

**LOCAL CONTRIBUTIONS
TO
PUBLIC EDUCATION
IN ALASKA:
A REPORT TO THE
KETCHIKAN GATEWAY BOROUGH ASSEMBLY**

**VOLUME I:
STATEMENT OF THE PROBLEM**

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TABLE OF CONTENTS

INTRODUCTION	1
CHAPTER 1. Ketchikan Gateway Borough Resolution No. 2296	8
CHAPTER 2. Geographic Characteristics Among Municipal School Districts and REAAs.....	11
a. The Stereotypes.	11
b. Geographic Characteristics.	13
CHAPTER 3. Racial Characteristics Among Municipal School Districts and REAAs	15
CHAPTER 4. Economic Characteristics Among Municipal School Districts and REAAs.....	18
a. Introduction.	18
b. The Denali Commission Report.	19
c. Economic Status by School District.	20
d. Ranking School Districts by Economic Status.....	22
e. Ranking Cash-Earnings Among Communities Hosting School Sites.....	26
f. Disparate Treatment Among School Districts of Similar Size, Basic Need and Cost Factors.	27
CHAPTER 5. A Case In Point: The Ill-fated Effort to Incorporate a Deltana Borough.....	32
a. Methods for Incorporating Boroughs.	32
b. The Deltana Borough Petitioning and Review Process.....	35
c. Proven Prosperity in the Delta-Greely REAA.	38
CHAPTER 6. The Extent of the Problem	44
CHAPTER 7. That Arbitrary Remnant Called “the Unorganized Borough”	51
CHAPTER 8. Concluding Summary.....	55
ENDNOTES	57

FOREWORD

This study was commissioned by the Ketchikan Gateway Borough Assembly. Borough Manager, Dan Bockhorst, and Borough Attorney, Scott Brandt-Erichsen, have provided invaluable assistance to me during the past eight months, supplying me with their insights, their earlier work products, and an overwhelming amount of source material for my research and analyses. I thank them most heartedly and sincerely.

I avoid plagiarism of my source materials only by acknowledging here and now that I have paraphrased studies and reports liberally, and that undoubtedly I have failed in some instances to give full and proper credit in my citations. I do apologize, but in the comfort of my optimistic expectation that I may be giving new life to dusty studies that were "shelved" after much hard work and detailed analyses by earlier disappointed and frustrated authors.

My work began with rereading the Alaska Supreme Court case of *Matanuska-Susitna School District et al. v. State of Alaska*. It is not a decision founded in proven facts or statistics. Two justices decided only one of four local contribution issues, reasoning from one "expert" opinion replete with erroneous stereotypes regarding the geographic, demographic and economic characteristics of regional educational attendance areas ("REAs") and municipal school districts. The same two justices refused to decide three other major issues, arguing correctly that there was no evidence before them to support the assertions of the borough and taxpayers. Two other justices sidestepped all of the substantive issues in the case by invoking in conclusory fashion the rationale of "non-justiciable issues." The fifth justice did not participate in the decision.

Hence, I begin Volume I of my Report with the foreknowledge that (1) the Alaska Supreme Court has never decided whether the requirement of a local contribution from municipal school districts and not from REAs denies any students of educational opportunities in violation of constitutional equal protection; (2) the Alaska Supreme Court has never seen hard demographic, geographic or economic data showing that these two classifications – *all* municipal school districts vs. *all* REAs – bear no reasonable relationship to the legitimate governing purpose of funding public education statewide; (3) the Alaska Supreme Court has never considered the constitutionality of a sweeping classification which

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for purposes of exemption from a local contribution encompasses virtually¹ the entire “unorganized borough;” and (4) the Alaska Supreme Court has never considered whether a statute founded in stereotyping raises the primacy of the impaired constitutional interests above that “lowest level of scrutiny” applied to the single issue decided in the *Mat-Su* case.

In this Volume I of my Report, I analyze the available data and challenge a classification that groups all REAAs together for the same exemption, and all municipal school districts together for a mandatory local contribution. I then describe earlier studies amply proving that many REAAs are prosperous and viable as borough governments but lack incentives to incorporate. In Volume II, I review the law and I use the data from Volume I to build arguments, pro and con, for the likelihood of success of any future attempt to litigate variations on the issues raised in the *Mat-Su* case, as well as many new legal issues never litigated in that case. In Volume III, I discuss the relative merits of pursuing various alternative courses of action that might bring a legislative change in the present system.

¹ Home-rule and first-class cities outside boroughs are municipal school districts in the unorganized borough. Hence, technically, the REAAs do not include the entire unorganized borough. Nonetheless, when treated as one entity for purposes of an exemption from a local contribution, the REAAs run the full breadth and distance of the unorganized borough, and include the immensely diverse socio-economic and geographical characteristics of that amorphous unorganized borough.

INTRODUCTION

In all of Alaska's 18 organized boroughs,² public school administration is an "areawide" municipal function performed by the borough government.¹¹ In all of the 16 home-rule and first-class Alaska cities located outside organized boroughs,³ public school administration is a function of those city governments.¹¹¹

At least seven regions of this huge remnant qualify fully in resources, revenue-potential and economic prosperity to become organized boroughs.

Together these 34 political subdivisions comprise what is known as "the municipal school districts" in Alaska. Some are affluent metropolitan communities enjoying diverse, robust economies and strong local tax bases. Others are rural and remote, economically distressed boroughs and cities with few job opportunities, weak or no cash economies, and a dearth of taxable properties.

A huge, diverse and irregular remnant of the State of Alaska – the entire area outside of organized boroughs – is known in a haphazard and indiscriminately singular fashion as "the unorganized borough."⁴ It encompasses 373,268 square miles, 56% of Alaska. It ranges from the southernmost tip of the State (Dall Island and nearby Prince of Wales Island) to points above the Arctic Circle, and from the eastern border with Canada (Tok) to the westernmost Aleutian Islands that bend the International Date Line. It is four times larger than Alaska's largest organized borough, and it is 23 times larger than the average organized borough. It is larger than the countries of France and Germany combined.

At least seven regions of this huge remnant qualify fully in resources, revenue-potential and economic prosperity to become organized boroughs. Other regions of this random residuum called "the

² Aleutians East Borough, Bristol Bay Borough, City and Borough of Juneau, City and Borough of Sitka, City and Borough of Wrangell, City and Borough of Yakutat, Denali Borough, Fairbanks North Star Borough, Haines Borough, Kenai Peninsula Borough, Ketchikan Gateway Borough, Kodiak Island Borough, Lake and Peninsula Borough, Matanuska-Susitna Borough, Municipality of Anchorage, Municipality of Skagway, North Slope Borough, Northwest Arctic Borough.

³ Cordova, Craig, Dillingham, Galena, Hoonah, Hydaburg, Kake, Klawock, Nenana, Nome, Pelican, Petersburg, Saint Mary's, Tanana, Unalaska, Valdez.

⁴ AS 29.03.010 ensures that the "single unorganized borough" will always be an arbitrary remnant, because it can never be more or less than the "[a]reas of the state that are not within the boundaries of an organized borough...." Since its 1961 enactment, AS 29.03.010 exists in direct contradiction of the constitutional mandate in Art. X, §6 for legislative administration of a plural number of unorganized "boroughs," according to Art. X, §3 commonalties of geographic, socio-economic and transportation interests. REAAs were indeed created as subdivisions of the unorganized borough by the legislature, but for purposes of the required local contribution to public education these subdivisions exist only *pro forma*. That local-contribution mandate, AS 14.17.410(b)(2), addresses in practice only an irrational, comprehensive amalgam of *all* REAAs without regard for their radically different socio-economic and transportation characteristics, and in effect grants a sweepingly broad exemption to the entire, singular, unconstitutional unit called the "unorganized borough." See, Chapter 7 below.

unorganized borough” are best characterized as remote Native-culture villages with economically distressed populations living in largely subsistence economies. This Report will show that, contrary to conventional wisdom, the Alaskans who live in this behemoth “unorganized borough” share no common socio-economic or cultural traits. They share in common only one aberrational fact: *They live in an entity that will always be a leftover remnant of the state, outside the rational boundaries created by local and regional governments.*

For purposes of administering public education in this default remnant, “the unorganized borough,” the state legislature has created 19 single-function service areas known as “regional educational attendance areas.”⁵ These REAAs do indeed constitute subdivisions that, to some extent,⁶ manifest within their respective boundaries common socio-economic, cultural and geographical characteristics. Some of them embrace areas in Alaska that could not possibly support a regional government because they are too remote and too isolated, economically distressed, and lacking in skilled local human resources.

But, more than one-third of these REAAs (at least seven⁷) encompass regions of Alaska where relatively affluent local people enjoy diverse industries, many cash-employment opportunities and much unencumbered private-property ownership.

Hence, when viewed or treated separately and individually, and except for the exclusion of home-rule and first-class cities from their boundaries, the REAAs manifest well-reasoned divisions with internal commonalities. But, when the REAAs are administered as “all REAAs,” they become a mere synonym for that oversized, perchance amalgam called “the unorganized borough.” In their merged form – whether the legislature calls it “the REAAs” or “the unorganized borough” – they lack any commonality whatsoever and they manifest nothing more or different than a huge, amorphous and anomalous, geographic remnant of the State of Alaska.

⁵ AS 14.08.031. They are the Alaska Gateway REAA, Aleutian Region REAA, Annette Island REAA, Bering Strait REAA, Chatham REAA, Copper River REAA, Chugach REAA, Delta-Greely REAA, Iditarod Area REAA, Kashunamit REAA (Chevak), Kuspuk REAA, Lower Kuskokwim REAA, Lower Yukon REAA, Pribilof Islands REAA, Southeast Island REAA, Southwest Region REAA, Yukon Flats REAA, Yukon-Koyukuk REAA, and Yupit REAA.

⁶ REAAs do not embrace constitutional common interests to the maximum extent because all home-rule and first-class cities outside boroughs are enclaves excluded from the REAA administrative boundaries.

⁷ *Unorganized Areas of Alaska that Meet Borough Incorporation Standards, A Report by the Alaska Local Boundary Commission to the Alaska Legislature Pursuant to Chapter 53, Session Laws of Alaska 2002*, February, 2003. According to the LBC, the seven regions that meet borough incorporation standards are (1) the Aleutians REAA as the “Aleutians West Model Borough,” (2) the Delta-Greely REAA and Alaska Gateway REAA as the “Upper Tanana Basin Model Borough,” (3) the Copper River REAA as the “Copper River Basin Model Borough,” (4) the Chugach REAA as the “Prince William Sound Model Borough,” (5) the “Glacier Bay Model Borough,” (6) the Chatham REAA as the “Chatham Model Borough,” and (7) the Wrangell-Petersburg Model Borough. Shortly before publishing the final report, the Southeast Island REAA was withdrawn because of “recent socioeconomic trends” and “pending more up-to-date information and further analysis” which never occurred. See, Chapter 6 below.

State law^{iv} requires that the residents of all municipal school districts, indiscriminately, must subsidize state funding of local public education by contributing 4 mills on assessable property value or 45% of the "basic need" in that school district, whichever is less.⁸ By the precise terms of this statute, State aid will not be provided to any municipal school district that fails to make this local contribution.^v This contribute-or-else mandate applies without regard for the remote or central location of the municipal school district, without regard for the distressed or prosperous status of the local economy, and without regard for the cash and wage-earning ability of the local people to contribute.

But, that same state law fully exempts the residents of all REAAs, indiscriminately, from making any local contribution whatsoever. This exemption applies without regard for the ability of the local people to contribute. *All citizens in that amorphous, anomalous "unorganized borough" enjoy 100% state/federal-funding of their local public education, without regard for differing regional human and economic resources, how many industries or wage earning jobs exist in the region, how much assessable private property exists in the region, or what level of economic prosperity the local people of the region enjoy.*

In essence, the legislature is saying that everyone living in that huge, socio-economically diverse residuum called "the unorganized borough" outside of home-rule and first-class cities receives full state-aid without regard for local ability to contribute, and everyone living in every municipal school district must contribute 4 mills of property value (up to 45% of basic need) without regard for culture, demographics or distressed economic conditions of those cities and boroughs.

This Report questions this sweepingly broad, irrational and arbitrary classification: an amorphous and socio-economically diverse unorganized borough on the one hand, and all municipal school districts on the other hand. What makes the Delta-Greely REAA, the Copper River REAA, and the Chugach REAA sufficiently similar to the Lower Yukon REAA, the Lower Kuskokwim REAA, and the Yupiit

In a bizarre Orwellian twist, ignoring the fact that the required local contribution was an unfunded mandate in the first place, DEED referred to this 50% Rule as the state's "tax subsidy" of the cost of public education in municipal school districts.

⁸ See, Appendix A for a detailed description of the formulae and calculation-process by the Department of Education and Early Development. Since 2002, the 4-mill equivalent is computed on 50% of the increase in real and personal property over the 1999 full and true value. In a bizarre Orwellian twist, ignoring the fact that the required local contribution was an unfunded mandate in the first place, DEED referred to this 50% Rule as the state's "tax subsidy" of the cost of public education in municipal school districts. Transcript of House Committee on Education, January 26, 2009 at p. 8 et seq. A "subsidy" is a grant of money, not a partial reprieve from a previously more onerous unfunded mandate. A modification from a flogging with a cat-o'-nine-tails to a flogging with five knotted cords does not make the latter a grant or a "subsidy." The words "tax subsidy" in this context aren't even close enough to truth to qualify as a euphemism. See n. 50 below for another example of verbal legerdemain by DEED regarding the mandatory local contribution.

REAA such that all of them should be treated the same for the economic purpose of being fully exempted from a local contribution to public education? What makes the economically distressed cities of Hoonah, Kake and Pelican sufficiently similar to Anchorage, Fairbanks and Juneau, such that all should be required to contribute 4 mills on their assessed taxable private property value toward the cost of their local public education? How are Nenana, Nome and Dillingham different from Glennallen, Delta-Junction and Tok, such that the Alaskans in the former cities must contribute local tax dollars to public education while citizens of the latter communities are exempt from any local contribution whatsoever?

The classification of all REAAs vs. all municipal school districts is, in practical application, a classification of all people in municipally-run school districts vs. all people outside home-rule and first-class cities in the unorganized borough. This Report will show that this classification is the result of widespread, erroneous stereotypes that cannot be explained by hard-core socio-economic or cultural data. Conventional wisdom is incorrect in the perception that all REAAs are “rural” and that all municipal school districts are “urban.” Some Alaska cities required by law to pay a local contribution to public education are subsistence-based, “economically distressed” communities, while some exempted REAAs are multi-industry regions with high wage/salary employment and hundreds of millions of dollars in assessable unencumbered private property. While the legislature imposed mandatory borough governments on eight regions of the state in a 1963 statute,⁹ the citizens of at least seven¹¹ other prosperous regions – 37% of the 19 REAAs – have successfully avoided incorporating similar local or regional governments that would result in the levy and collection of a tax for a local contribution to the public education of their children.

Alaska, the most prosperous state in the Union, per capita,¹⁰ is constitutionally committed to an admirably modern and progressive system of “statewide public education,” yet this same State has arbitrarily imposed on some-but-not-all local subdivisions an unfunded mandate requiring them to pay a portion of the basic need for local public education. The result is that many 100% economically distressed municipal school districts like the Wrangell Borough and the cities of Hoonah, Kake and Pelican are subsidizing full-financing by the State of local public education in 100% non-distressed, affluent REAAs like Delta-Greely REAA, Aleutians Region REAA and Pribilof Islands REAA, some of which obstinately refuse to incorporate a local government despite meeting all standards for incorporation, so that they can avoid taxing themselves to pay the 4-mill local contribution required from municipal school districts.

Another result is that these affluent-but-exempted REAAs spurning the formation of local government and unabashedly enjoying the windfall State dole are draining valuable State aid-to-education money that should be invested in other REAAs and in some municipal school districts that are truly distressed economically, truly isolated geographically, and truly limited both in transportation patterns and in the existence of taxable private property.

⁹ Ch. 52, SLA 1963. The areas compelled to form regional governments were Anchorage, the Matanuska-Susitna Valley, Fairbanks, Juneau, Sitka, Ketchikan, Kodiak Island and the Kenai Peninsula. In Section 1 of the enactment, the legislature assured these regions that they would not be penalized by the forced incorporation.

¹⁰ Alaska joins North Dakota, Wyoming and West Virginia as the only states enjoying budget surpluses in 2011.

It is important to note up front that this Report does not question or criticize the principle of fair and equitable apportionment of State public-education resources according to local need, such that educational opportunities and benefits are maximized throughout the State. Indeed, it might be argued that some remote, cross-cultural regions and economically distressed communities should receive a higher proportion of state aid, in order to achieve equitable educational results statewide.

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This Report only questions and criticizes the gross irrationality and unfairness of the *particular* classifications chosen by the legislature for assessing a required local contribution and for apportioning state aid to public education: Everyone in the unorganized borough outside home-rule and first-class cities (*all* REAs without exception) fully exempted, and *all* citizens in municipal school districts contributing locally.

Chapter 1 of this Report sets the framework for the Ketchikan Gateway Borough authorizing this study. Chapters 2 through 4 set forth analyses of racial, cultural, socio-economic and geographical data proving the unreasonableness and the unfairness of the present statutory classifications for required local contributions and for granting blanket exemptions throughout the unorganized borough. Chapters 5 and 6 contain detailed information about the seven present REAs that clearly meet all Alaska Local Boundary Commission standards for incorporation as boroughs, but which are unlikely to ever take local action to

form borough governments because they then would lose the present 100% state and federal financing of their local public education, and instead would be required to make local tax contributions to the education of their children. Chapter 7 then discusses the constitutional requirement for the creation of "unorganized boroughs" in the plural form, and the neglect of the Alaska Legislature to treat such subdivided constitutional units in differentiating fashion for purposes of administering the local-contribution requirement in public education.

