

# Part I Background

## A. Introduction.

Public education is one of the essential responsibilities of the State of Alaska. Article VII, Section 1 of the Constitution of the State of Alaska sets out the State's duties regarding public education as follows:

The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. . . .

One key measure of the State's commitment to public education is found in the level of funding provided for that purpose. In the current fiscal year (FY), the State appropriated \$729,255,000 for public education (K-12 support and pupil transportation). That figure represents 33.23 percent of all general-purpose appropriations for the State of Alaska during FY 2004.<sup>1</sup> The State spends more on education than on any other service.

In a press release dated June 6, 2003, Governor Murkowski noted that sacrifices were 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 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:<sup>2</sup>



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? There is great disparity in student performance from school to school and district to district. Why are some of our schools only able to show less than 10 percent of their students proficient on a benchmark exam, while other schools are able to show more than 90 percent of their students proficient on the same exam?

The 2003 Alaska Legislature directed the Local Boundary Commission ("Commission") and the Department of Education and Early Development ("Department" or "DEED") to review matters relating to school consolidation. This document constitutes the joint report of the Commission and the Department to the 2004 Alaska Legislature on the matter of school consolidation.

Part I of this report provides details regarding the legislative directive for this school consolidation study. Part I also provides background information about the structure of school districts in Alaska. Additionally, Part I addresses the State's central role with respect to education through a synopsis of the history and law.

<sup>1</sup> Source: State of Alaska, Legislative Finance Division.

<sup>2</sup> The press release and Governor's letter are included in this report as Appendix A.

## B. Legislative Directive and Proceedings for Review of School Consolidation.

### 1. Legislative Directive.

The 2003 Alaska Legislature directed the Commission and the Department to address matters relating to school consolidation.<sup>3</sup> Specifically, the legislative directive, which appears on page 10, Section 1, Chapter 83, SLA 2003, provides as follows:

It is the intent of the legislature that (1) the Local Boundary Commission 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 Local Boundary Commission work with the Department of Education and Early Development to fully examine the public policy advantages of prospective consolidations identified by the Local Boundary Commission, including projected cost savings and potential improvements in educational services made possible through greater economies of scale; and (3) the Local Boundary Commission with the Department of Education and Early Development report their findings to the legislature no later than the 30th day of the Second Session of the 23rd Legislature.

The legislative directive calls for particular emphasis to be placed on school districts with fewer than 250 students. In reviewing this directive, it is important to recognize that the “250 student” threshold is not a random or arbitrary number selected merely for purposes of this review. 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.

Numerical limitations (either minimums or maximums) set by the Legislature are considered under the standard rules applicable to interpretation of statutes (presumption of constitutionality) as well as plain meaning. A moving party arguing for a position other than the plain meaning of a statute or rule bears the burden of establishing legislative history that supports departure from the plain meaning. *K.L.F. v. State*, 790 P.2d 708, 711 (Alaska 1990), rev. dismissed 820 P.2d 1076 (Alaska 1991).

The adoption of a number (e.g., a minimum of 250 students) is considered to be a reasonable number. Courts will not infer that such a number is arbitrary, but will presume it expresses legislative intent over a proper subject to be governed by the legislature. Courts give such numbers a reasonable application.

Given the current limitation on creation of school districts, directing that emphasis be placed on studying those districts with fewer than 250 students has a rational basis for analytical purposes.

Cathy Brown with the Associated Press wrote an article framing many of the fundamental issues concerning the legislative directive regarding school consolidation issues. The article, published on June 6, 2003, in the *Anchorage Daily News* stated as follows:

#### Consolidating school districts eyed

**SAVINGS:** Cutting administrative costs might send money to classes.

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, R-Fairbanks, are pushing the idea, which is almost certain to be opposed by many communities that would be affected.

<sup>3</sup> Appendix B of this report provides background information about the Commission and the Department.

'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.'

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 back 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, and he's not happy with the talk of consolidation.

It 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 happen, said Kookesh, an Angoon Democrat.

'It's the lifeblood of the community,' he said. 'Everything centers around the school.'

Klawock Superintendent Richard Carlson believes any savings in administration would be eaten up in transporting students and remodeling buildings.

And he does not believe education would be improved. Klawock is proud of its school, which has produced doctors, lawyers and graduates of prestigious East Coast colleges, Carlson said.

'The people of Klawock are fiercely independent and feel very strongly that they should have the authority to run their own school,' Carlson said.

It's not clear that consolidating school districts would save the state a lot of money.

Under the state school funding formula, districts receive money based on the number of students they have, so the state would spend about the same amount of money, regardless of which rural district those students attend, Jeans said. However, he said, if the combined districts had lower administrative costs, more money might reach the classroom.

A 1992 legislative budget and audit report found that about \$5.3 million in administrative costs might be saved through consolidation of schools that are not in organized boroughs. That was about 1 percent of what the state was spending then on its school funding formula.

The report concluded that 'relatively modest' savings was not enough to warrant extensive restructuring of the state's education system and the loss of local control.



Details concerning the legislative directive were provided by Senator Gary Wilken in a letter to the Commission and Department dated November 6, 2003.<sup>4</sup> Senator Wilken noted that the legislative directive consists of three distinct elements. He described the first of those as follows:

The first requires “the . . . Commission [to] 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.”

The language regarding this first component of the directive is not intended to exclude participation by the Department . . . Indeed, active involvement by the Department is as critical to the fulfillment of the legislative intent for the first component as it is to the other two components of the project. In this legislative directive, student populations should be based on resident average daily membership figures.

The term ‘boundary changes’ used in the directive is to be broadly construed in a manner consistent with constitutional records, rulings of the Alaska Supreme Court, opinions of the Attorney General’s office, and the previously expressed views of the . . . Commission. Specifically, ‘boundary changes’ may include any action under the jurisdiction of the . . . Commission (i.e., municipal incorporation, annexation, dissolution, merger, consolidation,

detachment, and city reclassification). For purposes of this effort, the term may also include annexation, dissolution, merger, consolidation, and detachment to or from a regional educational attendance area.

