boroughs (education, platting, planning, and land use regulation). While justified if the policy debate is limited strictly to the issue of equity, such an exemption eliminates the incentive for residents of those cities to become part of a borough government.



22-LS0030A

HOUSE BILL NO. 2

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE ROKEBERG

Introduced: 1/8/01
Referred: Community and Regional Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a tax on real property in the unorganized borough."

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

3 * Section 1. AS 29.45 is amended by adding a new section to read:

4 Sec. 29.03.040. Tax on real property. (a) An annual tax of 10 mills is levied
5 each year on the full and true value of taxable real property in the unorganized
6 borough that is outside of home rule and first class cities and that is not subject to
7 taxation under AS 43.56. Money from taxes levied under this section may be
8 appropriated for funding regional educational attendance areas. The provisions of
9 AS 29.45.010 - 29.45.070 and 29.45.103 - 29.45.500 apply to taxes levied under this
10 section to the extent that they may be made applicable and do not conflict with this
11 section.

12 (b) The state assessor shall assess the real property, collect the taxes levied
13 under this section and deposit them into the general fund, and perform the mandatory
14 duties of a municipality, a governing body, a board of equalization, or a municipal
15 official under AS 29.45.010 - 29.45.070 and 29.45.103 - 29.45.500, except that the

H30000Ca -1- HB 2

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House Bill No. 2, 22nd Legislature

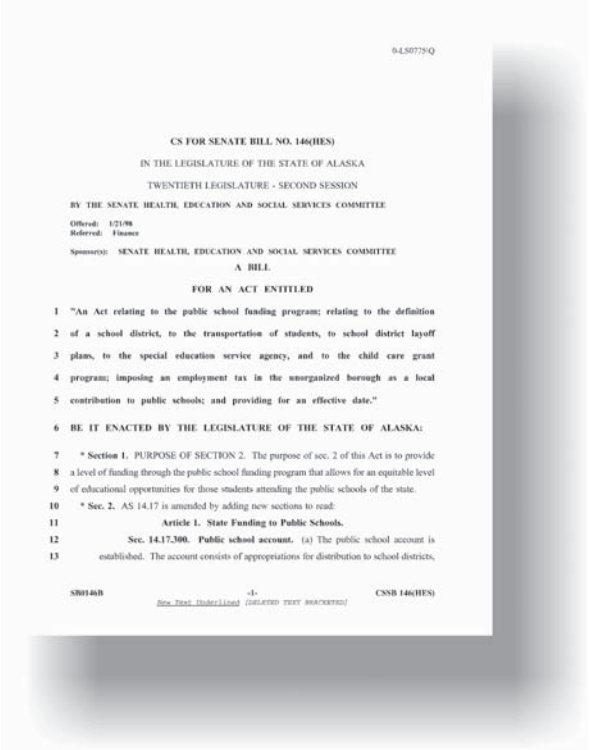
If the Legislature considers a property tax levy on the unorganized borough in the future, the LBC urges prudent consideration of alternatives to an across-the-board exemption for home-rule and first-class cities in the unorganized borough. If inclined to recognize the local responsibilities of home-rule and first-class cities in the unorganized borough but retain some degree of incentive, the Legislature could provide for a *partial* rebate of taxes to home-rule and first-class cities. Given the public policy set long ago by the Legislature in AS 14.12.025 to promote new school districts with at least 250 students, the Legislature might consider limiting any partial rebate to just those home-rule or first-class cities with at least 250 resident students.[52]

[52]Ten of the eighteen home-rule and first-class cities in the unorganized borough have fewer than 250 resident students.

(b) Sales Taxes.

The 1991 Task Force on Governmental Roles offered the following insights regarding the prospect of a sales tax:

> The sales tax is not particularly costly or difficult for the state to administer, hence its popularity among states. Since it is collected from sellers at the retail level, there are fewer returns to deal with than in the case of an income tax. Many states with both state and local general sale taxes gain administrative efficiency by piggybacking local tax collection onto the state tax system. The main advantages of a sales tax are that it can be designed so that revenue grows in proportion with the economy, it is relatively popular with voters (probably because it is paid in small amounts), and it captures revenues from nonresidents. The main disadvantages are its regressivity [sic] and the fact that it is not deductible from federal income tax.
>
> Task Force members brought up additional considerations. To be efficiently collected by the state, a sales tax would have to be uniform with respect to exemptions. This would eliminate the local option to apply the sales tax narrowly (e.g., only on fish sales, hotel/motel use, tobacco sales, etc.) or broadly. A statewide sales tax would infringe on municipalities' ability to express social policy with respect to taxation of food, residential rent, home heating oil, etc. Municipal officials might also be leery of piggybacking onto a state sales tax for fear that the state would gradually take over the entire sales tax and leave little or nothing for municipalities.



0-LS0775\Q

CS FOR SENATE BILL NO. 146(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 1/21/98
Referred: Finance

Sponsor(s): SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the public school funding program; relating to the definition**
2 **of a school district, to the transportation of students, to school district layoff**
3 **plans, to the special education service agency, and to the child care grant**
4 **program; imposing an employment tax in the unorganized borough as a local**
5 **contribution to public schools; and providing for an effective date."**

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

7 *** Section 1.** PURPOSE OF SECTION 2. The purpose of sec. 2 of this Act is to provide
8 a level of funding through the public school funding program that allows for an equitable level
9 of educational opportunities for those students attending the public schools of the state.
10 *** Sec. 2.** AS 14.17 is amended by adding new sections to read:
11 **Article 1. State Funding to Public Schools.**
12 **Sec. 14.17.300. Public school account.** (a) The public school account is
13 established. The account consists of appropriations for distribution to school districts,

SB0146B -1- **CSSB 146(HES)**
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Task Force Final Report, pp. 41-42.

The LBC is aware that the Alaska Municipal League opposes the prospect of a statewide sales tax:

> The League vigorously defends sales tax as a local option to maintain control over this key

> local revenue source. Imposition of a State sales tax would jeopardize local economics and cause a reduction in municipal sales tax.

Alaska Municipal League, *2005 Policy Statement*, Part I-A-1-e.

The Alaska Municipal League might oppose a sales tax on the unorganized borough as well. The LBC notes, however, that such a tax would be the equivalent of a sales tax imposed by a borough assembly, since it would be enacted by the Legislature under its authority to act as the assembly of the unorganized borough.

The preceding comments by the LBC regarding the prospect of exempting home-rule and first-class cities in the unorganized borough from a property tax apply here as well. In the Commission's view, there is yet another significant reason for not exempting home-rule and first-class cities from a sales tax on the unorganized borough. Unorganized borough residents who live in areas adjoining home-rule and first-class cities in the unorganized borough, but shop in those cities, would effectively receive the exemption. For example, an estimated 162 individuals reside in the unincorporated area adjoining the boundaries of the home-rule City of Petersburg. *See: Petition for Annexation to the City of Petersburg,* October 2004, p. 8.

(c) Employment Tax.

As is the case with property taxes, legislators have previously introduced measures to levy employment taxes on the unorganized borough. For example, Senate Bill No. 146, introduced in the 20th Legislature, proposed to levy an employment tax upon each employee who receives compensation for services performed in the unorganized borough outside of a home-rule or first-class city. Earnings from business activities of self-employed individuals conducted in the unorganized borough outside of a home-rule or first-class city would also have been subject to the tax.

The Commission's views regarding the prospect of exempting home-rule and first-class cities in the unorganized borough from a property tax or sales tax apply here as well. Residents of the unorganized borough who live in unincorporated areas adjoining home-rule and first-class cities in the unorganized borough but are employed in those cities would have, effectively, received the exemption. As noted above, for example, an estimated 162 individuals reside in the unincorporated area adjoining the boundaries of the home-rule City of Petersburg.

A head tax on the unorgainzed borough is equivalent to the school tax paid by residents of organized boroughs would generate between $15 million and $23 million annually, depending on policy decisions regarding applicablility of the tax.

(d) Head Tax.

Imposition of a uniform tax on residents of the unorganized borough is another option. One of the obvious advantages of such a tax is its simplicity.

As was previously discussed with regard to other prospective taxes on the unorganized borough, a policy determination would be necessary to decide who would be subject to the tax. If the purpose of the tax were limited to equity and fiscal considerations, the tax might apply only to those residents of the unorganized borough outside of home-rule and first-class cities. If, in addition to equity and fiscal considerations, the tax policy were aimed at promoting consolidation of small school districts (those with fewer than 250 resident students per AS 14.12.025), the tax might also apply to residents of the ten home-rule and first-class cities that serve fewer than 250 resident students. If the tax policy were also intended to promote borough incorporation, the tax might apply to all residents of the unorganized borough.

In FY 2005, organized boroughs were compelled by AS 14.17.410(b)(2) to pay $161,827,356 in "local contributions" for schools. That is equivalent to $285.24 for each of the 567,343 residents of organized boroughs. An equivalent tax on each of the 52,618 individuals residing in the unorganized borough outside of home-rule and first-class cities would generate $15,008,758. If the 5,869 residents of city school districts with fewer than 250 resident students were also subject to the tax, it would increase the annual revenue by $1,674,074. If the tax were applied to all residents of the unorganized borough, it would generate an additional $6,557,097. Thus, a head tax on the unorganized borough that is equivalent to the school tax paid by residents of organized boroughs would generate between $15 million and $23 million annually, depending on policy decisions regarding applicability of the tax.

2. Provide Financial Aid to Boroughs.

Boroughs (and city governments) are political subdivisions of State government. They are created to provide fundamental services on behalf of the State. Most local governments in the United States receive general financial aid from their respective state governments. The State of Alaska is a notable exception.

The gradual reduction and eventual elimination over the past two decades of general financial aid through the revenue sharing and safe communities programs is a significant disincentive to formation of new boroughs. Funding for those two programs reached a peak of $141,656,800 in FY 1985. Adjusted for inflation and population growth, the 1985 figure is conservatively estimated to be equivalent to $290,000,000 in today's terms.[53]

The contrast in treatment for general aid to local governments compared to education funding is notable. Education, of course, is one of the fundamental duties of borough governments (*see* AS 14.12.020(b) and AS 29.35.160(a)). While State aid for education funding has increased substantially, the financial burden placed on borough governments to provide schools has also escalated significantly. As noted earlier in this chapter, borough governments contributed $1,437,142,079 in support of their schools over the past five years. The "local contribution" required of boroughs under AS 14.17.410(b)(2) rose by 12.8 percent over the past five years. (*See* Section III of this Chapter for a discussion of the increased financial obligations placed on boroughs for delivery of education services on behalf of the State of Alaska.)

The "local contribution" required of boroughs under AS 14.17.410(b)(2) rose by 12.8 percent over the past five years.

[53]Various "inflation calculators" available online indicate that $141,656,800 in 1985 is equivalent to amounts ranging from $239,280,243 to $242,233,128 in 2003. Additionally, the population of Alaska has grown from 541,300 in 1985 to 648,818 in 2003. That represents an increase of 107,518 (19.9 percent) in the number of residents. Taking the growth of population into consideration increases the figure to a range of $286,897,011 - $290,437,520. Given that the figures above do not reflect inflation and population growth since 2003, the $290 million figure is probably conservative.

By FY 1988, the fundamental general financial aid programs for local governments had already been cut from $141,656,800 to $96,857,800 ($44,799,000 or 31.6 percent). State aid for education in FY 1988 was $431,656,373. As reflected in Table 3-8, while the fundamental general aid programs were reduced by 100 percent by FY 2004, State aid for education grew to $775,398,129 in FY 2005.[54] That represents an increase of $343,741,756 (79.6 percent) in education funding since FY 1988. The increase in education funding for FY 2005 was the highest on record. The Commission notes further that Governor Murkowski has proposed to increase education funding by an additional $126 million for FY 2006 and FY 2007.

The LBC encourages the Legislature to provide financial aid for local governments to carry out fundamental duties beyond education. Like the program-specific funding for education, such new funding for boroughs could be targeted for specific critical public services such as emergency medical, fire protection, police, and road maintenance. In terms of promoting the formation of new boroughs, it would be ideal if the aid program were designed with that goal in mind.

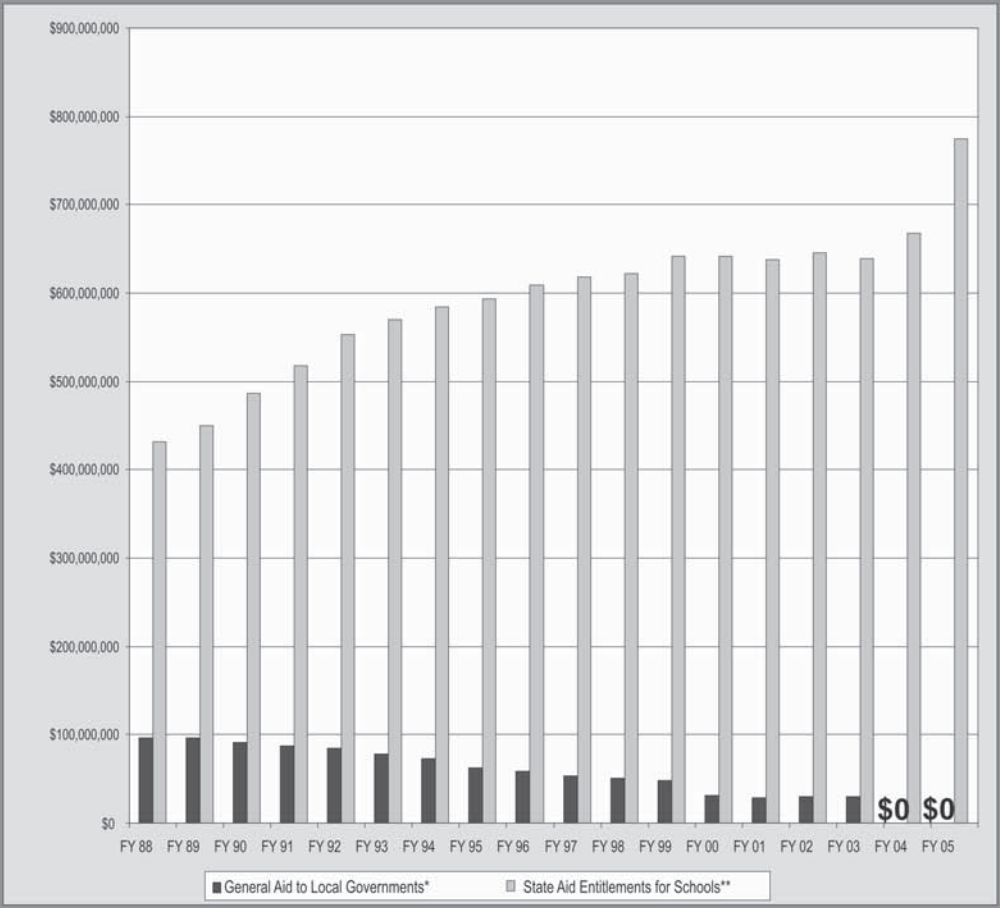
3. Increase Organization Grants for New Boroughs and Extend Grants to Boroughs That Expand Their Boundaries.

State law provides that each borough incorporated after December 31, 1985, is entitled to organization grants totaling $600,000 over three years ($300,000 the first year, $200,000 the second year, and $100,000 the third year). The grants are intended to defray the cost of transition to borough government and to provide for interim governmental operations. The level of funding has not increased in two decades. To adjust the funding for inflation alone would require an increase in the grants to more than $1 million. To offer a truly significant financial incentive to incorporate a borough, the LBC urges the Legislature to increase the amount of the grant to $5 million over a three-year period (e.g., $2.5 million the first year; $1.5 million the second year, and $1 million the third year).

Moreover, to create incentives to expand the boundaries of existing boroughs, organization grants should be extended to borough annexations. Clearly, boroughs that annex territory incur transition costs, as is the case for newly formed boroughs.

[54]The FY 2005 figure is the amount appropriated by the 2004 Legislature based on projected entitlements of all school districts. The actual figure will not be known until school district enrollment figures for FY 2005 are formally determined by DEED, based on the average daily student count over 20 consecutive school-days generally in October (AS 14.17.600).

Table 3-8



Fiscal Year	General Aid to Local Governments*	State Aid Entitlements for Schools**
FY 88	$96,857,800	$431,656,373
FY 89	$96,857,800	$449,607,417
FY 90	$91,094,000	$486,819,910
FY 91	$87,450,200	$517,645,586
FY 92	$84,995,000	$552,494,751
FY 93	$78,195,400	$570,427,417
FY 94	$72,721,800	$584,504,545
FY 95	$62,613,500	$593,824,947
FY 96	$58,230,700	$609,149,906
FY 97	$53,572,300	$617,763,007
FY 98	$50,358,000	$622,647,714
FY 99	$47,840,100	$641,945,621
FY 00	$31,893,400	$642,193,474
FY 01	$28,493,400	$638,461,956
FY 02	$29,630,700	$645,468,498
FY 03	$29,630,700	$638,933,278
FY 04	$0	$667,861,186
FY 05	$0	$775,398,129

4. Eliminate the Necessity That Boroughs Encompassing the Trans-Alaska Oil Pipeline Must Impose Property Taxes.

Under current law, organized boroughs are required to make financial contributions in support of their schools. The contributions are based on the value of taxable property within the borough. Each borough must contribute the equivalent of a 4-mill tax on the full and true value of taxable property within the borough (not to exceed 45 percent of the educational "basic need" for the borough school district).

The full and true value of a borough includes all oil and gas exploration, development, and transportation property within the borough assessed by the Department of Revenue (DOR) under AS 43.56. The State of Alaska levies a 20-mill property tax on the value of that property and credits the oil companies for taxes paid to a borough or city.

Given the current law, unorganized regions encompassing significant oil and gas exploration, development, and transportation properties would, upon borough incorporation, be faced with the prospect of substantial local contributions when calculating their 4-mill tax in support of schools. Consequently, the areas would likely have no practical alternative means of generating the required local contribution except through the levy of property taxes. The practical necessity of levying a property tax under such circumstances is a disincentive for borough formation because residents of unorganized areas generally seem to least prefer a property tax than any other type of local tax imposed on the general population. Four of the sixteen organized boroughs in Alaska do not levy property taxes.

The benefit to the State from the higher contributions resulting from the inclusion of the value of the oil and

Trans-Alaska Pipeline

gas property, of course, would be directly offset by reductions in State revenues from the State's 20-mill *ad valorem* property tax on the property in question. Thus, the amendment proposed here would have no fiscal impact on the State.

In reality, the State would likely be better off from a fiscal standpoint by such an exemption so long as local government property taxes were not levied on any oil and gas property within the borough. Doing so would insulate the State's 20-mill property tax from all fiscal impacts relating to a new borough, not just those associated with the borough's required local contribution for schools.

Such a provision would reduce impediments to borough formation in the Upper Tanana Basin, Copper River Basin, Yukon-Koyukuk region, and the Yukon Flats region. The LBC emphasizes that this option would not preclude a borough government from levying property taxes in a region with substantial oil and gas properties. It simply would not make it a practical requirement.

In 2001, the Alaska Senate adopted Senate Bill No. 48 (CS for Senate Bill No. 48(FIN) am), which included the identical provision recommended here. Because of other provisions in the bill, however, the legislation was not approved by the House. Section 2 of Senate Bill No. 48 provided as follows (underlined bold text reflects the additional language):

> AS 14.17.510(a) is amended to read:
>
> (a) To determine the amount of required local contribution under AS 14.17.410(b)(2) and to aid the department and the legislature in planning, the Department of Community and Economic Development, in consultation with the assessor for each district in a city or borough, shall determine the full and true value of the taxable real and personal property in each district in a city or borough. If there is no local assessor or current local assessment for a city or borough school district, then the Department of Community and Economic Development shall make the determination of full and true value from information available. In making the determination, the Department of Community and Economic Development shall be guided by AS 29.45.110. **<u>However, the full and true value of taxable real and personal property in any area detached shall be excluded from the determination of the full and true value of the municipality</u>**

from which the property was detached for the two years immediately preceding the effective date of the detachment. Also, in making the determination for a municipality that is a school district or for a city that is within a borough school district, the assessed value of property taxable under AS 43.56 shall be excluded if a municipal tax is not levied under AS 29.45.080 in that school district. The determination of full and true value shall be made by October 1 and sent by certified mail, return receipt requested, on or before that date to the president of the school board in each city or borough school district. Duplicate copies shall be sent to the commissioner. The governing body of a city or borough that is a school district may obtain judicial review of the determination. The superior court may modify the determination of the Department of Community and Economic Development only upon a finding of abuse of discretion or upon a finding that there is no substantial evidence to support the determination.