Volumes II and III of this Report then explore possible *routes* toward solutions, as opposed to solutions *per se*. Before choosing specific routes toward solutions, local and regional elected and administrative officials must engage in decisional processes fitted to their particular needs. Municipal attorneys must evaluate the likelihood of success in litigation, which is the subject of Volume II. Decision-makers must evaluate the strength of their elected senators, representatives and lobbyists for affecting change. In some instances, a broader, more fundamental public political education may be the solution, or, raising and pressing new commitments from candidates campaigning for the state house and senate might be the best approach to a solution. These political routes to a solution are discussed in Volume III.

The reader of Volume I should keep in mind the following questions that are subsequently addressed in Volumes II and III of the Report:

- Do the disparities in these present classifications fail to manifest a “fair and substantial relationship”¹¹ to the governing purpose of funding statewide public education, such that these classifications constitute a denial of constitutional equal protection?
- Do the disparities in these present classifications arise from erroneous stereotypes that raise the primacy of constitutional interest in the problem, and hence warrant a higher “intermediate level” of judicial scrutiny¹² for purposes of determining whether these classifications constitute a denial of equal protection?
- Given the vast differences among REAAs, does the treatment of all of them together in singular fashion as the unorganized borough, for purposes of granting an exemption from a local contribution to public education, violate the requirements in Art. X, §§3 and 6 of the Alaska Constitution requiring a plural number of unorganized boroughs classified by enumerated characteristics and assigned regionally appropriate powers and functions?¹³
- Does the grant of this exemption throughout the amorphous unorganized borough violate the provision of Art. X, §6 requiring maximum *local* “responsibility”?
- Does the grant of this exemption throughout the amorphous unorganized borough violate the provision of Art. I, §1 requiring “corresponding obligations” from the citizens of Alaska?
- Would a statewide public political education campaign be an effective method for breaking through the erroneous stereotypes presently causing Alaskan voters to assume incorrectly, without supporting data, that the classifications of universally taxed municipal school districts and universally exempted REAAs represent a reasonable division of the “urban” and “rural” State for purposes of local contributions to public education?

¹¹ When applying the lowest level of scrutiny that allows for the broadest level of over- and under-inclusiveness in an enactment containing a discriminating classification, the Alaska Supreme Court requires that the means chosen by the lawmakers must bear a “fair and substantial relationship” to a legitimate governmental purpose in order to pass constitutional muster as Equal Protection.

¹² If, on its “sliding scale” or “continuum,” the Alaska Supreme Court chooses to apply a higher level of scrutiny than what is represented in footnote 11 above, such as the “intermediate level” generally applied to erroneous stereotypes of, e.g., gender, far less over- and under-inclusiveness would be constitutionally tolerable. See, Chapters 2-4 below.

¹³ On the surface, it appears that, for purposes of administering public education, the state legislature has indeed subdivided the unorganized borough into reasonable divisions called REAAs. In practical effect, however, those reasoned subdivisions are not being used by the state legislature for purposes of granting or denying the exemption from a local contribution to local public education. In its operative effect, AS 14.17.410(b)(2) amalgamates all REAAs back into that single, heterogeneous remnant known as the “unorganized borough.”

- **Could new political action groups and new candidates for the state legislature frame the issue and bring these local-contribution inequities to the fore in local political campaigns, thereby motivating incumbent senators and representatives to support changes to more equitable classifications?**
- **Should burdened municipal school districts form their own statewide coalition for purposes of publicizing, lobbying and campaigning for legislative changes to a fairer system?**
- **Might it be possible for economically distressed municipal school districts to form a coalition with economically distressed REAAs in order to stop the drain of limited State monies to those affluent REAAs that have no incentive to form tax-contributing municipal corporations?**
- **Can public interest research groups, public interest law firms, and taxpayer organizations be mobilized to conduct additional in-depth studies of various facets of this Report, or to pursue litigation, or to pressure the Alaska Legislature for change to a fairer system?**
- **Can the Alaska Legislature be convinced to enact another Mandatory Borough Act, compelling seven affluent REAAs to form borough governments and to begin making local contributions to public education from taxable property?**
- **Should a presently incorporated borough or first-class/home-rule city outside boroughs begin municipal dissolution proceedings so that they too can obtain the exempt status that eliminates a local taxpayer-contribution to public education?**

CHAPTER 1. Ketchikan Gateway Borough Resolution No. 2296

On January 17, 2011, the Ketchikan Gateway Borough Assembly unanimously adopted Resolution No. 2296¹⁴ asking the state legislature “to mitigate the onerous and discriminatory State penalty imposed by AS 14.17.410(b)(2) on municipalities that operate school districts.” (See, Appendix B.) The Resolution was a conclusion from 14 well-documented findings of fact (“whereas” clauses) that can be summarized as follows:

According to the Alaska Department of Revenue, the State of Alaska “is in the strongest financial position in its history and has a stable outlook with tremendous opportunities.”¹⁵ The Alaska Permanent Fund stands at more than \$38.5 Billion. There is another \$12 Billion in savings in the State treasury. FY 2010 revenues to the State were \$13.9 Billion. The Department of Revenue projects a substantial state budget surplus again in 2012.

In his Budget Address on December 15, 2010, Governor Parnell deplored the federal unfunded mandate for Medicaid coverage, which requires from the State of Alaska “a \$123 million annual increase in mandated coverage.” The Governor bluntly threw down the gauntlet: “They [the Feds] made this mess, and I’m challenging them to clean it up and fund it.”

“The unfunded mandatory Medicaid payment by the State of Alaska is substantial in absolute terms (\$630 million), but it constitutes a relatively small portion of State revenues (4.6 percent of FY 2010 revenues).” Financial impact aside, it is the political principle of enacting unfunded federal mandates that frustrates Governor Parnell’s ability to administer the State of Alaska efficiently.

Paradoxically, while most state legislators share the Governor’s political philosophy opposing unfunded mandates, the Alaska Legislature itself continues to enact state laws that impose ever-increasing burdens on struggling local Alaska governments. These state-level unfunded mandates include expenditures that in far less prosperous times were paid by the state government.¹⁶ This

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¹⁴ “A Resolution of the Assembly of Ketchikan Gateway Borough Acknowledging that Unfunded Federal Mandates Impose a Significant Burden on the State of Alaska; Recognizing, however, that Unfunded State Mandates Impose an Even Greater Burden on the Ketchikan Gateway Borough and Other Local Governments; and Urging the Twenty-Seventh Alaska State Legislature to Mitigate those Unfunded State Mandates.” Appendix B.

¹⁵ Alaska Department of Revenue, Press Release No. 10-006, November 23, 2010.

¹⁶ One method for legislators to avoid the criticism that comes with crippling a program through budget cuts is to simply transfer more funding responsibility to the local taxpayers.

burdensome trend has now reached such an extreme that, in its *2011 Policy Statement*, the Alaska Municipal League urged mitigation of unfunded State mandates imposed on local governments.

The Alaska Constitution requires the legislature to “establish and maintain” a statewide system of public education “open to all children of the State.”^{vii} The Alaska Municipal League recently adopted

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a policy recognizing that the state has “fallen short” in its public-education obligation.¹⁷ The Education Law Center concluded in a study funded by the Ford Foundation that the State of Alaska deserves no better than a “D” grade for the level of effort it makes to fairly fund its public schools.¹⁸

While enjoying unparalleled prosperity, a budget surplus and an enviable savings account, the State of Alaska has not only sorely neglected (to the point of grade D, near-failure) fair funding of the constitutionally mandated statewide public school system, but also has arbitrarily shifted a portion of its financial responsibility to classifications of some-but-not-all-local regions and subdivisions.

The requirement of a “local contribution” to public-school education is the most significant and the most burdensome of all unfunded state mandates imposed by the Legislature on the Ketchikan Gateway Borough. For FY 2012, the

taxpayers of the Borough were required to contribute \$5,385,848. This amounts to \$29,921 for each day of school. Stated another way, the mandatory local contribution consumes 74% of the present area-wide property tax revenues collected in the Borough. Adding insult to injury, another unfunded mandate enacted by the State legislature requires that in FY 2012 the Borough must contribute \$1.2 million as a local share for school capital facilities.

The state-imposed unfunded mandate applying to the operating costs of local education in municipal school districts statewide results in a FY 2012 subsidy of \$229,207,921 paid by these municipal taxpayers toward the State’s constitutional obligation to establish and maintain a statewide public

¹⁷ *2011 Policy Statement* at 8.

¹⁸ *Is School Funding Fair? A National Report Card*, pp. 26-28, September 2010.

education system. While onerous for the local people, many of whom are in economically distressed areas of the State, the unfunded mandate has “a relatively minor fiscal benefit to the State of Alaska, equal to just 1.6% of FY 2010 State revenues.”

To make the matter even more unfair, the law establishing this unfunded mandate exempts 19 of the State’s 53 school districts from any local contribution whatsoever. This exemption from a local contribution is not based on fiscal capacity, financial ability, or any other economic criterion relevant to the funding of public educational needs. It extends arbitrarily across a huge, economically eclectic remnant¹⁹ of the state, “the unorganized borough,” which in turn circumscribes and amalgamates these 19 educational service areas known as “regional educational attendance areas.” These REAAs share only one characteristic in common: *the people in these communities are not organized into regional boroughs or local first-class/home-rule city governments.*

The Ketchikan Gateway Borough Resolution notes that this state legislation creates “a circumstance that is equivalent to the federal government exempting 18 of the 50 states from [those] federal mandates” that Governor Parnell deplored so forcefully.²⁰ Imagine too that the exemption of these 18 states bore no reasonable relationship to an exempted state’s ability to contribute to the federal unfunded mandate.

The following chapters of this volume of the Report discuss the immense racial and socio-economic diversity among REAAs, the contrasting economic distress of some municipal school districts required to make local contributions, the disincentives for any prosperous REAA to create a regional or local government, and the total irrationality and arbitrariness of the classifications chosen by the Legislature for imposing the unfunded mandate and for granting the exemptions.

¹⁹ Art. X, §§ 3 and 6 of the Alaska Constitution require the state legislature to create and administer a plural number of “unorganized boroughs.” The legislature has failed to implement that requirement, but instead has simply allowed by default for all portions of the state outside local governments to be treated as a “single unorganized borough.” AS 29.03.010. While AS 14.08.031 does subdivide this amorphous remnant into special service areas for purposes of public education, AS 14.17.410 grants a blanket exemption to all of these service areas, thereby in practice treating the unorganized state as one entity rather than as a plural number of “unorganized boroughs.”

²⁰ Appendix C is a letter to the editor by Ketchikan Gateway Borough Assembly member Agnes Moran imploring Governor Parnell to “lead by example” in his oft-stated policies of “pushing back on unfunded federal mandates, broken promises made at statehood and keeping taxes low to encourage economic growth.” She articulately summarizes the disincentive to creation of a borough: “When the state forced areas to organize into boroughs in 1963, they promised there would be no penalties or loss of services in these areas. Sadly, the state has failed to keep this promise. For example, citizens in organized boroughs and city school districts are forced to pay an areawide property tax for their local contribution to schools. Additionally, they are required to pay up to 35% of capital costs for school construction projects. Citizens in other unorganized areas (60% of the state) are not required to pay this tax and their contribution for school construction projects is a flat 2%.”

CHAPTER 2. Geographic Characteristics Among Municipal School Districts and REAAs
a. The Stereotypes.

Conventional wisdom holds that REAAs are always “rural” in character and municipal school districts are always “urban.” In fact, that is frequently incorrect.

Another common misconception among Alaskans is that REAAs are predominantly “Alaskan Native” in racial and cultural composition. In fact, many are not.

Stereotypically, REAAs are also cast in a mold as “economically distressed” areas with largely subsistence life styles and little or no fee-simple private ownership of land. In fact, many REAAs manifest quite the opposite economic and property-ownership characteristics.

In still another hackneyed generalization, REAAs are misperceived as off-road areas with relatively isolated and expensive transportation patterns. In fact, that too is not necessarily correct.

As noted in the Introduction, the only common feature that distinguishes all REAAs from all municipal school districts, is the irrelevant fact that the REAA service areas are geographically located in that eclectic, singular default remnant called “the unorganized borough,” while all municipal school districts are always found in incorporated boroughs and incorporated home-rule/first-class cities.

Statistics in this and the following chapters show that the citizens in some regions of that huge, amorphous and variegated default-residuum are situated on major Alaska road systems, enjoying highly industrialized cash economies with extensive private property owned by a predominantly Caucasian population and by large natural-resource extraction corporations. In nearly one-third of all REAAs, the population is concentrated in racially White communities, with industry and property ownership no different from the neighboring incorporated municipal school districts.

By contrast, the statistical data in this Volume prove that some municipal school districts required by law to make the mandatory local contributions to public education are predominantly Alaska Native communities whose citizens live largely subsistence lifestyles in “distressed” economies off the major transportation corridors, and with very little unencumbered private property on the tax rolls.

The mistaken perception that all REAAs are in “rural” areas and all municipal governments are in “urban” areas can be found in a number of statewide policy-making contexts where important educational decisions are being made.

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For example, the superior court case of Kasayulie v. State of Alaska^{xiii} raised issues of disparities in state statutes for school construction and maintenance funding, which the statutes divide into REAAs and into municipal school districts. In his decisional Order of March 27, 2001, Judge Reese used the stereotypical word “rural” 16 times and *never once* wrote the correct statutory word “regional” when he referred to school-construction funding laws that, by their precise legal wording, apply specifically and only to REAAs (regional educational attendance areas) – some of which are “rural” and some “urban.”

In the same vein, the stereotypical “urban” appears three times in the Order of Judge Reese, and he *never once* uses the correct statutory words for this alternative statutory division, “city and borough school districts” or “municipal school district” – a category that includes many remote and isolated small towns and some whole boroughs both rural in nature and having distressed economies.

State legislators and executive-branch officials also mistakenly substitute the word and the concept of “rural” for what are actually a broader, more generic set of “regional educational attendance areas.” For example, Section 1 of HCS CSSB 237 opens with references to “rural” and “urban” school districts, largely parroting Judge Reese. The second sentence of HCS CSSB 237 then slips easily but mindlessly into references to “REAAs,” as though a general reference to that broad category of educational service areas is always and unquestionably synonymous with the references in the first sentence to “rural.”²¹

The new legislation then addresses changes in the treatment of REAAs and municipal government school districts, again assuming that these classifications represent respectively the “rural” and “urban” school districts described in the opening sentence of the legislation.

In the Attorney General Opinion Letter of May 18, 2010, evaluating the legality of HCS CSSB 237, the assistant AG writing for the signature of Attorney General Daniel S. Sullivan falls into the same erroneous stereotype found in the writings and analyses of Judge Reese and the drafters of HCS CSSB 237 – that of assuming that “regional educational attendance area” is synonymous with “rural” and that “municipal school district” is synonymous with “urban.” Although the title of HCS CSSB 237 clearly refers only to the statutory “regional educational attendance areas” and the statutory “municipal school districts,” the attorney general refers to REAAs as being “rural” 14 times in his opinion letter, and he addresses municipal school districts as being “urban” 9 times. This erroneous stereotype is so strong in the mind of the author of this AG Opinion Letter that on two occasions s/he mistakenly refers to the statutory “regional educational attendance areas” as “*rural* education attendance areas.”^x

²¹ “The mechanisms that currently exist in statute to provide construction funding to regional educational attendance areas (REAA) have not resulted in sufficient funding for projects approved for those districts.” As stated, the observation is correct. But, the underlying fact is that some REAAs are economically distressed regions manifesting subsistence economies, while other REAAs are cash economies enjoying diverse industries and huge potential assessments of private-property ownership.

b. Geographic Characteristics.

There are municipal school districts in eight or more "rural" cities outside boroughs.²² As noted in the Introduction, the "rural" Yukon River village of St. Mary's shares nothing in common with the "urban" Municipality of Anchorage, other than the fact that both administer a *municipal* school district. St. Mary's shares much more in common with its Yukon River neighbors like Mountain Village and Emmonak, both located in the Lower Yukon REAA. Does the word "urban" accurately describe the municipal school districts of Galena, Hoonah, Hydaburg, Kake, Klawock, Nenana, Pelican, Tanana or Yakutat?

[This] prevents limited State educational resources from going to the most needy areas, but also literally paralyzes implementation of the constitutional mandate for maximizing local self-government in Alaska.

The "rural" island community of Hoonah shares none of the socio-economic characteristics of the "urban" Fairbanks North Star Borough, other than the fact that both are *municipal* school districts. Hoonah shares much more in common with Klukwan in the Chatham REAA and Metlakatla in the Annette Island REAA.

It is also a supreme fallacy to stereotype all borough school districts geographically as "urban." As the Alaska Local Boundary Commission has noted, borough governments are suitable to rural areas as

well as urban areas.²³ This fact has also been recognized by the Alaska Supreme Court.²³ Six of Alaska's boroughs govern exclusively rural communities.²⁴ Another seven boroughs include mostly rural communities.²⁵ Can anyone possibly argue that the word "urban" describes the municipal school districts of the Bristol Bay Borough, the North Slope Borough, the Northwest Arctic Borough, the Aleutians East Borough, the Lake & Peninsula Borough or the Yakutat Borough?

²² Excluding "regional centers" like Dillingham, Nome and Unalaska that are probably "rural," and excluding a few other remote communities that are relatively prosperous, no one can deny the "rural" nature of Galena, Hoonah, Hydaburg, Kake, Klawock, Nenana, Pelican and Saint Mary's.

²³ *Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d. 92, 98 (Alaska 1974). "The borough concept was incorporated into our constitution in the belief that one unit of local government could be successfully adapted to both urban and sparsely populated areas of Alaska...."