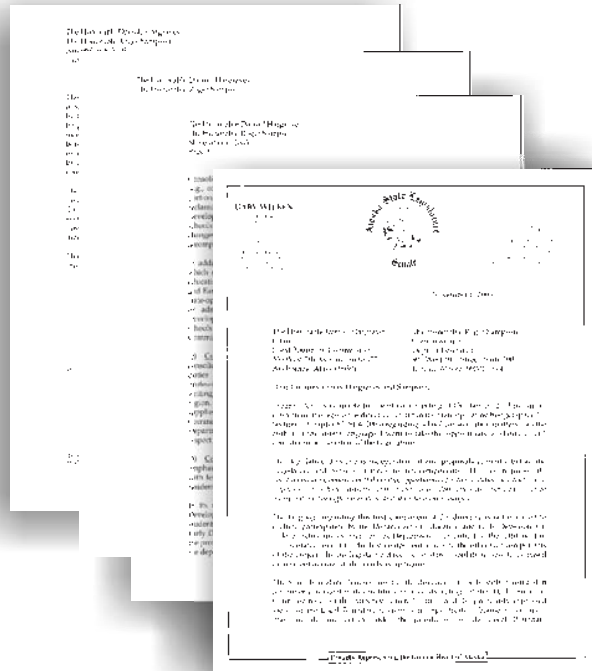
Senator Wilken wrote that the second component of the legislative directive calls for an objective review of the arguments for and against school consolidation. Specifically, he stated:

The second component of the legislative directive requires “the . . . Commission [to] work with the Department . . . to fully examine the public policy advantages of prospective consolidations identified by the . . . Commission, including projected cost savings and potential improvements in educational services made possible through greater economies of scale.” As is reflected in the language, this component should also be a joint effort between the . . .

Commission and the Department . . . I want to stress that the language is not intended to limit the examination to just ‘public policy advantages’ of consolidation. The review by your two agencies should be balanced and, therefore, address any public policy ‘disadvantages’ associated with school consolidation.

Senator Wilken noted that the final element of the directive calls for the Commission and the Department to issue a report on the findings of the two agencies. He urged the Commission and Department to conduct joint hearings in at least some of the potentially affected communities. Specifically, he wrote:

The last component of the legislative directive requires “the . . . Commission with the Department . . . [to] report their findings to the legislature no later than the 30th day of the Second Session of the 23rd Legislature.” The deadline for submission of the report to the Legislature is February 10, 2004. I recognize that



<sup>4</sup> Senator Wilken is the author of the legislative directive. A copy of his letter of November 6, 2003, is included in this report as Appendix C.

both the . . . Commission and the Department . . . have heavy workloads and limited resources. Nonetheless, it would be ideal if the agencies held joint hearings in at least some of the communities that could be affected by consolidation.

## 2. Proceedings.

Following receipt of the November 6, 2003, letter from Senator Wilken, Commission Chair Hargraves and Department Commissioner Sampson wrote a joint letter inviting input on the issue of school consolidation from 150 interested individuals and organizations.<sup>5</sup> The letter was sent to the following individuals and organizations on November 10, 2003:

- Ü Mayors of each of the 16 organized boroughs;
- Ü Mayors of each of the 18 home-rule and first-class cities in the unorganized borough;
- Ü Presiding officers of each of the 53 school boards in Alaska;
- Ü Superintendents of each of the 53 school districts in Alaska;
- Ü Executive Director of the Association of Alaska School Boards;
- Ü Executive Director of the Alaska Council of School Administrators;
- Ü Executive Director of NEA-Alaska;
- Ü President of Alaska PTA;
- Ü President of Alaska Association of School Business Officials;
- Ü President and Executive Director of Citizens for the Educational Advancement of Alaska Children;
- Ü Director of the Mt. Edgecumbe High School;

- Ü Acting Director of Alyeska Central School; and
- Ü Executive Director of the Alaska Municipal League.

Noting that Senator Wilken's November 6 letter "provides important details concerning the legislative directive," Commissioner Sampson and Commission Hargraves included a copy of Senator Wilken's letter in their joint November 10 communiqué to the 150 recipients noted above. Recipients were urged to comment on school consolidation. They were asked, in particular, to address the following two issues:

1. Given the considerable administrative and managerial duties associated with operating a public school district, at what point does the best interests of Alaska's children and the best interests of the general public compel school consolidation?
2. If some form of school consolidation is directed by the Alaska Legislature, what options should be considered first?

In terms of the first question, the November 10 letter from Commissioner Hargraves and Commissioner Sampson noted that the 2003 legislative directive called for emphasis to be placed on school districts with fewer than 250 students. The letter noted that the 1986 Legislature had also prescribed that new school districts must have at least 250 students unless the Commissioner of the Department determined that formation of a new district with fewer students "would be in the best interest of the state and the proposed district."

The November 10 joint letter noted that no standards or criteria have ever been adopted to guide determinations when the creation of new school districts with fewer than 250 students "would be in

<sup>5</sup> See Appendix D for the joint letter, along with the names and addresses of the recipients.



the best interest of the state and the proposed school district.” Commissioner Sampson and Commissioner Hargraves invited views on criteria that should be considered with regard to school consolidation.

Concerning the second question, the November 10 joint letter noted that school consolidation could be brought about in a number of ways. It again referred to Senator Wilken’s November 6 letter, noting that it “carefully outlines a multitude of options.”

The Commission and Department recognize that the two questions posed to the 150 individuals in the November 10 joint letter were somewhat nebulous. To some extent, it may have been more difficult for some of the recipients to respond in a detailed manner without background and reference materials, such as those provided in this report.

Moreover, the Commission and Department acknowledge that some recipients may have been deterred in responding to the November 10 letter since it seemed to offer only a brief period for response. Specifically, the letter stated, “Because the 2004 legislative session is fast approaching, it would most helpful if you submitted your comments to us by November 26, 2003.”

Eleven sets of written comments were submitted to the Commission and Department by November 26. Seven additional sets of written comments on school consolidation were provided to the Commission and Department subsequent to November 26. All comments are included in this report.<sup>6</sup>

The Commission and Department carefully considered the written comments along with other information prepared for this review, including detailed profiles of each school district in Alaska<sup>7</sup> and data regarding a number of school district characteristics that are relevant to the issue of consolidation.<sup>8</sup>

The Commission and Department met on the following five occasions regarding school consolidation. Those were:

- Ü October 29, 2003;
- Ü December 17, 2003;
- Ü January 16, 2004;
- Ü February 6, 2004; and
- Ü February 13, 2004.