5. Extend Municipal Land Grants for Annexations and Consider Increases in Entitlements.

Under current law, a borough incorporated after July 1, 1978, is entitled to ten percent of the vacant, unappropriated, unreserved state lands within its boundaries. To encourage borough annexations, it is suggested that the same grants be given for any area annexed to an existing borough.

The Alaska Municipal League endorses municipal land entitlements as a means to promote annexation to boroughs. The League's formal position on the matter is set out below:

> The League supports legislative changes to entitlement lands provisions to encourage existing municipalities to provide services to portions of the unorganized borough through annexation.

Alaska Municipal League, *2005 Policy Statement*, Part III-E-3.

The prospect of increasing land entitlements to existing and future boroughs should also be explored as further incentive for the extension of borough government.

Further in this regard, the LBC notes that land entitlements for boroughs have not always been transferred as quickly as borough officials would prefer. *See*, Table 3-12 for details regarding this issue as of February 2003. The LBC understands that additional funds have been appropriated for the State agency dealing with municipal land transfers and anticipates that the remaining entitlements will be conveyed expeditiously and that any future municipal entitlement transfers will be a priority of the State.

Borough Land Entitlements – AS 29.65

Municipality	Original Entitlement	Acreage Remaining to Convey
Aleutians East Borough	7,633	5,713
Municipality of Anchorage	44,893	272
Bristol Bay Borough	2,898	349
Denali Borough	49,789	29,303
Fairbanks North Star Borough	112,000	177
Haines Borough	2,800	25
City and Borough of Juneau	19,584	160
Kenai Peninsula Borough	155,780	20,892
Ketchikan Gateway Borough	11,593	0
Kodiak Island Borough	56,500	0
Lake and Peninsula Borough	125,000	92,885
Matanuska-Susitna Borough	355,210	8,489
North Slope Borough	89,850	89,486
Northwest Arctic Borough	285,438	285,434
City and Borough of Sitka	10,500	0
City and Borough of Yakutat	21,500	20,088

Source: Table attached to February 28, 2003, Letter from Dick Mylius, Chief, DNR Resource Assessment and Development Section, Division of Mining, Land, and Water, Department of Natural Resources, to Senator Thomas Wagoner, Chair, Senate Community and Regional Affairs Committee, Alaska Senate.

6. Restrict National Forest Receipts and Restrict Shared Fisheries Fees and Taxes to Boroughs and Cities Within Boroughs.

As noted above, the 1991 Task Force on Governmental Roles concluded that ". . . recent actions by the legislature to share National Forest receipts and Fisheries Business Tax receipts with communities in the unorganized borough have removed nearly all of the few remaining incentives to organize boroughs." Those issues are addressed below.

(a) National Forest Receipts.

In 1964, following the formation of organized boroughs encompassing portions of Alaska's national forests, the State of Alaska allocated National Forest receipts on the basis of national forest acreage within each organized borough and the unorganized borough. Payments were made to organized boroughs, while the State retained the share for the unorganized borough. Because the federal law required that National Forest receipts be spent on schools and roads in the area where

the payment was generated, the State held the view that the legal requirement was met because the State spent an amount at least equal to the retained unorganized borough portion on schools and roads within the affected areas of the unorganized borough.

The Legislature changed the allocation of funds, effective in 1992. Under the revised law, the State allocated the unorganized borough portion of the funds to cities in or near the portion of the national forest in the unorganized borough, REAAs in or near the portion of the national forest in the unorganized borough, and the unincorporated community of Metlakatla. While payments to boroughs were based strictly on the amount of national forest acreage within their respective boundaries, payments to cities and REAAs within the unorganized borough depended on student enrollment (for REAAs and city school districts) and miles of roads maintained (for cities and Metlakatla).

In FY 2004, the five organized boroughs in southeast Alaska that qualified for program funds received an average of $62.60 per capita. In contrast, nineteen entities (three REAAs, nine home-rule or first-class cities, six second-class cities, and one nonprofit corporation) in the southeast Alaska portion of the unorganized borough received an average of $333.81 per capita.

The LBC notes, in particular, that REAAs within national forests receive funds not available to REAAs outside national forests. In FY 2004, the three REAAs in southeast Alaska received $1,027,546 in National Forest receipts. That amounted to $1,423 for each student in those districts (a total of 722.3 ADM for those three districts, including correspondence students).

In addition to being a disincentive to borough formation, the existing system creates broad opposition to

certain borough annexations. As noted in Chapter 2 of this report, the Ketchikan Gateway Borough is expected to propose the annexation of 5,545 square miles. Annexation of national forest lands to a borough results in the shift of national forest funds from entities in the unorganized borough to the annexing borough. According to the Department, based on FY 2004 funding, it is estimated that the proposed Ketchikan Gateway Borough annexation would shift $1,315,573 annually from unorganized borough recipients to the Ketchikan Gateway Borough. Recipients within the unorganized borough expressed concern over earlier attempts by the Ketchikan Gateway Borough to annex much of the area in question.

Restricting National Forest receipts funding to organized boroughs, as was the case prior to 1992, would create incentives for borough incorporation of the area encompassing Prince of Wales Island and other unorganized areas of southeast Alaska. It would also remove impediments to borough annexations in southeast Alaska.

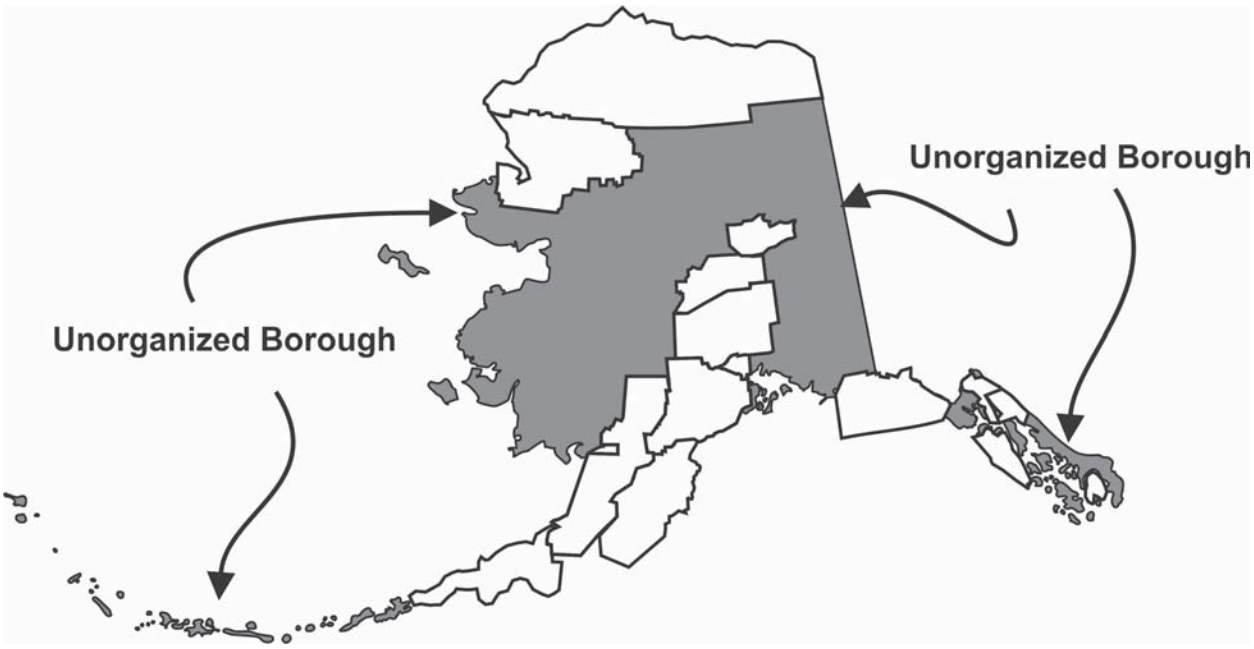
(b) Shared Fisheries Fees and Taxes.

DOR collects fisheries business license fees and taxes under the provisions of AS 43.75.011 – 43.75.290. A portion of the fees and taxes are distributed

by DOR to eligible municipalities under the formula set out in AS 43.75.130.

Fifty percent of any revenue not transferred to eligible municipalities is allocated to the Department for distribution to eligible municipalities that demonstrate significant effects from fisheries business under the provisions of AS 29.60.450.

Under the Fisheries Resource Landing Tax statutes (AS 43.77.010–200), DOR collects a landing tax on floating fisheries businesses and distributes it directly to eligible municipalities according to the formula spelled out in AS 43.77.060. Once this allocation is made, 50 percent of the funds not distributed by DOR to eligible municipalities are also transferred to Commerce for distribution to eligible municipalities.



As is the case with National Forest receipts, restricting shared fisheries fees and taxes to organized boroughs would create further incentives for borough incorporation.

Section II. Lack of Standards and Law Providing the Manner for Establishment of Unorganized Boroughs

Subsection A. Statement of the Issue:

Article X, section 3 of Alaska's Constitution requires the Alaska Legislature to enact laws providing for (1) standards for establishment of organized and unorganized boroughs and (2) methods for establishment of organized and unorganized boroughs. In 1961, the Legislature enacted standards for establishment of *organized boroughs*. Laws providing the manner for establishment of *organized boroughs* have also been enacted. However, in 46 years, the Legislature of the State of Alaska has yet to enact laws providing standards and the manner for establishment of *unorganized boroughs*.

The absence of standards for establishment of unorganized boroughs and the lack of compliance with the common-interest principle on the part of the single unorganized borough act as a significant impediment to achievement of the constitutional goals of maximum local self-government with a minimum of local government units set out in Article X, section 1 of Alaska's Constitution.

Dr. John Bebout, a consultant to the Local Government Committee at the Alaska Constitutional Convention,

Assistant Director of the National Municipal League, and Professor at the New York University School of Administration, commented in 1981 on the matter as follows:

> The legislature never did look at the state as a whole with a view to a division of the "entire state" into boroughs along meaningful social, economic and geographic lines. Instead, it provided for or accepted a number of organized boroughs of varying sizes and shapes, without regard to future borough formation, and left all the rest of the state in one "unorganized borough." This defeated for the time being the intent of the constitution that the legislature, acting in lieu of borough assemblies, should provide for the performance of services deemed appropriate to each region of the state, "allowing for maximum local participation and responsibility" in each case. . .
>
> . . . .
>
> The development of consensus for organized borough government seems likely in most regions to be a gradual process if it occurs at all. The first step toward it is to break up the single unorganized borough by a single act which establishes boundaries that make sense in terms of the socio-economic standards set by the constitution and reflect the needs of all regions of the state. To continue to create new boroughs, whether unorganized or organized, piecemeal would be likely to leave shapeless areas that could never be assembled in viable borough units unless radical changes were made in the boundaries of already established boroughs, always a politically chancy business.

Problems and Possibilities for Service Delivery and Government in the Alaska Unorganized Borough, pp. 86 - 88.

Subsection B. Background:

1. Alaska's Constitution Requires the Legislature to Enact Standards and Methods for Establishment of Unorganized Boroughs.

Article X, section 3 of Alaska's Constitution provides as follows:

> The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to

the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.[55]

In sum, Article X, section 3 imposes the following seven duties upon the Legislature:

1. Enact standards (including population, geography, economy, transportation, and other factors) for establishment of organized boroughs;
2. Enact standards (including population, geography, economy, transportation, and other factors) for establishment of unorganized boroughs;
3. Enact laws providing the manner for establishment of organized boroughs;
4. Enact laws providing the manner for establishment of unorganized boroughs;
5. Classify boroughs;
6. Prescribe the powers and functions of boroughs; and
7. Enact methods by which boroughs may be "organized, incorporated, merged, consolidated, reclassified, or dissolved."

2. Standards and Methods for Establishment of Unorganized Boroughs Have Never Been Enacted.

Five of the seven duties outlined in Article X, section 3 have been fulfilled. The exceptions are the duty to enact standards for establishment of unorganized boroughs and the duty to enact laws providing for the manner in which unorganized boroughs will be established.

The LBC views this circumstance as being analogous to the failure on the part of the Commission during the early years of Statehood to perform its duty to adopt standards for annexation.

The 1959 Legislature enacted a law providing, in part, that, "The [LBC] is hereby vested with the duties, powers, and responsibilities involved in . . . developing proposed standards and procedures for changing local boundary lines . . . ." SLA 1959, ch. 64, § 7. In 1964, the Legislature amended the law to make the

[55]The term "by law" is defined by Article XII, section 11 of the Constitution to mean "by the Legislature." It states, "As used in this constitution, the terms 'by law' and 'by the legislature,' or variations of these terms, are used interchangeably when related to law-making powers. . . ."

development of standards a precondition to the LBC's action on annexation petitions. The Commission, as it was constituted from 1964 until 1973, neglected to adopt standards. The Alaska Supreme Court concluded, in effect, that the LBC was guilty of nonfeasance. The Court stated:

> In our view the [LBC] has had sufficient time to discover sensible principles pertaining to the changing of local boundaries. Permitting continued failure on the commission's part to promulgate standards for changing local boundary lines can no longer be justified by the need for further experience.

United States Smelting, Refining and Mining Company v. Local Boundary Commission, 489 P.2d 140 (Alaska 1971).

3. Standards for Unorganized Boroughs Should Include Consideration of the Fiscal and Administrative Capacity of the Area.

Provisions were made in the Constitution for unorganized boroughs because the framers believed that, at least initially, some boroughs might lack the administrative and fiscal capacity to operate as organized boroughs. During the second reading of the proposed Local Government Article at the Constitutional Convention on January 19, 1956, the Chair of the Committee on Local Government explained to his fellow delegates:

> [W]e allow for the boroughs remaining unorganized until they are able to take on their local government functions.

Alaska Constitutional Convention Proceedings, Alaska State Legislature, Alaska Legislative Council, November 1963, p. 2612.

In addition to standards for unorganized boroughs dealing with population, geography, economy, and transportation, the requisite standard regarding "other factors" would logically include a measure of the fiscal and administrative capacity of an area to determine whether unorganized boroughs are able to take on their local government functions.

Similar views were reflected in an open letter from the Director of the State's local government agency in 1960:

> What would be reasonable standards for an unorganized borough in demonstrating its readiness and ability to become an organized — and — in the

> same vein, standards for an organized borough to achieve home rule, as provided by the state constitution? . . .
>
> . . . .
>
> The constitution makes provisions for some standards, such as economy, geography and culture, but we must have more than these. Financial ability to support self-government must be given heavy consideration. . . .

Letter from Charles W. Hughes, Director, Division of Local Affairs, January 15, 1960, pp. 2-3.

In the LBC's view, the capacity of an area to assume local responsibility is determined largely by two fundamental factors. One is the specific duties imposed on boroughs by the State. Obviously, the greater the duties imposed on boroughs (e.g., education, transportation, public safety, health and social services, etc.), the greater the difficulty regions will have in meeting the capacity threshold. The second factor is the human and financial resources available to the borough.

With regard to duties, the LBC notes that the Legislature has prescribed three fundamental duties for organized boroughs. Those are education, assessment and collection of taxes, and land use regulation.[56] Beyond that, other borough functions are discretionary.

The most substantial of those three duties is education. In terms of judging the capacity to carry out that duty, the Commission notes that State law

[56]The mandatory responsibilities of boroughs are outlined in AS 29.35.160 – 29 35.180 below:

Sec. 29.35.160. Education. (a) Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation in a borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education and Early Development. However, operation of the military reservation schools by the borough school district may be required by the Department of Education and Early Development under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education and Early Development, operation, management, and control of schools on the military reservation transfers to the borough school district in which the military reservation is located.

Footnote continued on next page

provides greater State aid for education in boroughs with lower levels of taxable property.[57] In other words, the financial burden to support schools that is placed on municipal school districts with less resources is proportionately lower than it is for communities and regions that have greater fiscal capacity.[58] The common perception that poorer areas are unable to assume responsibility for municipal government is not necessarily valid.[59]

For example, as shown in Table 3-9 on the following page, in FY 2005, the City of St. Mary's, which operates a city school district, was subject to a local contribution requirement for its schools that was equivalent to $127 per resident student. In contrast, the per-student required local contribution of the North Slope Borough was $4,721, more than 37 times that of the City of St. Mary's.[60]

The LBC is, of course, not suggesting that unorganized boroughs themselves would have any governmental powers. The authority to exercise governmental powers in unorganized boroughs rests exclusively with the Alaska Legislature which, under

Footnote continued from previous page

(b) This section applies to home rule and general law municipalities.

Sec. 29.35.170. Assessment and collection of taxes. (a) A borough shall assess and collect property, sales, and use taxes that are levied in its boundaries, subject to AS 29.45.

(b) Taxes levied by a city shall be collected by a borough and returned in full to the levying city. This subsection applies to home rule and general law municipalities.

Sec. 29.35.180. Land use regulation. (a) A first or second class borough shall provide for planning, platting, and land use regulation in accordance with AS 29.40.

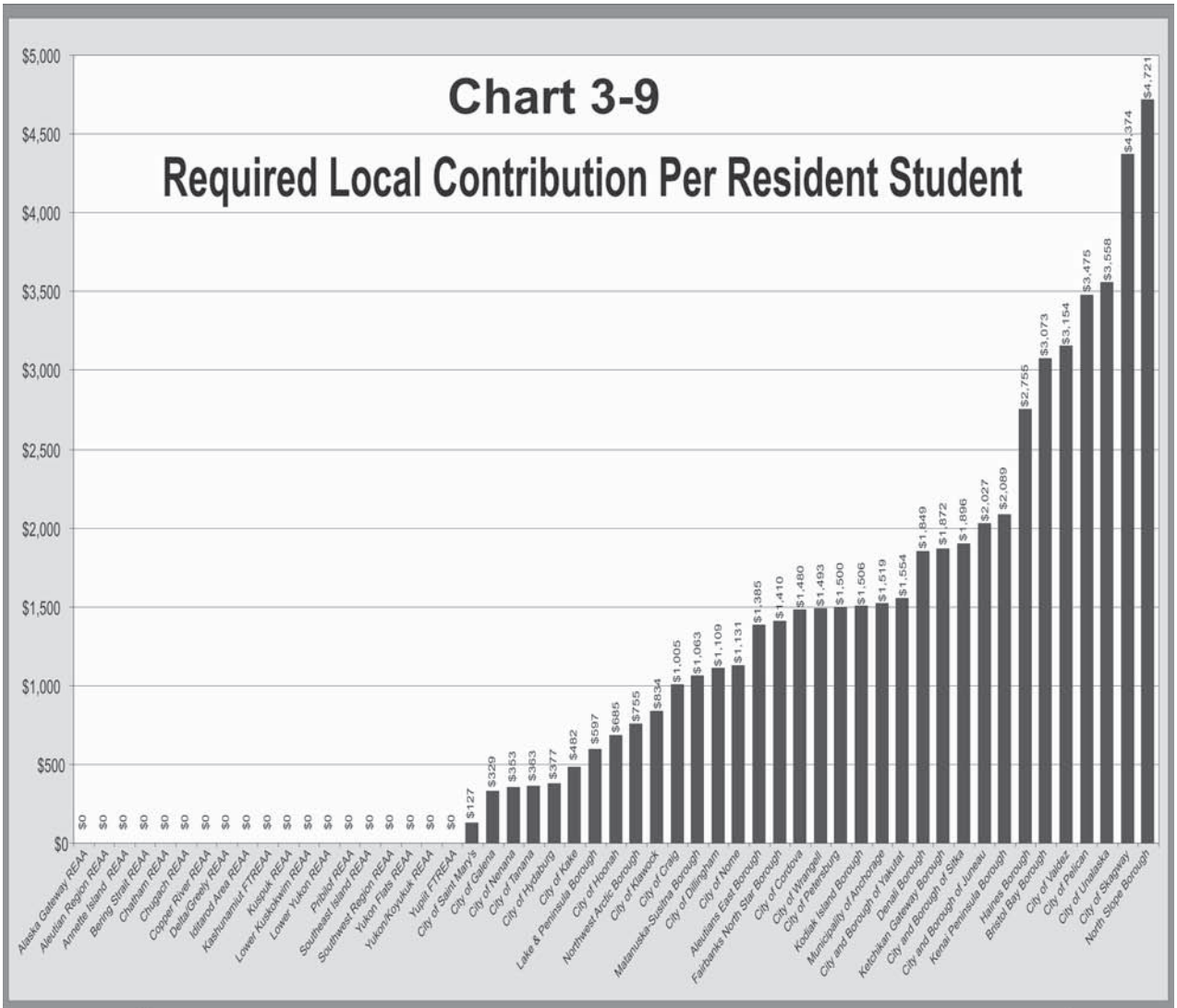
(b) A home rule borough shall provide for planning, platting, and land use regulation.