²⁴ Bristol Bay Borough, North Slope Borough, Northwest Arctic Borough, Aleutians East Borough, Lake & Peninsula Borough, and Yakutat Borough.

²⁵ Kodiak Island Borough, Kenai Peninsula Borough, Haines Borough, Skagway Borough, Ketchikan Gateway Borough, Matanuska-Susitna Borough and Denali Borough.

A quick review of a boundary map of Alaska reveals the supreme fallacy of stereotyping all REAAs geographically as "rural." They share no common "rural" characteristic. Indeed, they share no relevant common characteristic whatsoever – not cultural roots nor presence/absence of industry, nor economic status, nor encumbrances on private property ownership. While some REAAs are truly rural and distinct in all regards from Anchorage, Fairbanks, Juneau and Ketchikan, etc., many others objectively meet all financial and economic qualifications for borough incorporation but vigorously spurn petitions for the formation of local government, continuing instead to enjoy the windfall of 100% state-funded public schools and no local tax contribution to the public education of their children – a distorted form of being "on the dole" that not only prevents limited State educational resources from going to the most needy areas, but also literally paralyzes implementation of the constitutional mandate for maximizing local self-government in Alaska.²⁶

Serious consequences result from the erroneous stereotype that "REAA" is synonymous with "rural" and that "municipal school district" is synonymous with "urban." Many prosperous local Alaskans in REAAs that manifest flourishing economies and valuable private property escape local taxation and a local contribution completely and enjoy full State funding of local public education, while many local Alaskans in relatively remote areas outside cash economies and in economically distressed circumstances make local tax contributions to the public education of their children, simply because many years ago they either chose to follow the mandate of the Alaska Constitution to maximize local governance, or, more onerously, they were compelled by the state legislature to form regional governments under the Mandatory Borough Act of 1963 – with the hollow promise that they would not be penalized for doing so.^{x1}

[M]any years ago they either chose to follow the mandate of the Alaska Constitution to maximize local governance, or, more onerously, they were compelled by the state legislature to form regional governments under the Mandatory Borough Act of 1963 – with the hollow promise that they would not be penalized for doing so.

²⁶ Art. X, §1 of the Alaska Constitution states, "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 jurisdiction. A liberal construction shall be given to the powers of local government units." (Emphasis mine.)

CHAPTER 3. Racial Characteristics Among Municipal School Districts and REAAs

In Alaska, the racial composition of a community or region can be one meaningful measure of local cultural and cross-cultural characteristics, local cash vs. subsistence economies, and the extent of unencumbered, taxable fee-simple land ownership. The following data shows that there is no correlation between the classifications of REAAs on the one hand, and municipal school districts on the other hand, that represents any similar divisions along racial or cultural (and hence economic) commonalities.

The Alaska Department of Labor and Workforce Development, Research & Analysis Section used 2010 U.S. Census data to classify all students in all of Alaska's school districts by race.²⁷ The resulting spreadsheet shows clearly that many exempted REAAs are predominantly non-Native, and many municipal school districts paying a local contribution are predominantly Alaska Native. The same Census data also shows that racial compositions are highly variable within the arbitrary statutory classifications that group all REAAs exempt and all municipal school districts contributing 4 mills up to 45% of basic need.

Of the 19 REAAs exempted from the mandatory local contribution, more than one-third (seven in number or 37%) of them enroll less than 36% "American Indians and Alaska Natives."²⁸ Of the same 19 exempted REAAs, nearly one-third (six in number or 31.6%) show an enrollment of more than 50% "White" students.²⁹

- Although the Delta-Greely REAA has the lowest percentage enrollment of Alaska Natives (3.1%) in the entire State of Alaska and a larger White enrollment (89%) than any school district in the State except Denali and Skagway Boroughs, AS 14.17.410 grants the Delta-Greely region an exemption from any local contribution.³⁰
- The student population in the Southeast Island REAA is only 6% Alaska Native and 87% White, yet this region too enjoys the exemption from a local contribution.
- The exempted Aleutian REAA contributes no local funding of public schools although only 17.38% of its students are Alaska Natives and 78.3% are other races (with a large Asian population included with Whites)
- The exempted Copper River REAA enrolls 21% Alaska Natives and 70.5% White students, yet this region enjoys an exemption from any local contribution.

²⁷Ingrid Zaruba, Research Analyst, Census & Geographic Information Network, Alaska Department of Labor and Workforce Development, Research & Analysis Section. See, Appendix D, which also identifies which school districts are REAAs and which are municipal school districts.

²⁸ Alaska Gateway REAA, Aleutian Region REAA, Chatham REAA, Chugach REAA, Copper River REAA, Delta-Greely REAA and Southeast Island REAA.

²⁹ Alaska Gateway REAA, Chatham REAA, Chugach REAA, Copper River REAA, Delta-Greely REAA and Southeast Island REAA. Adding Asians, the Aleutian Region REAA joins this non-Native Alaskan group.

³⁰ The Alaska Department of Commerce, Community, and Economic Development concluded that, in FY 2006, only 2.5% of the entire population in the Delta-Greely REAA was Alaska Native or American Indian, and that even when analyzed as Alaska Native or American Indian in combination with another race, i.e. bi-racial parentage, only 4% of the population fit that category. *Preliminary Report to the Local Boundary Commission on the Deltana Borough Incorporation*, Feb. 2007 at 100 and Tables 2-18.

- The exempted Chugach REAA shows a student population that is 24.3% Alaska Native and 68.4% Non-Native (excluding bi-racial), or, 59.7% White.
- The students in the exempted Alaska Gateway REAA are only 31.8% Alaska Native and fully 60% White – a “whiter” student population than the Kodiak Borough School District, and as “white” as the Pelican City School District, both of which are required to make a local contribution to basic need for local public education.
- The exempted Chatham REAA is only 35.4% Alaska Native and 55% White (60% if other non-Native races are included).

By contrast, seven (or 20%) of the 34 municipal school districts required by AS 14.17.410(b) to make a local contribution enroll more than 63% “Alaska Native” students.³¹ Among these same 34 municipal school districts required by the unfunded mandate to make a local contribution, 12 districts (35%) have less than one-third “White” enrollment,³² and seven of those 12 districts have less than a one-quarter “White” enrollment.³³ Six of these seven municipal school districts still show less than one-quarter total enrollment of *all combined* non-Native races: White, Black, Asian, and Hispanic/Latino.

- Although the St. Mary’s City School District is 91.5% Alaska Native students and only 3.8% White students, it is burdened by AS 14.17.410(b)(2) with the unfunded mandate of a local contribution to public education.
- The Tanana City School District is 86.6% Alaska Native and only 9.8% White students, yet it too must contribute 4 mills to the “basic need” for public education.
- The racial profile of students in the Northwest Arctic Borough School District is 81.4% Alaska Native and only 11.3% White, yet AS 14.17.410(b)(2) requires that region to make a local contribution.
- The Hydaburg City School District pays 4 mills on assessed property value into the State’s “basic need” computation, despite the fact that it is 77.1% Alaska Native students and only 11.4% White students.
- It’s neighbor, Kake City School District is 69.1% Alaska Native and only 17.1% White, yet it pays a local contribution for school funding while the unincorporated remainder of Prince of Wales Island, enjoying the arbitrary default classification of Southeast Island REAA, is exempted despite a contrasted enrollment that is 86.6% White and only 6% Native.
- The Lake and Peninsula Borough School District enrolls 65% Alaska Native students and 23.3% White students, but this predominantly Native district also must make a mandatory local contribution under AS 14.17.410(b)(2).

³¹ Galena, Hydaburg, Kake, Lake and Peninsula Borough, Northwest Arctic Borough, St. Mary’s and Tanana.

³² Aleutians East Borough (21% White), Dillingham (31%), Galena (29%), Hoonah (33%), Hydaburg (11%), Kake (17%), Lake and Peninsula Borough (23%), Nome (30%), North Slope Borough (33.37%), Northwest Arctic Borough (11%), St. Mary’s (4%), and Tanana (10%).

³³ Aleutians East Borough, Hydaburg, Kake, Lake and Peninsula Borough, Northwest Arctic Borough, St. Mary’s and Tanana.

In its 2003 Report to the Legislature on "Unorganized Areas of Alaska that Meet Borough Incorporation Standards," the Local Boundary Commission noted that five boroughs (municipal school districts) are predominately Alaskan Native, and that 72 of 223 Alaska villages recognized by the Bureau of Indian Affairs are located within the municipal school districts of organized boroughs.^{xii}

There are many more statistics that make the same point undeniable: REAAs as a whole have no common racial, ethnic or cultural characteristics, and no common distinguishing features from municipal school districts as a whole, that might justify the legislature treating all REAAs as an integral singularity for purposes of a blanket exemption from a local contribution to public education. Similarly, municipal school districts – as a singular classification – share no racial, ethnic or cultural characteristics in common. Race, ethnicity and culture simply cannot provide a rational basis for the legislated classifications that distinguish between who pays 4 mills toward local public education and who is fully exempted from any such contribution.

In the last analysis, there are no urban/rural or racial/cultural distinctions manifest in the classifications of REAAs vs. municipal school districts. Assumptions to the contrary are nothing more than erroneous stereotypes. Furthermore, if the racial and cultural distinctions shade across and obfuscate any rational basis for the statutory classifications of REAAs vs. municipal school districts, then racial and cultural distinctions also cannot provide an opening gambit into other possibly reasoned distinctions that might justify that choice of a statutory division, like cash vs. subsistence economies, or isolation vs. convenient transportation patterns, or taxable vs. encumbered property ownership. Those characteristics are analyzed below.

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CHAPTER 4. Economic Characteristics Among Municipal School Districts and REAAs

a. Introduction.

In protracted litigation (1986-97), the Matanuska-Susitna Borough and local *Mat-Su* taxpayers unsuccessfully challenged the legality of requiring municipal school districts to make a local contribution to public education.^{xiii} Both the State Attorney General's Office (representing the State as a party) and the Alaska Supreme Court relied heavily³⁴ on the following patently incorrect "expert" testimony introduced by the State's attorneys at the trial-court level:

Michael W. Worley, tax assessor for the State, affied that the available tax base in REAAs is limited by a number of factors: the tax-exempt status of certain Native-owned lands, the widespread lack of ownership records, and the fact that property ownership is often poorly defined in these areas.^{xiv}

As will be shown in Chapters 5 and 6 below, that statement is patently absurd regarding ownership records and property ownership in at least seven of the 19 REAAs. Without citing any supporting demographic or economic evidence whatsoever, State Assessor Worley, the trial judge and the appellate justices accepted the erroneous conventional wisdom that all REAAs encompass primarily encumbered property of Native people living in subsistence economies. They unfortunately failed to look more closely at the specific regions forming REAAs, and to contrast affluent REAAs like Delta-Greely, Copper River, Chugach, the Aleutians and Pribilof REAAs from the truly subsistence-based REAAs like the Kashunamiut, Lower Kuskokwim, Lower Yukon, Southwest Region, Yukon Flats and Yupiit regions.

At the same level of oversight, they failed to look more closely at specific municipal school districts to discern the levels of economic distress, such as what is found in the Wrangell and Haines boroughs and in the Hoonah, Kake

At the same level of oversight, they failed to look more closely at specific municipal school districts to discern the levels of economic distress, such as what is found in the Wrangell and Haines boroughs and in the Hoonah, Kake and Pelican city school districts – all of which are 100% "economically distressed" yet burdened with the legislative mandate to contribute to local education the equivalent of 4-mills on taxable property value.

³⁴ The erroneous testimony of State Assessor Worley is the "evidence" cited as the rationale for the findings of Justices Compton and Eastaugh that the classifications – REAA vs. municipal school districts – bear a "fair and substantial relationship" to the purpose served by the statute, and therefore do not violate constitutional Equal Protection.

and Pelican city school districts – all of which are 100% “economically distressed” yet burdened with the legislative mandate to contribute to local education the equivalent of 4-mills on taxable property value.

In fact, there are many predominantly White REAAs along the major road systems of Alaska that manifest flourishing cash economies, year-round employment opportunities in diverse major industries, and complete land records of clearly defined, unencumbered private property ownership with no greater quantity of “Native-owned lands” than in and around the major cities of Alaska. After extensive study, mandated by the State Legislature, the Alaska Local Boundary Commission concluded in 2003 that fully six and possibly seven REAAs qualify to become incorporated boroughs in every regard – *including the existence of sufficient taxable private property to run a municipal school system.*³⁵

The following statistical analyses will show that economically distressed regions of the State are a veritable checkerboard of REAAs and municipal school districts intermixed; that economically prosperous regions of the State include many REAAs as well as municipal school districts; and that economic conditions between these two extremes consist of an equally motley admixture of REAAs and municipal school districts. There simply is no correlation between the economic ability or inability of a region to make a local contribution to public education, and the simplistic, bipolar distinction found in AS 14.17.410 between all REAAs and all municipal school districts.

b. The Denali Commission Report.

In May 2010, the Denali Commission published its “Distressed Community Criteria 2010 Update,” which is attached here as **Appendix E**. An Alaska community was considered economically “distressed” if it met any two of the following three criteria:

- The average annual market income in the community in 2009 was less than the minimum wage of \$14,969.
- More than 70% of community residents age 16 and over earned less than \$14,969 in 2009.
- Less than 30% of community residents age 16 and over worked all four quarters of 2009.^{xv}

The determinative data was collected from Alaska Permanent Fund Dividend demographics, from state unemployment insurance reports and from state commercial fishery income reports.^{xvi}

Some marginal communities then were moved by the Denali Commission into the economically “distressed” category for 2010 by “the 3% formula” if any two of the following modified criteria existed: (1) the average earnings in 2009 were less than $\$14,968 \times 1.03 = \$15,417$; (2) more than 67% of community residents earned less than \$14,968; (3) less than 33% of community residents worked all

³⁵ *Unorganized Areas of Alaska That Meet Borough Incorporation Standards, supra*. As discussed in greater detail in Chapter 6 below, the seven regions that qualify for borough incorporation are the Aleutians Area REAA as the “Aleutians West Model Borough,” the Delta-Greely REAA and Alaska Gateway REAA as the “Upper Tanana Basin Model Borough,” The Copper River REAA as the “Copper River Basin Model Borough,” the Chugach REAA as the “Prince William Sound Model Borough,” the Chatham REAA as the “Glacier Bay Model Borough” and the “Wrangell-Petersburg Model Borough.” Shortly before publishing, the Southeast Island REAA was removed from the list for “further analysis.” Since that 2003 report was published, Wrangell (a city school district) joined two other communities to become a borough, and a petition to incorporate Petersburg (a city school district) as a borough is now pending before the Local Boundary Commission.

four quarters.^{xvii} In the present Report, all cities and communities in the category of “the 3% formula” are listed as “economically distressed.”

A few limitations of the Denali Commission report should be recognized up front. It does not convey the full picture of the local economies of cities and communities in Alaska. It is primarily a jobs and income report. It does, however, accurately portray cash economies vs. subsistence economies. Also, one needs to recognize that the entities identified in the Denali Commission report are as vastly different as Anchorage with a population of 292,000 and Chisina with a population of zero.³⁶ Finally, the report does not apply accurately to military bases and federal enclaves like Fort Eielson, Fort Greely and Kodiak Station because the raw data did not include federal or military income.

Nonetheless, jobs and income potential measured in the Denali Commission report are accurate indices of the health of the broader regional economies. The conclusions one draws from this Chapter 4 – jobs and cash-earnings – correlate remarkably well with the later analyses in Chapters 5 and 6 of the full breadth of regional economies and resources in seven of the REAAs.

c. Economic Status by School District.

Appendix F places all Denali Commission cities and “communities” in their respective school districts. For this purpose, the word “community” includes both unincorporated villages and federal census-designated places (“CDPs”). I assume in the computations below that all of the federal CDPs given an economic status in the Denali Commission report are in fact inhabited places, although I know that is not true in fact.³⁷

When all of the Denali Commission cities and communities are placed in their respective REAAs and municipal school districts, it becomes quite apparent that there is no correlation between (1) local income or the prosperity of a local cash economy, and (2) the statutory classifications distinguishing municipal school district from REAAs for purposes of ability to make a local contribution. Appendix F discloses that at least five of the municipal school districts³⁸ are 100% “economically distressed,” while six of the REAAs³⁹ are some of the most prosperous regions of the State of Alaska.

All 11 cities and communities⁴⁰ in the Lower Yukon REAA (100%) are “economically distressed.” The one city (Chevak) in the Kashunamiut REAA is “economically distressed.” In the Yupiit REAA, all three of the cities and communities (100%) are “economically distressed.” In the Southwest Region REAA, all nine cities and communities (100%) are “economically distressed.” They deserve substantial State financial help in local public education.

³⁶ Chisina is listed as “distressed” in the Denali Commission report.

³⁷ Chisana, in the Chugach REAA and Ester in the Fairbanks North Star Borough are listed as “distressed” CDPs in the Denali Commission report, but both are uninhabited. I have not checked to see how many other CDPs in the Denali Report might be designated as “distressed” but in fact are largely uninhabited locations that should not be included in the classifications.

³⁸ Haines Borough, Wrangell City and Borough, Hoonah, Kake and Pelican.

³⁹ Delta-Greely, Chugach, Copper River, Aleutians Region, Annette Island and the Pribilof REAAs.

⁴⁰ Every CDP in this REAA is an incorporated second-class city except Pitkas Point.

But, **Appendix F** also shows that the Wrangell City and Borough and the Haines Borough are deserving of the same level of help. In the Wrangell City and Borough, all three communities (100%) are “economically distressed, and in the Haines Borough all six communities (100%) are “economically distressed.” Why then are the Wrangell and Haines Boroughs not exempted from the locally assessed 4-mill contribution to their public school education?