An initial draft of this joint school consolidation report was posted to the Internet for public review and comment on December 3, 2003. A subsequent draft of the joint report was made available in the same fashion on January 29, 2004.

At a public meeting on February 6, 2004, the Commission and Department discussed with Senator Wilken the need for a short extension of time to complete and submit the school consolidation report to the Legislature. Senator Wilken interposed no objection to a brief extension.

Given the time and resources allotted to the task, the Commission and the Department take the view that the two agencies have accomplished as much as is practicable with respect to the legislative directive regarding school consolidation. If the Legislature wishes the Commission and Department to pursue any aspect of this school consolidation review, including hearings in potentially affected communities, the Commission and Department are prepared to undertake any additional efforts directed by the Legislature.

<sup>6</sup> See Appendix E.

<sup>7</sup> See Appendix F.

<sup>8</sup> See Appendix G.



*Naknek School within the Bristol Bay Borough School District.*

### C. Types of School Districts in Alaska.

There are four different types of school districts in Alaska. They are (1) borough school districts, (2) city school districts, (3) regional educational attendance areas (“REAAs”), and (4) federal transfer regional educational attendance areas (“FTREAA”).

The four types of districts have certain distinguishing characteristics. In terms of this report, two fundamental distinctions are particularly noteworthy. The first concerns the geographic area served by the different types of school districts. Two of the four types of districts are regional in nature. Those are borough school districts and REAAAs. In contrast, city school districts encompass only a community.<sup>9</sup> With regard to the fourth type of district, despite their designation as federal transfer *regional* educational attendance areas, the existing FTREAAAs clearly lack regional characteristics.

The second fundamental distinguishing characteristic noted here relates to requirements for local financial support of schools. City and borough school districts are required to make a local contribution to aid their schools. Specifically, AS 14.17.410(b)(2) provides:

[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.

In contrast, REAAAs and FTREAAAs rely exclusively on State and federal funding for operation of schools.

<sup>9</sup> Appendix H provides additional information about city and borough governments that is relevant to this report.

An overview of the four types of school districts in Alaska follows.

## 1. Borough School Districts.

AS 14.12.010(2) provides that “each organized borough is a borough school district.” Additionally, AS 29.35.160 provides:

(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.

(b) This section applies to home rule and general law municipalities.

There are 16 organized boroughs in Alaska, all of which are listed on the following page in Table 1. Each borough school district is ranked in column 1 of the table in ascending order with respect to FY 2004 resident average daily membership (ADM).

The public school funding components for each borough school district are also shown in Table 1. Column 2 shows the *basic need* (i.e., the amount of education funding to which each district is entitled under Alaska’s education foundation funding

formula) for each district. The glossary provided in this report offers a detailed definition of the term *basic need* and other technical terms used in this report.

Column 3 of Table 1 shows the *required local contribution* that borough school districts must pay under AS 14.17.410(b)(2). The *required local contribution* does not increase the level of funding for a borough school district. Instead, it offsets the reduction in State financial aid imposed exclusively on borough and city school districts. In that regard, the *required local contribution* is, in effect, a State tax levied exclusively on organized boroughs and home-rule and first-class cities in the unorganized borough.

Column 4 of Table 1 lists the portion of federal impact aid (PL 874) generated within each district that is applied to the basic need for that district.

Column 5 equals the *State aid* for borough school districts. It is the difference between *basic need*, minus the *required local contribution*, minus *deductible federal impact aid*.

Borough school districts are permitted under AS 14.17.410(c) to make voluntary local contributions in support of their schools (within certain constraints) to increase funding beyond the level of basic need. Column 6 of Table 1 lists the voluntary contributions of organized borough school districts for FY 2004. Unlike the *required local contributions*, voluntary contributions do increase the level of funding for local school districts.

Column 7 lists the total funding (combined *basic need* and *voluntary local contributions*) available to the districts.



**Table 1**  
**ADM and Funding Components for Borough School Districts in Alaska**  
**Fiscal Year 2004**

Column 1 <i>School District</i>	Column 2 <i>Basic Need</i>	Column 3 Minus <i>Required Local Contribution AS 14.17.410(b)(2)</i>	Column 4 Minus <i>Deductible Federal Impact Aid (PL-874)*</i>	Column 5 Equals <i>State Aid</i>	Column 6 <i>Voluntary Local Contribution (AS 14.17.410(c))</i>	Column 7 <i>Basic Need and Voluntary Contributions</i>
City and Borough of Yakutat (resident ADM 125)	\$1,153,354	\$201,923	\$37,651	\$913,780	\$225,077	\$1,378,431
Bristol Bay Borough (resident ADM 195.4)	\$1,956,553	\$767,940	\$236,252	\$952,361	\$273,315	\$2,229,868
Aleutians East Borough (resident ADM 280)	\$3,906,853	\$371,742	\$302,952	\$3,232,159	\$528,258	\$4,435,111
Haines Borough (resident ADM 304.9)	\$2,473,968	\$829,391	\$0	\$1,644,577	\$508,833	\$2,982,801
Denali Borough (resident ADM 305.8)	\$4,296,905	\$551,138	\$1,944	\$3,743,823	\$725,512	\$5,022,417
Lake & Peninsula Borough (resident ADM 415.3)	\$6,313,158	\$255,003	\$248,291	\$5,809,864	\$603,432	\$6,916,590
City and Borough of Sitka (resident ADM 1,443.7)	\$9,182,714	\$2,677,839	\$8,006	\$6,496,869	\$2,112,024	\$11,294,738
North Slope Borough (resident ADM 1,810.5)	\$18,991,880	\$8,759,133	\$1,604,082	\$8,628,665	\$14,232,835	\$33,224,715
Northwest Arctic Borough (resident ADM 2,023.2)	\$22,697,537	\$1,526,769	\$1,584,520	\$19,586,248	\$1,688,724	\$24,386,261
Ketchikan Gateway Borough (resident ADM 2,346.9)	\$14,833,469	\$4,488,957	\$2,836	\$10,341,676	\$2,768,812	\$17,602,281
Kodiak Island Borough (resident ADM 2,621.6)	\$18,734,235	\$3,880,880	\$606,794	\$14,246,561	\$4,227,476	\$22,961,711
City and Borough of Juneau (resident ADM 5,360.1)	\$32,450,120	\$10,755,240	\$0	\$21,694,880	\$7,110,060	\$39,560,180
Kenai Peninsula Borough (resident ADM 8999.3)	\$59,983,705	\$17,843,057	\$0	\$42,140,648	\$13,783,066	\$73,766,771
Matanuska-Susitna Borough (resident ADM 13,354.7)	\$85,762,042	\$13,404,794	\$0	\$72,357,248	\$18,576,130	\$104,338,172
Fairbanks North Star Borough (resident ADM 14,373.9)	\$90,567,373	\$19,800,718	\$5,436,019	\$65,330,636	\$14,744,982	\$105,312,355
Municipality of Anchorage (resident ADM 48,586.2)	\$279,387,870	\$69,729,060	\$5,323,297	\$204,335,513	\$51,761,574	\$331,149,444
<b>TOTALS</b> (resident ADM 102,546.50)	<b>\$652,691,736</b>	<b>\$155,843,584</b>	<b>\$15,392,644</b>	<b>\$481,455,508</b>	<b>\$133,870,110</b>	<b>\$786,561,846</b>