[57]Details about the formula are provided in the discussion in this chapter about the need to amend AS 14.17.510.

[58]Without regard to fiscal capacity, REAAs and FTREAAs are not required to make local contributions.

[59]In terms of fiscal capacity, the LBC recognizes that the elimination of funding for the State Revenue Sharing and Safe Communities programs has had a detrimental effect on the capacity of regions to carry out responsibilities locally.

[60]Figures are based on FY 2005 required local contributions divided by the latest enrollment figures (FY 2004).



DISTRICT	REQUIRED LOCAL CONSTRIBUTION PER RESIDENT STUDENT	DISTRICT	REQUIRED LOCAL CONSTRIBUTION PER RESIDENT STUDENT	DISTRICT	REQUIRED LOCAL CONSTRIBUTION PER RESIDENT STUDENT
Alaska Gateway REAA	$0	Yupiit FTREAA	$0	City of Wrangell	$1,493
Aleutian Region REAA	$0	City of Saint Mary's	$127	City of Petersburg	$1,500
Annette Island REAA	$0	City of Galena	$329	Kodiak Island Borough	$1,506
Bering Strait REAA	$0	City of Nenana	$353	Municipality of Anchorage	$1,519
Chatham REAA	$0	City of Tanana	$363	City and Borough of Yakutat	$1,554
Chugach REAA	$0	City of Hydaburg	$377	Denali Borough	$1,849
Copper River REAA	$0	City of Kake	$482	Ketchikan Gateway Borough	$1,872
Delta/Greely REAA	$0	Lake & Peninsula Borough	$597	City and Borough of Sitka	$1,896
Iditarod Area REAA	$0	City of Hoonah	$685	City and Borough of Juneau	$2,027
Kashunamiut FTREAA	$0	Northwest Arctic Borough	$755	Kenai Peninsula Borough	$2,089
Kuspuk REAA	$0	City of Klawock	$834	Haines Borough	$2,755
Lower Kuskokwim REAA	$0	City of Craig	$1,005	Bristol Bay Borough	$3,073
Lower Yukon REAA	$0	Matanuska-Susitna Borough	$1,063	City of Valdez	$3,154
Pribilof REAA	$0	City of Dillingham	$1,109	City of Pelican	$3,475
Southeast Island REAA	$0	City of Nome	$1,131	City of Unalaska	$3,558
Southwest Region REAA	$0	Aleutians East Borough	$1,385	City of Skagway	$4,374
Yukon Flats REAA	$0	Fairbanks North Star Borough	$1,410	North Slope Borough	$4,721
Yukon/Koyukuk REAA	$0	City of Cordova	$1,480		

Article X, section 6 of the Alaska Constitution, has the capacity to "exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough." Creation of unorganized boroughs would help the State provide critical services on a more carefully controlled regional basis, facilitate the gathering of information that reflects regional differences, and separately track state expenditures and revenues in each of the unorganized boroughs.

4. A Single, Residual Unorganized Borough Does Not Conform to Constitutional Guidelines.

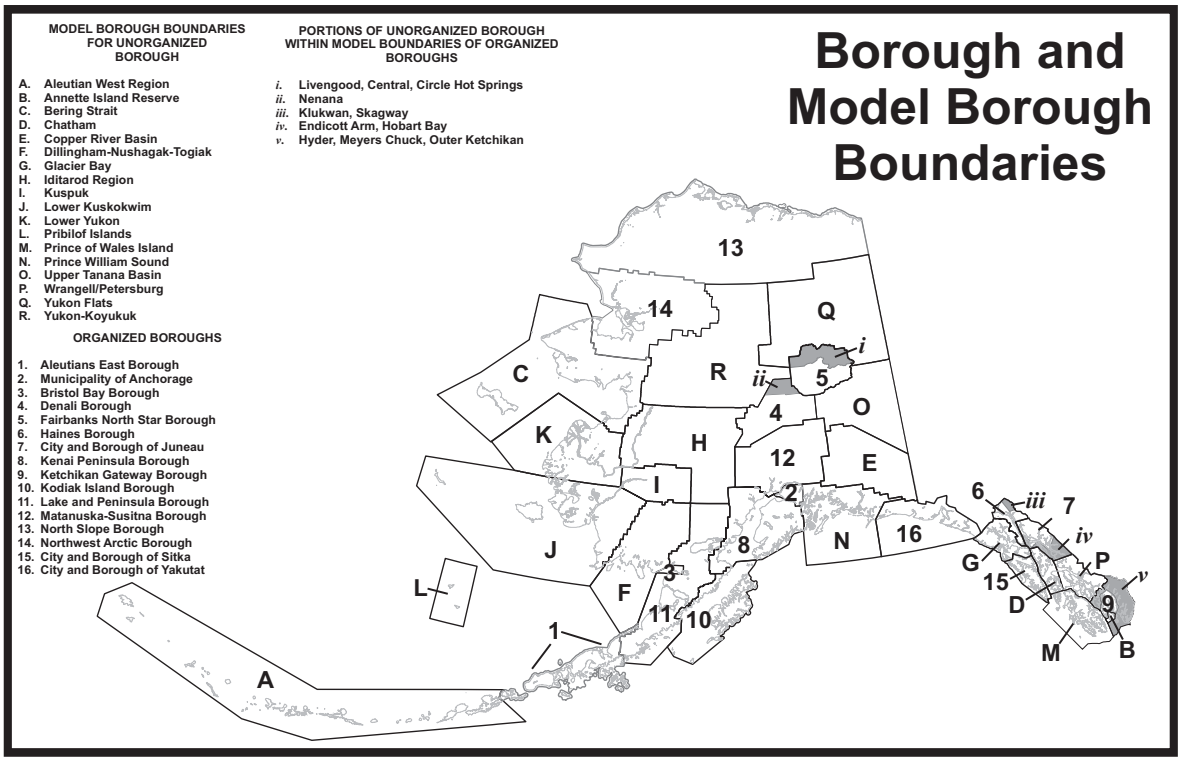
In 1960, the LBC had recommended to the Legislature that the LBC be given the duty, subject to review by the 1961 Legislature, to divide all of Alaska into boroughs, organized or unorganized. The recommendation, however, was rejected.

Instead, the 1961 Alaska Legislature, without the benefit of standards, established a single unorganized borough encompassing all of Alaska not within an organized borough. Given the vast and diverse nature of Alaska, establishing a single, residual unorganized borough does not adhere to the mandate in Article X, section 3 that each borough, organized or organized, "embrace an area and population with common interests to the maximum degree possible."

From its inception, the unorganized borough has embraced an area and population with highly diverse interests rather than the maximum common interests required by the Constitution. The contemporary contrasts in various parts of the unorganized borough are remarkable. As currently configured, the unorganized borough contains an estimated 374,843 square miles, 57 percent of the total area of Alaska. It ranges in a noncontiguous manner from the southernmost tip of Alaska to approximately 150 miles above the Arctic Circle. The unorganized borough also extends in a noncontiguous manner from the easternmost point in Alaska (at Hyder) to the westernmost point in Alaska at the tip of the Aleutian Islands. The unorganized borough encompasses all or portions of:

- Alaska's four judicial districts;
- eleven census areas;
- nine state house election districts;
- seventeen REAAs and two FTREAAs;
- ten of Alaska's thirteen regional Native corporations formed under the Alaska Native Claims Settlement Act;
- eighteen model boroughs and model borough boundary areas for five existing organized boroughs.

In short, the unorganized borough is comprised of a vast area with widely diverse interests rather than maximum



common interests as required by the Constitution. This is particularly evident from the fact that the unorganized borough spans so many house election districts, census districts, REAAs, regional Native corporations, and model boroughs, many of which are comprised of areas with common social, cultural, and other characteristics.

Compliance with the common interests clause of Article X, section 3 of Alaska's Constitution could be achieved with respect to the unorganized borough if AS 29.03.010 were amended to divide the single unorganized borough into multiple unorganized boroughs formed along natural regions.

The foundation for such an effort already exists in the form of model borough boundaries established by the Commission between 1989 – 1992. Those boundaries were defined using all the constitutional, statutory, and regulatory boundary standards for organized boroughs. During the multi-year effort, hearings were conducted in 88 communities throughout Alaska.

The LBC formally adopted the model borough boundaries under 3 AAC 110.990(9). The Commission views those boundaries as a credible and useful tool in guiding future policy decisions regarding the establishment and alteration of borough governments. In recent years, the model

borough boundaries have been challenged by some. The challenge seems to have its roots in the 2002 unanimous decision of the LBC to reject a particular borough boundary proposal.

In her comments to the LBC on January 5, 2005, former Senator Sturgulewski stated as follows:

> I think the biggest issue is the lack of standards and procedures for the establishment of unorganized boroughs. It was a 1961 law that kind of "dumped" everybody into the unorganized borough. . . . I think that it would be well to consider unorganized borough boundaries based on . . . the model borough boundaries developed by the LBC.[61]

Senator Sturgulewski emphasized that in 1981, then-Governor Hammond adopted Administrative Order No. 65, establishing "State Information Districts" to develop and report information on conditions within those districts. The boundaries of the State Information Districts were based on boroughs and REAAs.[62] Senator Sturgulewski urged the LBC to recommend that the Legislature and the Governor adopt a similar measure with respect to existing boroughs and model boroughs. A copy of Administrative Order No. 65 is included as Appendix C in this report.

Administrative Orders
FROM THE OFFICE OF THE GOVERNOR OF ALASKA

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 20, 1981

ADMINISTRATIVE ORDER NO. 65

All agencies of the executive branch of the state government shall use State Information Districts designated by this order to develop and report information on conditions within their respective jurisdiction and on their programs as may be required by specific request by the Division of Budget and Management.

The State Information District boundaries shall coincide with the boundaries of the following as they now exist or may exist in the future:

(1) all unified home rule municipalities,
(2) all organized boroughs; and
(3) all rural educational attendance areas.

Census subarea 1783 (Skagway) shall be used as a boundary until such time it is subsumed within one of the above categories.

By June 30, 1981, the Department of Natural Resources shall issue a map at a scale which accurately depicts these boundaries and also provides a metes and bounds description, utilizing latitude and longitude as points to the extent practicable.

To the extent that the use of State Information Districts for reporting purposes will result in significant expense or inefficiency within state government, their use will be excused by the Division of Budget and Management.

The Division of Policy Development and Planning is designated the lead agency to implement this order, and to ensure that the system for developing and reporting information is consistent throughout the executive branch, it is authorized and directed to supervise the development of the system in each agency and coordinate the development of the system between agencies, beginning no later than May 1, 1981, and ending no later than May 1, 1982.

Beginning with the budget for fiscal year 1983, agency program and financial plans prepared under AS 37.07.050 and agency performance reports prepared under AS 37.07.080 shall be prepared so as to locate programs and expenditures with reference to the boundaries established by this order; however, except as they would otherwise do so, agencies are not required to prepare budgets, programs, or objectives on the basis of these boundaries.

This administrative order takes effect immediately.

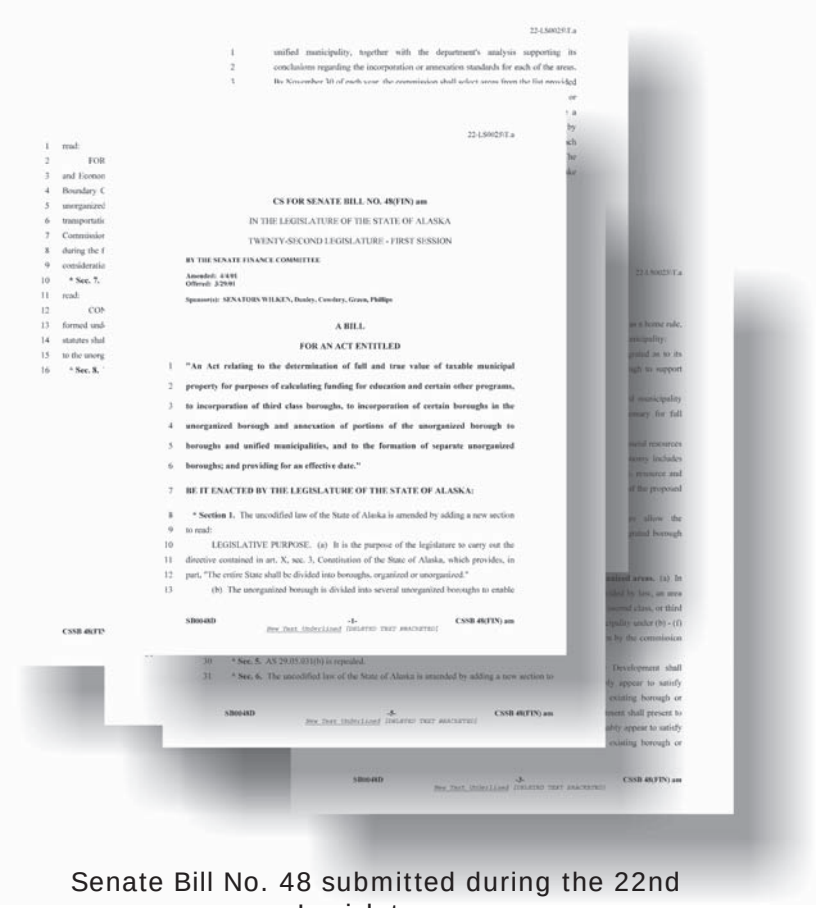
DATED March 20, 1981, at Juneau, Alaska.

S/S Jay S. Hammond
Jay S. Hammond
Governor of Alaska

[61]Senator Sturgulewski acknowledged that there is controversy over the model borough boundaries. She stressed that if they are "out-of-date," as some critics have suggested, they should be updated.

[62]It is noteworthy that, in many cases, the boundaries of REAAs are used as model borough boundaries. REAAs are regional governmental institutions established thirty years ago for the efficient and effective delivery of educational services in the unorganized borough. Statutory standards for REAA boundaries, set out in AS 14.08.031, are very similar to those for boroughs. When REAAs were created in 1975, they were widely perceived as forerunners to organized boroughs. However, just as the formal corporate boundaries of organized boroughs are flexible to accommodate changing social, cultural, and economic conditions, the Commission recognizes that the model borough boundaries are also flexible. The Commission has found that in certain instances, social, economic, or other developments since 1992 have warranted changes to model borough boundaries. In 1996, the LBC modified the model borough boundaries for the Prince William Sound region. Following the merger of the Adak REAA with the Aleutians REAA, the LBC modified the Aleutians West Model Borough to encompass all of the territory west of the Aleutians East Borough.

The Commission embraces Senator Sturgulewski's recommendation and notes that several legislative proposals have been introduced to divide the unorganized borough along model borough boundary lines. The need for dividing the unorganized borough was well articulated in SB 48 in the 22nd Legislature. The bill stressed that doing so would "enable the state to provide critical services on a more carefully controlled regional basis, to facilitate the gathering of information that reflects regional differences, and to separately track state expenditures and revenues in each of the unorganized boroughs."



CS FOR SENATE BILL NO. 48(FIN) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Amended: 4/4/01
Offered: 3/29/01

Sponsor(s): SENATORS WILKEN, Donley, Cowdery, Green, Phillips

A BILL

FOR AN ACT ENTITLED

"An Act relating to the determination of full and true value of taxable municipal property for purposes of calculating funding for education and certain other programs, to incorporation of third class boroughs, to incorporation of certain boroughs in the unorganized borough and annexation of portions of the unorganized borough to boroughs and unified municipalities, and to the formation of separate unorganized boroughs; and providing for an effective date."

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

Senate Bill No. 48 submitted during the 22nd Legislature.

Senator Fischer stressed in his comments to the LBC on January 5, 2005, that action should be taken on this step in the near term in order to ensure that such boundaries will be in place prior to preparations for the 2010 federal Census.

5. Prior Legislative Proposals Have Recognized That the Unorganized Borough Does Not Conform to the "Common Interests Clause" of the Constitution.

During the past ten years, at least six legislative proposals recognized that the unorganized borough does not conform to the common interest clause of Article X, section 3 of the Constitution. For example, Senate Bill No. 48 in the 22nd Legislature would have

required the State's local government agency to propose the division of the single unorganized borough into multiple unorganized boroughs using standards regarding population, geography, economy, and transportation. The LBC would have been required to submit each proposed unorganized borough to the Legislature for review under Article X, section 12 of Alaska's Constitution.[63]

6. The Failure to Follow the Constitutional Principles Concerning Unorganized Boroughs Hinders Coordinated Delivery of State Services.

In remarks to the LBC on January 5, 2005, former Senator Victor Fischer stressed the importance of establishing multiple unorganized boroughs. Senator Fischer pointed out that the issue was *the* fundamental concern in a 1979 Local Government Study initiated by the Chairmen of the Senate and House Community and Regional Affairs Committees in response to recognized problems related to local government in Alaska.[64]

The study recommended the establishment of multiple regional unorganized boroughs. The purpose of doing so was two fold: (1) to promote efficient and effective delivery of all state services, and (2) to provide common areas for collection of information, data, and other materials important to the region and to agencies responsible for provision of technical and financial assistance.

Subsection C. Recommendation:

The LBC recommends that the Alaska Legislature enact laws providing standards for establishment of unorganized boroughs and the manner in which unorganized boroughs are created.

The LBC envisions that the standards relating to unorganized boroughs would be identical to those for organized boroughs, except with respect to fiscal and administrative capacity. Organized borough standards are set out in AS 29.05.031 below:

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[63]Other measures included SB 142 and HB 205 in the 20th Legislature and SB 280, SB 337, and HB 250 in the 19th Legislature.

[64]*Local Government Study – 1979,* Senate and House Community and Regional Affairs Committees. Members were Senator Arliss Sturgulewski, Senator Tim Kelly, Senator Bob Mulcahy, Senator Pat Rodey, Senator Terry Stimson, Representative Bill Parker, Representative Margaret Branson, Representative Pat Carney, Representative Ray Metcalfe, Representative Pat O'Connell, Representative Charlie Parr, and Representative Fred Zharoff.

Sec. 29.05.031. Incorporation of a borough or unified municipality.

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

The following are excerpts from the preliminary report of the *Local Government Study - 1979* that identified issues and problems being studied.

- **EXISTING UNORGANIZED BOROUGH IS INADEQUATE**
  Most of rural Alaska is characterized by lack of adequate governmental services and by absence of appropriate vehicles for meeting local and regional needs. **The existing single unorganized borough consists of those parts of the state left over after other areas become organized. It is not a region; it is an "amorphous mass."** As a result, the present unorganized borough does not provide any basis for the delivery of state services or for fostering of local self-determination (emphasis added).

- **NO SELF-GOVERNMENT OR PARTICIPATION IN RURAL REGIONS**
  Alaska's constitution calls for maximum local self-government. It requires that the legislature provide for performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. But rural people have virtually no say on what happens in their regions.