According to the Denali Commission, the Cities of Hoonah, Kake and Pelican are 100% “economically distressed.” This means that nearly 20% of the 16⁴¹ city school districts burdened with a mandatory 4-mill local contribution are economically “distressed.” The arbitrary division in AS 14.17.410 between “municipal school districts” and “REAs” is the only distinction between these three “distressed” cities and their neighbors, Angoon, Kupreanof, Port Alexander, Coffman Cove, Kasaan, and Thorne Bay which are equally “distressed” cities but exempted from the local contribution because they are perchance located in REAs.

Looking at the **Appendix-F** school districts in the mid-range of being “distressed” and “non-distressed,” one sees that, in the Copper River REAA, 64% of the communities⁴² are “economically distressed.” In the neighboring Denali Borough, 60% of the communities are “economically distressed.” In the Lake and Peninsula Borough, 59% of the cities and communities are “economically distressed.” In the Northwest Arctic Borough, 58% of the cities and communities are “economically distressed.” In the Kenai Peninsula Borough, 53% of the cities and communities are “economically distressed.” In the Chugach REAA, 50% of the cities and communities are “economically distressed.”

What makes the Copper River REAA and the Chugach REAA reasonably different from these similarly situated Denali, Lake and Peninsula, Northwest and Kenai borough school districts, such that the two REAs should enjoy a blanket exemption from providing any local money for public education while equally distressed boroughs are required to pay the equivalent of a 4-mill local contribution to the funding of their local public education?

In the Delta-Greely REAA, 40% of the cities and communities are designated by the Denali Commission as “economically distressed,” when in fact this region numbers among the most prosperous in the state.⁴³ (See Chapter 5 below) In the Bristol Bay Borough, 33% of the communities are “economically distressed.” In the Matanuska-Susitna Borough, 32% of the cities and communities are “economically distressed.” In the Fairbanks North Star Borough, 27% of the cities and communities are “economically distressed.”⁴⁴ In the Kodiak Island Borough, 27% of the cities and communities are “economically distressed.” Why should the Delta Greely REAA enjoy a windfall exemption from the 4-mills that these similarly situated boroughs are contributing to their local public education?

⁴¹ Cordova, Craig, Dillingham, Galena, Hoonah, Hydaburg, Kake, Klawock, Nenana, Nome, Pelican, Petersburg, St. Mary's, Tanana, Valdez and Unalaska (Dutch Harbor).

⁴² There is no incorporated city in this REAA.

⁴³ See pp. 22-23 below and Chapter 5 of this Report. One distressed “community” is in fact a huge, sparsely populated CDP. The other is a remote Native village.

⁴⁴ This computation makes a correction for the fact that Eielson AFB is listed incorrectly as “economically distressed” in the Denali Report. See p. 21 above.

d. Ranking School Districts by Economic Status.

If Appendix F is transposed to a list ranking levels of "economically distressed" status, one can see graphically that some municipal school districts rank with some REAAs as 100% distressed; that some REAAs rank with municipal school districts as being 0% distressed; and that the percentages between are a checkerboard mix of REAAs and municipal school districts. From the most "distressed" to the most affluent, the cash-earnings economies of the 53 Alaska school districts rank as follows:

<u>Municipal School District or REAA</u>	<u>% Economically Distressed</u>
Chatham REAA	100%
City of Hoonah	100%
City of Kake	100%
City of Pelican	100%
Haines Borough	100%
Kashunamiut REAA	100%
Lower Yukon REAA	100%
Southeast Island REAA	100%
Southwest Region REAA	100%
Wrangell City and Borough	100%
Yupiiit REAA	100%
Yukon Flats REAA	92%
Lower Kuskokwim REAA	86%
Alaska Gateway REAA	83%
Bering Strait REAA	80%
Iditarod Area REAA	78%
Kuspuk REAA	78%
Yukon-Koyukuk REAA	71%
Copper River REAA	64%
Denali Borough	60%
Lake and Peninsula Borough	59%
Northwest Arctic Borough	58%
Kenai Peninsula Borough	53%
Chugach REAA	50%

Delta-Greely REAA ⁴⁵	40%
Bristol Bay Borough	33%
Matanuska-Susitna Borough	32%
Fairbanks North Star Borough	27%
Kodiak Island Borough	27%
Aleutians East Borough	0%
Aleutians Region REAA	0%
Annette Island REAA	0%
City and Borough of Juneau	0%
City and Borough of Sitka	0%
Cordova	0%
Craig	0%
Dillingham	0%
Galena	0%
Hydaburg	0%
Ketchikan Gateway Borough	0%
Klawock	0%
Municipality of Anchorage	0%
Nenana	0%
Nome	0%
North Slope Borough	0%
Petersburg	0%
Pribilof Islands REAA	0%
Saint Mary's	0%
Skagway Borough	0%
Tanana	0%
Unalaska	0%
Valdez	0%
Yakutat City and Borough	0%

⁴⁵ See, Chapter 5 for a detailed analysis of the municipal maturity and affluence of this REAA.

It is clear from the above ranking that, viewed in terms of relative cash-earnings ability to pay a local contribution to local public education, the statutory classifications distinguishing municipal school districts from REAAs are meaningless and irrational.

Focusing specifically on Southeast Alaska, the above listing shows that in the Chatham REAA all eight cities and communities (100%) are “economically distressed.” In the Southeast Island REAA, 12 of 13 cities and communities (92%) are “economically distressed.” In the Wrangell City and Borough, all three cities and communities (100%) are “economically distressed.” In the Haines Borough, all six of the communities (100%) are “economically distressed.” The city school districts of Hoonah, Kake and Pelican are also 100% “economically distressed.”

Why are some of these cities required by law to contribute 4 mills to local education while the “non-distressed” community of Metlakatla enjoys a full exemption from any local contribution? Why are the Chatham REAA and the Southeast Island REAA treated differently from their equally distressed neighbors for purposes of a required local levy of 4 mills for local public schools? What “fair and substantial” difference justifies these two contrived classifications among so many Southeast Alaskan neighbors?

Focusing now on Interior Alaska, one notes that 61% of the communities in the Copper River REAA are “economically distressed.”⁴⁶ Its neighbor, the Denali Borough is 60% “economically distressed.” Yet Denali must make a local contribution to its public education and Copper River is totally exempt. The statutory distinction between them is baseless and arbitrary.

Expanding this contrast with the 61%-status of the Copper River REAA, the Lake and Peninsula Borough is a comparable 59% “economically distressed” and the Northwest Arctic Borough is 58% “economically distressed.” What makes the “economically distressed” communities of Egegik, Nondalton, Chignik Lagoon, Chignik Lake, Kokhanok, Levelock, Perryville, Pope-Vannoy Landing, Port Alsworth and Ugashik (i.e., fly-in communities in the Lake and Peninsula Borough) so different from the Copper River REAA that the former group of cities and communities must pay a 4-mill equivalency to their local public educational expenses, while the seven “non-distressed,” road-system communities of Copper Center, Copperville, Glennallen, Gulkana, Mendaltna, Silver Springs and Tazlina in the Copper River REAA get a total free ride? And while these “non-distressed” Copper River REAA communities

[V]iewed in terms of relative cash-earnings ability to pay a local contribution to local public education, the statutory classifications distinguishing municipal school districts from REAAs are meaningless and irrational.

⁴⁶ See, Chapter 6 below for a detailed review of the Copper River REAA by the Alaska Department of Commerce, Community, and Economic Development, and the Alaska Local Boundary Commission.

skate free, the “distressed” Inupiat cities of Ambler, Kiana, Kivalina, Kobuk, Selawik, Shungnak and Noatak (Northwest Arctic Borough) see 4-mills of the monies in their borough coffer⁴⁷ spent to support local public education rather than other regional social and infrastructure needs.

Redirecting focus now to the relatively prosperous Aleutian Chain and Bering Sea islands, the City of Unalaska is “non-distressed,” and none of the six cities and communities in the Aleutians East Borough is “economically distressed.” The adjoining Aleutians Region REAA shares the same affluence, with none of its three cities and communities “economically distressed.” In the neighboring Pribilof Islands REAA, neither city is “economically distressed.” Given the indisputable fact that the Aleutians/southern Bering Sea is a 100%-prosperous region of Alaska, what “fair and substantial” economic difference justifies AS 14.17.410(b)(2) compelling the Aleutians East Borough and the City of Unalaska to make 4-mill local contributions to public education while the two prosperous neighboring REAAs contribute absolutely nothing toward their local educational expenses?

In Western Alaska, Saint Mary’s, Dillingham and Kotzebue are economically “non-distressed” cities located in municipal school districts. They make the equivalency-contribution of 4-mills of local property value. But, Aniak, Bethel and McGrath also enjoy a sufficient level of cash-economies to merit the category of “non-distressed” cities. Like Saint Mary’s, Dillingham and Kotzebue, they are incorporated rural cities that serve as regional hubs off the Alaska road system. Yet Aniak, Bethel and McGrath are totally exempted from paying any amount toward their local public education because they are located within REAAs.

The Delta-Greely REAA presents a unique situation: The Denali Commission report lists the city of Delta Junction and the community of Deltana as being “non-distressed,” while the communities of Big Delta and Healy Lake join Fort Greely as being “economically distressed.” As noted above, the Denali Commission acquired no reliable data for federal enclaves. Fort Greely is a bustling economy, far from being “distressed.” Big Delta is a CDP but not a settlement of people in the strict sense. It is a huge expanse of 61 square miles inhabited by only 14 people per square mile. Racially, that sparsely scattered population is 96% White, 2.5% Latino and 1.5% Native American. Healy Lake is a legitimately “distressed” off-road Native village.

The Delta-Greely REAA as a whole is the most racially White region in Alaska enjoying a flourishing cash economy with major industries (a huge gold mine, extensive agriculture, a highly technical military base and a thriving recreation/tourism industry) at a crossroads of major Alaska road systems – all of which is exempt from the tax levy and the 4-mill local contribution to local school funding. This REAA is reviewed as “A Case In Point” in Chapter 5 of this Report.

In summary, **Appendix F** and the above ranking list of school districts illustrate clearly that AS 14.17.410(b)(2) requires 4-mills of local funding without regard for the ability of distressed taxpayers to pay the local contribution. This data also shows that the statute does not consider regional affluence or regional levels of assessable real and personal property. It exempts *every* city and community in *every* REAA. Simply put, the data does not support any economically “fair and substantial” relationship

⁴⁷ The Northwest Arctic Borough pays its equivalent 4-mills on property value without levying a property tax, because it receives a payment in lieu of taxes (“PILT”) from the Red Dog Mine. Nevertheless, this is locally generated tax money that could be spent on capital improvements and social programs in these many cities and communities with distressed economies.

between the gross classifications in the statute and the legitimate governmental purpose of funding State public education.

e. Ranking Cash-Earnings Among Communities Hosting School Sites.

The above data in section d applies comprehensively to all Denali Commission cities, settlements and CDPs in the 19 REAAs and the 34 municipal school districts. However, the percentages of “distressed” and “non-distressed” settlements is distorted by some unknown measure because some CDPs are no more than large, relatively unpopulated land areas and, in at least a few known instances they contain virtually no population.

If one instead assumes that communities hosting a school building are more likely to be populated areas with meaningful employment and unemployment characteristics, then reviewing only those communities will partially alleviate the above distortion. The outcome should be an improved accuracy in the comparisons and the contrasts of cash and earnings potential in REAAs and in municipal school districts.

If an entire REAA or an entire municipal school district is 100% “economically distressed” in **Appendix F** and in the above list, then honing in on cities and communities hosting a school will not change that status. Likewise, if an entire REAA or municipal school district is 0% “economically distressed” in the above list, then no purpose is served by focusing on the lesser number of communities and cities hosting a school building. Hence, the list below and **Appendix G** focus on only those REAAs and municipal school districts that fall between the two extremes of fully “distressed” or fully “non-distressed.” In **Appendix F**, they can be identified as the underlines cities and communities. Regional changes in rankings appear as follows:

<u>Municipal School District or REAA</u>	<u>% Economically Distressed</u>
Yukon-Koyukuk REAA	100%
Alaska Gateway REAA	86%
Kuspuk REAA	86%
Lower Kuskokwim REAA	86%
Yukon Flats REAA	86%
Bering Strait REAA	80%
Iditarod Area REAA	71%
Northwest Arctic Borough	64%
Copper River REAA	60%
Lake and Peninsula Borough	57%
Kenai Peninsula Borough	50%
Chugach REAA	33%

Denali Borough	33%
Kodiak Island Borough	29%
Matanuska-Susitna Borough	23%
Fairbanks North Star Borough	20%
Bristol Bay Borough	0%
Delta-Greely REAA	0%

In this refined list, the Yukon-Koyukuk REAA now joins the Chatham REAA, the City of Hoonah, the City of Kake, the City of Pelican, the Haines Borough, the Kashunamiut REAA, the Lower Yukon REAA, the Southeast Island REAA, the Southwest Region REAA, the Wrangell City and Borough and the Yupiit REAA as 100% economically distressed. All 12 of these school districts probably lack the cash-earnings ability to fund their local public education, but AS 14.17.410(b)(2) prevents 42% of them from receiving the deserved exemption from a local contribution, for reasons having no rational relationship to their ability to pay.

In this new focus on school sites, the Lower Kuskokwim REAA and the Bering Strait REAA remain unchanged at 86% and 80% “economically distressed,” respectively. The Yukon Flats REAA, Lower Kuskokwim REAA, Alaska Gateway REAA,⁴⁸ Kuspuk REAA and Bering Strait REAA join this category as deserving recognition as having relatively few wage-earning job opportunities in their respective regions.

The indicators in two school districts show increasingly distressed regional profiles when one focuses only on cities and communities with school sites: The Northwest Arctic Borough rises from 58% to 64%, and the Kodiak Island Borough rising from 27% to 38% economically distressed.

But, regional indicators show more prosperity as “distressed” percentages drop in some other school districts. The Denali Borough drops from 60% to 33%, the Chugach REAA drops from 50% to 33%, and the Delta-Greely REAA joins the Bristol Bay Borough in dropping to 0%.⁴⁹ The Chugach REAA and Delta-Greely REAA are now seen in a more accurate light as regions clearly capable of supporting a local-government borough, and contributing to the costs of their local public education, as indicated in Chapter 6 below.

f. Disparate Treatment Among School Districts of Similar Size, Basic Need and Cost Factors.

Sections c, d and e above demonstrate that there is no categorical difference between all REAAs on the one hand and all municipal school districts on the other when employment and cash-earnings are

⁴⁸ Note however that, if the Alaska Gateway REAA was treated as a part of the Upper Tanana Basin Model Borough, it becomes an economically viable borough government according to the Alaska Local Boundary Commission. See Chapter 6 below.

⁴⁹ This exercise of focusing only on cities and communities hosting school sites produces no remarkable change in the percentages of “economically distressed” cities and communities in the Copper River REAA (64% to 60%), the Lake and Peninsula Borough (59% to 57%), the Kenai Peninsula Borough (54% to 47%), the Matanuska-Susitna Borough (29% to 23%), and the Fairbanks North Star Borough (27% to 20%).

used as a measure of economic conditions. The statutory classifications are totally obfuscated when these statistics are applied.

The data below will now show that, even when applying the statutory formulae for computing state aid, the classifications dividing all municipal school districts from all REAAs are arbitrary and irrational. Many municipal school districts manifest virtually the same enrollments, the same school sizes, and – most importantly for economic analysis – the same local cost factors as many of the REAAs. But, in a statutory division and classification totally unrelated to local cost factors in education, the entire former group is required to make a local tax contribution while the entire latter group enjoys a full exemption.

As with geography, demographics and local economies, many municipal school districts are strikingly similar to many REAAs when one compares this “adjusted basic need,” thus proving again, from still another perspective, that there is no “fair and substantial relationship” between the means . . . and the goal of fair apportionment of state aid among the 53 school districts in Alaska.

As described in greater detail in **Appendix A**, the formula used by The Alaska Department of Education and Early Development for state-aid to local public education includes an elaborate process of (1) determining an enrollment-number adjusted for differing local cost factors and school-size factors, then (2) adding another factor for special-needs students, then (3) adding a third factor for enrolled correspondence students, and then (4) multiplying that sum (called the “total basic need”) by the legislative appropriation of “basic student allocation” for the particular funding year.

If the “adjusted basic need” in (1) above is the sum of factors including local enrollment, local school size and local cost factors, then it is reasonable to conclude that school districts with similar “adjusted basic need” are similarly situated in terms of costs of operations and costs of services. As with geography, demographics and local economies, many municipal school districts are strikingly similar to many REAAs when one compares this “adjusted basic need,” thus proving again, from still another perspective, that there is

no “fair and substantial relationship” between the means chosen by the legislature (the classifications distinguishing simplistically between the entire unorganized borough and all municipal school districts) and the goal of fair apportionment of state aid among the 53 school districts in Alaska.

In December 2009, the Alaska Department of Education and Early Development published *“Public School Funding Program Overview Updated December 2009.”* That document set forth detailed “FY 2011 Projections” of the effects of the funding formulae in each of the state’s 53 school districts.

The 53 school districts are listed alphabetically in that table, and not identified as REAAs or municipal school districts. One can however bring focus on this distinction in treatment by following the column, which DEED euphemistically labels “required local effort.”⁵⁰

Appendix H summarizes the “FY 2011 Projections” of DEED in a format that more clearly (1) identifies which school districts are REAAs and which are municipal school districts, (2) shows the “basic

Political language “has to consist largely of euphemism, question-begging and sheer cloudy vagueness” because it is “largely the defense of the indefensible.”

– George Orwell

need” calculation in descending dollar amounts, for easier ability to compare and contrast, (3) shows the ADMs adjusted for local cost factors, and (4) shows which districts pay what amount – or nothing – as a required local contribution.