\* Public Law 874, 81<sup>st</sup> Congress, September 30, 1950, or Pub. L. 81-874.



*Wrangell High School is located in the City of Wrangell School District. The City of Wrangell is a home rule city in the unorganized borough.*

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## 2. City School Districts.

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AS 14.12.010(1) provides that, “each home rule and first class city in the unorganized borough is a city school district.” Additionally, AS 29.35.260(b) states:

A home rule or first class city outside a borough is a city school district and shall establish, operate, and maintain a system of public schools as provided by AS 29.35.160 for boroughs. A second class city outside a borough is not a school district and may not establish a system of public schools.

There are 18 home-rule and first-class cities in the unorganized borough. Like organized boroughs, home-rule and first-class cities in the unorganized borough are required by AS 14.17.410(b)(2) to make local contributions in support of their schools. Table 2 on the following page provides the same information for city school districts as Table 1 provides for borough school districts.

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## 3. Regional Educational Attendance Areas (REAAs).

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AS 14.12.010(3) provides that, “the area outside organized boroughs and outside home rule and first class cities is divided into [REAAs].”

AS 14.08.031 provides as follows regarding REAAs.

(a) The Department of Community and Economic Development in consultation with the Department of Education and Early Development and local communities shall divide the unorganized borough into educational service areas using the boundaries or sub-boundaries of the regional corporations established under the Alaska Native Claims Settlement Act, unless by referendum a community votes to merge with another community contiguous to it but within the boundaries or sub-boundaries of another regional corporation.

(b) An educational service area established in the unorganized borough under (a) of this section constitutes a regional educational attendance area. As far as practicable, each regional educational attendance area shall contain an integrated socio-economic, linguistically and culturally homogeneous area. In the formation of the regional educational attendance areas, consideration shall be given to the

**Table 2**  
**ADM and Funding Components for City School Districts in Alaska**  
**Fiscal Year 2004**

<b>Column 1</b> <i>School District</i>	<b>Column 2</b> <i>Basic Need</i>	<b>Column 3</b> Minus <i>Required Local Contribution AS 14.17.410(b)(2)</i>	<b>Column 4</b> Minus <i>Deductible Federal Impact Aid (PL-874)</i>	<b>Column 5</b> Equals <i>State Aid</i>	<b>Column 6</b> <i>Voluntary Local Contribution (AS 14.17.410(c))</i>	<b>Column 7</b> <i>Basic Need and Voluntary Contributions</i>
City of Pelican (resident ADM 15)	\$276,405	\$46,251	\$0	\$230,154	\$0	\$276,405
City of Tanana (resident ADM 63.3)	\$940,151	\$22,973	\$21,909	\$895,269	\$0	\$940,151
City of Hyaburg (resident ADM 87.1)	\$771,098	\$32,980	\$85,010	\$653,108	\$19,020	\$790,118
City of Skagway (resident ADM 105.8)	\$1,028,576	\$459,390	\$0	\$569,186	\$391,189	\$1,419,765
City of Klawock (resident ADM 147.0)	\$1,338,999	\$129,004	\$132,926	\$1,077,069	\$207,462	\$1,546,461
City of Kake (resident ADM 155.2)	\$1,311,151	\$72,538	\$96,768	\$1,141,845	\$187,940	\$1,499,091
City of Saint Mary's (resident ADM 159)	\$1,728,718	\$17,869	\$0	\$1,710,849	\$1,131	\$1,729,849
City of Hoonah (resident ADM 180.2)	\$1,603,481	\$124,301	\$109,859	\$1,369,321	\$335,099	\$1,938,580
City of Nenana (resident ADM 226.1)	\$4,648,352	\$70,880	\$0	\$4,577,472	\$0	\$4,648,352
City of Galena (resident ADM 229)	\$14,938,277	\$72,361	\$26,878	\$14,839,038	\$868,369	\$15,806,646
City of Craig (resident ADM 381.8)	\$5,075,507	\$409,579	\$64,062	\$4,601,866	\$692,024	\$5,767,531
City of Wrangell (resident ADM 391.8)	\$2,720,106	\$593,989	\$235	\$2,125,882	\$210,363	\$2,930,469
City of Unalaska (resident ADM 398.6)	\$3,400,653	\$1,428,225	\$1,914	\$1,970,514	\$761,914	\$4,162,567
City of Cordova (resident ADM 471.7)	\$3,533,519	\$685,035	\$4,665	\$2,843,819	\$682,465	\$4,215,984
City of Dillingham (resident ADM 527)	\$4,455,369	\$585,855	\$78,978	\$3,790,536	\$514,145	\$4,969,514
City of Petersburg (resident ADM 653.4)	\$4,485,302	\$941,092	\$0	\$3,544,210	\$941,115	\$5,426,417
City of Nome (resident ADM 716.5)	\$5,920,522	\$798,141	\$19,973	\$5,102,408	\$622,436	\$6,542,958
City of Valdez (resident ADM 866.7)	\$6,070,356	\$2,610,516	\$2,742	\$3,457,098	\$2,072,168	\$8,142,524
<b>TOTALS</b> (resident ADM 5,775.2)	<b>\$64,246,542</b>	<b>\$9,100,979</b>	<b>\$645,919</b>	<b>\$54,499,644</b>	<b>\$8,506,840</b>	<b>\$72,753,382</b>