- **ABSENCE OF COORDINATED APPROACH TO DELIVERY OF PUBLIC SERVICES**
  Lack of officially recognized regional boundaries has created a situation in which numerous entities (such as Native corporations and regional nonprofit organizations), having no official links to state government, are called upon and attempt to deliver services and provide local and regional control. Confusion and frustration have resulted from the proliferation of these entities. Villages and small communities are overwhelmed by state, federal, and quasi-governmental programs and service deliverers, which provide uncoordinated and unplanned solutions to local problems and needs. There is no coordinated approach to service delivery. Instead, there is an array of programs administered in an uncoordinated manner. These multitudinous separate efforts contribute to the inability of villages to digest all the "bits and pieces." . . .

- **DIFFICULTIES OF REGIONAL PLANNING IN RURAL REGIONS**
  A major problem resulting from the lack of officially recognized regional boundaries has been the inability of the state to provide for comprehensive planning in rural Alaska - the type of planning which would be both long range and short term, providing an alternative to dealing with each problem on a confrontation basis. The lack of this local/regional planning capability leads to a lack of local control and coordination of state and federal programs in rural Alaska.

- **LACK OF REGIONAL COORDINATION BY STATE**
  Fragmentation of service delivery also results from the proliferation of district boundaries used by governmental agencies for both administrative and service delivery functions. . . . [T]hese overlapping jurisdictional boundaries were depicted as confusing roadblocks to the efficient delivery of services to citizens. . . .

The LBC notes that these same issues and problems exist today and underlie the conclusions and recommendations in this report.

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

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

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

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

The LBC is prepared to lend its expertise and assistance to the Legislature in the development of appropriate standards and procedures for establishment of unorganized boroughs.

Section III. Funding for Borough Feasibility Studies

Subsection A. Statement of the Issue:

There is no ready source of funding for borough feasibility studies.

Subsection B. Background:

AS 44.33.840 – 44.33.846 authorizes the undertaking of borough feasibility studies. Unfortunately, however, funding for the studies has never been appropriated. As outlined in Chapter 2 of this report, certain regions have interest in considering borough incorporation. If the Legislature institutes adequate inducements for borough incorporation on the order recommended by the LBC earlier in this Chapter, interest in borough incorporation will likely increase significantly.

Subsection C. Recommendation:

The Commission recommends that the Legislature appropriate $100,000 to be available for local borough study efforts in the near term. If inducements for borough incorporation are implemented, that figure should be increased significantly.

Section IV. The Law Curbing the Escalating "Tax" on Borough and City School Districts Lacks Provisions to Deal with Boundary Changes.

Subsection A. Statement of the Issue.

In 2001, the Legislature amended the formula under which State aid for borough and city school districts is calculated. The amendment was intended to provide modest financial relief for the boroughs and 18 cities that are required to make a "local contribution" in support of their schools.

The "local contribution" results in a direct offset of State aid for those districts. In other words, for each dollar that a borough or city is required to contribute, State aid to that borough or city school district declines by one dollar. If a borough or city fails to make its required "local contribution," all State aid for education is withheld from that borough or city school district.

In effect, the required "local contribution" is a State tax imposed on organized boroughs and cities that operate schools. Public school districts other than boroughs and cities are not required to make local contributions. Therefore, those other districts are exempt from the tax.

Prior to the 2001 amendment, the required "local contribution" for many boroughs and cities had been escalating significantly year after year. The 2001 amendment slowed the increase in the required "local contribution" for those boroughs and cities.

However, it is unclear how the 2001 amendment applies with respect to municipal boundary changes for boroughs and cities that are required to operate schools (i.e., formation of a new borough or city school district, annexation to an existing borough or school district, or detachment from an existing borough or city school district). It appears that the prospect for such boundary changes was not considered when the 2001 amendment was crafted.

Detailed background information on the issue is provided below. The Commission is only proposing modifications to address inadequacies in the amended law when boundary changes are at issue. However, to understand the rationale underlying the current law, a fair amount of detailed background information is warranted to place the boundary issue in the proper context. Following that background information, the LBC offers a specific recommendation to clarify the law.

Subsection B. Background.

1. The State of Alaska Has a Duty to Provide Education.

The Legislature has a constitutional duty to "establish and maintain a system of public schools" (Article VII, section 7). That duty is largely carried out through four types of school districts: (1) borough school districts, (2) home-rule and first-class city school districts in the unorganized borough, (3) REAAs, and (4) FTREAAs.[65]

Currently, there are 16 borough school districts, 18 city school districts, 17 REAAs, and 2 FTREAAs.

2. Distinctions Among the Four Types of School Districts.

The LBC recognizes three fundamental distinctions with respect to the different types of school districts. Those are outlined below:

(a) Size and Economies of Scale.

The first distinction among the types of school districts relates to size and economies of scale. Borough school districts and REAAs generally encompass large regions, multiple schools, and relatively large numbers of students. In contrast, each city school district and FTREAA generally encompasses a single community, few schools, and relatively small numbers of students. It is notable that because city school districts and FTREAAs exist as enclaves within REAAs, the number of schools and the number of students served by REAAs would be significantly greater if REAAs served all students within the region. Table 3-10 reflects average characteristics of each of the four types of school districts regarding size and economies of scale.

Table 3-10
Comparison of School District Types Regarding Size and Economies of Scale

Type	Average Size (sq. miles)	Average Number of Schools	Average Number of Students
Boroughs	17,242	18	6,406
REAAs	21,578	8	720
Cities	74	2	318
FTREAAs	10	2	398

[65] *See* n. 10 Beyond education services provided through the four types of districts listed above, in FY 2004, the State also operated two educational facilities: Alyeska Central School, a statewide correspondence school, and Mt. Edgecumbe High School, a boarding school in Sitka More details regarding these schools are provided in Table 3-7, above.

Table 3-11
Comparison of School District Types in Terms of Vested Responsibilities and Legal Capacity

Type	Taxing Power	Authority to Initiate Debt	Legislative Powers	Elected By
Borough	Borough Assembly	Borough Assembly	Borough Assembly	Borough Voters
City	City Council	City Council	City Council	City Voters
REAA	Alaska Legislature	Alaska Legislature	Alaska Legislature	Borough, City, REAA, and FTREAA Voters
FTREAA	Alaska Legislature	Alaska Legislature	Alaska Legislature	Borough, City, REAA, and FTREAA Voters

(b) Local Versus State Responsibility and Legal Capacity.

The second fundamental distinction among the different types of districts relates to local versus State responsibility and legal capacity. Borough and city school districts are components of their respective municipal corporations. As political subdivisions of the State of Alaska, borough and city governments hold the power to levy taxes, issue debt, enact laws, and otherwise exercise broad responsibilities of general local governments. Those powers are vested in locally elected borough assemblies and city councils. In contrast, REAAs and FTREAAs are single-purpose service areas of Alaska's unorganized borough. They are instrumentalities of State government. The Alaska Legislature holds exclusive power to levy taxes, issue debt, and enact laws regarding REAAs[66] and FTREAAs. Those powers are vested in 60 legislators[67] who, by overwhelming margins, reside outside REAAs and FTREAAs and are elected by voters living within the other types of school districts (i.e., boroughs, home-rule cities in the unorganized borough, and first-class cities in the unorganized borough). Table 3-11

[66] In 2003, REAAs were, however, granted limited authority to borrow funds through the Alaska Housing Finance Corporation for construction or acquisition of teacher housing. (AS 14.08.101(9), AS 18.56.580.)

[67] Article X, section 6 of Alaska's Constitution. *See* n. 5 above for full text of this section.

provides a comparison of the different types of school districts in terms of vested responsibilities and legal capacity.

(c) State Aid for Operation of Schools.

The third fundamental distinction concerns State aid for operation of schools. That distinction is at the root of the issue at hand. State aid for all types of school districts is nominally defined by AS 14.17.410(b)(1) and represented by the following formula:

Basic Need[68]

– required local contribution

– 90% of federal impact aid

= State aid

The distinction among types of school districts with respect to State aid arises from the fact that only borough and city school districts are subject to the required local contribution provision. Thus, in effect, two divergent formulas for State aid apply to school districts. Those are reflected below:

As shown in the above formulas, the "required local contribution" of a city or borough school district results in a direct offset of State aid for education. For every dollar that a borough or city is required to contribute, State aid to that borough or city school district is decreased by one dollar. Moreover, AS 14.17.410(d) provides that, "State aid may not be provided to a city or borough school district if the local contributions required under (b)(2) of this section have not been made." In effect, the "required local contribution" is a State tax imposed on organized boroughs and cities that operate schools. REAAs and FTREAAs are not required to make local contributions.

The contribution requirement for boroughs and cities is set out in AS 14.17.410(b)(2). It provides as follows:

Formula Applicable to Borough and City School Districts	Formula Applicable to REAAs and FTREAAs
Basic Need	Basic Need
– required local contribution	
– 90% of federal impact aid	– 90% of federal impact aid
= State aid	= State aid

[68]The term "basic need" is defined in the glossary.

> [T]he required local contribution of a city or borough school district is the equivalent of a four mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year, as determined by the Department of Community and Economic Development under AS 14.17.510 and AS 29.45.110 , not to exceed 45 percent of a district's basic need for the preceding fiscal year as determined under (1) of this subsection.

AS 14.17.510 sets out the method by which the full and true value of taxable property is determined. Prior to the 2001 amendment, AS 14.17.510 read as follows:

> **Sec. 14.17.510. Determination of full and true value by Department of Community and Economic Development.** (a) To determine the amount of required local contribution under AS 14.17.410(b)(2) and to aid the department and the legislature in planning, the Department of Community and Economic Development, in consultation with the assessor for each district in a city or borough, shall determine the full and true value of the taxable real and personal property in each district in a city or borough. If there is no local assessor or current local assessment for a city or borough school district, then the Department of Community and Economic Development shall make the determination of full and true value from information available. In making the determination, the Department of Community and Economic Development shall be guided by AS 29.45.110. The determination of full and true value shall be made by October 1 and sent by certified mail, return receipt requested, on or before that date to the president of the school board in each city or borough school district. Duplicate copies shall be sent to the commissioner. The governing body of a city or borough that is a school district may obtain judicial review of the determination. The superior court may modify the determination of the Department of Community and Economic Development only upon a finding of abuse of discretion or upon a finding that there is no substantial evidence to support the determination.

(b) Motor vehicles subject to the motor vehicle registration tax under AS 28.10.431 shall be treated as taxable property under this section.

3. Concerns Over the Required Local Contribution Provision.

Concerns have long been expressed by some that the "required local contribution" (i.e., the "State tax" selectively levied on organized boroughs and cities that operate school districts) is problematic in two fundamental respects. The first is that it is inequitable – perhaps even unconstitutional. The second is that it amounts to a breach of promise on the part of the State of Alaska.

(a) Concerns Over Inequity.

The concerns over inequity stem from the fact that the provision for the required local contribution applies only to a particular class of Alaskans (i.e., residents of boroughs and residents of home-rule and first-class cities in the unorganized borough) and that no rational basis exists (e.g., fiscal capacity to support schools) to distinguish that class from the remainder of Alaskans (i.e., residents of REAAs and FTREAAs).

In 1997, the Alaska Supreme Court ruled on an appeal over whether the divergent funding scheme violated the equal-protection clause under Alaska's Constitution. *Matanuska-Susitna Borough School District v. State,* 931 P.2d 391 (Alaska 1997). In large part because the Court held that "freedom from disparate taxation, lies at the low end of the continuum of interests protected by the equal protection clause," the Court concluded that there was no violation of the equal protection clause. A synopsis of the *Matanuska-Susitna* case is provided in this report as Appendix B. Readers are encouraged to review the synopsis when considering the issue of equity.

The Court ruling has certainly not curtailed concerns over the issue. The conclusion by the 1991 Task Force on Governmental Roles that such inequity "is a perennial area of conflict in Alaska politics" is as true today as it was then.

In their concurring statements in *Matanuska-Susitna*, Justices Matthews and Rabinowitz indicated that the proper venue for resolution of the issue is the Alaska Legislature. Justices Matthews and Rabinowitz noted that "any available remedy must be pursued through majoritian processes rather than through the courts." *Id.,* at 406.

It is noteworthy that no fewer than nine proposals were introduced in the Alaska Legislature over the past decade to address the issue of equity. For example, Senate Bill No. 30 in the 20th Legislature included a finding that:

> [T]he rights, opportunities, and obligations of borough residents are not equal to those of residents in the unorganized borough, particularly in respect to education, taxation, and land use regulation, and that this is not in keeping with art. I, sec. 1, of the Constitution of the State of Alaska, that states in part,'. . . that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State'.

SB 30 provided for the levy of a six-mill property tax levy within each of several unorganized boroughs (excluding the territory within home-rule and first-class cities) established along the model borough boundaries identified by the LBC.[69]

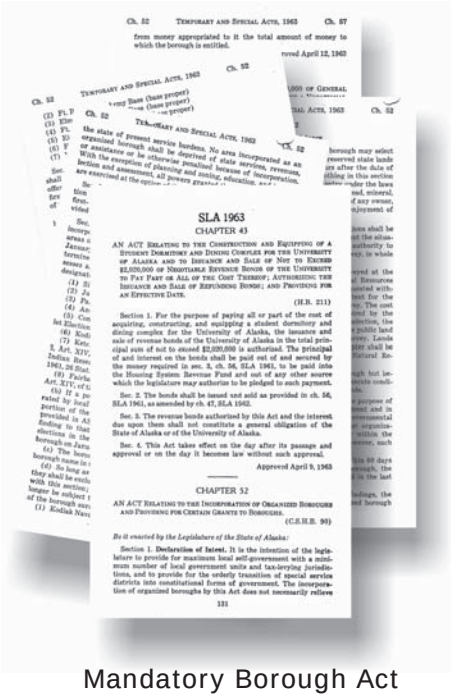
Members of the 1963 Legislature.

While not addressed by the Court in *Matanuska-Susitna,* adding to the concerns over inequity is the fact that the overwhelming majority of those subject to the local contribution requirement live in districts that were incorporated by the 1963 legislative mandate to incorporate eight specific areas of Alaska. More than 95 percent of borough residents live in boroughs that were mandated to incorporate under the 1963 Mandatory Borough Act. The Legislature has made no similar enactment subsequent to 1963 to ensure that residents of other areas of the unorganized borough that possess the fiscal and administrative capacity to operate boroughs incorporate boroughs.

[69]Other bills addressing the issue of equity include HB 470 in the 23rd Legislature; HB 2, in the 22nd Legislature; SB 142, SB 146, SB 337, and HB 205 in the 20th Legislature; and SB 280 and HB 250 in the 19th Legislature.

(b) Concerns Over Breach of Promise.

As noted in part B-2(c), the "local contribution" required of each organized borough and city that operates a school district acts as a decrement to the level of State aid for schools received by that borough or city school district. Because the "required local contribution" provision applies only to borough and city school districts, and not to REAAs and FTREAAs, it can be viewed as a "penalty" imposed on boroughs and cities that operate schools.


SLA 1963
CHAPTER 43
CHAPTER 52

Mandatory Borough Act

In 1963, the Legislature mandated that eight specific regions of Alaska incorporate boroughs. Those were the greater regions of Ketchikan, Juneau, Sitka, Kodiak Island, Kenai Peninsula, Anchorage, Matanuska-Susitna Valleys, and Fairbanks. The 1963 Mandatory Borough Act included a statement of intent that, "No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation." Sec. 1, Ch. 52, SLA 1963.

That statement of intent, viewed as a promise, has long since been abandoned.

Boroughs formed under the 1963 Mandatory Borough Act are responsible for educating the vast majority of Alaska's students. In FY 2004, 80 percent of resident students (97,040 of 108,215) were educated by mandatorily formed boroughs.

Boroughs formed under the 1963 Mandatory Borough Act bear, by far, the greatest burden of the funding decrement imposed by the required "local contribution." In FY 2005, the mandatorily formed boroughs accounted for $148,928,606 of the $171,057,616 in required "local contributions." That figure represents 87 percent of all required local contributions for FY 2005.

Moreover, given the formulas involved, the mandatorily formed boroughs generally experienced the greatest increases in the annual decrements for education funding resulting from the "local contributions" required by AS 14.17.410(b)(2).

4. 2001 Amendment.

(a) The Change in the Law.

In 2001, the Alaska Legislature passed a bill amending AS 14.17 regarding State aid to public schools.[70]

Section 3 of the law was intended to provide moderate financial relief for boroughs and cities that are subject to the State "tax" for education in the form of required "local contributions." Section 3 did not reduce the financial burden for those boroughs and cities; however, it slowed the *increase* in that burden for some boroughs and cities beginning in FY 2002.

Specifically, Section 3 of Ch 95 SLA 2001 provided as follows:

> **Sec. 3.** AS 14.17.510 is amended by adding a new subsection to read:
>
> (c) Notwithstanding AS 14.17.410(b)(2) and the other provisions of this section, if the assessed value in a city or borough school district determined under (a) of this section increases from the base year, only 50 percent of the annual increase in assessed value may be included in determining the assessed value in a city or borough school district under (a) of this section. The limitation on the increase in assessed value in this subsection applies only to a determination of assessed value for purposes of calculating the required contribution of a city or borough school district under AS 14.17.410(b)(2) and 14.17.490(b). In this subsection, the base year is 1999.

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[70] *HOUSE CS FOR CS FOR SENATE BILL NO. 174(FIN)* contained five sections. Section 1 expressed the intent of the Legislature that any increase in funding for education under AS 14.17 provide an opportunity for schools to move toward standards-based education and pay the costs of improving student performance by providing standards-based programs. Section 2 increased the base student allocation by $70 (from $3,940 to $4,010). Section 3, which is at issue here, amended the law regarding what is referred to in the statutes as the "required local contribution" of borough and city school districts under AS 14.17.410(b)(2). Section 4 modified the law regarding the determination of the number of schools in a district. Section 5 provided for an effective date.

The Senate, comprised of 13 Republicans and 7 Democrats, passed the bill unanimously. The House passed the bill by a vote of 29 to 11. Twenty-three of 26 House Republicans (88.5 percent) and 6 of 13 House Democrats (46 percent) voted for the bill. (The Alaska Independence Party member of the House did not vote for the bill.) The bill was signed into law as Ch 95 SLA 2001 by then-Governor Tony Knowles.

(b) Effect of the Amendment.

The 2001 amendment had the desired effect of slowing the growth of the annual decrement in State education aid (i.e., slowing the increase in the required "local contribution" or "tax") for boroughs and cities that operate schools.

In FY 2001, the "tax" totaled $152,438,383. In FY 2005, the tax grew to $171,057,616. In the four years since Section 3 of Ch 95 SLA 2001 has been in place, the amount of the annual tax on borough and city school districts has grown by $18,619,233.

Between FY 2001 and FY 2005, borough and city school districts have incurred education funding decrements (i.e., they have made "required local contributions" or paid "taxes") totaling $806,560,805. The cumulative increase in the tax for FY 2002, 2003, 2004, and 2005 amounted to $44,368,890. If the 2001 amendment had not been enacted, the cumulative tax during that same four-year period would have been roughly double the actual figure. Specifically, it would have increased by an additional $44,396,674.

Even with the 2001 amendment, the tax increased for some districts by more than 21 percent since FY 2001. Without the amendment, 15 borough and city school districts would have suffered double digit decrements.

Table 3-12 on the following page lists the decrements imposed by AS 14.17.410(b)(2) (i.e., the "required local contributions") for the 16 borough school districts and 18 city school districts for FY 2001 and FY 2005. Additionally, the cumulative decrements for the five-year period from FY 2001 through FY 2005 are also shown. Further, the table lists the percentage change in the decrements between FY 2001 and FY 2005. The 17 REAAs and 2 FTREAAs are also listed.

Even with the 2001 amendment in place, the eight boroughs formed under the 1963 Mandatory Borough Act suffered the bulk of the increased decrements between FY 2001 and FY 2005. Those eight boroughs paid 97.7 percent of the increase ($43,329,442 of the $44,368,890).