The narrative below follows this Appendix H, with a focus on the REAAs that the Alaska Local Boundary Commission identified in 2003 as fully capable

of supporting borough government. (See Chapter 6 below.) It shows how municipal school districts, similar to relatively prosperous REAAs in terms of local student populations adjusted for local costs of education, are nonetheless treated differently for purposes of the requirement of a local contribution to public education.

The Alaska Gateway REAA (part of the LBC-recommended Upper Tanana Basin Model Borough) the Aleutians East Borough and the City of Dillingham all have similar “basic need” of \$6.6 million, \$6.4

⁵⁰ No correct English meaning of the word “effort” can possibly define the process of the required local contribution, the unfunded mandate, imposed by law on municipal school districts. The word “effort” denotes and connotes willingly trying to “get there.” An “effort” is a *consciously voluntary* expending of energy in an *attempt* to achieve an end, with no implied assurance that the goal will ever be reached. Quality teachers and good coaches frequently remind their students of the distinction between “effort” and “achievement.”

By contrast, the mandatory local contribution is a bald-faced, tyrannical command from the state legislature that unwilling local property owners in municipal school districts shall and must pay-over a local subsidy to state public school aid, whether or not they want to do so and without any option or excuse for failing to do so. AS 14.17.410(d) specifically withholds all state aid from a municipal school district that fails to make that local contribution.

In “*Politics and the English Language*,” that insightful essay studied by every college freshman in English 101, George Orwell noted that political language “has to consist largely of euphemism, question-begging and sheer cloudy vagueness” because it is “largely the defense of the indefensible.” Orwell also observed that “the slovenliness of our language makes it easier for us to have foolish thoughts.” Whether one attributes DEED’s use of the euphemistic phrase “local effort” to “defense of the indefensible” or simply to bureaucratic “slovenliness” in the use of language, the rest of us can avoid “foolish thoughts” by exposing this verbal legerdemain for what it is, and by viewing the required statutory local contribution in the true sense of its practical impact as an unfunded mandate imposed upon some hapless citizens regardless of regional socio-economic characteristics, while an irrational blanket exemption is granted to other prosperous citizens simply because they reside in that amorphous and unconstitutional remnant known singularly as “the unorganized borough.”

See, n. 8 above for another example of DEED verbal deception regarding the required local contribution.

million and \$6.1 million respectively. Their ADM enrollments, adjusted for local cost factors, range similarly across an 83-point spread at 895.72, 924.06 and 841.35 respectively. The local taxpayers in the Aleutians East Borough are required to contribute \$506,163 to local education, and the property owners in the City of Dillingham must contribute \$646,546 to the education of their children in their public schools. However, no private property owner in the entire Alaska Gateway REAA contributes even a penny to the cost of educating the students in that region.

The Aleutians Region REAA (which the LBC has identified as a region ripe for borough formation)⁵¹, the Yakutat Borough and the economically distressed^{xviii} City of Kake all have “basic need” in the same range of \$1.5 million, \$1.6 million and \$1.5 million respectively. Their ADM enrollments, adjusted for the local cost factors show only a 50-point spread, being 207.35, 241.33 and 191.25 respectively. Yakutat taxpayers must contribute \$222,452 to local public education, and taxpayers in the distressed City of Kake are required to contribute \$91,313 to local education. The local citizens in the Aleutians Region REAA enjoy a windfall and pay nothing, despite the relative economic comfort of that region. The educational expenses for their children are fully subsidized by state aid and federal monies.

The Chatham REAA (recommended for incorporation as the LBC’s Chatham Model Borough⁵² and Glacier Bay Model Borough) and the City of St. Mary’s have “basic need” of \$3.1 million and \$3.2 million respectively. Their ADM enrollments, adjusted for local cost factors, are also similar, with a spread of only 15 points, at 417.17 and 431.71 respectively. But, St. Mary’s contributes \$34,867 from a meager tax base, while the Chatham REAA contributes nothing.

The Chugach REAA, (a/k/a Prince William Sound Model Borough recommended by the LBC for incorporation), the economically distressed^{xix} City of Hoonah and the City of Klawock all have “basic need” in the same range of \$2.2 million to \$2 million. Their ADM enrollments, adjusted for local cost factors, are also similar, within a 68-point spread at 195.65, 254.81 and 263.24 respectively. While the taxpayers in Hoonah contribute \$192,240 to their public education, and the taxpayers in Klawock pay \$171,762, the entire Chugach REAA is exempted by the statute from any local contribution whatsoever.

The Copper River REAA (embracing the Copper River Basin Model Borough⁵³ recommended for incorporation by the LBC), the City of Valdez and the City of Petersburg have “basic need” in the same range of \$6.8 million to \$7.2 million. Their ADM enrollments, adjusted for local cost factors, are also similar within a 131-point spread at 994.6, 992.34 and 863.21 respectively. While the local taxpayers in Valdez are required to contribute \$3,273,440 and taxpayers in the City of Petersburg must contribute \$1,212,452 to local public education, the prosperous Copper River REAA contributes absolutely nothing to local educational costs.

⁵¹ The new borough would include the City of Unalaska with the REAA.

⁵² The Chatham REAA does not include Kake, but the Chatham Model Borough does.

⁵³ The Chugach REAA does not include the City of Valdez and the City of Cordova, while the Prince William Sound Model Borough does.

The **Delta-Greely REAA** (coterminous with the LBC-approved but ill-fated Deltana Borough), the Lake and Peninsula Borough, and the City of Nome all have “basic need” in the same range of \$9.3 million to \$10.4 million, according to the FY 2011 Projections by DEED. Their ADM enrollments, adjusted for local cost factors, fall in another range of close similarities, showing only a 98-point spread at 1302.82, 1394 and 1295.67 respectively. But, they are treated differently for purposes of state aid to education: The taxpayers of Nome are required to contribute \$1,013,362 to local public education, and the Lake and Peninsula Borough is required to contribute \$285,129 from its local tax revenues. The prosperous Delta-Greely REAA pays absolutely nothing. The local people in the Delta-Greely REAA quietly enjoy the epitome of a government dole: 100% funding of their local public education paid by the state and federal governments.

The Southeast Island REAA, (withdrawn from the LBC list of eight regions potentially ripe for borough formation, for “further analysis” that never occurred), the economically distressed Wrangell City and Borough, and the Haines Borough have “basic need” of \$4.3 million, \$4.3 million and \$4.1 million respectively. Their ADM enrollments, adjusted for the local cost factors, fall within a 95-point spread at 595.23, 517.26 and 499.84 respectively. The Wrangell City and Borough taxpayers are required by state law to contribute \$668,150 to local public education, and the Haines Borough property owners dutifully must contribute \$1,051,112 toward the cost of educating their children. In the Southeast Island REAA, the local private property owners and resident consumers pay absolutely nothing toward the cost of their local public education.

In summary, Chapter 2 exposed the errors in the stereotype that “REAA” is synonymous with “rural” and that “municipal school district” is synonymous with “urban.” Chapter 3 exposed the errors in assuming that REAAs and municipal school districts reflect any respective classifications of race or culture. The present Chapter 4 exposes the mistaken assumptions that REAAs and municipal school districts reflect any meaningful difference in ability to pay, in cash vs. subsistence economies or in cost factors for local public education.

The next two chapters draw from precise and detailed studies of the full panoply of economic factors and available resources in seven REAAs – factors and resources that distinguish them in radical fashion from truly distressed and remote REAAs and from truly distressed and remote municipal school districts.

CHAPTER 5. A Case In Point: The Ill-fated Effort to Incorporate a Deltana Borough

The Delta-Greely REAA is only one illustration of the ripeness of at least seven REAAs for borough incorporation. It is not singled-out here for separate treatment because it deserves any greater scrutiny than the other relatively affluent REAAs. It warrants a whole chapter here because we have the most information about this REAA. It has been subjected to intense research and analyses first by a commission of local residents and their expert, then in the heavily annotated Petition for Incorporation by 259 local residents, then in scores of public comments and two public hearings, then in two studies by the Department of Commerce, Community, and Economic Development, and finally in the Finding and Conclusions of the Alaska Local Boundary Commission – an entity which the Alaska Supreme Court defers to as the experts in this field of municipal incorporation. In Chapter 6, I will bring into focus the other six REAAs that evidence similar socio-economic and geographic characteristics warranting either incorporation as boroughs or some other form of an assessed local contribution to local public education.

a. Methods for Incorporating Boroughs.

The Framers of the Alaska Constitution recognized that local political determination of matters pertaining to municipal boundary changes (incorporation, annexation, detachment, dissolution, etc.) do not always result in the wisest decisions in the best interests of either the local citizenry or the state as a whole, and that these matters should be decided on a statewide basis. The Alaska Supreme Court has endorsed and repeated that fundamental principle of governance many times.⁵⁴

Hence, Art. X, § 12⁵⁵ of the Alaska Constitution requires the creation “by law”⁵⁶ of the Local Boundary Commission (“LBC”).⁵⁷ The Constitution then assigns to the LBC broad authority to “consider any proposed local government boundary change”⁵⁸ subject to a possible legislative veto. If the LBC so

⁵⁴ E.g. *Fairview Public Util. Dist. No. 1 v. City of Anchorage*, 368 P. 2d 540, 543 (Alaska 1962). “An examination of the relevant minutes of those [Committee on Local Government] meetings 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.”

⁵⁵ “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.”

⁵⁶ Whenever the Constitution says “by law,” it means by the legislature. Art. 12, §11, Alaska Constitution.

⁵⁷ There are more than 120 boards and commissions in Alaska state government. The LBC is one of only five that were mandated by the Alaska Constitution. The others are the Alaska Judicial Council, the Commission on Judicial Conduct, the University of Alaska Board of Regents and the Redistricting Board.

⁵⁸ Art. X, §12 provides for a “local government boundary change” through the legislative review process. Every incorporation of a borough is a “boundary change” carved out of the unorganized borough. In 1991, the Alaska Attorney General stated, “In our view ‘changing local boundary lines’ includes not only annexation or detachment proceedings but also incorporation proceedings.” 1991 Inf. Op. Att’y Gen. (Feb. 15; 663-91-0212). Mr. Vic Fischer, delegate to Alaska’s Constitutional Convention

chooses,⁵⁹ it also can establish procedures "subject to law" for boundaries to be "adjusted" by local action. The LBC consists of five commissioners appointed by the governor. One commissioner is appointed from each of the four judicial districts, and the fifth "at large" commissioner is the chair.^{xx}

The LBC performs multiple functions pertaining to borough formation, including acting on petitions for borough incorporation,^{xxi} merger,^{xxii} consolidation,^{xxiii} dissolution,^{xxiv} and conducting studies of local government boundary problems,^{xxv} as well as establishing procedures for formation of boroughs by local action.^{xxvi}

There are three methods for creating a new borough in Alaska. The "legislative review" method is a procedure precisely outlined in the Alaska Constitution. The LBC considers a petition for incorporation originating from any number of possible sources, including the commission itself and its staff.⁶⁰ An LBC decision approving incorporation is final unless, within the first 10 days of the next legislative session, both houses of the state legislature pass a resolution rejecting incorporation.^{xxvii}

The second method for incorporating a borough is through the "local action" procedure authorized in the following sentence of Art. X, §12 of the Alaska Constitution: "The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action." This "local action" method evinces three significant differences from the "legislative review" method. (1) It is "subject to law," meaning that the legislature can dictate how the LBC administers this method. There is no such language in Art. X, § 12 pertaining to the "legislative review" method. Instead, the Constitution itself describes how that method is administered. (2) The "local action" method is discretionary with the LBC. The LBC "may" establish procedures for this method. The LBC is not required to provide for a "local action" method, but is subject to legislative direction if it chooses to allow that method. (3) If the LBC approves the incorporation of the new borough, "local action" means that the electorate then gets to vote on whether they want to incorporate. A borough is created only if a majority of those voting approve incorporation.^{xxviii} Hence, although both the framers of the

and Secretary to the Committee on Local Government, and an expert highly respected in opinions of the Alaska Supreme Court, has noted, "The Local Boundary Commission has total authority to establish boroughs subject to legislative veto, within the 45-day provision" of Art. X, §12 of the Alaska Constitution. *Transcript of Review of Local Government Article of Alaska's Constitution*, Department of Community and Regional Affairs, Feb. 13-14, 1996 at p. 14. The Alaska Supreme Court has consistently recognized the broad powers of the LBC in the creation of local governments in Alaska. E.g., *Mobil Oil Corp. v. Local Boundary Commission*, 518 P. 2d 92, 99 (Alaska 1974).

The Alaska legislature recently attempted to limit the constitutional authority of the LBC by adding a sentence to AS 44.33.812(a)(3) providing that "'boundary change' may not be construed to include a borough incorporation." It is highly likely that this attempt at a statutory limitation of the LBC is unconstitutional. The Alaska Constitution provides that the LBC is "established" by the legislature, but once it has been established, nothing in the Constitution authorizes the legislature to limit the broad constitutional authority of the LBC to "consider any proposed local government boundary change," subject only to later legislative review in some instances. (Emphasis mine.) The Alaska Supreme Court has consistently recognized the broad powers of the LBC in the creation of local governments in Alaska.

⁵⁹ The "legislative review" method is constitutionally mandated. The "local action" method exists for use only in the discretion of the LBC.

⁶⁰ "The idea was advanced that boundaries be established by a separate local government boundary commission, ... which could undertake such on its own initiative. The legislature would be given the power to veto or revise any decisions of such a commission." Minutes of the 18th meeting of the Local Government Committee at the Constitutional Convention, December 4, 1955. (Emphasis mine.)

Constitution and the Alaska Supreme Court recognized that local political decisions usually do not result in wise policy decisions in boundary matters, the LBC is authorized by the Constitution to make exceptions, in its own discretion.

The third method for incorporating a borough has been used only once in Alaska state history. It is a method apparently⁶¹ deriving from Art. X, §3 of the Alaska Constitution. In the 1963 Mandatory Borough Act, the legislature simply declared unilaterally that eight specific independent school districts would automatically become incorporated boroughs, effective January 1, 1964, unless these regions incorporated themselves by the "local option" method prior to that date.⁶² At that time, those regions were assured by the Legislature and Governor that no harmful or prejudicial consequences would come from the mandatory incorporation.^{xxx} Clem Tillion, a member of the House of Representatives in 1963, stated in a later interview "that the 1963 Mandatory Borough Act was approved by the legislature with the understanding that other unorganized areas would be compelled to organize by subsequent legislatures."^{xxx} That has never happened.

[T]hose regions were assured by the Legislature and Governor that no harmful or prejudicial consequences would come from the mandatory incorporation.

⁶¹ Art. X, §3 states, *inter alia*, "... [Boroughs] shall be established in a manner and according to standards provided by law. ... 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."

This wording of §3 doesn't really say that the legislature can create boroughs. It says that the legislature establishes the "manner," "standards," classifications, and "methods" for the incorporation of boroughs. This must be read in the context of two observations about Art. X, §12. First, §12 assigns to the LBC "any local government boundary change" without exception. Secondly, §12 limits the legislature to creating the LBC (in the first sentence), and making any local action "subject to law" (in the last sentence) but only if and when the LBC in its discretion chooses to invoke and allow local action. It is very possible that Art. X should be read in its entirety as distinguishing the actual creation of boroughs (as residing exclusively in the LBC), from the creation of manners, standards and methods of incorporation (as the domain of the legislature).

By this interpretation, the legislature builds the standards and procedures in all contexts except "legislative review," and the LBC has the exclusive decisional authority within those standards and procedures to change local government boundaries whether by incorporation, dissolution or some other action.

The contrary argument stems only from the fact that, when the Alaska Legislature passed the 1963 Mandatory Borough Act compelling eight election districts to become boroughs, six of the 20 senators (30%) and two members of the House had been delegates to the Constitutional Convention, and did not object to the legislature exercising this power. *Unorganized Areas of Alaska that Meet Borough Incorporation Standards, supra* at 44.

⁶² 52 SLA 1963, §3. The eight affected regions were Anchorage, Matanuska-Susitna Valleys, Fairbanks, Juneau, Sitka, Ketchikan, the Kenai Peninsula, and Kodiak Island. The only other independent school district in the state, the Lynn Canal Icy Straits election district, was excluded from House Bill 90 by the Senate. In a subsequent decision, the Alaska Supreme Court held that 52 SLA 1963, §3 was "local or special legislation" within the meanings of Art. II, §19 and Art. XI, §7 of the Alaska Constitution, and hence not subject to the referendum process. *Walters et al. v. Cease, et al.*, 394 P.2d 670 (1964). The parties never challenged the question of whether the legislature possesses constitutional authority to create boroughs directly, i.e., the issue of the precise meaning of Art. X, §3, discussed in n. 85 above, or, whether the legislation violated Art. II, §19 of the Constitution. Both of these legal questions are addressed in greater detail as legal analyses in Volume II of this Report.

b. The Deltana Borough Petitioning and Review Process.

From March 17, 2004 through November 2005, a local “Deltana Borough Charter Commission” met at least monthly to consider the incorporation of a new borough for that region. Its boundaries would conform exactly to the common-interest boundaries of the Delta-Greely REAA, which have been in place since 1975.^{xxx} The local Charter Commission retained an outside expert in municipal government to assist in their evaluation. This effort was the third attempt in ten years by people in the Delta-Greely region to petition the LBC for the creation of a regional borough government.

On January 3, 2006, a multi-volume Petition was submitted to the LBC by 259 local Delta-Greely voters. It included over a year’s research and compilations of maps, economic data, history of self-governing success, inventory of resources and local industries, *pro forma* budgets, taxable private property values, and other support for a unified home-rule borough.