**Table 3**  
**ADM and Funding Components for REAA School Districts in Alaska**  
**Fiscal Year 2004**

Column 1 <i>School District</i>	Column 2 <i>Basic Need</i>	Column 3 <i>Minus Required Local Contribution AS 14.17.410(b)(2)</i>	Column 4 <i>Minus Deductible Federal Impact Aid (PL-874)</i>	Column 5 <i>Equals State Aid</i>	Column 6 <i>Voluntary Local Contribution (AS 14.17.410(c))</i>	Column 7 <i>Basic Need and Voluntary Contributions</i>
Aleutian Region REAA (resident ADM 42.1)	\$1,031,786	\$0	\$214,284	\$817,502	\$0	\$1,031,786
Chugach REAA (resident ADM 75)	\$1,400,909	\$0	\$112,218	\$1,288,691	\$0	\$1,400,909
Pribilof REAA (resident ADM 124.5)	\$1,554,620	\$0	\$535,743	\$1,018,877	\$0	\$1,554,620
Southeast Island REAA (resident ADM 210.2)	\$2,685,036	\$0	\$27,620	\$2,657,416	\$0	\$2,685,036
Chatham REAA (resident ADM 218.4)	\$2,231,416	\$0	\$231,439	\$1,999,977	\$0	\$2,231,416
Annette Island REAA (resident ADM 287.5)	\$2,188,475	\$0	\$1,333,771	\$854,704	\$0	\$2,188,475
Yukon Flats REAA (resident ADM 293.1)	\$4,792,349	\$0	\$528,068	\$4,264,281	\$0	\$4,792,349
Iditarod Area REAA (resident ADM 293.9)	\$4,325,129	\$0	\$393,356	\$3,931,773	\$0	\$4,325,129
Kuspuk REAA (resident ADM 425.8)	\$5,472,563	\$0	\$1,038,164	\$4,434,399	\$0	\$5,472,563
Alaska Gateway REAA (resident ADM 440)	\$5,107,025	\$0	\$169,919	\$4,937,106	\$0	\$5,107,025
Yukon/Koyukuk REAA (resident ADM 434.7)	\$9,158,793	\$0	\$1,530,719	\$7,628,074	\$0	\$9,158,793
Copper River REAA (resident ADM 532.4)	\$5,632,277	\$0	\$165,189	\$5,467,088	\$0	\$5,632,277
Delta/Greely REAA (resident ADM 667.3)	\$6,487,389	\$0	\$0	\$6,487,389	\$0	\$6,487,389
Southwest Region REAA (resident ADM 680)	\$8,341,627	\$0	\$2,504,665	\$5,836,962	\$0	\$8,341,627
Bering Strait REAA (resident ADM 1,712.5)	\$21,221,669	\$0	\$6,601,238	\$14,620,431	\$0	\$21,221,669
Lower Yukon REAA (resident ADM 2,040.2)	\$22,587,308	\$0	\$7,492,866	\$15,094,442	\$0	\$22,587,308
Lower Kuskokwim REAA (resident ADM 3,799)	\$42,610,348	\$0	\$7,486,809	\$35,123,539	\$0	\$42,610,348
<b>TOTALS</b> (resident ADM 12,276.6)	<b>\$146,828,719</b>	<b>\$0</b>	<b>\$30,366,068</b>	<b>\$116,462,651</b>	<b>\$0</b>	<b>\$146,828,719</b>



transportation and communication network to facilitate the administration of education and communication between communities that comprise the area. Whenever possible, municipalities, other governmental or regional corporate entities, drainage basins, and other identifiable geographic features shall be used in describing the boundaries of the regional school attendance areas.

(c) Military reservation schools shall be included in a regional educational attendance area. However, operation of military reservation schools by a city or borough school district may be required by the department under AS 14.12.020(a) and AS 14.14.110. Where the operation of the military reservation schools in a regional educational attendance area by a city or borough school district is required by the department, the military reservation is not considered part of the regional educational attendance area for the purposes of regional school board membership or elections.

(d) U.S. Bureau of Indian Affairs schools shall be included in a regional educational attendance area boundary.

Currently, there are 17 REAAs. Table 3 on the previous page provides the same information for REAA school districts as Tables 1 and 2 provide for borough and city school districts. As reflected in Table 3, unlike borough and city school districts, REAAs are exempt from the requirement of making a local contribution in support of schools under AS 14.17.410(b)(2).

#### 4. Federal Transfer Regional Educational Attendance Areas (FTREAA's).

In 1985, the Alaska Legislature passed a special act (Chapter 66, SLA 1985) authorizing four villages in the Lower Kuskokwim REAA (Akiachak, Akiak, Tuluksak, and Chefnak) to form a single FTREAA. The same act authorized the village of Chevak in the Lower Yukon REAA to form a separate FTREAA. Legislative "findings and purpose" for the special act were set out in Section 1 of that Act, as follows:

Section 1. FINDINGS AND PURPOSE. Federal transfer schools formerly funded through the Bureau of Indian Affairs in the villages of Akiachak, Akiak, Tuluksak, Chevak, and Chefnak will no longer receive federal funding after fiscal year 1985. The legislature finds that these villages have successfully operated the schools on their own through contracts with the Bureau of Indian Affairs. Therefore, it is the purpose of this Act to give these villages the opportunity to continue to operate these schools on their own by forming federal transfer regional educational attendance areas.

Creating "FTREAA's" by carving out relatively tiny enclaves from longstanding REAAs established under the standards in AS 14.08.031 is inconsistent with those very standards. The 1985 act provided that the proposed FTREAA in the Lower Kuskokwim region could be comprised of as many as four noncontiguous villages.<sup>10</sup> The four villages were defined in terms of the boundaries of the second-class cities serving those villages at the time.<sup>11</sup> The boundaries of those four cities encompassed a

<sup>10</sup> Akiachak, Akiak, and Tuluksak are, respectively, approximately 15, 20, and 45 miles northeast of Bethel; Chefnak is approximately 100 miles southwest of Bethel.