In relative terms, the City of Hoonah benefited the most from the 2001 amendment. Had AS 14.17.510(c) not been enacted, the percentage increase in the City of Hoonah's required local contribution from FY 2001 to FY 2005 would have been 42.54 percent. With the curb in place, it was still 21.27 percent.

Table 3-12
REQUIRED "LOCAL CONTRIBUTION" PAID BY LOCAL TAXPAYERS
(Ranked in descending order of total "required local contribution" from FY 2001 – FY 2005)

District	FY 2001	FY 2005	Total (FY 2002 - FY 2005)	Percentage Change from FY 2001 to FY 2005
Municipality of Anchorage	$62,643,830	$73,751,264	$338,440,837	17.73%
Fairbanks North Star Borough	$18,856,685	$20,265,902	$97,501,855	7.47%
Kenai Peninsula Borough	$16,203,652	$18,787,851	$86,593,923	15.95%
Matanuska-Susitna Borough	$11,919,135	$14,190,111	$64,884,783	19.05%
City and Borough of Juneau	$9,975,186	$10,857,132	$52,517,981	8.84%
North Slope Borough	$8,741,954	$8,546,346	$44,015,496	-2.24%
Ketchikan Gateway Borough	$4,344,296	$4,391,848	$22,146,028	1.09%
Kodiak Island Borough	$3,746,940	$3,947,342	$19,233,596	5.35%
City and Borough of Sitka	$2,543,072	$2,737,156	$13,174,419	7.63%
City of Valdez	$2,571,754	$2,725,788	$13,154,061	5.99%
Northwest Arctic Borough	$1,524,744	$1,526,651	$7,627,652	0.13%
City of Unalaska	$1,312,800	$1,417,911	$6,847,074	8.01%
City of Petersburg	$975,396	$986,492	$4,904,373	1.14%
Haines Borough	$792,247	$834,746	$4,090,197	5.36%
City of Nome	$767,704	$808,454	$3,980,106	5.31%
Bristol Bay Borough	$840,184	$600,308	$3,847,312	-28.55%
City of Cordova	$661,261	$697,681	$3,417,697	5.51%
City of Wrangell	$592,117	$584,754	$2,996,998	-1.24%
City of Dillingham	$585,075	$569,155	$2,940,084	-2.72%
Denali Borough	$490,981	$564,194	$2,644,530	14.91%
City of Skagway	$524,241	$462,878	$2,491,861	-11.71%
City of Craig	$413,016	$383,790	$2,032,406	-7.08%
Aleutians East Borough	$387,694	$384,290	$1,906,147	-0.88%
Lake & Peninsula Borough	$276,964	$247,911	$1,334,978	-10.49%
City and Borough of Yakutat	$177,185	$194,304	$933,899	9.66%
City of Klawock	$129,095	$123,135	$635,384	-4.62%
City of Hoonah	$101,288	$122,834	$574,279	21.27%
City of Galena	$71,933	$73,143	$361,445	1.68%
City of Kake	$72,257	$74,734	$361,363	3.43%
City of Nenana	$72,306	$73,183	$353,941	1.21%
City of Pelican	$49,161	$52,121	$245,446	6.02%
City of Hydaburg	$32,892	$32,726	$164,550	-0.50%
City of Tanana	$23,336	$22,692	$114,926	-2.76%
City of Saint Mary's	$18,002	$18,789	$91,178	4.37%
Alaska Gateway REAA	$0	$0	$0	
Aleutian Region REAA	$0	$0	$0	
Annette Island REAA	$0	$0	$0	
Bering Strait REAA	$0	$0	$0	
Chatham REAA	$0	$0	$0	

Table continued on next page

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Table 3-12
REQUIRED "LOCAL CONTRIBUTION" PAID BY LOCAL TAXPAYERS
(Ranked in descending order of total "required local contribution" from FY 2001 – FY 2005)

District	FY 2001	FY 2005	Total (FY 2002 - FY 2005)	Percentage Change from FY 2001 to FY 2005
Chugach REAA	$0	$0	$0	
Copper River REAA	$0	$0	$0	
Delta/Greely REAA	$0	$0	$0	
Iditarod Area REAA	$0	$0	$0	
Kashunamiut FTREAA	$0	$0	$0	
Kuspuk REAA	$0	$0	$0	
Lower Kuskokwim REAA	$0	$0	$0	
Lower Yukon REAA	$0	$0	$0	
Pribilof REAA	$0	$0	$0	
Southeast Island REAA	$0	$0	$0	
Southwest Region REAA	$0	$0	$0	
Yukon Flats REAA	$0	$0	$0	
Yukon/Koyukuk REAA	$0	$0	$0	
Yupiit FTREAA	$0	$0	$0	
	$152,438,383	$171,057,616	$806,560,805	

From FY 2001 to FY 2005, the Matanuska-Susitna Borough, Municipality of Anchorage, Kenai Peninsula Borough, and Denali Borough also suffered double digit increases in the education funding decrements imposed by AS 14.17.410(b)(2).

Had the 2001 curb not been in place, the increase to the Matanuska-Susitna Borough would have been more than 38 percent. The Municipality of Anchorage and the Kenai Peninsula Borough would have also experienced increases in their decrements in excess of 30 percent.

(c) Lack of Provisions Dealing With Boundary Changes in 2001 Amendment.

The 2001 amendment does not address the manner in which the required "local contributions" are to be determined following boundary changes (i.e., incorporations, annexations, mergers, consolidations, detachments, and reclassifications) involving boroughs and home-rule and first-class cities in the unorganized borough. For example, if an existing borough annexes territory, it is unclear whether the base full and true value of that

borough is changed to reflect the annexation. Similarly, if a new borough is formed, it is unclear what its base full and true value would be.

The lack of such boundary-change valuation methodology exacerbates the difficulties faced by municipal governments that have a duty to provide education. In particular, those seeking boundary changes face great uncertainty with respect to their prospective required local contribution for funding education. Addressing the boundary-change valuation methodology in the manner outlined below will resolve that uncertainty. Of course, it does nothing to address the fundamental issues discussed above such as the inequities with respect to the burden placed on residents of boroughs and cities that operate schools and the breach of the 1963 promise for equitable funding made with respect to boroughs.

Subsection C. Recommendation:

To address the issue set out above, the LBC recommends the following amendments to AS 14.17.510:

Sec. ___. AS 14.17.510(c) is amended to read:

(c) Notwithstanding AS 14.17.410(b)(2) and the other provisions of this section, if the assessed value in a city or borough school district determined under (a) of this section increases from the base [YEAR], only 50 percent of the annual increase in assessed value may be included in determining the assessed value in a city or borough school district under (a) of this section. The limitation on the increase in assessed value in this subsection applies only to a determination of assessed value for purposes of calculating the required contribution of a city or borough school district under AS 14.17.410(b)(2) and 14.17.490(b). In this subsection, the base [YEAR] is **the full and true value of the taxable real and personal property as of January 1,** 1999**, except as provided in (d) - (i) of this section.**

Sec. ___. AS 14.17.510 is amended by adding new subsections to read:

(d) The base for a borough, home rule city in the unorganized borough, or first class city in the unorganized borough that existed before January 1, 1999, and that annexes territory after January 1, 1999, is the sum of the full and true value of the taxable real and personal property in that borough or city as of January 1, 1999, and the full and true value of taxable real and personal property in the

annexed area or territory on January 1 of the year immediately following the year in which the annexation takes effect.

(e) Except as provided in (f), the base for a borough incorporated after January 1, 1999, is the sum of the base for all home rule and first class cities in the newly incorporated borough as of the date of incorporation of the borough and the full and true value of taxable real and personal property in the borough outside home rule and first class cities on January 1 of the year immediately following the year in which the borough incorporation takes effect.

(f) The base for a borough incorporated after January 1, 1999, through merger, consolidation, or unification is the sum of the base for the borough that existed before merger, consolidation, or unification.

(g) The base for a home rule or first class city in the unorganized borough incorporated after January 1, 1999, is the full and true value of taxable real and personal property in the city on January 1 of the year immediately following the year in which the incorporation takes effect.

(h) The base for a city in the unorganized borough that was reclassified from a second class city to a first class city after January 1, 1999, is the full and true value of taxable real and personal property in the city on January 1 of the year immediately following the year in which the reclassification takes effect.

(i) The base for a borough, home rule city in the unorganized borough, and first class city in the unorganized borough from which an area or territory is detached after January 1, 1999, is reduced in proportion to the ratio of the full and true value of taxable property in the detached area or territory as estimated by the Department of Commerce, Community, and Economic Development divided by the full and true value of taxable property in the borough on January 1 of the year immediately following the year in which the detachment takes effect.

To ensure coordination of the above recommendation with other recommendations made by the Commission in this report, the LBC notes that it has also urged the Legislature to consider amendment of AS 14.17.510(a) in the context of providing inducements for the incorporation of boroughs. Details concerning that proposed amendment are outlined in

Section I of this Chapter. The specific amendment recommended for AS 14.17.510(a) is set out below.

Sec. ___. AS 14.17.510(a) is amended to read:

(a) To determine the amount of required local contribution under AS 14.17.410(b)(2) and to aid the department and the legislature in planning, the Department of **Commerce,** Community**,** and Economic Development, in consultation with the assessor for each district in a city or borough, shall determine the full and true value of the taxable real and personal property in each district in a city or borough. If there is no local assessor or current local assessment for a city or borough school district, then the Department of **Commerce,** Community**,** and Economic Development shall make the determination of full and true value from information available. In making the determination, the Department of **Commerce,** Community**,** and Economic Development shall be guided by AS 29.45.110. **However, the full and true value of taxable real and personal property in any area detached shall be excluded from the determination of the full and true value of the municipality from which the property was detached for the two years immediately preceding the effective date of the detachment. Also, in making the determination for a municipality that is a school district or for a city that is within a borough school district, the assessed value of property taxable under AS 43.56 shall be excluded if a municipal tax is not levied under AS 29.45.080 in that school district.** The determination of full and true value shall be made by October 1 and sent by certified mail, return receipt requested, on or before that date to the president of the school board in each city or borough school district. Duplicate copies shall be sent to the commissioner. The governing body of a city or borough that is a school district may obtain judicial review of the determination. The superior court may modify the determination of the Department of **Commerce,** Community**,** and Economic Development only upon a finding of abuse of discretion or upon a finding that there is no substantial evidence to support the determination.

Section V. School Consolidation Study

Subsection A. Statement of the Issue:

When considering the costs of education, it is prudent to examine the possibilities of school consolidation.

Subsection B. Background:

On February 24, 2004, the joint report by the LBC and DEED regarding school consolidation was filed with the Legislature. The school consolidation study was mandated by the Legislature in 2003 (p. 10, Section 1, Chapter 83, SLA 2003) as follows:

> It is the intent of the legislature that (1) the [LBC] identify opportunities for consolidation of schools, with emphasis on school districts with fewer than 250 students, through borough incorporation, borough annexation, and other boundary changes; (2) the [LBC] work with the [DEED] to fully examine the public policy advantages of prospective consolidations identified by the [LBC], including projected cost savings and potential improvements in educational services made possible through greater economies of scale; and (3) the [LBC] with the [DEED] report their findings to the legislature no later than the 30th day of the Second Session of the 23rd Legislature.

The LBC met in public session on six occasions to consider the issues and take public comment thereon.

The LBC unanimously approved the report at its Public Meeting of February 13, 2004. The Deputy Commissioner of DEED also participated in the meeting and indicated DEED's approval of the report. Senator Gary Wilken was an active participant in the study effort throughout the course of the project.

The 330-page report was distributed in hard copy and electronic format and is posted to the LBC's Web site.

In the course of the study, DEED analyzed the economic effects of consolidating ten small city school districts (districts with fewer than 250 students). The LBC reached the following conclusions regarding the effects that consolidation would have on those districts.

- State education costs would be reduced by $262,833 each year, or more than $190 per student in the ten city school districts.
- Consolidation would increase basic need (the entitlement for education funding) for the students in the ten small districts by $1,038,240 - or more than $750 per student.

- Consolidation would free up local taxes in the ten cities by $1,088,642 annually, or nearly $800 per student.
- The sum of the economic gains noted above equals $1,740 per student each year, but prospective benefits of consolidation extend well beyond that gain.
- Many of the ten small city school districts and the four regional educational attendance areas that encompass those city school districts do not meet the statutory requirement for a minimum of 70 percent instructional spending. If consolidated, those fourteen districts would be merged into four larger regional districts.
- Creating four larger regional districts might improve programs and offer other educational benefits to students.
- Circumstances suggest to the [LBC] that the future of small school districts in Alaska is unlikely to improve without leadership from the State Legislature in terms of school consolidation. Those circumstances include growing administrative burdens on school districts, generally shrinking student populations in smaller school districts, and competition for increasingly scarce financial resources.

Details regarding those conclusions are found on pages 65 - 69 of the 2004 school consolidation report.

The LBC and DEED took the view that considerable benefit had already resulted from this school consolidation study effort and that the potential future benefits are beyond measure. Under Alaska's Constitution, education is a State function and a State responsibility. How far the State Legislature pursues this matter will be decided in time.

The LBC outlined the following general recommendations to the Legislature regarding school consolidation:

(a) Promote borough government.

(b) Establish a threshold for school districts to relinquish school powers.

(c) Establish formal procedures for REAA boundary changes.

(d) Address the establishment of FTREAAs through apparent local and special legislation.

(e) Remove disincentives for school consolidation from the education funding formula.

(f) Create incentives for school consolidation.

Details concerning those recommendations are presented on pages 51 - 59 of the report.

Subsection C. Recommendation:

The LBC recommends that the Legislature consider the joint report on school consolidation submitted by the Commission and DEED in response to the mandate set out in section 1, Ch 83, SLA 2003, p. 10.

Section VI. Staff Resources Needed to Support the LBC

Subsection A. Statement of the Issue:

The workload of the LBC requires additional staff resources.

Subsection B. Background:

The LBC staff currently consists of two Local Government Specialists. Chapter 2 of this report lists pending and reasonably anticipated petitions and other actions involving LBC staff. In addition, the LBC staff also carries out significant other duties within the Department. For example, LBC staff is frequently called upon to provide local-government expertise on matters dealing with legislation, regulations, and policy.

This current staff level represents a significant reduction over the past two decades. In the 1980s, the LBC staff consisted of three Local Government Specialists. Those three staff members were dedicated largely to full-time service to the LBC.

The two current staff members routinely each work fifty to seventy hours a week to meet statutory and other deadlines and still meet the heavy demand for information and assistance from the LBC Commissioners, municipal officials, the general public, the Legislature, other departments, and other divisions of Commerce. The additional hours that each works are uncompensated. When possible, LBC staff members have been aided to a limited extent by other Commerce staff. However, the two LBC staffers must still review that work to ensure compliance with LBC statutes, regulations, and case law.

Moreover, once staff has prepared required reports or other documents, it must also arrange, schedule, and notice the public meetings or hearings in which the Commissioners must participate. Such meetings frequently require travel on the part of the Staff, as well as the Commissioners. While attending such meetings and hearings, the other work of LBC staff is deferred. Following such hearings or meetings, LBC staff is required to ensure that minutes are prepared of the events; that decisional statements are drafted or revised; that reports, legislation, regulations, etc., are drafted, revised, or issued based on the LBC meetings or hearings; and that petition forms and informational documents are updated to reflect necessary changes.

In its 2004 annual report, the LBC requested funding for at least one additional staff member. The Legislature funded one new position; however, the appropriation was vetoed. Following the veto, the Department explored reallocating staff resources to provide additional support to the LBC. However, given other budget cuts to the agency over the years, general fund resources are particularly limited. The Department was unable to reallocate sufficient staff resources to address the concern.

Subsection C. Recommendation:

The LBC encourages the funding of at least one additional staff person in the Department's budget to assist with Commission business.

Appendix A

ARTICLE X

Local Government

Section 1. Purpose and Construction. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Cross References - For statutory provisions relating to liberal construction and extent of local powers, see AS 29.35.400 - 29.35.420.

Decisions - Home rule is constitutionally recognized in Alaska. - State v. Jennings, 555 P.2d 248 (Alaska 1976).

Section encourages creation of borough governments. - Aside from the standards for incorporation in former AS 07.10.030, there are no limitations in Alaska law on the organization of borough governments. The Alaska Constitution encourages their creation. Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska 1974).

The supreme court reads this section to favor upholding organization of boroughs by the local boundary commission whenever the requirements for incorporation have been minimally met. Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska 1974).

Boroughs are not restricted to the form and function of municipalities. - They are meant to provide local government for regions as well as localities and encompass lands with no present municipal use. Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska 1974).

Intent of rule in second sentence. - The constitutional rule of liberal construction found in the second sentence was intended to make explicit the framers' intention to overrule a common-law rule of interpretation which required a narrow reading of local government powers. Liberati v. Bristol Bay Borough, 584 P.2d 1115 (Alaska 1978).

Taxing authority under former AS 29.48.010(7) consistent with second sentence. - The broad grant of taxing authority to municipalities under AS 29.48.010(7) (see now AS 29.35.010(6)), limited only by other provisions of law, was consistent with the second sentence of this section, which requires that "a liberal construction shall be given to the powers of local government." Liberati v. Bristol Bay Borough, 584 P.2d 1115 (Alaska 1978).

There is no general prohibition against like municipal and state taxes. - Liberati v. Bristol Bay Borough, 584 P.2d 1115 (Alaska 1978).

Power to impose civil penalty for failure to timely pay sales taxes. - The power of a municipality to impose a civil penalty for failure to timely file or pay

sales taxes is granted primarily because this section requires that a liberal construction be given to the powers of municipalities, a rule of interpretation that is echoed by statute see now AS 29.35.400 - 29.35.420. Bookey v. Kenai Peninsula Borough, 618 P.2d 567 (Alaska 1980).

Discussion of state preemption of taxation by general-law municipalities. - See Liberati v. Bristol Bay Borough, 584 P.2d 1115 (Alaska 1978).

The Public Employment Relations Act, AS 23.40.070 et seq., - is expressly made applicable to home-rule municipalities, and thus municipalities are impliedly prohibited from refusing to negotiate with organizations selected by employees unless the exemption was timely enacted. State v. City of Petersburg, 538 P.2d 263 (Alaska 1975).

Applying a liberal construction to the powers of local government cannot override the express declaration of policy made a part of the Public Employment Relations Act - when coupled with considerations of the impact of the repeal of AS 23.40.010 and the different language used in the 1972 exemption provision, ch. 113, Sec. 4, SLA 1972. State v. City of Petersburg, 538 P.2d 263 (Alaska 1975).

Purpose of statutes authorizing state land selection by borough or city. - The enactment of former AS 29.18.190 and 29.18.200, authorizing state land selection by a borough or city, was designed to further the goal of maximum local self-government reflected in this section. North Slope Borough v. LeResche, 581 P.2d 1112 (Alaska 1978).

Applied in Jefferson v. State, 527 P.2d 37 (Alaska 1974); City of Kodiak v. Jackson, 584 P.2d 1130 (Alaska 1978); City of Homer v. Gangl, 650 P.2d 396 (Alaska 1982).

Quoted in Chugach Elec. Ass'n v. City of Anchorage, 476 P.2d 115 (Alaska 1970); City of Douglas v. City & Borough of Juneau, 484 P.2d 1040 (Alaska 1971); State, Pub. Offices Comm'n v. Marshall, 633 P.2d 227 (Alaska 1981); Simpson v. Municipality of Anchorage, 635 P.2d 1197 (Alaska Ct. App. 1981); State v. Alex, 646 P.2d 203 (Alaska 1982); City of Anchorage v. Richards, 654 P.2d 797 (Alaska Ct. App. 1982); Municipality of Anchorage v. Afualo, 657 P.2d 407 (Alaska Ct. App. 1983).

Cited in Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, 368 P.2d 540 (Alaska 1962); Gilman v. Martin, 662 P.2d 120 (Alaska 1983); Kenai Peninsula Borough v. State, Dep't of Community & Regional Affairs, 751 P.2d 14 (Alaska 1988).