The proposed Deltana Borough would create one local government to provide basic municipal services in the Deltana area, including education, planning, platting, land use regulation, cemetery, landfill, street and road maintenance, parks and recreation, community center, library, volunteer fire/EMS/ambulance/rescue squad, airport maintenance and collection of proposed gas and energy taxes along with the payments in lieu of taxes from the Pogo Mine. Most of these services were previously provided by three separate government entities: the City of Delta Junction, the Delta-Greely Regional Educational Attendance Area (REAA) and in the case of platting, the State of Alaska.^{xxxi}

The petitioners proposed the “local action” method for incorporation: If the LBC approved the Petition and allowed “local action,” then a majority of local people motivated to mail a ballot back to the Division of Elections⁶³ would determine the final outcome. The Petition proposed not only that the voters approve incorporation *per se*, but also approve a 3% home-heating fuel and vehicle gas sales tax, a 10% tax on the sale of electric power, and an agreement with the Teck-Pogo gold mining company for a payment in lieu of taxes (a “PILT”).^{xxxiii} Like four other existing boroughs in Alaska,⁶⁴ the proposed Deltana Borough would not need to levy a property tax to meet its revenue needs.^{xxxiv}

No formal opposition was filed as responsive briefing, but 39 individuals and groups sent written comments to the LBC staff during a three-month period through March 31, 2006.^{xxxv} During the next seven months, the staff of the LBC,⁶⁵ functioning within the Department of Commerce, Community, and

⁶³ As a cost-saving measure, the Division of Elections in recent years has chosen exclusively mail-in balloting processes for local-action elections, despite objections from the Local Boundary Commission and criticism of the method from the staff within the Department of Commerce, Community, and Economic Development.

⁶⁴ Denali Borough, Northwest Arctic Borough, Aleutians East Borough and Lake and Peninsula Borough.

⁶⁵ AS 29.05.080 requires the LBC staff to investigate each borough-incorporation proposal and report its “findings to the local boundary commission with recommendations regarding the incorporation.” The LBC staff is required by statute to ascertain the fiscal and administrative viability of a borough, and to issue both a preliminary and final report to the LBC.

Economic Development (“DCCED”), engaged in thorough reviews and analyses of the material supplied in the Petition and in public comments.⁶⁶

The reviews and analyses performed by the LBC staff at DCCED were not (and never are) a simple task. The Constitution,⁶⁷ state statutes^{xxxvi} and elaborate LBC regulations⁶⁸ require detailed parsing and precise analyses of many aspects and characteristics of a local area before it qualifies for incorporation as a borough government:

- The population must be large and stable enough to support local government.^{xxvii}
- The boundaries of the area must be contiguous, without enclaves or overlap with other boroughs,^{xxviii} must conform to natural boundaries,^{xxxix} must encompass a sufficiently large area with common social, cultural and economic interests that are interrelated and integrated into a minimum number of local governments,^{xi} and must include all areas needed for efficient, cost-effective delivery of municipal services.^{xii} Model borough boundaries or presently existing REAA boundaries are preferred.^{xiii}
- The communications media and transportation facilities must be sufficiently developed and integrated.^{xiiii}
- The plan for transition from present status to fully functioning local government must be adequate.^{xlv} The area must have adequate financial resources, and the 6-year budget must be both plausible and feasible.^{xlv}
- There can be no detrimental effects on civil or political rights.^{xvii}
- The incorporation of the new borough must serve the best interests of the state.^{xviii}

On November 6, 2006, DCCED published its Preliminary Report concluding that the Deltana Petition for incorporation of a borough met all of the standards of every applicable statute and regulation.^{xviii}

“The foregoing analysis of the reasonably anticipated functions, expenses, and income of the proposed borough; the ability of the proposed borough to generate and collect local revenue; and the feasibility and plausibility of the anticipated operating and capital budgets through the sixth full fiscal year of operation reflect a fiscally viable proposal.

⁶⁶ AS 29.05.050(a) and (c) require the Alaska Department of Commerce, Community, and Economic Development to investigate all petitions and report to the Alaska Local Boundary Commission.

⁶⁷ Art. X, §1 of the Alaska Constitution states, “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...” Art. X, §3 then states, “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...”

⁶⁸ AS 29.05.100 specifically requires satisfaction of the borough incorporation standards adopted by the LBC in its administrative regulations.

The economic base, property valuations, land use, existing and reasonably anticipated development, and personal income are evidence of an economy that is fully capable of supporting borough government. Lastly, the availability of employable persons to serve the proposed borough and the reasonably predictable level of commitment and interest of the population in sustaining a borough government reflect positively on the region. Accordingly, Commerce concludes that the standards set out in AS 29.05.031(a)(3) and 3 AAC 110.055 regarding the human and financial resources are fully satisfied by the Petition."^{xlix}

One must keep in mind that the boundaries of the region described in the above DCCED conclusion, and the region described in greater detail below in this subsection, follow precisely the same regional boundaries as the present Delta-Greely REAA – an educational service area that, despite the above 2006 findings of prosperity and multiple resources, enjoys today the windfall of a blanket exemption from any local contribution to the cost of local public education.

On December 4, 2006, DCCED conducted an informational public meeting in the Delta-Greely region proposed for borough incorporation. Written comments on the Preliminary Report were accepted through December 13, 2006. The *Final Report to the Local Boundary Commission Regarding the Deltana Borough Proposal* was published in February 2007. The LBC staff in DCCED concluded:

"After due consideration of the timely written public comments submitted to the LBC regarding the Petition and the November 2005 Preliminary Report and the comments provided at the December 4, 2006 informational meeting in Delta Junction, Commerce reaffirms the conclusions and recommendations of the Preliminary Report that the Deltana Borough proposal meets all the applicable legal standards and should be approved by the LBC."^l

The locally generated Petition for Incorporation, the 2006 Preliminary Report of the LBC staff within DCCED, and the 2007 Final Report to the Local Boundary Commission constitute three volume-sized studies providing a vividly detailed and precisely accurate picture of the affluence within this REAA that still today enjoys a full exemption from any local contribution to the costs of its local public education.

On the evening of March 16, 2007, all five Commissioners of the LBC held another public hearing in Delta Junction. 251 members of the public attended, and public comments continued for two and a half hours. At a decisional meeting the next morning, March 17, 2007, the LBC determined that the Petition met all applicable standards, and the five commissioners unanimously approved the Petition without amendment or conditions (other than the various voter-approval conditions stated in the Petition itself).

Following an appeal and litigation, the matter was submitted to the voters in accordance with law. On the ballot, incorporation was conditioned on local voter approval of (1) the PILT agreement with the Teck-Pogo mine operators, (2) the proposition authorizing the new borough to levy a 3% home

heating fuel and vehicle gas sales tax, and (3) the proposition authorizing the new borough to levy a 10% tax on the sale of electrical power – all presented to the voters as a single question.

Incorporation crashed in resounding defeat at the polls. Instead of a Deltana Borough with the anticipated \$7 million surplus in its treasury in 2011, and instead of the State of Alaska saving \$1,347,348 annually in educational expenses in the Delta-Greely REAA, the local electorate in that Delta Greely REAA today still enjoys what one LBC commissioner dubbed at the public hearing “educational welfare.”

c. Proven Prosperity in the Delta-Greely REAA.

The 2005 estimated population in the Delta-Greely REAA was 4,148 residents, with 1,047 (25.2%) of these people residing in the second-class city of Delta Junction.⁶⁹ The LBC staff noted in 2006 that at that time there were six successfully incorporated boroughs in Alaska with populations of fewer than 5,000 residents.⁶⁹ “The average 2005 population for those six boroughs was 1,667, which was 40 percent of the size of the 2005 population of the proposed Deltana Borough.”ⁱⁱⁱ

“The economy of the Deltana region [the Delta-Greely REAA] is diverse and includes agriculture, forestry, mining, highway tourism, and the military. The abundant fish and wildlife promises income from recreation and tourism.”ⁱⁱⁱ Farming is the major land use of privately owned lands. The Delta region of the Tanana Valley has over 75 farms. ... Agricultural products range from livestock to vegetables to grain, and include feed crops, and forage and bedding straw.”^{iv} Tables and narrative in the DCCED *Preliminary Report to the Local Boundary Commission on the Deltana Borough Incorporation* describe the prosperous economic base,^{iv} and show diverse occupations of the employed civilian population by industry,^{vi} and also break down sources of income for employed civilians, both private and government.^{vi}

Property values in the Petition derived from the State Assessor’s analysis in 2005.^{viii} The Petitioners projected the value of land and property as of January 1, 2008 at \$411 million, and DCCED increased that valuation another \$70 million based on the State Assessor’s higher valuation of the Pogo Mine.^{ix} The projected full and true value of taxable real and personal property in the Delta-Greely REAA for 2010 was \$337 million, representing lower projected values of the Pogo Mine than earlier estimates.⁷⁰ Excluding the Pogo Mine⁷¹ and the Trans-Alaska Pipeline corridor⁷² running through the

⁶⁹ The six listed boroughs are Aleutians East Borough with a population of 2,659, Bristol Bay Borough at 1,073, Denali Borough at 1,823, Haines Borough at 2,207, Lake and Peninsula Borough at 1,620 and Yakutat Borough at 619. *Final Report to the Local Boundary Commission Regarding the Deltana Borough Proposal, supra* at 37. There now is a seventh borough with a population under 5,000, the Skagway Borough.

⁷⁰ It assumes Teck-Pogo at \$260 million in 2008 with straight-line declining value to \$71 million in 2015. *Id.* at 69-70.

⁷¹ The mine would be making a payment in lieu of taxes.

⁷² AS 14.17.510(a) was amended in 2006 to exclude taxable value of oil and gas property from the calculation of the local contribution required by AS 14.17.410(b)(2) if no property taxes are levied on these properties by that borough or city.

Deltana region [the Delta Greely REAA], the state assessor estimated the value of the remaining taxable property at \$182 million.^{lx}

As noted by the Office of the Attorney General,

If incorporated, the proposed Deltana Borough would rank second among the seventeen boroughs [in full and true value of taxable property], behind only the North Slope Borough. The per capita assessed value of the proposed Deltana Borough is more than twice the figure for the Fairbanks North Star Borough. The average for all boroughs was \$105,505 per resident. The median figure is \$88,601. The figure for the proposed Deltana Borough is \$64,837 (61.5 percent) greater than the average figure and \$81,741 (92.3 percent) greater than the median figure.^{lxi}

The Attorney General's Office concluded that "in fact, the fiscal resources, particularly the value of taxable property, of the proposed Deltana Borough would be the envy of most organized boroughs in Alaska."^{lxii}

In terms of the maturity of human resources to run a borough government, the LBC found in its Statement of Decision that

The City of Delta Junction has provided services to the region on an areawide basis for many years.⁷³ The City has successfully operated and managed the cemetery, landfill, parks, library and other community buildings, and has maintained the airport and roads used by all residents of the Deltana area [i.e. Delta Greely REAA]. Thus, the City of Delta Junction has long demonstrated that it has the human resources necessary to serve the

"[I]n fact, the fiscal resources, particularly the value of taxable property, of the proposed Deltana Borough would be the envy of most organized boroughs in Alaska."

– State Attorney General's Office

residents of the Deltana region. The Delta-Greely REAA has provided educational services throughout its 5,892-square-mile jurisdiction since its formation in 1975.

....

Since its incorporation as a second-class city in 1960, the City of Delta Junction has assessed and collected revenues and fees needed to operate and manage the cemetery, landfill, parks, library and other community buildings, Thus, the City of Delta Junction has long demonstrated its capacity to generate and collect local revenue,^{lxiii}

⁷³ "The record in this proceeding indicates that some have stated that the City of Delta Junction has provided services for the entire region for the past three decades." *Local Boundary Commission Statement of Decision, supra* at n. 18.

At Fort Greely, the Department of Defense maintained nine Ground-Based Midcourse Defense (“GMD”) interceptor missiles in 2007. The Federal defense-spending bill for FY 2007 appropriated \$200 million to the national defense system operated at Fort Greely.

The Missile Defense Agency allocated \$24.8 million to mitigate potential community impacts on the region by the GMD program. The Delta-Greely REAA built a new elementary school with \$9.5 million of that federal money, and another \$15 million of that federal money financed the following infrastructure and programs for these residents of an exempted REAA:

- a new regional land fill,
- new fire and emergency equipment,
- a new fire station,
- renovation/conversion of the old fire station to a public works facility,
- a new library,
- renovations and improvements to the local ice arena (\$2 M),
- reconstruction of a TV transmission tower (\$3 M) and
- social services, job training and adult education programs.^{lxiv}

The pro forma budgets submitted in the Petition for review by DCCED and the LBC showed revenues of over \$13 million in 2009, over \$12 million in 2010, over \$11.8 million in 2011 and over \$11.6 million in 2012. Expenditures in 2012 were projected at \$11 million, leaving a surplus (total expenditures minus total revenues) of \$673,806 for the sixth fiscal year as a borough.^{lxv} The cumulative surplus for years 1 through 6 was over \$7 million.^{lxvi} DCCED concluded, “Since the revenues exceed the expenditures resulting in a generous surplus of funds available for operation of the borough, not only in the sixth full fiscal year of operation but in the preceding years, Commerce concluded that the proposed budget and the Deltana Borough incorporation are fiscally viable.”^{lxvii}

The PILT agreement with the Pogo Mine was very similar to the funding arrangement between the Red Dog lead and zinc mine and the Northwest Arctic Borough. The Pogo PILT would have provided more than \$2 million every year for ten years, which DCCED evaluated as “the bulk of the local cost of schools.”⁷⁴ ^{lxviii} Moreover, when a region becomes an organized borough, it has the ability to not only defer responsibility for the assumption of schools for as long as two years,^{lxix} but also can then phase in required local contributions for funding those schools.^{lxx} In addition, a new borough is entitled to organization grants during each of the first three years of operation.^{lxxi}

⁷⁴ The amount of the PILT was based on an annual reevaluation of the value of the mine, and would be a minimum of \$2 million per year or 10 mills multiplied by the then-current value of the mine, whichever was greater. *Id.* at 16-17. In addition, the Teck-Pogo PILT would increase with any general obligation bonds of the new borough. *Preliminary Report to the Local Boundary Commission on the Deltana Borough Incorporation, supra* at 19.

As a part of its favorable Statement of Decision, the LBC accepted and adopted the analysis in the Petition that showed that “the local assumption of education responsibility will save the State of Alaska \$1,347,348 annually.”⁷⁵ Today we can conclude that if the people in the Delta-Greely REAA were required to make a local contribution to public education in 2011, the State could have distributed at

[B]y not including that well-to-do REAA among regions that fit the stereotypical rationales presently applied in legislation to municipal school districts, every student in Alaska is deprived of educational opportunities.

least \$1,347,348 in additional funding among either all 53 school districts, or among more needy municipal school districts and REAAs. Stated another way, if the Delta-Greely REAA was required to make a local contribution of \$1,347,348, then the State could raise the level of “basic need” without increasing the present funding level of State aid.

In FY 2012, the legislature decided to provide a level of basic need for Alaska’s 53 school districts equal to \$1,368,209,817. But, the legislature only funded \$1,066,177,711 of that total from the State treasury. To make up the shortfall, the State took \$235,380,655 from municipal school districts in required local contributions. It also added \$66,651,451 in federal impact aid.

If the Delta-Greely REAA were required to contribute \$1,347,348 to the pool of local contributions, that element of public school education funding would increase to \$236,728,003. The level of “basic need” for Alaska’s 53 school districts would increase to \$1,369,557,165.

By adding a 4-mill levy in that one prosperous REAA, the “basic need” funding for every student in Alaska rises.⁷⁵ Conversely, by not including that well-to-do REAA among regions that fit the stereotypical rationales presently applied in legislation to municipal school districts, every student in Alaska is deprived of educational opportunities.⁷⁶

In summary, overwhelming socio-economic, demographic and geographic evidence establishes indisputably that the Delta-Greely REAA is a more prosperous region than many municipal school districts in Alaska, and that the Delta-Greely REAA could easily administer a successful borough government – with its corollary responsibility of making a 4-mill equivalent local contribution to local

⁷⁵ In the Ketchikan Gateway Borough, the “basic need” funding rises fully \$22,856 just by adding that one borough to the equation.

⁷⁶ Can it be guaranteed that, if Delta Greely was making a local contribution, the State would hold its level of state-aid the same and allow basic need to increase, as in the example? No. But, the opposite argument is even more speculative and incapable of proof, in light of the overwhelming evident that the Alaska Legislature would like to fund education at a higher level, and that school districts want more funding. For purposes of evaluating fairness and equities, one must take the facts as they exist today, without speculating regarding future legislative funding.

public education. A Petition from 259 local residents, two DCCED reports, and the findings/decision of the LBC all agreed that:

- The local population in the Delta-Greely REAA is large enough and stable enough for borough government.
- The diverse economy in the Delta-Greely REAA includes agriculture, forestry, mining, the military, highway tourism and fish/wildlife recreational tourism.
- Taxable real and personal property in the Delta-Greely REAA was valued in 2005 at \$336.8 million.
- Six years of pro forma budgets show not only feasibility and plausibility of financing borough government in the Delta-Greely REAA, but a cumulative surplus of more than \$7 million.
- Local administration of a myriad of local government services and functions in the Delta-Greely REAA has already proven successful over many decades of time.
- The communications media and the land, air, and water transportation facilities in the Delta-Greely REAA are highly developed and well integrated.
- Boundaries running coterminous with the 1975 Delta-Greely REAA boundaries comprise a sufficiently large region for efficient, cost-effective delivery of borough government services to residents possessing common social, cultural and economic interests that are interrelated and integrated.

[T]he elephant in the room is AS 14.17.410 – that blanket exemption from a local contribution to local public education, granted indiscriminately to all REAAs. It looms portentously as a powerful disincentive to the formation of any local government that would then be penalized with a mandatory local contribution as all municipal school district are penalized today.