<sup>11</sup> The territory within the proposed new district was defined in terms of the corporate boundaries of the four second-class cities serving the respective villages (see *Order and Notice of Election for REAA # 23, Villages of Akiachak, Akiak and Tuluksak*, Office of the Lieutenant Governor, Division of Elections, August 29, 1985). The boundaries of the city governments serving Akiachak, Akiak, Tuluksak, and Chefnak encompassed, respectively, 12, 3, 4, and 6 square miles (a total of 25 square miles). Voters in Chefnak ultimately rejected the proposition to be included in the federal transfer regional educational attendance area, while voters in the other three villages approved the proposition. Thus, the new district (named the Yupit Regional Educational Attendance Area) was comprised of three noncontiguous communities encompassing a total of 19 square miles. (The City of Akiachak was dissolved on January 31, 1990; and the City of Tuluksak was dissolved on March 7, 1997.)

**Table 4**  
**ADM and Funding Components for FTREAA School Districts in Alaska**  
**Fiscal Year 2004**

Column 1 <i>School District</i>	Column 2 <i>Basic Need</i>	Column 3 Minus <i>Required Local Contribution AS 14.17.410(b)(2)</i>	Column 4 Minus <i>Deductible Federal Impact Aid (PL-874)</i>	Column 5 <i>Equals State Aid</i>	Column 6 <i>Voluntary Local Contribution (AS 14.17.410(c))</i>	Column 7 <i>Basic Need and Voluntary Contributions</i>
Kashunamiut FTREAA (Chevak) (resident ADM 365.6)	\$3,606,810	\$0	\$1,186,336	\$2,420,474	\$0	\$3,606,810
Yupit FTREAA (Akiachak, Akiak, and Tuluksak) (resident ADM 439)	\$5,152,092	\$0	\$1,626,399	\$3,525,693	\$0	\$5,152,092
<b>TOTALS</b> (resident ADM 804.6)	<b>\$8,758,902</b>	<b>\$0</b>	<b>\$2,812,735</b>	<b>\$5,946,167</b>	<b>\$0</b>	<b>\$8,758,902</b>

total of 25 square miles, which represented only one-tenth of 1 percent (0.10 percent) of the 23,811 square miles within the Lower Kuskokwim REAA that had been established a decade earlier.

In the Lower Yukon region, the disparity in size of the proposed new FTREAA district to the longstanding REAA was even greater than was the case with the Lower Kuskokwim region. For purposes of implementing the 1985 act, the village of Chevak was defined in terms of the boundaries of the City of Chevak, a second-class city encompassing only 700 acres (1.1 square miles).<sup>12</sup> That area represented less than six one-thousandths of 1 percent (0.0057 percent) of the 19,303 square miles within the Lower Yukon REAA that had been created in 1975.

The 1985 special act purported to override the statutory standards set out in AS 14.08.031 regarding establishment of REAAs as follows:

Sec. 2. (a) Notwithstanding AS 14.08.031, the villages of Akiachak, Akiak, Tuluksak, and Chefnak may hold an election to determine if the villages shall form a single regional educational attendance area and the village of Chevak may hold an election to determine if it shall form its own regional educational attendance area, for the purpose of operating schools in the villages. A regional educational attendance area

may be formed only if a majority of the villages of Akiachak, Akiak, Tuluksak, and Chefnak vote to do so in an election held no later than August 13, 1985. An election may be held in the villages of Akiachak, Akiak, Tuluksak, and Chefnak, and the villages in which a majority of the qualified voters vote to form a regional education attendance area shall combine to form a single regional educational attendance area. If an election is not held by August 13, 1985, or if the villages vote not to form a regional educational attendance area, the federal transfer schools in each village become part of the regional educational area in which the village is located.

In addition to the apparent conflict with the boundary standards in AS 14.08.031, the creation of a school district in the unorganized borough with boundaries identical to those of a second-class city seems to conflict with the spirit of AS 29.35.260(b). The statute provides that, "A second class city outside a borough is not a school district and may not establish a system of public schools." While the

<sup>12</sup> See, *Order and Notice of Election for REAA # 22 Chevak*, Office of the Lieutenant Governor, Division of Elections, August 29, 1985. Voters in Chevak approved the creation of the new district. The district was named the Kashunamiut Regional Educational Attendance Area.

second-class City of Chevak does not technically operate the Kashunamiut FTREAA, the effect of creating the district with boundaries that are coterminous to those of the City of Chevak has a similar effect.

In the case of the Yupiit FTREAA, it initially operated exclusively within the boundaries of three second-class cities. Two of the three cities were subsequently dissolved. The jurisdictional area of the Yupiit school district remains unchanged, but it currently operates in two unincorporated communities and one incorporated community in the unorganized borough.

Only two FTREAs were ever created. Table 4 on the previous page provides the same information for FTREAA school districts as Tables 1 - 3 provide for borough, city, and REAA school districts. As reflected in Table 4, unlike borough and city school districts, FTREAs, like REAs, do not make a local contribution in support of schools under AS 14.17.410(b)(2).

When reviewing the 1985 law that allowed the creation of the FTREAs, one cannot help but question whether it was local and special legislation and, thus, unconstitutional.<sup>13</sup> The following summarizes the details that lead to this question.

1. The five communities named in the law are either unincorporated or second-class cities in the unorganized borough and had Bureau of Indian Affairs (BIA) schools;
2. under AS 29.35.260(b), *supra*, second-class cities in the unorganized borough are not classified as school districts and may not establish a system of public schools;
3. under AS 14.08.031(d), *supra*, BIA schools are included in an REAA boundary;
4. under AS 14.08.031(a), *supra*, the entire unorganized borough is to be divided into REAs; and

5. under the last sentence of Section 2 of the 1985 special act, *supra*, the federal transfer schools will be part of the existing REAs in which the villages are located if no election is held or the villages vote not to form the authorized FTREAs.