Section 2. Local Government Powers. All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

AG Opinions - A home rule city has the power to enact an ordinance exempting from local taxation any class of real or personal property, if such an exemption is not prohibited by the city's home rule charter. 1969 Op. Att'y Gen. No. 1.

Decisions - Coexistence of cities and boroughs. - Section merely authorizes, but does not require, coexistence of cities and boroughs. City of Douglas v. City & Borough of Juneau, 484 P.2d 1040 (Alaska 1971).

Borough defined. - The borough in Alaska is a political subdivision of the state for governmental purposes and corresponds generally to the county in other states. Walters v. Cease, 388 P.2d 263 (Alaska 1964).

Section limits taxing authority. - To implement the goal of nonduplication of taxing jurisdictions, this section limits taxing authority to organized boroughs and cities. No other local entities may tax. Liberati v. Bristol Bay Borough, 584 P.2d 1115 (Alaska 1978).

Legislative delegation of taxing power. - Legislature may not delegate its taxing power to entity other than borough or city. State v. Alex, 646 P.2d 203 (Alaska 1982).

Delegation of powers to arbitrator. - Provision in the Code of the Municipality of Anchorage providing for final and binding interest arbitration did not constitute an unconstitutional delegation of power to an arbitrator, since the Anchorage Municipal Charter did not contain any express limitation upon the Municipal assembly's power to delegate its legislative functions, the delegation in question was relatively narrow and related to the complex and potentially volatile subject of labor relations in the public sector, adequate standards to guide the arbitrator's decision making were part of the delegation, and the arbitrator's decision was subject to discrete procedures and to judicial review. Municipality of Anchorage v. Anchorage Police Dep't Employees Ass'n, 839 P.2d 1080 (Alaska 1992).

Former section concerning royalty assessment on sale of salmon - impermissibly delegated taxing power to regional associations, in violation of this section. State v. Alex, 646 P.2d 203 (Alaska 1982).

The "local activity rule" - is an expedient method for resolving an impasse between state statutes which seek to further a specific policy and municipal ordinances which either directly or collaterally impede this implementation. Chugach Elec. Ass'n v. City of Anchorage, 476 P.2d 115 (Alaska 1970).

Applied in City of Homer v. Gangl, 650 P.2d 396 (Alaska 1982).

Quoted in Walters v. Cease, 394 P.2d 670 (Alaska 1964).

Stated in Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, 368 P.2d 540 (Alaska 1962); Begich v. Jefferson, 441 P.2d 27 (Alaska 1968); City of Douglas v. City & Borough of Juneau, 484 P.2d 1040 (Alaska 1971).

Section 3. Boroughs. The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

Decisions - Purpose of section. - This section vests in the legislature power to prescribe procedures for borough incorporation without restriction. Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska 1974).

This section was not intended to operate as an exception to the "general law" rule of Alaska Const., art. II, Sec. 19. Abrams v. State, 534 P.2d 91 (Alaska 1975).

No exception to prohibition against local or special laws. - Alaska Const., art. II, Sec. 19 governs the exercise of all legislative powers expressly granted by other portions of the constitution. There is no intimation in its language or in the articles concerning local government which would create an exception to this prohibition against local or special laws. Abrams v. State, 534 P.2d 91 (Alaska 1975).

Borough defined. - The borough in Alaska is a political subdivision of the state for governmental purposes and corresponds generally to the county in other states. Walters v. Cease, 388 P.2d 263 (Alaska 1964).

Quoted in Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, 368 P.2d 540 (Alaska 1962); Walters v. Cease, 394 P.2d 670 (Alaska 1964).

Stated in City of Douglas v. City & Borough of Juneau, 484 P.2d 1040 (Alaska 1971).

Section 4. Assembly. The governing body of the organized borough shall be the assembly, and its composition shall be established by law or charter.

Amendment Notes - The amendment effective October 14, 1972 (7th Legislature's SJR 52 (1972)) deleted the second and third sentences which specified city and non-city representation on the borough assembly.

Decisions - Cited in Thomas v. Bailey, 595 P.2d 1 (Alaska 1979).

Section 5. Service Areas. Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services.

AG Opinions - The legislature could establish school service areas in an unorganized borough by general law subject to the restrictive limitations of this section. 1961 Op. Att'y Gen. No. 24.

A home rule city does not have unreined authority to create service areas and impose a tax rate on that service area without complying with statutory law. December 8, 1986 Op. Att'y Gen.

Decisions - Applied in Falke v. Fairbanks N. Star Borough, 648 P.2d 597 (Alaska 1982).

Quoted in Concerned Citizens v. Kenai Peninsula Borough, 527 P.2d 447 (Alaska 1974); State v. Alex, 646 P.2d 203 (Alaska 1982); Fairbanks N. Star Borough v. College Utils. Corp., 689 P.2d 460 (Alaska 1984).

Section 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 may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

Decisions - Quoted in State v. Alex, 646 P.2d 203 (Alaska 1982).

Cited in Hootch v. Alaska State-Operated Sch. Sys., 536 P.2d 793 (Alaska 1975).

Section 7. Cities. Cities shall be incorporated in a manner prescribed by law, and shall be a part of the borough in which they are located. Cities shall have the powers and functions conferred by law or charter. They may be merged, consolidated, classified, reclassified, or dissolved in the manner provided by law.

Decisions - Power of home rule city is measured by charter. - The meaning of this section is that, where a home rule city is concerned, the charter and not a legislative act is looked to in order to determine whether a particular power has been conferred upon the city. It would be incongruous to recognize the constitutional provision stating that a home rule city "may exercise all legislative powers not prohibited by law or by charter" (Alaska Const., art. X, Sec. 11), and then to say that the power of a home rule city is measured by a legislative act. Lien v. City of Ketchikan, 383 P.2d 721 (Alaska 1963).

This section and Sec. 9 distinguished. - The constitutional distinction between Sec. 9 of this article, granting the qualified voters of a first class city the right to adopt, amend, or repeal a home rule charter, and this section, providing that cities may be merged, consolidated or dissolved in the manner provided by the legislature, appears to be reflective of a policy which has as its objective the placement of decisional responsibility for local problems within local control and decisional responsibility for broader problems in control of a broader community. City of Douglas v. City & Borough of Juneau, 484 P.2d 1040 (Alaska 1971).

The phrase "dissolved in the manner provided by law," - is interchangeable with "in the manner provided by the legislature." City of Douglas v. City & Borough of Juneau, 484 P.2d 1040 (Alaska 1971).

Since this section says dissolved "in the manner" provided by the legislature, it empowers the legislature to construct any otherwise constitutional scheme for dissolution, rather than requiring the legislature to perform the dissolution. City of Douglas v. City & Borough of Juneau, 484 P.2d 1040 (Alaska 1971).

This section leaves the legislature free to determine - the manner of dissolution of cities. City of Douglas v. City & Borough of Juneau, 484 P.2d 1040 (Alaska 1971).

Delegation of power to dissolve cities. - By placing the power to dissolve cities in the legislature, the constitution does not impliedly prohibit the legislature from delegating the power to others. City of Douglas v. City & Borough of Juneau, 484 P.2d 1040 (Alaska 1971).

Applied in Area Dispatch, Inc. v. City of Anchorage, 544 P.2d 1024 (Alaska 1976).

Quoted in Chugach Elec. Ass'n v. City of Anchorage, 476 P.2d 115 (Alaska 1970).

Cited in Jefferson v. State, 527 P.2d 37 (Alaska 1974).

Section 8. Council. The governing body of a city shall be the council.

Section 9. Charters. The qualified voters of any borough of the first class or city of the first class may adopt, amend, or repeal a home rule charter in a manner provided by law. In the absence of such legislation, the governing body of a borough or city of the first class shall provide the procedure for the preparation and adoption or rejection of the charter. All charters, or parts or amendments of charters, shall be submitted to the qualified voters of the borough or city, and shall become effective if approved by a majority of those who vote on the specific question.

Decisions - This section and Sec. 7 distinguished. - The constitutional distinction between this section, granting the qualified voters of a first class city the right to adopt, amend, or repeal a home rule charter, and Sec. 7 of this article, providing that cities may be merged, consolidated or dissolved in the manner provided by the legislature, appears to be reflective of a policy which has as its objective the placement of decisional responsibility for local problems within local control and decisional responsibility for broader problems in control of a broader community. City of Douglas v. City & Borough of Juneau, 484 P.2d 1040 (Alaska 1971).

Power of home rule city is measured by charter. - The meaning of this section is that, where a home rule city is concerned, the charter and not a legislative act is looked to in order to determine whether a particular power has been conferred upon the city. It would be incongruous to recognize the constitutional provision stating that a home rule city "may exercise all legislative powers not prohibited by law or by charter" (Alaska Const., art. X, Sec. 11), and then to say that the power of a home rule city is measured by a legislative act. Lien v. City of Ketchikan, 383 P.2d 721 (Alaska 1963).

Section 10. Extended Home Rule. The legislature may extend home rule to other boroughs and cities.

Section 11. Home Rule Powers. A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.

AG Opinions - A home rule municipality duly incorporated under the laws of Alaska may establish and operate a local housing authority so as to fall within the definition of "public housing agencies" under the 1974 revision of the United States Housing Act of 1937, P.L. 93-388, 42 U.S.C.A. Sec. 1437, 1437a(6). February 2, 1976 Op. Att'y Gen.

Mere inconsistency with a state statute is not sufficient to invalidate a municipal ordinance as unconstitutional. May 12, 1980 Op. Att'y Gen.

A home rule city has the power to enact an ordinance exempting from local taxation any class of real personal property, if such an exemption is not prohibited by the city's home rule charter. 1969 Op. Att'y Gen. No. 1.

A Proposition 13 initiative which reads: "The municipality of may not levy and tax for any purpose in excess of one percent of the assessed value of property within the municipality" would, as a practical matter, unconstitutionally impair the obligation of existing contracts any municipality has made to borrow money by general obligation bonds, and, additionally, would directly conflict with the policy adopted by AS 29.53.055 (now see AS 29.45.100) to levy such taxes at such rates as are required to repay general obligation bonds; as such, it would be void. August 29, 1978 Op. Att'y Gen.

A municipality enacting a local district coastal management program may restrict or exclude a use of state concern without falling afoul of the constitutional limitations in this section on the exercise of municipal authority if that restriction or exclusion is reasonable, within the meaning of AS 46.40.070(c). May 12, 1980 Op. Att'y Gen.

Municipal authority to regulate oil and gas activities of federal lessees depends upon whether the leases are on-shore or off-shore. In the case of the former, the doctrine of federal preemption may prohibit local coastal zone ordinances from affecting any measure of control. In the case of the latter, local coastal management programs which are approved by the Alaska Coastal Policy Council and thus part of the Alaska Coastal Management Program will become one of the touchstones in the state consistency determination required by section 307(c)(3) of the Coastal Zone Management Act, 16 U.S.C. Sec. 1451 et seq. May 12, 1980 Op. Att'y Gen.

Decisions - Purpose of section. - This constitutional provision was adopted in order to abrogate traditional restrictions on the exercise of local legislative authority. Simpson v. Municipality of Anchorage, 635 P.2d 1197 (Alaska Ct. App. 1981).

A parallel provision - to this section was found in former AS 29.05.020. City of Fairbanks v. Schrock, 457 P.2d 242 (Alaska 1969).

Broad grant of authority. - The Alaska Constitution contains a broad grant of authority to municipalities. Johnson v. City of Fairbanks, 583 P.2d 181 (Alaska 1978).

Delegation of powers. - From the provisions of this section, it follows that the right of a municipal assembly to delegate powers to govern the affairs of a municipality will not be strictly construed, for without the power to delegate duty and discretion the affairs of the city

could not be carried on. Municipality of Anchorage v. Anchorage Police Dep't Employees Ass'n, 839 P.2d 1080 (Alaska 1992).

Limits on exercise of municipal power. - Despite wide-ranging municipal power, the exercise of that authority is not insulated from possible invalidity when a conflict with state law occurs. Johnson v. City of Fairbanks, 583 P.2d 181 (Alaska 1978).

The city of Juneau acquired greater legislative power upon becoming a home rule city, but by the very terms of the constitutional grant of legislative power to a home rule city it was prohibited from exercising legislative powers prohibited by law. City of Juneau v. Hixson, 373 P.2d 743 (Alaska 1962).

Home rule cities are subject to the same limitations with respect to contracting debts as all other political subdivisions of the state. City of Juneau v. Hixson, 373 P.2d 743 (Alaska 1962).

Home-rule powers intended to be broadly applied. - See Jefferson v. State, 527 P.2d 37 (Alaska 1974).

But not intended to be preeminent. - See Jefferson v. State, 527 P.2d 37 (Alaska 1974).

Rejection of the doctrine of state preemption by "occupying the field" reaffirmed. - See Jefferson v. State, 527 P.2d 37 (Alaska 1974).

Alaska's home-rule provision is a "grant" or "sword" of legislative power - given to the municipality to be exercised as long as it is not prohibited by law. Jefferson v. State, 527 P.2d 37 (Alaska 1974).

This section distinguished from "shield" or "protection" provisions. - See Jefferson v. State, 527 P.2d 37 (Alaska 1974).

The test derived from Alaska's constitutional provisions is one of prohibition, - rather than traditional tests such as statewide versus local concern. Jefferson v. State, 527 P.2d 37 (Alaska 1974).

A municipal ordinance is not necessarily invalid in Alaska because it is inconsistent or in conflict with a state statute. The question rests on whether the exercise of authority has been prohibited to municipalities. Jefferson v. State, 527 P.2d 37 (Alaska 1974); Area Dispatch, Inc. v. City of Anchorage, 544 P.2d 1024 (Alaska 1976); Johnson v. City of Fairbanks, 583 P.2d 181 (Alaska 1978).

The prohibition must be either by express terms or by implication - such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law. Jefferson v. State, 527 P.2d 37 (Alaska 1974); Area Dispatch, Inc. v. City of Anchorage, 544 P.2d 1024 (Alaska 1976); Johnson v. City of Fairbanks, 583 P.2d 181 (Alaska 1978).

The "local activity rule" - is an expedient method for resolving an impasse between state statutes which seek to further a specific policy and municipal ordinances which either directly or collaterally impede this implementation. Chugach Elec. Ass'n v. City of Anchorage, 476 P.2d 115 (Alaska 1970); Macauley v. Hildebrand, 491 P.2d 120 (Alaska 1971).

The determination of whether a home rule municipality can enforce an ordinance which conflicts with a state statute depends on whether the matter regulated is of statewide or local concern. Macauley v. Hildebrand, 491 P.2d 120 (Alaska 1971).

Conflicts between state statutes and municipal ordinances - generally have been modulated by ruling in favor

of the statutes. Chugach Elec. Ass'n v. City of Anchorage, 476 P.2d 115 (Alaska 1970).

Power of home rule city is measured by charter. - The meaning of this section is that, where a home rule city is concerned, the charter and not a legislative act is looked to in order to determine whether a particular power has been conferred upon the city. It would be incongruous to recognize the constitutional provision stating that a home rule city "may exercise all legislative powers not prohibited by law or by charter" (Alaska Const., art. X, Sec. 11), and then to say that the power of a home rule city is measured by a legislative act. Lien v. City of Ketchikan, 383 P.2d 721 (Alaska 1963).

The power to tax is a legislative power, - and the city of Anchorage, as a home rule city, is authorized by the constitution to "exercise all legislative powers not prohibited by law or by charter." City of Anchorage v. Baker, 376 P.2d 482 (Alaska 1962).

Limitation on taxes through initiative precluded. - Since a municipality, in its legislative capacity, is prohibited from enacting a limitation on taxes to pay bonds, then the people, acting through the initiative, in their legislative capacity, are similarly precluded. Whitson v. Anchorage, 608 P.2d 759 (Alaska 1980).

An ordinance providing in effect that no supplier could provide a customer with electric power, - if the providing of the service required an expenditure of moneys in excess of $1,000 must yield to a determination by the Public Utilities Commission that the supplier could operate within the certified area, in light of conflicting statutes which invest in the Public Service Commission the power to regulate, to an extent permitted by law, the transmission of electric current. Chugach Elec. Ass'n v. City of Anchorage, 476 P.2d 115 (Alaska 1970).

Although inconsistency with state law is not normally the gauge - for determining validity of a local ordinance in Alaska, under the express terms of AS 28.01.010(a) it is clear that inconsistency is the standard that governs the validity of a local ordinance regulating the operation of a motor vehicle. Simpson v. Municipality of Anchorage, 635 P.2d 1197 (Alaska Ct. App. 1981).

Effect of Revised Criminal Code. - The Revised Criminal Code does not address municipal powers and therefore cannot be construed to explicitly prohibit any municipal action. Municipality of Anchorage v. Afualo, 657 P.2d 407 (Alaska Ct. App. 1983).

Municipal ordinance penalizing solicitation of prostitutes by putative customers - is not prohibited by enactment of AS 11.66, art. 1 nor does it irreconcilably conflict with AS 11.66.100 which only penalizes prostitutes. Municipality of Anchorage v. Afualo, 657 P.2d 407 (Alaska Ct. App. 1983).

Concealment statute without specific intent. - Because Anchorage is a home rule municipality, the municipal assembly has the power, unless expressly or impliedly prohibited by state statute, to enact a concealment statute which does not require specific intent. Smith v. Municipality of Anchorage, 652 P.2d 499 (Alaska Ct. App. 1982).

This section did not prohibit the enactment of a concealment of merchandise ordinance since statewide uniformity was not a significant purpose of this section. Smith v. Municipality of Anchorage, 652 P.2d 499 (Alaska Ct. App. 1982).

Ordinance prohibiting concealment of weapons in automobiles. - AS 11.61.220 does not imply a legislative intent to create a privilege to conceal a weapon in an automobile, nor does it implicitly require state-wide uniformity

of weapons regulations; thus, municipal ordinance interpreted as forbidding concealing of weapons in automobiles was not prohibited by AS 11.61.220. City of Anchorage v. Richards, 654 P.2d 797 (Alaska Ct. App. 1982).

Officeholder's eligibility for salaried appointment. - Home rule charter section which prohibited a person who holds or has held an elective city office from being eligible for appointment to an office or for employment for which a salary is paid by the city until one year has elapsed following the term for which he was elected or appointed, unless an exception is made with the approval of four or more members of the city council, was not preempted by repealed AS 29.23.555 see now AS 29.20.010 since the charter also contained a section prohibiting members of the city council from voting on matters in which they have a pecuniary interest. Acevedo v. City of N. Pole, 672 P.2d 130 (Alaska 1983).

Ordinance providing for mandatory minimum sentence. - State law prohibits a city from enacting an ordinance providing for a mandatory minimum sentence. City of Kodiak v. Jackson, 584 P.2d 1130 (Alaska 1978).

Mandatory minimum sentences created by city ordinances are invalid when in conflict with state law. Wright v. Municipality of Anchorage, 590 P.2d 425 (Alaska 1979).

The mandatory aspects of the sentencing provisions of an ordinance providing for a mandatory minimum sentence on conviction of an assault of a police officer were irreconcilable with AS 12.55.080 - 12.55.085, in that the former could not be given its substantive effect if the latter were to be accorded the weight of law. Such being the case, the city was prohibited by this section from requiring the imposition and execution of mandatory minimum sentences for violations of the ordinance. City of Kodiak v. Jackson, 584 P.2d 1130 (Alaska 1978).

The fact that the state itself has the power to enact specific exceptions to AS 12.55.080 and 12.55.085 fails to prove that a home-rule city possesses the same power. City of Kodiak v. Jackson, 584 P.2d 1130 (Alaska 1978).

Making assignation a criminal offense. - There is no legislative enactment in Alaska that expressly prohibits a home rule city from making assignation a criminal offense. Rubey v. City of Fairbanks, 456 P.2d 470 (Alaska 1969).

Requiring school system to participate in centralized accounting. - A home rule borough may not require its school system to participate in centralized accounting without the statutorily required approval of the school board. Macauley v. Hildebrand, 491 P.2d 120 (Alaska 1971).