The Deltana petition for incorporation of a borough met every one of the plethora of standards found in Art. I, §1 and Art. X, §§1, 3 and 12 of the Alaska Constitution, in Alaska Statutes 29.05.031 and 100, in DCCED regulations 3 AAC 11-.045--065 and .900—990, and in the federal law, 42 USC §1973 – passing comfortably through a gantlet of scrutiny few governmental decisions are ever subjected to.

Even Governor Frank Murkowski said that he believed the area is capable of supporting a borough and should be encouraged to do so. He noted that the area has a significant tax base and was benefiting from the Pogo Mine and the missile defense site at Fort Greely.^{lxxiii} Why, then, is this region

of the unorganized borough not a borough government in a State where Art. X, § 1 of the Constitution calls for “maximum local self-government with a minimum of local government units.”?

Quite simply, the elephant in the room is AS 14.17.410 – that blanket exemption from a local contribution to local public education, granted indiscriminately to all REAAs. It looms portentously as a powerful disincentive to the formation of any local government that would then be penalized with a mandatory local contribution as all municipal school district are penalized today.

In the meantime, the State’s “base student allocation” is lower for every school district than it would be if the Delta-Greely REAA was making the local contribution estimated at \$1,347,348 annually, and if six relatively prosperous REAAs (discussed below) were either incorporated borough governments paying the 4-mill-equivalency as a local contribution, or, required to make a local contribution in the form of a levied state assessment imposed by the legislature on the regions.

CHAPTER 6. The Extent of the Problem

The Delta Greely REAA is not an anomaly. In 2003, the LBC concluded in a report to the legislature that seven regions of the state, six REAAs, meet all of the elaborate standards for borough incorporation. Another region, an REAA, was pulled from the conclusion late in the study, for purposes of further analysis that never occurred.

The 2002 Legislature unanimously⁷⁷ directed the Alaska Local Boundary Commission to review conditions in the unorganized borough, to identify areas that meet the standards for borough incorporation, and to report its results the following year to the Twenty-Third Alaska State Legislature.⁷⁸

In February, 2003, the Alaska Local Boundary Commission finished its study and published a report entitled *“Unorganized Areas of Alaska that Meet Borough Incorporation Standards: A Report by the Alaska Local Boundary Commission to the Alaska Legislature Pursuant to Chapter 53, Session Laws of Alaska 2002,”* concluding that seven regions of the unorganized borough could sustain a viable regional borough government.^{lxxiv} Those seven regions are:

- Aleutians REAA as the “Aleutians West Model⁷⁹ Borough”
- Delta-Greely REAA and Alaska Gateway REAA as the “Upper Tanana Basin Model Borough”
- Copper River REAA as the “Copper River Basin Model Borough”
- Chugach REAA as the “Prince William Sound Model Borough”
- A Portion of Chatham REAA as the “Glacier Bay Model Borough”
- A Portion of Chatham REAA as the “Chatham Model Borough”
- “Wrangell-Petersburg Model Borough”

As a part of its conclusions, the LBC noted that “if boroughs formed in the seven regions determined to meet all borough incorporation standards in this report, the number of school districts servicing those regions would be reduced from fourteen to seven. Additionally, if the Prince of Wales Island region incorporated as a borough, the four school districts in that region would be consolidated into one.”^{lxxv}

⁷⁷ The vote on the Senate bill was 19 – 0 with 1 member absent. The vote on the House bill was 35 – 0 with 5 members absent.

⁷⁸ Chapter 53, SLA 2002. Section 3 of the law states, “NEW BOROUGH INCORPORATION. The Local Boundary Commission shall review conditions in the unorganized borough ... [and] shall report to the legislature the areas it has identified that meet the standards for incorporation. ...”

⁷⁹ For many years, opponents of borough incorporation have argued that the LBC Model Boroughs are outdated and obsolete. However, with few exceptions, the LBC Model Borough boundaries closely follow REAA boundaries. “In fact, the vast majority of residents of the unorganized borough live in model boroughs that are identical to the REAAs in which they live. The fact that there is no clamor to change the boundaries of REAAs suggests ... that those advocating changes in or abandonment of model borough boundaries are more fundamentally opposed to borough government boundaries as embodied in Alaska’s constitution, rather than just the model borough boundaries.” In fact, borough standards at AS 29.05.031 are remarkably similar to REAA standards at 14.08.031, with the exception that there are no economic capacity standards for REAAs because they are fully funded by the State. *Unorganized Boroughs in Alaska That Meet Borough Incorporation Standards* at 73 and 80. (Assigning economic capacity standards to REAAs would be a method of then determining which REAAs should be granted an exemption from a local contribution, and which should be either taxed a 4-mills equivalent by the legislature or become a mandatory borough.)

The LBC report first describes a process that included many months of extensive hearings throughout the State, many written comments from the public, six deliberative meetings of the LBC, and a methodical process of elimination of those regions of the State that could not meet the strict standards for borough incorporation (described in detail in Chapter 5 above). First the LBC eliminated from consideration all “unorganized remnants” adjacent to existing organized boroughs and also located within the model borough boundaries, i.e., parcels that probably would eventually exhibit regional commonalities and broad public interest characteristics with an existing borough.⁸⁰ Then the LBC eliminated ten unorganized areas “marginal in terms of their financial capacity to support the services mandated for borough government.”⁸¹ This left the LBC reviewing in greater detail eight unorganized areas in the State, including the seven they concluded were sufficiently mature for borough government.⁸²

All of Chapter 2 (55 pages) of the LBC’s final report to the legislature is devoted to describing the elaborate breadth and depth of legal standards applied by the DCCED staff and the Commission itself to the question of whether a region qualifies for incorporation as an organized borough.^{lxvii} As noted in Chapter 5 above, it is no simple task. For that reason, the 2003 findings and conclusions in the LBC report, *Unorganized Areas of Alaska that Meet Borough Incorporation Standards*, should be highly persuasive as an accurate read of the municipal maturity of the regions considered in that report.

With regard to all seven areas that met borough incorporation standards, the LBC observed that reasonably anticipated borough income sources include real and personal property taxes, a general sales tax, various targeted taxes,⁸³ licenses and permits, service charges, enterprise revenues and others. Each of the potential new boroughs also would receive from the State organization grants⁸⁴ to provide for interim operation of government. Moreover, the newly organized boroughs could defer responsibility for the assumption of schools for as long as two years,^{lxviii} and also could then phase-in the required local contributions for funding local schools.^{lxviii} The newly formed boroughs also would receive 10% of the vacant, unreserved and unappropriated State land within their boundaries, and that land could be sold to generate revenues or used for any other purpose suitable to the borough

⁸⁰ *Unorganized Boroughs in Alaska That Meet Borough Incorporation Standards* at 91-92. The “unorganized remnants” are found in the Denali Model Borough, Fairbanks-North Star Model Borough, Lynn Canal Model Borough, Juneau Model Borough and Ketchikan Gateway Model Borough.

⁸¹ *Id.* at 92. The ten “marginal” areas were Yukon Flats Model Borough, Yukon-Koyukuk Model Borough, Iditarod Model Borough, Kuspuk Model Borough, Dillingham-Nushagak-Togiak Model Borough, Pribilof Islands Model Borough, Lower Kuskokwim Model Borough, Bering Strait Model Borough and Annette Island Model Borough.

⁸² Originally, the LBC also included the Prince of Wales region, the Southeast Island REAA, as ripe for borough incorporation, based on economic capacity, population size and stability, regional commonalities and broad public interest. However, shortly before publishing the final Report, the LBC withdrew this region from its list because of “recent socioeconomic trends,” and “pending more up-to-date information and further analysis...” *Id.* at 2. No one has compiled that “up-to-date information and further analysis” during the past nine years.

⁸³ E.g., raw fish tax, bed tax, car rental tax, sale of tobacco tax, aircraft flat tax, severance tax on natural resources, tour tax, liquor tax, guide fee tax, fuel tax, etc.

⁸⁴ AS 29.05.190. During the first full or partial year of borough governance, the amount is \$300,000. It is reduced to \$200,000 in the second year and \$100,000 in the third year.

government. The federal government pays all boroughs a PILT for certain federally owned lands known as "entitlement lands." Monies are also distributed to organized boroughs from National Forest Receipts, the Safe Communities Program, Fisheries Business Tax, Fisheries Landing Tax, Coastal Management service areas and many capital matching grants.

The LBC found that the poverty levels in all eight unorganized regions were, in every instance, lower than at least one existing and successfully functioning organized borough, and that the rates of unemployment ("a fundamental measure of the strength of the economic base of a region") were also lower than at least one existing and successfully functioning organized borough.^{lxxxix} The LBC analyzed and discussed the "economic capacity" of each of the eight unorganized areas with city-by-city precision.^{lxxx}

The State Assessor calculated estimates of the taxable property within each of the unorganized areas for the year 2001.^{lxxxi} The total taxable property in these eight unorganized areas outside city school districts (i.e., only within REAAs), excluding the value of oil and gas properties, was \$454 million, which at 4 mills would increase local contributions throughout the state by \$1.8 million in 2001 property valuations – an amount that every student in Alaska still loses every year. If oil and gas properties were to be included in the equation, the total taxable property in these eight⁸⁵ unorganized areas outside city school districts (i.e., only within REAAs) would be over \$1.8 Billion in 2001 valuations. At 4 mills, the sum of the annual statewide loss of the benefit of local contributions from these REAAs that could be boroughs is \$7.3 million, measured in 2001 property values.

The 2003 findings and conclusions of the LBC regarding the "Wrangell-Petersburg Model Borough" are excluded from consideration here because Wrangell has since become an organized borough, and a petition for incorporation of the Petersburg Borough is pending before the LBC. The detailed findings and conclusions of the LBC, including the marginal and withdrawn Southeast Island REAA ("Prince of Wales Model Borough"), are set forth below by region:

Aleutians REAA as the "Aleutians West Model Borough." The mandatory^{lxxxii} borough powers of (1) education, (2) assessment and collection of taxes, and (3) land use regulation are already being performed successfully by the City of Unalaska, located within the new borough. The Aleutians REAA is a second existing school district experienced in educational administration, which would be integrated into the new borough.

Five organized boroughs had higher rates of unemployment than this unorganized area in 2000.^{lxxxiii}

In 2001, the taxable property outside city school districts (i.e. new "local contribution" funding to public education) was estimated by the State Assessor at \$14,601,366.^{lxxxiv}

Delta-Greely REAA and Alaska Gateway REAA as the "Upper Tanana Basin Model Borough." As noted in Chapter 5, the City of Delta Junction has performed areawide services for decades, and that

⁸⁵ The Southeast Island REAA as the "Prince of Wales Model Borough" was included in the economic study, but set aside in the final recommendation "for further study."

city would continue to exist within the new borough. There also are two REAA school districts in this region that would be consolidated and integrated into the new borough government, both experienced in educational administration since 1975.

Two organized boroughs had higher rates of unemployment than this unorganized area in 2000.^{lxxxv} If the Delta-Greely REAA was considered alone, as the proposed Deltana Borough described in Chapter 5 above, the unemployment rate plummets.

In 2001, the taxable property outside city school districts (i.e. new "local contribution" funding to public education) was estimated by the State Assessor at \$185,804,095, excluding the value of oil and gas properties.^{lxxxvi} Oil and gas properties added another \$283,241,629 to the total taxable valuation in 2001.

Copper River REAA as the "Copper River Basin Model Borough." The human resources and infrastructure of the Copper River REAA are assimilated and preserved in the new borough for the administration of public education.

One organized borough had higher rates of unemployment than this unorganized area in 2000.^{lxxxvii}

In 2001, the taxable property outside city school districts (i.e. new "local contribution" funding to public education) was estimated by the State Assessor at \$82,465,139, excluding the value of oil and gas properties.^{lxxxviii} Oil and gas properties added another \$420,294,030 to the total taxable valuation in 2001.

Chugach REAA as the "Prince William Sound Model Borough." The mandatory borough powers of (1) education, (2) assessment and collection of taxes, and (3) land use regulation are already being performed successfully by the Cities of Cordova and Valdez, located within the new borough. Also, the established and experienced Chugach REAA infrastructure is assimilated into the new borough.

Thirteen organized boroughs had higher rates of unemployment than this unorganized area in 2000.^{lxxxix}

In 2001, the taxable property outside city school districts (i.e. new "local contribution" funding to public education) was estimated by the State Assessor at \$53,314,539, excluding the value of oil and gas properties.^{xc} Oil and gas properties added another \$657,050,730 to the total taxable valuation in 2001.

Chatham REAA as the "Glacier Bay Model Borough." The mandatory borough powers of (1) education, (2) assessment and collection of taxes, and (3) land use regulation are already being performed successfully by the Cities of Hoonah and Pelican, located within the new borough. Also, part of the Chatham REAA is assimilated into this LBC-recommended borough.

Two organized boroughs had higher rates of unemployment than this unorganized area in 2000.^{xcI}

In 2001, the taxable property outside city school districts (i.e. new "local contribution" funding to public education) was estimated by the State Assessor at \$24,018,189.^{xcl}

Chatham REAA as the "Chatham Model Borough." The mandatory borough powers of (1) education, (2) assessment and collection of taxes, and (3) land use regulation are already being performed successfully by the City of Kake, located within the new borough. Also, parts of the Chatham REAA and the Southeast Island REAA are integrated into this new borough.

One organized boroughs had higher rates of unemployment than this unorganized area in 2000.^{xcll}

In 2001, the taxable property outside city school districts (i.e. new "local contribution" funding to public education) was estimated by the State Assessor at \$18,092,997.^{xclv}

Southeast Island REAA as the "Prince of Wales Model Borough." The mandatory borough powers of (1) education, (2) assessment and collection of taxes, and (3) land use regulation are already being performed successfully by the Cities of Craig, Klawock and Hydaburg, located within the new borough. Also, a major portion of the established Southeast Island REAA infrastructure is included in this LBC-recommended borough.

"[T]he lack of a strong State policy promoting the extension of borough government [is] the most pressing 'local government boundary problem' facing Alaska."

– Local Boundary Commission

Five organized boroughs had higher rates of unemployment than this unorganized area in 2000.^{xcv}

In 2001, the taxable property outside city school districts (i.e. new "local contribution" funding to public education) was estimated by the State Assessor at \$75,334,584.^{xcvl}

The LBC eventually concluded in 2003 that more study of this region was required, as a result of then-recent changes in the timber industry. That further study was never performed.

In conclusion, the LBC formally declared in 2001 that it "considers the lack of a strong State policy promoting the extension of borough government to be the most pressing 'local government boundary problem' facing Alaska."^{xcvll} Two years later, in response to a request from the legislature, the LBC formally declared that seven and perhaps eight regions of the State qualified in all respects for borough formation. Senator Gary Wilken then sponsored Senate Concurrent Resolution 12, which would have required the LBC to consider borough incorporation for four of the REAAs previously

determined to meet borough formation standards. SCR 12 passed the Senate, but died in the House Committee on Community and Regional Affairs.^{xcviii}

Today, in 2012, seven of 19 REAAs continue to receive full state aid to local public education without contributing a dime locally, despite their population size and stability, their highly developed transportation and communications patterns, their economic capacity to do so, their regional dissimilarities from other economically distressed REAAs and other distressed municipal school districts, and the broad statewide public interest deriving from maximizing local government with the least number of units, where the number of school districts in these regions would drop from 14 to seven, and where precious state funding of public education could be allocated to other, more needy regions of the state.

More than 96% of Alaskans live in areas that have not voluntarily initiated borough incorporation.^{xcix} The effort to incorporate the Deltana Borough by local action was unsuccessful. Only one of the eight unorganized areas of the State recognized by the LBC in 2003 as meeting borough-incorporation standards has become a borough. The people in these regions have no incentive to incorporate organized boroughs as long as they can retain 100% state-and-federal government aid to their local public education.

Finally, as noted in Chapter 4 above, the State's "expert" in the *Mat-Su* litigation, State Assessor Michael Worley, significantly influenced the decision of Alaska Supreme Court by playing upon the erroneous stereotype suggesting that property ownership in REAAs was predominately exempted Native lands and poorly defined

ownership. State Assessor Worley was also cited by the Supreme Court for an equally incorrect assumption that "[b]orough organization generally occurs when a tax base develops or is discovered in the area which is adequate to support local government and to yield, in addition, greater services than are otherwise provided by the state."^c In truth, it is highly unlikely that the citizens in these regions will ever vote to form boroughs, because that change of status would block their presently successful end-run around the requirement of a tax levy for contributions to their local public education expenses. As Governor Jay Hammond observed in his book, "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?"^d

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– Jay Hammond

Nothing short of mandatory borough formation, or major changes in the education-finding formulae will correct the present inequities resulting from treating the entire unorganized borough as a singular unit for exemption from AS 14.17.410(b)(2), and the present inequities of assessing a local contribution from economically distressed municipal school districts while affluent REAAs enjoy a free ride at State expense.

**CHAPTER 7. That Arbitrary Remnant Called
“the Unorganized Borough”**

Art. X, §6 of the Alaska Constitution requires the Alaska state legislature to

“provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility.”

Two words in this constitutional provision are noteworthy for present purposes. Unorganized boroughs are referenced in the plural form, not as the one amorphous remnant of the State embodied in AS 29.03.010 which states, “Areas of the state that are not within the boundaries of an organized borough constitute a single⁸⁶ unorganized borough.” (Emphasis mine.)

Also, the provision requires maximization of local “responsibility” in the unorganized borough(s).⁸⁷ Applied as simple English usage, those constitutionally pluralized “unorganized boroughs” that are not distressed economically should carry the same “local ... responsibility” for a local contribution to public education that municipal school districts are now required to endure.⁸⁸ A blanket exemption from that local-contribution requirement, applying sweepingly across a single unconstitutional unorganized borough, without regard for vast, regional socio-economic differences within that unorganized borough, violates both of these requirements of Art. X, §6 of the Alaska Constitution.