In fact, in his review of the bill<sup>14</sup> authorizing the creation of the two FTREAs, Attorney General Norman Gorsuch questioned the constitutionality of the legislation. He stated:

In addition to the difficulties of implementation, the bill presents a serious constitutional question under art. II, sec. 19, of the Alaska Constitution. That section provides that the Legislature shall pass no local or special act, if a general act can be made applicable.

Article VII, sec. 1, of the Alaska Constitution mandates that the legislature shall provide for public education in the state. AS 14.08 is the expression of a law of general application to the problem of providing education services in the unorganized borough. Indeed, the application of that statute has resulted in the operation of the local high school in each of these villages by an REAA. If AS 14.08 is followed, all of the schools in each of the communities would be operated by the existing REAA. The impact of HCS CSSB 208(HESS) is to carve a special exception out of the general statutory pattern to accommodate the circumstance that the BIA chose to operate these five day schools under contract with the local village entity, which has no relationship to the rationale behind the creation of the REAA's under AS 14.08.

<sup>13</sup> Article 2, Section 19 of the Alaska Constitution provides in pertinent part: "The legislature shall pass no local or special act if a general act can be made applicable."

<sup>14</sup> HCS CSSB 208(HESS) (Chapter 66, SLA 1985) authorizing four villages in the Lower Kuskokwim REAA (Akiachak, Akiak, Tuluksak, and Cheforak) to form a single FTREAA. The same act authorized the village of Chevak in the Lower Yukon REAA to form an FTREAA.

The prohibition against local and special legislation found in art. II, sec. 19, of the Alaska Constitution limits all powers that the legislature might otherwise exercise under the powers conferred upon it by the constitution, *State v. Lewis*, 559 P.2d 630 (Alaska 1977), cert. denied 432 U.S. 901 (1977). While the legislature has broad power to regulate public education, it may be argued that this specific application of its power is improper.

To avoid the prohibition against local and special legislation, a bill does not require even application in all areas of the state, but rather it must be reasonably related to a matter of common interest to the whole state, *State v. Lewis*, *supra* and *Abrams v. State*, 534 P.2d 91 (1975).

Under *Abrams*, HCS CSSB 208(HESS) could be found unconstitutional. In *Abrams*, special procedures were enacted for the establishment of a new borough in the Eagle River area which was already in the Greater Anchorage Area Borough. In fact, the statute had no application, as here, in any other locality and was at a significant variation from existing statutory procedures governing the creation of boroughs. These considerations led to the court holding that statute unconstitutional. While it is a valid legislative purpose to maximize local control of public education, serious questions can be raised when that local control, as in the case of HCS CSSB 208(HESS), is furthered without regard to the factors that led to the creation of the state's existing REAA's and without regard to the impact upon other school districts of the transfer of BIA schools in general.

A better legislative response to the transfer of the BIA schools to the state's system of public education would be the amendment of AS 14.08. By those amendments, the impact of the BIA transfers could be accommodated and considerations of local control could be addressed throughout the unorganized borough.

Notwithstanding our comments, if you sign the bill into law or let it become law without your signature, we believe that the legislation may be defended in good faith. We reach this conclusion because of the imprecision with which courts have addressed local and special problems. However, its successful defense is by no means certain. If you wish to veto this bill, a draft veto message is enclosed for your use.<sup>15</sup>

Despite this caveat, Governor Sheffield signed the bill into law. To the Commission's knowledge, the legislation has not been tested in the courts.

## D. Education in Alaska: History and the Law.

A study of school consolidation necessarily entails an examination of the laws governing education in Alaska. The Alaska Constitution is the legal basis of State education in Alaska. The two provisions in the Alaska Constitution that deal with education are Article VII (Health, Education and Welfare) and Article XV (Schedule of Transitional Measures). Section 1 of Article VII provides in pertinent part:

The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. . . .<sup>16</sup>

Article XV, Section 3 provides in pertinent part:

Cities, school districts . . . and other local subdivisions of government existing on the effective date of this constitution shall continue to exercise their powers and functions under existing law, pending enactment of legislation to carry out the provisions of this constitution. . . .

<sup>15</sup> HCS CSSB 208(HESS), First Session, 14th Legislature (Alaska 1985); letter from Attorney General Norman C. Gorsuch to Governor Bill Sheffield (May 21, 1985) (Department of Law File No. 388-052-85), pp. 3 - 4. The letter is attached to this report as Appendix I.

<sup>16</sup> In its entirety, Article VII, Section 1 of the Alaska Constitution provides:

The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.



As discussed earlier in this report, the public education laws adopted by the Legislature are set out in Title 14 of the Alaska Statutes. Among other things, those statutes create the Department;<sup>17</sup> address the organization, government, local administration (school boards), financing, and construction of public schools; and provide for education in the unorganized borough and military reservations in the state. Those statutes also designate each organized borough and each home-rule and first-class city in the unorganized borough as a municipal school district, required to establish, maintain, and operate a system of public schools throughout the boundaries of the borough or city school district. Outside those municipal school districts, education in the unorganized borough is provided through REAAs, which are also established in Title 14, and FTREAs as discussed elsewhere in this report.

Consideration and adoption of educational oversight provisions during the Constitutional Convention were not without controversy, specifically in the context of local government and control of schools. The following is a description of that process made during a study of the education question in Alaska in 1968:

Such a provision [regarding school district oversight] naturally met with great opposition from some members of the convention. Delegates with close ties to educational organizations, such as school board members or school attorneys, objected most.

The classic arguments were all used: Education is the most important service government gives to the people and should therefore be independent of the rest of government. . . . Education should not be in an 'inferior' position to the general government and its governing body.

Attempts were made to give school systems fiscal autonomy, representation on the assembly, and full local government power as equals to boroughs and cities.

These arguments were rejected by the convention, and schools were given neither corporate status nor fiscal independence. This should have ended the question. But it, of course, did not.

Education is a State responsibility primarily delegated to local governments. There is no legal question that schools could be taken entirely out of local control and operated and financed from the State level. . . .

. . . .

. . . [I]f the legislature decides to delegate school functions to the local areas . . . , it is bound by the constitutional provisions relating to local government. Recognizing this, the state delegated to the boroughs the school functions, while retaining certain authority itself . . . .<sup>18</sup>

In a related review of education and local control, the following observations were made:

We would . . . particularly note that in the Alaska constitution, as in that of every other state, education is a State function and a State responsibility. The State cannot abdicate its responsibility by delegating complete control of education to local government.