When a municipal charter is silent as to the mode of decision - on a matter committed to the legislative body, ordinance procedures are not ordinarily required. Municipality of Anchorage v. Frohne, 568 P.2d 3 (Alaska 1977).

Notice provisions for tort claims against municipalities. - Alaska Statutes 09.65.070, authorizing actions against municipalities, impliedly prohibits municipalities from requiring a potential plaintiff to submit notice of tort claims, as a condition to bringing an action, within a period shorter than the period provided by the statute of limitations. Johnson v. City of Fairbanks, 583 P.2d 181 (Alaska 1978); DeHusson v. City of Anchorage, 583 P.2d 791 (Alaska 1978).

A city charter provision which barred actions against the city unless the required notice of claims had been filed within 120 days after the injury occurred was invalid since the practical effect of the provision was to nullify the

state legislature's establishment of a two-year period for commencing tort actions. That is, even though the two years permitted for commencing an action would still have applied through AS 09.65.070, the right to bring an action in Alaska's courts would have been contingent upon giving a notice of claim within a substantially shorter period of time. If the injured person had failed to give notice within the prescribed time, he would have been barred from pursuing his remedy in state courts, despite the fact that his action would have been timely under the two-year statute of limitations. Johnson v. City of Fairbanks, 583 P.2d 181 (Alaska 1978); DeHusson v. City of Anchorage, 583 P.2d 791 (Alaska 1978).

The Public Employment Relations Act, - AS 23.40.070 et seq., is expressly made applicable to home-rule municipalities, and thus municipalities are impliedly prohibited from refusing to negotiate with organizations selected by employees unless the exemption was timely enacted. State v. City of Petersburg, 538 P.2d 263 (Alaska 1975).

Applying a liberal construction to the powers of local government cannot override the express declaration of policy made a part of the Public Employment Relations Act when coupled with considerations of the impact of the repeal of AS 23.40.010 and the different language used in the 1972 exemption provision, ch. 113, Sec. 4, SLA 1972. State v. City of Petersburg, 538 P.2d 263 (Alaska 1975).

The city of Anchorage - is not an office, department or agency of the executive branch of the state government under Alaska Const., art. III, Sec. 22 which deals with the executive power of the state. It is a home rule city with maximum local self-government, organized under this article of the constitution relating to local government. Wellmix, Inc. v. City of Anchorage, 471 P.2d 408 (Alaska 1970).

Applied in Cremer v. Anchorage, 575 P.2d 306 (Alaska 1978); Allstate Ins. Co. v. Municipality of Anchorage, 599 P.2d 140 (Alaska 1979); Bailey v. Lenord, 625 P.2d 849 (Alaska 1981).

Quoted in State v. Browder, 486 P.2d 925 (Alaska 1971); Roderick v. Sullivan, 528 P.2d 450 (Alaska 1974); Tunley v. Municipality of Anchorage Sch. Dist., 617 P.2d 490 (Alaska 1980); Anderson v. Municipality of Anchorage, 645 P.2d 205 (Alaska Ct. App. 1982).

Section 12. Boundaries. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

Cross References - For provisions concerning the local boundary commission, see AS 44.47.565 - 44.47.583.

Decisions - The intention of this section - and its implementing statute, AS 44.47.567, was to provide an objective administrative body to make state-level decisions regarding local boundary changes, thus avoiding the chance that a small, self-interested group could stand in the way of boundary changes which were in the public interest. Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974).

The advantage of the method proposed, - in the words of the committee on local government, "* * * lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively." Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, 368 P.2d 540 (Alaska 1962).

The relevant minutes of the meetings of the committee on local government show clearly the concept that was in mind when this section was being considered: That local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, 368 P.2d 540 (Alaska 1962).

The concept that was in mind when this section was being considered by the constitutional convention was that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. Oesau v. City of Dillingham, 439 P.2d 180 (Alaska 1968).

The framers of the Alaska Constitution thought that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. City of Douglas v. City & Borough of Juneau, 484 P.2d 1040 (Alaska 1971).

When method became operative. - The method for making boundary changes contemplated by this section was operative upon the enactment of the 1959 statutes creating a local boundary commission (SLA 1959, ch. 64, Sec. 7) and conferring powers upon it (SLA 1960, ch. 45). Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, 368 P.2d 540 (Alaska 1962).

This section established two methods by which local boundaries might be changed: - (1) by direct action of the local boundary commission subject to legislative disapproval, and (2) by establishment by the commission of procedures for the adjustment of boundaries by local action. Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974).

The local action provision of this section has been implemented - by legislation (AS 29.68.010) and by administrative action (19 AAC Sec. 15.010 et seq.). Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974).

Section implemented by AS 44.47.567. - See Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974).

Provisions of AS 44.47.567 and 44.47.583. - By AS 44.47.567 and 44.47.583, it is provided that the commission must make studies of local government boundary problems, develop proposed standards and procedures for changing boundaries, and consider boundary changes requested of it by political subdivisions. The commission may conduct hearings on boundary changes and present proposed changes to the legislature. The change becomes effective unless the legislature disapproves; legislative silence permits the change. United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

This section empowers the legislature to veto commission actions. - United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

Legislative review for compliance. - This section does nothing to compel the legislature to review for compliance with its own requirements. United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

This section and AS 44.47.583 do not make the decision as to whether the commission has complied with the law exclusively legislative. United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

Veto power defined. - The legislative veto power granted in Alaska Const., art. III, Sec. 23 and this section, is the power to change statutes, not rule-making power, which is the power to interpret and implement statutes. State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980).

Legislature handicapped in absence of known standards governing change of boundary lines. - Under Alaska's constitution, the supreme court has the duty of insuring that administrative action complies with the laws of Alaska. Absent known standards governing the changing of local boundary lines, the legislature's ability to make rational decisions as to whether to approve or disapprove proposed local boundary changes of the commission is seriously handicapped. United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

Annexation of community without consent of residents. - Residents of a community have no constitutionally protected interest in its existence as a separate governmental unit. Hence, the legislature may provide for the annexation of a community without its residents' consent. City of Douglas v. City & Borough of Juneau, 484 P.2d 1040 (Alaska 1971).

Standing to contest annexation. - An aggrieved property owner in an area to be annexed has standing to contest the annexation. United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

Administratively-selected method of annexation is controlling. - The selection of annexation method made by the commission and approved by the legislature is controlling. Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974).

The policy decision as to the mode of annexation is an exercise of lawfully vested administrative discretion which the supreme court will review only to determine if administrative, legislative or constitutional mandates were disobeyed or if the action constituted an abuse of discretion. Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974).

Dissolution of utility district upon annexation. - The provision of former AS 42.35.370 providing for dissolution of a utility district with the consent of the voters when "the whole or the integral part of a district becomes annexed to an incorporated city" had application only where annexation took place under the petition-election procedure of former AS 29.70.010 to 29.70.240, and had no application where annexation takes place under a different method established by this section. Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, 368 P.2d 540 (Alaska 1962).

Submission of an accepted incorporation petition to the legislature is not required - by the state constitution. Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska 1974).

The convention debating adoption of this article simply did not address the question of whether incorporation petitions must be submitted to the legislature. Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska 1974).

Extension of city services. - All annexations will have the purpose and effect, in part, of extending city services. Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974).

The basic purpose for creating the boundary commission - and conferring upon it the powers that it possesses was to obviate the type of situation where there was a controversy over municipal boundaries which apparently could not be settled at the local level. Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska 1974).

This policy does not reach creation of an organized borough - from the nonfunctioning unorganized borough. Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska 1974).

Carving a new unit of government from the unorganized borough generates no controversy between governments with competing economic and political interests. The conflicts accompanying boundary adjustments between two functioning governments which must be submitted to the legislature under this section do not afflict mere incorporation. Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska 1974).

Wood River made part of city of Dillingham. - When the legislature failed to disapprove of the commission's proposal, the commission's local boundary change, which consisted of the abolition of the boundary of Wood River and the confirmation of the boundary of the city of Dillingham, had the effect of making Wood River a part of the city of Dillingham. When the boundary commission's proposal for boundary change become effective, the city of Wood River was dissolved, even though the statutory procedures for dissolution of cities were not followed. Oesau v. City of Dillingham, 439 P.2d 180 (Alaska 1968).

Quoted in Graham v. City of Anchorage, 364 P.2d 57 (Alaska 1961).

Stated in Walters v. Cease, 394 P.2d 670 (Alaska 1964).

Cited in Pavlik v. State, Dep't of Community & Regional Affairs, 637 P.2d 1045 (Alaska 1981).

ection 13. Agreements; Transfer Of Powers. Agreements, including those for cooperative or joint administration of any functions or powers, may be made by any local government with any other local government, with the State, or with the United States, unless otherwise provided by law or charter. A city may transfer to the borough in which it is located any of its powers or functions unless prohibited by law or charter, and may in like manner revoke the transfer.

Decisions - Quoted in City of Juneau v. Hixson, 373 P.2d 743 (Alaska 1962).

Stated in City of Douglas v. City & Borough of Juneau, 484 P.2d 1040 (Alaska 1971); City of Homer v. Gangl, 650 P.2d 396 (Alaska 1982).

Section 14. Local Government Agency. An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law.

Cross References - The agency established in the executive branch to advise and assist local governments is the Department of Community and Regional Affairs (AS 44.47).

Decisions - Stated in Walters v. Cease, 394 P.2d 670 (Alaska 1964).

Section 15. Special Service Districts. Special service districts existing at the time a borough is organized shall be integrated with the government of the borough as provided by law.

Appendix B

Synopsis of *Matanuska-Susitna Borough School District v. State,* 931 P.2d 391 (Alaska 1997)

In 1997, the Alaska Supreme Court ruled on an appeal over whether the divergent funding scheme violated the equal-protection clause under Alaska's Constitution. *Matanuska-Susitna Borough School District v. State,* 931 P.2d 391 (Alaska 1997).

The ruling, written by Justice Compton, followed a number of prior cases by employing "a sliding scale approach to determine the level of scrutiny that is required in reviewing a challenged statute." *Id., 396.* That approach involved three steps.

The initial step was to determine "what weight should be afforded the constitutional interest impaired by the challenged enactment." *Id.* The Court noted that this first step was "the most important variable in fixing the appropriate level of review." *Id.*

In undertaking that first step, the Court followed its 1985 ruling on the constitutionality of the State oil and gas corporation income tax in *Atlantic Richfield Co. v. State,* 705 P.2d 418, 437 (Alaska 1985), holding that " '[t]he interest involved here, freedom from disparate taxation, lies at the low end of the continuum of interests protected by the equal protection clause.' "[1] *Matanuska-Susitna,* 398.

The second step in determining the level of scrutiny to be given by the Court was an examination "of the purposes served by a challenged statute." *Id., 396.*

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[1] This holding that "[t]he interest involved here, freedom from disparate taxation, lies at the low end of the continuum of interests protected by the equal protection clause." was from *Atlantic Richfield* in which the statement was followed by footnote 55. That footnote stated, "*See Regan v. Taxation with Representation of Washington,* 461 U.S. 540, 547, 103 S.CT. 1997, 2002, 76 L.Ed.2d 129, 138 (1983). *See generally* P. Hartman, *supra* note 8, § 3.1, at 131-38."

In applying the second step in *Atlantic Richfield,* the Court addressed the purpose of the statute in terms of why oil companies were treated differently than other corporations with respect to taxation.

> Regarding the statute's purpose, the oil companies claim that greed and other improper motives led the Alaska legislature to enact the Oil Tax. The state, however, has adequately established that a primary purpose of the Oil Tax was to rectify a perceived underestimation of oil production and pipeline transportation income that occurred with the application of an apportionment formula. The goal was to insure that the tax rate assessed to the oil companies on this income was commensurate with the rate applicable to the income of other corporations in the state. Ch. 110, § 1, SLA 1978. Taxing the oil companies differently to rectify a perceived inequity was the legislature's attempt to prevent disparate treatment; thus, the validity of this purpose in light of the companies' interest is established.

Atlantic Richfield, 437.

In terms of the second step undertaken with respect to the disparate taxation issue in *Matanuska-Susitna*, the Court held that:

> Because the individual plaintiffs' interests affected lie "at the low end of the continuum," we need only examine whether the state's objectives were legitimate. . . . The stated purpose of the public school foundation program that provides for operating cost aid is "to assure an equitable level of educational opportunities for those in attendance in the public schools of the state." AS 14.17.220. This purpose easily meets the required standard of legitimacy.

Matanuska-Susitna, at 399.

The LBC perceives a critical distinction between the two cases in terms of the second step. In *Atlantic Richfield,* the Court clearly established that the purpose of the challenged statute had a direct bearing on the different tax treatment accorded oil companies as compared to other corporations. The Court noted that the "primary purpose" of the statute "was to rectify a perceived underestimation of oil production and pipeline transportation income." Moreover, the Court observed that the goal of the statute "was to insure that the tax rate assessed to the oil companies on this income was commensurate with the

rate applicable to the income of other corporations in the state." Indeed, the Court even stated that "[t]axing the oil companies differently to rectify a perceived inequity was the legislature's attempt to prevent disparate treatment."

However, the second step taken in *Matanuska-Susitna,* offers no explanation as to how the imposition of a tax burden on one group of Alaskans (i.e., citizens of boroughs and city school districts) but not on others (i.e., citizens of REAAs and FTREAAs) serves the purpose of the statute (i.e., "to assure an equitable level of educational opportunities for those in attendance in the public schools of the state." [2]). Instead, the Court simply declared that the statement of purpose covering the entire chapter in AS 14.17 "easily meets the required standard of legitimacy." Again, the stated purpose of AS 14.17 was "to assure an equitable level of educational opportunities for those in attendance in the public schools of the state." The LBC does not perceive how disparate treatment of Alaskans with respect to taxation promotes "an equitable level of educational opportunities."

It is particularly puzzling when juxtaposed with the *Regan* case cited in *Atlantic Richfield* (*see* n. 6 above) on which the Court relied in its analysis. In *Regan* the U.S. Supreme Court stated:

> The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized.... The passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, **the**

[2]It should be noted that in 1998, AS 14.17.010 – 14.17.250, including this "purpose" statement, were repealed. New provisions were enacted and are codified as AS 14.17.300 – 14.17.490. The statement of the legislative purpose of the new provisions is substantially similar to the one examined by the Court. The new statement is set out in sec. 1, ch. 83 Temporary and Special Acts.

> **presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes**. The burden is on the one attacking the legislative arrangement to negate every conceivable basis which might support it." *Madden v. Kentucky,* 309 U.S. 83, 87-88, 60 S.Ct. 406, 407-408, 84 L.Ed. 590 (1940) (footnotes omitted).

Regan, at 547 (emphasis added).

It is certainly arguable that requiring a local contribution for education only by boroughs and home-rule and first-class cities in the unorganized borough and none by REAAs and FTREAAs is a type of classification. Given the increasing burden that the "local contribution" requirement (i.e., tax) has placed on boroughs and cities that operate schools – more than $800 million over the past five years alone – it is further arguable that it has become an oppressive discrimination that should be remedied.

In terms of the final step in *Matanuska-Susitna*, the Court again followed rulings in several previous cases. The Court stated:

> Because the individual interests affected lie "at the low end of the sliding scale," we need only find a "fair and substantial relationship" between means and ends. . . .
>
> . . . REAAs are constitutionally unable to tax. Alaska Const. Art. X, § 2. The State argues that "[t]he statutory treatment of municipal districts and REAAs is warranted based on the constitutional differences between these two entities." The individual plaintiffs argue that the State itself could tax REAAs for REAA school expenses, since "[t]he legislature . . . may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough." Alaska Const. Art. X, § 6. They argue that the availability of this option of directly taxing REAAs for REAA school purposes undermines the State's justification for the disparate treatment inherent in the means chosen.
>
> The plaintiffs demand more of the State than equal protection requires, however.

Id., at 399.

The same conclusions regarding the *Regan* analysis applies equally here.

While the Court determined in *Matanuska-Susitna* that concerns over perceived inequities regarding taxation did not violate the equal-protection clause under Alaska's Constitution, concerns over the issue remain. As noted by Justices Matthews and Rabinowitz in their concurring statements in *Matanuska-Susitna*, the proper venue for resolution of the issue is the Alaska Legislature. Justices Matthews and Rabinowitz noted that "any available remedy must be pursued through majoritian processes rather than through the courts." *Id.,* at 406.

It is noteworthy that no fewer than nine proposals were introduced in the Alaska Legislature over the past decade to address the issue of equity. For example Senate Bill No. 30 in the 20th Legislature included a finding that "the rights, opportunities, and obligations of borough residents are not equal to those of residents in the unorganized borough, particularly in respect to education, taxation, and land use regulation, and that this is not in keeping with art. I, sec. 1, of the Constitution of the State of Alaska, that states in part, '. . . that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State'." SB 30 provided for the levy of a six-mill property tax levy within each of several unorganized boroughs (excluding the territory within home-rule and first-class cities) established along the model boundaries identified by the LBC.[3]

While not addressed by the Court in *Matanuska-Susitna,* adding to the concerns over inequity is the fact that the overwhelming majority of those subject to the local contribution requirement live in districts that were incorporated by a 1963 legislative mandate to incorporate eight specific areas of Alaska. More than 95 percent of borough residents live in boroughs that were mandated to incorporate under the 1963 Mandatory Borough Act. The Legislature has made no similar enactment subsequent to 1963 to ensure that residents of other areas of the unorganized borough that possess the fiscal and administrative capacity to operate boroughs incorporate boroughs.

[3]Other bills addressing the issue of equity include HB 470 in the 23rd Legislature; HB 2, in the 22nd Legislature; SB 142, SB 146, SB 337, and HB 205 in the 20th Legislature; and SB 280 and HB 250 in the 19th Legislature.

Appendix C

Administrative Orders

FROM THE OFFICE OF THE GOVERNOR OF ALASKA

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 20, 1981

ADMINISTRATIVE ORDER NO. 65

All agencies of the executive branch of the state government shall use State Information Districts designated by this order to develop and report information on conditions within their respective jurisdiction and on their programs as may be required by specific request by the Division of Budget and Management.

The State Information District boundaries shall coincide with the boundaries of the following as they now exist or may exist in the future:

(1) all unified home rule municipalities,
(2) all organized boroughs; and
(3) all rural educational attendance areas.

Census subarea 1783 (Skagway) shall be used as a boundary until such time it is subsumed within one of the above categories.

By June 30, 1981, the Department of Natural Resources shall issue a map at a scale which accurately depicts these boundaries and also provide a metes and bounds description, utilizing latitude and longitude as points to the extent practicable.

To the extent that the use of State Information Districts for reporting purposes will result in significant expense or inefficiency within state government, their use will be excused by the Division of Budget and Management.

The Division of Policy Development and Planning is designated the lead agency to implement this order, and to ensure that the system for developing and reporting information is consistent throughout the executive branch, it is authorized and directed to supervise the development of the system in each agency and coordinate the development of the system between agencies, beginning no later than May 1, 1981, and ending no later than May 1, 1982.

Beginning with the budget for fiscal year 1983, agency program and financial plans prepared under AS 37.07.050 and agency performance reports prepared under AS 37.07.090 shall be prepared so as to locate programs and expenditures with reference to the boundaries established by this order; however, except as they would otherwise do so, agencies are not required to prepare budgets, programs, or objectives on the basis of these boundaries.

This administrative order takes effect immediately.

DATED March 20, 1981, at Juneau, Alaska.

S/S Jay S. Hammond
Jay S. Hammond
Governor of Alaska

Glossary

ADM is an acronym for "average daily membership."

Alaska Department of Commerce, Community and Economic Development (Department) means the State agency that serves as staff to the Alaska Local Boundary Commission and also serves as the local government agency mandated by Article X, section 14 of the Constitution of the State of Alaska (formerly Alaska Department of Community and Economic Development, or DCED).

Alaska Local Boundary Commission (LBC) is the independent commission established under Alaska's Constitution (Article X, section 12) to render judgments regarding proposals to alter municipal boundaries. The Local Boundary Commission is one of only five boards of the State of Alaska with constitutional origins.

Annexation is the expansion of the jurisdictional boundaries of an existing city government or borough government.

Areawide means throughout a borough, both inside and outside all cities in the borough (AS 29.71.800).

Assembly means the governing body of a borough (AS 29.71.800).

Average Daily Membership (ADM) is the average daily student count over 20 consecutive school-days in October (AS 14.17.600). ADM is defined in State law as "the aggregate number of full-time equivalent students enrolled in a school district during the student count period for which a determination is being made, divided by the actual number of days that school is in session for the student count period for which the determination is being made" (AS 14. 17.990(1)).

Base Student Allocation is the dollar value set in State law that is applied to the "district adjusted ADM" to arrive at the "basic need" for school districts. (See definitions of "district adjusted ADM" and "basic need" in this glossary.) The current base student allocation set out in AS 14.17.470 is $4,576.

Basic Need is the level of fundamental financial aid that a school district is entitled to receive under State law. Under AS 14.17.400(b), if the funding appropriated into the public school account is insufficient to meet the basic need of all districts, DEED must reduce pro rata each district's basic need. The following steps are used to determine the basic need for each school district:

Ascertain average daily membership (ADM). The first step is to determine the average daily membership (ADM) in every school within each school district in Alaska. The term "average daily membership" is defined earlier in this glossary.

Adjust for school size factor.[1] The second step involves adjustment of the average daily membership (ADM) of every school within each school district based upon the particular size of the school. The ADM of each school with 1,022 or fewer students is adjusted upward.

The smaller the ADM, the greater the adjustment. For example, a school with an ADM of 10 is adjusted by a multiple of 3.96 (i.e., 10 students are counted as 39.6); a school with an ADM of 25 is adjusted by a multiple of 1.908 (i.e., 25 students are counted as 47.7); a school with an ADM of 200 is adjusted by a factor of 1.3605 (i.e., 200 students are counted as 272.1). At the threshold ADM of 1,022, the school size factor adjustment becomes negligible.[2]

While the ADM of each school with 1,022 or fewer students is adjusted upward, the ADM of each school with 1,023 or more students is adjusted downward. The higher the ADM, the greater the adjustment. At the 1,023 threshold, the adjustment is negligible. However, a school with an ADM of 1,500 is adjusted by a multiple of 0.9491 (i.e., 1,500 students are counted as 1,423.6); a school with an ADM of 2,000 is adjusted by a multiple of 0.9218 (i.e., 2,000 students are counted as 1843.6). The school with the largest enrollment in FY 2003 had an ADM of 2,454. Its student count was adjusted by a factor of 0.9067 (i.e., its 2,454 students were counted as 2,224.96). In FY 2003, just over 15% of Alaska's students attended schools that had average daily memberships of 1,023 or higher.

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[1] AS 14.17.450.

[2] A school with an ADM of 1,022 is adjusted by a factor of 1.000078277886497064579256360078 3 (i.e., 1,022 students are counted as 1,022.08).

The following defines the adjustments specified in law:

- if the student count[3] is ³ 10 but < 20 the adjusted student count is 39.6;
- if the student count is ³ 20 but < 30 the adjusted student count is 39.6 + (1.62 X the number of students in excess of 20);
- if the student count is ³ 30 but < 75 the adjusted student count is 55.8 + (1.49 X the number of students in excess of 30);
- if the student count is ³ 75 but < 150 the adjusted student count is 122.85 + (1.27 X the number of students in excess of 75);
- if the student count is ³ 150 but < 250 the adjusted student count is 218.1 + (1.08 X the number of students in excess of 150);
- if the student count is ³ 250 but < 400 the adjusted student count is 326.1 + (0.97 X the number of students in excess of 250);
- if the student count is ³ 400 but < 750 the adjusted student count is 471.6 + (0.92 X the number of students in excess of 400);
- if the student count is ³ 750 adjusted student count is 793.6 + (0.84 X the number of students in excess of 750).

Apply district cost factor.[4] In the third step, each district's school-size-adjusted ADM is further adjusted by district cost factors. Cost factors for the 53 districts in Alaska range from a base of 1.000 to 1.736. The cost factors for each of Alaska's school districts is listed below:

Municipality of Anchorage	1.000	City and Borough of Juneau	1.005
Ketchikan Gateway Borough	1.000	Haines Borough	1.008
City of Petersburg	1.000	City of Craig	1.010
City and Borough of Sitka	1.000	Matanuska-Susitna Borough	1.010
City of Wrangell	1.000	Annette Island REAA	1.011
Kenai Peninsula Borough	1.004	City of Klawock	1.017

[3]If the ADM in a school is less than 10, those students are included in the ADM of the school in that district with the lowest ADM as determined by the most recent student count data for that district. (AS 14.17.450(b).)

[4]AS 14.17.460.

City of Kake	1.025	City of Nome	1.319
Fairbanks North Star Borough	1.039	City of Galena	1.348
City and Borough of Yakutat	1.046	City of St. Mary's	1.351
City of Hoonah	1.055	Kashunamiut REAA	1.389
City of Hydaburg	1.085	Pribilof REAA	1.419
Kodiak Island Borough	1.093	Aleutians East Borough	1.423
City of Valdez	1.095	Southwest Region REAA	1.423
City of Cordova	1.096	Kuspuk REAA	1.434
Delta/Greely REAA	1.106	Lower Yukon REAA	1.438
Chatham REAA	1.120	Yupiit REAA	1.469.
Southeast Island REAA	1.124	Iditarod REAA	1.470
City of Skagway	1.143	Lower Kuskokwim REAA	1.491
Copper River REAA	1.176	City of Tanana	1.496
City of Unalaska	1.245	Yukon/Koyukuk REAA	1.502
City of Dillingham	1.254	North Slope Borough	1.504
Bristol Bay Borough	1.262	Bering Strait REAA	1.525
City of Nenana	1.270	Northwest Arctic Borough	1.549
City of Pelican	1.290	Lake and Peninsula Borough	1.558
Alaska Gateway REAA	1.291	Yukon Flats REAA	1.668
Chugach REAA	1.294	Aleutians Region REAA	1.736
Denali Borough	1.313		

Apply special needs factor.[5] In the fourth step, a special needs factor is applied. To assist districts in providing special education (except intensive special education), gifted and talented education, vocational education, and bilingual education services the figure derived in the third step following the application of the district cost factor is multiplied by 1.20, as set out in AS 14.17.410 (b)(1). To qualify for special needs funding, a school district must file a plan with the DEED indicating the special needs services that will be provided.

Add intensive service adjustment.[6] In the fifth step, a district may receive an adjustment for intensive services funding for each special education student who needs and receives intensive services and is enrolled on the last day of the 20-school-day-count period. For each such student, intensive services funding is equal to the intensive student count multiplied by five. To receive funding, a district is required to establish a "individual education

[5]AS 14.17.420(a)(1).

[6]AS 14.17.420(a)(2).

plan" for each special education student who needs and receives intensive services.

Add correspondence students.[7] The sixth step relates to funding for any correspondence students served by a district. Funding for correspondence study provided by a district is calculated by multiplying the ADM of the correspondence program by a factor of 0.8.

Apply base student allocation.[8] The figure arrived at through the steps outlined above is the district adjusted ADM. The district adjusted ADM is multiplied by the base student allocation, currently, $4,576, to arrive at the basic need for each district.

Note: AS 14.17.490 provides as follows concerning school funding:

> *Sec. 14.17.490. Public school funding adjustments.*[9]
>
> *(a) Except as provided in (b) - (e) of this section, if, in fiscal year 1999, a city or borough school district or a regional educational attendance area would receive less public school funding under AS 14.17.410 than the district or area would have received as state aid, the district or area is, in each fiscal year, eligible to receive additional public school funding equal to the difference between the public school funding the district or area was eligible to*

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[7] AS 14.17.430.

[8] AS 14.17.470.

[9] In *Public School Funding Program Overview,* (January 2004) DEED outlines the application of AS 14.17.490 as follows:

Adjustments to the Funding 'Floor'
The funding 'Floor' was established in FY 99 to provide funds for districts generating less state aid using the New Funding Formula and bridges the transition between the programs. All adjustments to the 'Floor' are reductions. There are two ways that the 'Floor' can be adjusted:

1) If the Basic Need in the current fiscal year is greater than the Basic Need in the prior fiscal year, then take the difference, and multiply it by 40%. Subtract this number from the funding 'Floor' to arrive at the new 'Floor' amount for the current fiscal year.
2) If the ADM decreases by 5% or more over FY99, then reduce the funding 'Floor' by that same percentage.

Please Note: No action is taken to the funding 'Floor' if:

1) The current fiscal year Basic Need is less than the prior year Basic Need or,
2) The ADM has not decreased by 5% or more since FY99.

receive under AS 14.17.410 in fiscal year 1999 and the state aid the district or area would have received in fiscal year 1999.

(b) A city or borough school district is not eligible for additional funding authorized under (a) of this section unless, during the fiscal year in which the district receives funding under (a) of this section, the district received a local contribution equal to at least the equivalent of a four mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year as determined by the Department of Community and Economic Development under AS 14.17.510 and AS 29.45.110.

(c) For the purposes of the reduction required under AS 14.17.400 (b), funding authorized under (a) of this section is treated the same as the state share of public school funding under AS 14.17.410 .

(d) Beginning in fiscal year 2000, if a district receives more public school funding under AS 14.17.410 than the district received in the preceding fiscal year, any amount received by the district under this section shall be reduced. The amount of the reduction required under this subsection is equal to the amount of increase from the preceding fiscal year in public school funding multiplied by 40 percent. In this subsection, "public school funding" does not include funding under this section.

(e) Beginning in fiscal year 2000, in each fiscal year, the department shall compare each district's ADM with the district's ADM in fiscal year 1999. If the current fiscal year ADM is less than 95 percent of the district's ADM in fiscal year 1999, the department shall reduce the district's public school funding calculated under (a) of this section by a percentage equal to the percentage of decrease in the district's ADM.

(f) For purposes of this section, "state aid" means state aid distributed under the provisions of AS 14.17, as those provisions read on January 1, 1998, and additional district support appropriated by the legislature for fiscal year 1998.

Borough means a general law borough (first class, second class, or third class), a non-unified home rule borough, or a unified home rule borough (unified municipality) (3 AAC 110.990(1)).

In general terms, the word 'borough' means a place organized for local government. Boroughs exist in certain other states in this country and in other countries; however, they bear no similarity to boroughs in Alaska.

After much debate, Alaska's Constitutional Convention Delegates chose the term "borough" over alternatives such as county, canton, division, and province. They did so because they felt that the term borough did not carry the connotations of the other terms. The Delegates wanted to preclude rigid thinking and the application of restrictive court decisions based on the extensive body of county law developed in the existing states. (*See*, Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, 1971, p. 37.)

In Alaska, a borough is a regional unit of municipal government (*See,* Victor Fischer, *Alaska's Constitutional Convention,* 1975, pp. 116 – 123); Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, 1971, pp. 37 – 41; *Mobil Oil v. Local Boundary Commission,* 518 P.2d 92, 100 (Alaska 1974); and Alaska State Legislature, Legislative Counsel, *Proceedings of the Alaska Constitutional Convention*, 1963, pp. 2638 and 2641.)

CDP is an acronym for "census designated place."

Census Designated Place means a statistical territory, defined for each decennial census according to Census Bureau guidelines, comprising a densely settled concentration of population that is not within an incorporated place, but is locally identified by a name. Beginning with Census 2000, there are no size limits.

Charter is the organic law of a home-rule municipality describing the rights and responsibilities of the municipality and its citizens (AS 29.04.010).

Cherry-Picking means choosing what is most beneficial to one from a range of available options/products, etc.

City means a general law (first class or second class city or a home-rule city government (AS 29.71.800). It is a municipal corporation and political subdivision of the State of Alaska.

Coastal Resource Service Area means a service area established and organized under AS 29.03.020 and AS 46.40.110 - 46.40.180 (3 AAC 110.990(2)).

Commission refers to the Local Boundary Commission (3 AAC 110.990(3)).

Community means a social unit comprised of 25 or more permanent residents as determined under 3 AAC 110.920 (3 AAC 110.990(5)).

Consolidation in terms of "municipal consolidation" means the dissolution of two or more municipalities and their incorporation as a new municipality (AS 29.71.800). "Consolidation" in terms of "school consolidation", means the combining of two or more school districts through any of several means (e.g., borough incorporation, annexation, city reclassification, city dissolution, or modifying the boundaries of REAAs).

Contiguous means, with respect to territories and properties, adjacent, adjoining, and touching each other (3 AAC 110.990(6)).

Council means the governing body of a city (AS 29.71.800).

Department means the "Alaska Department of Commerce, Community and Economic Development" (formerly DCED for "Alaska Department of Community and Economic Development" and formerly DCRA for the "Alaska Department of Community and Regional Affairs").

DEED is an acronym for "Alaska Department of Education and Early Development."

Detachment means reduction of the jurisdictional boundaries of an existing city or borough government (AS 29.06.040).

Dissolution means terminating the corporate status of a municipal government (AS 29.06.450).

District means a city or borough school district or a regional educational attendance area (REAA) (AS 14.17.990(2)). District also means a federal transfer regional educational attendance area (FTREAA).

District Adjusted ADM is the average daily membership of a district that has been adjusted by: (1) applying the school size factor to the student count as set out in AS 14.17.450; (2) applying the district cost factor described in AS 14.17.460; (3) applying the special needs factor as set out in AS 14.17.420(a)(1); (4) adding the intensive service adjustment as set out in AS 14.17.420(a)(2); and (5) adding correspondence students as set out in AS 14.17.430.

Enrollment is a one-day count of the number of students as of October 1.

Enrollment Gap is the difference between the 250-student threshold established in AS 14.12.025 for the creation of new school districts and the most recent average daily membership for a district with fewer than 250 students.

Federal Impact Aid is federal financial assistance provided, upon application, to school districts with children whose parents live and/or work on federal property. Ninety percent of the eligible federal impact aid funds are used in the calculation of state aid (see column 4 of Tables 1-4 in Part I of the report for treatment of the deductible federal impact aid).

Federal Transfer Regional Educational Attendance Area (FTREAA) means an educational service area established and organized under a special act in 1985 (Ch. 66, SLA 1985) separate and distinct from an REAA established and organized under AS 14.031 and AS 29.03.020. There are two FTREAAs: (1) a school district that provides education services to three villages in the Lower Kuskokwim REAA (Akiachak, Akiak, and Tuluksak); and (2) a school district that provides education services to the village of Chevak in the Lower Yukon REAA.

FTE is an acronym for "full-time equivalent."

FTREAA is an acronym for "federal transfer regional educational attendance area."

Full-Time Equivalent means employment in terms of the equivalent of full-time positions.

General Law Municipality means a municipal corporation and political subdivision of the State of Alaska that has legislative powers conferred by State law; it may be an unchartered first-class borough, second-class borough, third class borough, first-class city, or second-class city organized under the laws of the State of Alaska. (AS 29.04.020.)

High School Graduation Qualifying Examination (HSGQE) (a.k.a. State High School Exit Exam) means an exam given to all high school sophomores, juniors, and seniors to determine proficiency in reading, writing, and mathematics. Proficiency in those fields is required in order to earn a high school diploma.

Home-Rule Municipality means a city or a borough that has adopted a home-rule charter. A home-rule municipality has all legislative powers not prohibited by law or charter (AS 29.04.010).

HSGQE is an acronym for "high school graduation qualifying examination."

Incorporation means creating a political subdivision and municipal government under the laws of Alaska (AS 29.05.011 - 29.05.031).

LBC is an acronym for "Alaska Local Boundary Commission."

Magnet School means a school with a strong emphasis in a particular subject area, for example, music, science, drama, math, etc. In a magnet school, students are typically selected through an application process instead of being assigned based on residence.

Merger means dissolution of a municipality and its absorption by another municipality (AS 29.71.800).

Model Borough Boundaries means those boundaries set out in the Commission's publication *Model Borough Boundaries*, revised as of June 1997 and adopted by reference (3 AAC 110.990(9)).

Municipality means a political subdivision incorporated under the laws of the state that is a home-rule or general law city, a home-rule or general law borough (AS 29.71.800).

Nonareawide means throughout the area of a borough outside all cities in the borough (AS 29.71.800).

Permanent Resident means a person who has maintained a principal domicile in the territory proposed for change under this chapter for at least 30 days immediately preceding the date of acceptance of a petition by the department, and who shows no intent to remove that principal domicile from the territory at any time during the pendency of a petition before the Commission (3 AAC 110.990(10)).

Petition means a proposal for one or more actions by the Local Boundary Commission as provided for under 3 AAC 110.420.

Petitioner is the entity or group, set out in 3 AAC 110.410, filing a request for action by the Local Boundary Commission.

Petitioner's Representative is the person designated to act as the representative of a petitioner (3 AAC 110.410(e)).

Political means pertaining or relating to the policy of the administration or government. Pertaining to, or incidental to, the exercise of the functions vested in those charged with the conduct of government; relating to the management of affairs of state; as political theories; or pertaining to exercise of rights and privileges or the influence by which individuals of a state seek to determine or control its public policy; having to do with organization or action of individuals, parties or interests that seek to control appointment or action of those who manage affairs of a state. (Blacks Law Dictionary)

Political Subdivision means a borough or city organized and operated under state law (3 AAC 110.990(11)).

Property Owner means a legal person holding a vested fee simple interest in the surface estate of any real property including submerged lands; "property owner" does not include lienholders, mortgagees, deed of trust beneficiaries, remaindermen, lessees, or holders of unvested interests in land (3 AAC 110.990(12)).

Quality School Funding is a component of public school funding. Under AS 14. 17.480, a district is eligible to receive a quality school funding grant not to exceed the district's adjusted ADM multiplied by $16.

REAA is an acronym for "regional educational attendance area."

Reclassification means changing the classification of a municipal government; e.g., from a second-class city to a first-class city (AS 29.04.040 - 29.04.050).

Regional Educational Attendance Area means an educational service area established and organized under AS 14.08.031 and AS 29.03.020. It is a school district that provides education services to that portion of the unorganized borough outside of home-rule and first-class cities.

Reply Brief refers to the document filed by the Petitioner with the Local Boundary Commission pursuant to 3 AAC 110.490.

Required Local Contribution means the local contribution required by AS 14.17.410(b)(2) of a city or borough school district that is the equivalent of a four mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year, as determined by the Department of Community and Economic Development under AS 14.17.510 and AS 29.45.110, not to exceed 45 percent of a district's basic need for the preceding fiscal year as determined under AS 14.17.410(b)(1). Neither REAAs nor FTREAAs are subject to required local contributions. (See also "voluntary local contribution.")

Respondent is a person or entity who argues for or against a petition, has the capacity to sue or be sued, and has certain rights and responsibilities in a petition proceeding.

Responsive Brief refers to the document filed by a respondent under 3 AAC 110.480.

Service Area refers to an area in which borough services are provided that are not offered on an areawide or nonareawide basis, or in which a higher or different level of areawide or nonareawide services are provided. Borough service areas are not local governments because they lack legislative and executive powers. Nonetheless, borough service areas are local governmental *units* in the context of the minimum of local government units clause found in Article X, § 1 of Alaska's Constitution.

State (where capitalized) refers to the State of Alaska government.

State Aid (State Foundation Formula). State aid equals basic need minus a required local contribution and 90 percent of eligible federal impact aid for that fiscal year. (AS 14.17.410(b)(1)).

Unorganized Borough means areas of Alaska that are not within the boundaries of an organized borough (AS 29.03.010).

Voluntary Local Contribution (also referred to as "excess local contribution") means the level of funding in addition to the local contribution required under AS 14.17.410((b)(2) that a city or borough school district may contribute in a fiscal year. The voluntary local contribution may not exceed the greater of (1) the equivalent of a two-mill tax levy on the full and true value of the

taxable real and personal property in the district as of January 1 of the second preceding fiscal year, as determined by the Department of Community and Economic Development under AS 14.17.510 and AS 29.45.110; or (2) 23 percent of the district's basic need for the fiscal year under AS 14.17.410(b)(1). (See also "required local contribution.")

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