. . . .

. . . [I]t would appear that the zeal of some to provide unique features in Alaskan government, particularly with regard to education, should be critically examined. We should urge some of the late-comers to Alaska to review the tapes and transcripts of the Constitutional Convention, which make it quite clear that the framers of the Constitution did not intend that education be a subordinate and subservient arm of local government.<sup>19</sup>

<sup>17</sup> The Department includes the Commissioner; the State Board of Education and Early Development, and staff necessary to carry out the functions of the department (AS 14.07.010).

<sup>18</sup> Billy G. Berrier, "Education and the Borough: Integration," 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, pp. 196 - 197.

<sup>19</sup> Donald M. Dafoe, "Education and the Borough: Autonomy," *The Metropolitan Experiment in Alaska*, pp. 235 - 236.

In an analysis of legislative oversight of education made shortly after statehood, a survey team of educators and others prominent in Alaska's education community asserted the following:

Quite clearly, the Legislature has a continuing responsibility for public education which it is not free to delegate wholly to the uncertainties of home rule. It would appear that it is free to abandon, modify, or continue the present pattern of school organization . . . . In 113 A.L.R. 1401 it is stated: 'The school system or school districts are but agencies of the state legislature to administer its constitutional duty to maintain a system of public schools . . . .' In 47 Am. Jur. 302, the authority of legislatures to reorganize school districts is set forth with such statements of the courts as, . . . 'schools may be continued or discontinued, and the school system changed, or one system substituted for another as often as the legislature may deem it necessary or advisable,' and 'The fact that the legislature has always intrusted [sic] the management of school affairs to local organizations will not preclude it at any time from changing the system so as to remove them (schools) from local control.' This seems to be the situation in Alaska under Article VII and Article XV. Local agencies for the administration of schools may be reorganized under the constitution in any pattern and at such times as the Legislature decrees by general law. There is direct authorization for it and no prohibition against it anywhere in the constitution. There is a prohibition against extending to any local school districts the unwarranted status of a local or home-rule government.

. . . The Minutes of the Constitutional Convention reveal no controversy over the mandate in Article VII. Indeed, the status of local school districts did not enter any extended discussion until Article X, dealing with the power of local civil government, was presented by the Local Government Committee. By this time Article VII had already been endorsed and delegates undoubtedly were aware of it as they debated Article X. The minutes of January 19th (p. 16) quote a delegate of the Local Government Committee as defining committee policy to design a borough 'by which the people could largely exercise the broad degree of power, except those especially reserved to the state.' Article VII obviously makes such a reservation of public education to the state rather than to local or home-rule government.

. . . .

With these discussions taking place after the adoption of Article VII, it is difficult to find any implication that any part of the constitution was intended to limit the power of the Legislature to organize or reorganize the school district structure of the state. Even in regard to fiscal autonomy for school districts, the power of the Legislature was regarded by delegates as supreme.<sup>20</sup>

In the years since statehood, the Alaska Supreme Court has, on several occasions, addressed education issues and the intent of Article VII, Section 1 of the Alaska Constitution. Of specific note, the Court has observed:

[The] constitutional mandate for pervasive state authority in the field of education could not be more clear. First, the language is mandatory, not permissive. Second, the section not only requires that the legislature 'establish' a school system, but also gives to that body the continuing obligation to 'maintain' the system. Finally, the provision is unqualified; no other unit of government shares responsibility or authority. That the legislature has seen fit to delegate certain educational functions . . . in order that Alaska schools might be adapted to meet the varying conditions of different localities does not diminish this constitutionally mandated state control over education.<sup>21</sup>

The principle underlying the foregoing is that it is the Legislature that oversees education in Alaska, not school districts or school boards. Those bodies are creatures of the Legislature and have only the powers and responsibilities delegated by the Legislature.

Juxtaposing the law and history of education to the school consolidation issues facing Alaska today, it is interesting to note the argument against school consolidation by the education community; e.g., the Alaska Association of School Boards (AASB) and

<sup>20</sup> Erick L. Lindman, et al., *A Foundation for Alaska's Public Schools*, Los Angeles, CA: Ford Foundation, September 1961, pp. 55 and 56 (hereinafter, *Foundation Study*).

<sup>21</sup> *Macauley v. Hildebrand*, 491 P.2d 120, 122 (Alaska 1971) (footnotes omitted; emphasis added).

the Alaska Association of School District Administrators. The AASB states that it “is opposed to *mandated* school consolidation because it will significantly reduce local control for a majority of school districts in Alaska.”

That same argument was made during the Constitutional Convention and during the transition from a territory to a state. The *Foundation Study* conducted shortly after statehood succinctly concluded:

The constitution, itself, stipulates in Article XII, Section 9, ‘The provisions of this constitution shall be construed to be self-executing whenever possible.’ Article VII is to be executed solely at the discretion of the Legislature. It seems quite evident that school districts can be created, dissolved, or reconstituted whenever the Legislature has time to study the problems and decide upon solutions. It may, if it chooses, tie them into local boroughs but it is free to decide otherwise. Schools must be maintained throughout Alaska whether cities continue or disband, whether organized boroughs are created or are voted down at every referendum, and regardless of what form local government may take under Article X or what laws the Legislature may enact in the interests of local government. Public education is not a local municipal function except and until the Legislature chooses to declare it so.<sup>22</sup>

The fact that the Legislature has granted a measure of local control to school districts and school boards does not mean that such control has become vested by the passage of time with a level of autonomy that cannot now be changed by the Legislature. Education is specifically not a right granted to local government or “local control” under the Alaska Constitution. The minutes of the Constitutional Convention are replete with discussions dealing with local government powers and are too numerous to cite and discuss here. They are available on the Lieutenant Governor’s Web site<sup>23</sup> and should be reviewed by everyone dealing with educational and local government issues.

In considering the foregoing, however, it is worth noting that the mandate to the Commission and the Department is to consider matters relating to consolidation of school districts; it is not a mandate to consider a diminution of authority extended to school districts or school boards by the Legislature.

<sup>22</sup> *Foundation Study*, p. 57.

<sup>23</sup> <http://ltgov.state.ak.us/constitution.php>.