Art. X, §3 of the Alaska Constitution is another relevant section, deserving a quote in full:

[T]he Alaska Legislature in 1961 enacted a law making all areas outside organized boroughs one motley remaining portion known as “the single unorganized borough” – without the constitutionally required regard for vast internal differences in “population, geography, economy, transportation, and other factors” and without regard for the constitutional requirement that each unorganized borough “shall embrace an area and population with common interests to the maximum degree possible.”

⁸⁶ Incorporation of a Petersburg Borough is pending before the LBC. The second-class city of Kupreanof is opposing inclusion, arguing that a single unorganized borough is unconstitutional.

⁸⁷ This is consistent with the provision in Art. X, §1 of the Constitution requiring “maximum local self-government.” It is also consistent with the provision in Art. I, §1 “that all persons have corresponding obligations to the people and to the State.”

⁸⁸ Not only does Art. X, §6 require “maximum...responsibility” at a local level, but also Art. I, §1 recites the fundamental tenet that “all persons have corresponding obligations to the people and to the State.”

The entire State shall be divided into boroughs, organized and 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.⁸⁹

The word “they” refers to all “boroughs, organized and unorganized.” As noted by the LBC,^{cii} the language in Art. X, §3 requires the state legislature to

1. Enact standards for establishing both organized and unorganized boroughs
2. Enact procedures for establishing both organized and unorganized boroughs
3. Classify organized and unorganized boroughs
4. Prescribe the powers and functions of organized and unorganized boroughs, and
5. Enact methods for boroughs to be “organized, incorporated, merged, consolidated, reclassified, or dissolved.”

These 53 years after Statehood, the Alaska State Legislature still has not enacted

- standards and procedures for establishing unorganized boroughs,
- classifications for unorganized boroughs,
- powers and functions in unorganized boroughs, or
- methods for unorganized boroughs to be incorporated, reclassified or dissolved.

Instead of following its constitutional duty to form unorganized boroughs in the plural form, the Alaska Legislature in 1961 enacted a law making all areas outside organized boroughs one motley remaining portion known as “the single unorganized borough”^{ciii} – without the constitutionally required regard for vast internal differences in “population, geography, economy, transportation, and other factors” and without regard for the constitutional requirement that each unorganized borough “shall embrace an area and population with common interests to the maximum degree possible.” As noted by the LBC,

From its inception, the single unorganized borough has embraced an area and population with highly diverse interests rather than the maximum common interests required by the constitution. The diversity of the social, cultural, economic, transportation, and geographic characteristics of the unorganized borough is

⁸⁹ “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.” Art. XII, §11, Alaska Constitution.

remarkable. As currently configured, the existing unorganized borough contains an estimated 374,843 square miles – 57% of the total area of Alaska. It ranges in a non-contiguous manner from the southernmost tip of Alaska to approximately 150 miles above the Arctic Circle. This borough extends in a non-contiguous manner from the easternmost point in Alaska (at Hyder) to the westernmost point in Alaska at the tip of the Aleutian Islands.^{civ}

Viewed another way, in 2003 the unorganized borough included portions of each of Alaska's four judicial districts, a total of 11 entire census districts, portions of 10 State House election districts, all or portions of 6 State Senate election districts, 19 entire REAAs, all or portions of 10 of Alaska's 12 ANCSA regional Native corporations, 18 entire model boroughs and model-borough territory for five existing organized boroughs. "Clearly, the unorganized borough remains a vast area with extremely diverse interests rather than common interests as required by the constitution."^{cv}

The descriptions above clearly are not what the Alaska Constitution means when it refers to "boroughs, organized and unorganized" being established and classified by "population, geography, economy, transportation, and other factors" such that each of them "shall embrace an area and population with common interests to the maximum degree possible."

Nowhere is this unconstitutional inequity more flagrantly apparent than in AS 14.17.410(b)(2), the statutory provision requiring the unfunded mandate of a local contribution to public education from only municipal school districts while exempting approximately two-thirds of all citizens⁹⁰ in that singular, amorphous and diverse 374,843-square-mile remnant that has never been properly subdivided by the legislature in compliance with the Alaska Constitution. To whatever extent one tries to argue that the REAAs are

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⁹⁰ Approximately one-third of the population of the unorganized borough resides in first-class/home-rule city school districts outside organized boroughs. *Unorganized Areas of Alaska That Meet Borough Incorporation Standards, supra* at 20.

“classifications” with “powers and functions” in compliance with the Constitution, the response is that REAAs per se are not the operative unit for the exemption from the local-contribution requirement.⁹¹ Because all REAAs obtain the exemption without regard for ability to pay, the operative unit is the unorganized borough outside city school districts. If all REAAs are treated as an integrated singularity, without regard for whether they fall in an economically prosperous Group A or a distressed Group B, then the REAAs are treated as an unconstitutional, single unorganized borough. Essentially, what AS 14.17.410(b)(2) says is that everyone in the unconstitutionally singular unorganized borough is exempt, while everyone outside that singular unit must pay, without regard for socio-economic and cultural distinctions among the exempted entities and without regard for the socio-economic and cultural similarities between many of the exempted entities and many of the assessed municipal school districts. It is not enough to create classifications called REAAs, and then ignore their distinctions in the administration of a required local contribution to local public education.

Art. X, §1 of the Alaska Constitution calls for not only “maximum local self-government” but also “with a minimum of local government units.” Addressing the greater economies of scale achieved by the formation of boroughs, the LBC stated,

[E]ach organized borough comprises a single school district. Yet the lone unorganized borough encompasses thirty-seven different school districts – more than twice the number in all organized boroughs combined. The unorganized borough has just thirteen percent of Alaska’s population, yet it contains seventy percent of the school districts in the state. If the state were organized along the model borough boundaries defined by 3 AAC 110.990(9), the number of school districts servicing the area now within the unorganized borough would be reduced by more than 50%.^{cv}

The LBC noted that, based on 2001-02 enrollments, 35% of the school districts in the unorganized borough have fewer than 250 students, the threshold established in law for a new school district.^{cvi} One-third of these school districts in the unorganized borough obtained waivers for FY 2000 of the requirement that at least 65% of operating funds be budgeted for instruction.^{cvii}

⁹¹ Also, REAAs do not “embrace an area and population with common interests to the maximum degree possible,” because REAAs exclude from their boundaries enclaves of home-rule/first class cities outside boroughs.

CHAPTER 8. Concluding Summary

While all 19 REAAs receive 100% of local public education funding from state and federal sources, all 34 municipal school districts are required by AS 14.17.410(b)(2) to make a local contribution amounting to the equivalent of 4 mills on a modified assessment of local property values (up to a maximum of 45 percent of basic need). Because all REAAs receive the exemption regardless of socio-economic or geographic characteristics, the operative effect is a widespread exemption across a huge, diverse and variegated statutory remnant called the “single unorganized borough,” which in itself is an unconstitutional entity, and which includes some of the most prosperous regions of the State of Alaska. Because all municipal school districts must pay the local contribution, the operative effect is to assess many economically distressed boroughs and cities in Alaska.

The classifications of REAAs vs. municipal school districts are replete with erroneous stereotypes. They do not divide along rural and urban characteristics, or separate isolated fly-in regions from more accessible road-system transportation patterns. Six of Alaska’s boroughs govern exclusively rural communities. Five REAAs are located in whole or part along the road systems of continental Alaska, while 11 city school districts and 11 boroughs are located in more isolated fly-in regions.

Neither classification as a whole manifests predominately Native Alaskan racial and cultural characteristics or predominately occidental cultural characteristics. Seven REAAs enroll less than 36% American Indians and Alaska Natives. Six REAAs show an enrollment of more than 50% White students. By contrast, seven municipal school districts enroll more than 63% Alaska Native students, and 12 municipal school districts have less than 25% White enrollment. Five boroughs are predominately Alaska Natives, and 72 of 223 Alaska villages recognized by the BIA are located within the municipal school districts of organized boroughs.

They do not divide subsistence economies from cash economies, or economically distressed from economically non-distressed regions. Five municipal school districts – two boroughs and three cities outside boroughs – are 100% economically distressed, according to the Denali Report, yet they must make the 4-mill equivalent local contribution to local education while four REAAs that are 100% “non-distressed” enjoy the windfall of full state and federal funding of their local public education. All REAAs and municipal school districts between these two extremes are an intermingled hodge-podge

[T]he operative effect is a widespread exemption across a huge, diverse and variegated statutory remnant called the “single unorganized borough,” which in itself is an unconstitutional entity, and which includes some of the most prosperous regions of the State of Alaska.

with no distinguishing economic characteristics following their arbitrary REAA vs. municipal-school-district classifications.

Local enrollment numbers, school-size factors and differing local cost factors also do not explain the classifications of all REAAs vs. all municipal school districts. School districts of virtually identical size and cost factors appear on both sides of the arbitrary divide created by the two classifications.

Municipal school districts share nothing in common but the fact that they incorporated a local or regional government at some time in the past – many unwillingly, as a result of mandatory state legislation carrying the broken promise that they would not be penalized later.

The classifications do not bifurcate taxable private property ownership from encumbered property ownership immune from a 4-mill levy. The Alaska Local Boundary Commission and the State Assessor estimated that the value of the total 2001 taxable property in eight unorganized areas outside city school districts (i.e., only within REAAs) was \$454 million excluding the value of oil and gas properties, and \$1.8 billion if values of oil and gas properties were included.

REAAs share nothing in common among themselves but the fact that they are in the “single unorganized borough.” Municipal school districts share nothing in common but the fact that they incorporated a local or regional government at some time in the past – many unwillingly, as a result of mandatory state legislation carrying the broken promise that they would not be penalized later.

Today, in 2012, seven of 19 REAAs continue to receive full state aid to local public education without contributing a dime locally, despite their population size and stability, their highly developed transportation and communications patterns, their economic ability to contribute, their regional dissimilarities from other economically distressed REAAs and other distressed municipal school districts, and the broad statewide public interest deriving from maximizing local government with the least number of units, where the number of school districts in these regions would drop from 14 to seven and where precious state funding of public education could be allocated to other, more needy regions of the state.

Whether or not the formulae and classifications for state funding of local education were ever rational and relevant to meaningful school-district characteristics, they clearly are irrational and obsolete today. Grouping *all* REAAs for an exemption and *all* municipal school districts for a local assessment creates overly broad classifications founded in erroneous stereotypes that bear no fair and substantial relationship to the underlying purpose of funding statewide education.

ENDNOTES

ⁱ The author, Robert Eldridge Hicks, has practiced law in Alaska for over 40 years. Immediately after his 1971 graduation from the Harvard Law School, Mr. Hicks came to Juneau as a Supreme Court law clerk first to Justice John Dimond and then to Justice Robert Boochever. He was appointed the first Executive Director of the Alaska Judicial Council in 1973, conducting many studies of bush justice in Alaska until 1975 when he entered the private practice of law in Anchorage. During his many decades in private practice, Mr. Hicks specialized in municipal law and education law with clients throughout the State, serving at various times as the city attorney for Nome, Bethel, Dillingham, Unalaska, Seldovia, Emmonak and Kotlik, as special counsel to the North Slope Borough Assembly, and as legal counsel to the Nome City School District, the Delta-Greely REAA, the Alaska Gateway REAA and the Craig City School District. Mr. Hicks was retained by the Alaska Local Boundary Commission in 1987-88 to perform a comprehensive rewrite of its regulations. On numerous occasions, the Local Boundary Commission has invited him to conduct seminars for newly appointed commissioners. He also has served as a commissioner and as vice-chair of the Local Boundary Commission.

ⁱⁱ AS 29.35.160 and 14.12.010(2).

ⁱⁱⁱ AS 29.35.260(b) and AS 14.12.010.

^{iv} AS 14.17.410(b)(2).

^v AS 14.17.410(d).

^{vi} *Unorganized Areas of Alaska that Meet Borough Incorporation Standards*, *supra* at footnote 7.

^{vii} Art. VII, §1, Alaska Constitution.

^{viii} Case No. 3AN-97-3782 (1999).

^{ix} *Alaska Attorney General Opinion Letter*, May 18, 2010 at 2.

^x *Unorganized Areas of Alaska that Meet Borough Incorporation Standards*, *supra* at 27.

^{xi} See, Appendix C and Section 1 of Ch. 52, SLA 1963.

^{xii} *Unorganized Areas of Alaska That Meet Borough Incorporation Standards*, *supra* at 28.

^{xiii} *Matanuska-Susitna Borough School District et al. v. State of Alaska et al.*, 931 P.2d 391 (Alaska 1997).

^{xiv} *Id.* at 400, n 13.

^{xv} Denali Commission, *Distressed Community Criteria 2010 Update*, May 2010 at p. 2.

^{xvi} *Id.* at 1-2.

^{xvii} *Id.* at 12-13.

^{xviii} Denali Commission, *Distressed Community Criteria, 2010 Update*, *supra* at 33.

^{xix} *Id.* at 33.

^{xx} AS 44.33.810.

^{xxi} AS 29.05.090--.100.

^{xxii} AS 29.06.120--.130.

^{xxiii} AS 29.06.120--.130.

^{xxiv} AS 29.06.490--.500.

^{xxv} AS 44.33.812(a)(1).

^{xxvi} AS 44.33.812 and AS 29.06.040(c).

^{xxvii} Art. X, §12, Alaska Constitution, AS 44.33.812(b)(2) and AS 29.06.040(a).

^{xxviii} AS 29.05.110(a).

^{xxix} 52 SLA 1963, §1.

^{xxx} *Unorganized Areas of Alaska That Meet Borough Incorporation Standards*, *supra* at 19 and n. 10.

^{xxxi} *Local Boundary Commission Statement of Decision*, April 12, 2007, at 18.

^{xxxii} *Id.* at 16.

^{xxxiii} *Final Report to the Local Boundary Commission on the Deltana Borough Incorporation*, Feb. 2007 at 16.

^{xxxiv} *Preliminary Report to the Local Boundary Commission on the Deltana Borough Incorporation*, *supra* at p. 82.

^{xxxv} *Local Boundary Commission Statement of Decision*, *supra* at 2.

^{xxxvi} AS 29.05.031 and .100(a).

^{xxxvii} 3 AAC 110.050(a).

^{xxxviii} 3 AAC 110.060(e).

^{xxxix} 3 AAC 110.060(a).

^{xl} Art. X, §§1 & 3, Alaska Constitution; 3 AAC 110.045(a).

^{xli} 3 AAC 110.060(a).

^{xlii} 3 AAC 110.060(b) and (c).

^{xliii} 3 AAC 110.045(c).

^{xliiv} 3 AAC 110.900.

^{xli v} 3 AAC 110.055.

^{xli vi} 3 AAC 110.910.

^{xlvi} 3 AAC 110.065.

^{xlviii} Art. I, §1 and Art. X §§1, 3 and 12, Alaska Constitution; AS 29.05.031 and .100; 3 AAC 110.045 – .065 and 110.900 – .990; and 42 USC §1973.

^{xlix} *Preliminary Report to the LBC on the Deltana Borough Incorporation, supra* at 93.

ⁱ *Final Report to the Local Boundary Commission Regarding the Deltana Borough Proposal, supra* at 48.

ⁱⁱ *Local Boundary Commission Statement of Decision, supra* at 15.

ⁱⁱⁱ *Id.* at 23.

ⁱⁱⁱⁱ *Final Report to the Local Boundary Commission Regarding the Deltana Borough Proposal, supra* at 38.

^{lv} *Preliminary Report to the Local Boundary Commission on the Deltana Borough Incorporation, supra* at 86.

^{lvi} *Id.* at 75-77.

^{lvii} *Id.* at 88, Table 2-13.

^{lviii} *Id.* at 88, Table 2-14.

^{lix} *Final Report to the Local Boundary Commission Regarding the Deltana Borough Proposal, supra* at 42.

^{lxi} *Preliminary Report to the Local Boundary Commission on the Deltana Borough Incorporation, supra* at 69.

^{lxii} *Local Boundary Commission Statement of Decision, supra* at 38.

^{lxiii} "Memorandum In Opposition to Appellant's Supplemental Motion for Preliminary Injunction to Stay the Election of the Deltana Borough," *Murphy et al. v. Local Boundary Comm.*, Case No. 4FA-07-01738 CI, July 26, 2007 at 9.

^{lxiv} *Id.* at 8.

^{lxv} *Local Boundary Commission Statement of Decision, supra* at 34-35 and 37.

^{lxvi} *Preliminary Report to the Local Boundary Commission on the Deltana Borough Incorporation, supra* at 60.

^{lxvii} *Id.* at 71, Table 2-4.

^{lxviii} *Final Report to the Local Boundary Commission Regarding the Deltana Borough Proposal, supra* at 44.

^{lxix} *Preliminary Report to the Local Boundary Commission on the Deltana Borough Incorporation, supra* at 75.

^{lxx} *Final Report to the Local Boundary Commission Regarding the Deltana Borough Proposal, supra* at 11.

^{lxxi} AS 29.05.130-140.

^{lxxii} AS 14.17.410(e).

^{lxxiii} *Preliminary Report to the Local Boundary Commission on the Deltana Borough Incorporation, supra* at 68.

^{lxii} *LBC Statement of Decision Regarding Deltana Borough Incorporation, supra* at 42; *Preliminary Report to the Local Boundary Commission on the Deltana Borough Incorporation, supra* at 18.

^{lxiii} *Preliminary Report to the Local Boundary Commission on the Deltana Borough Incorporation, supra* at 20.

^{lxiv} *Unorganized Areas of Alaska That Meet Borough Incorporation Standards, supra*.

^{lxv} *Id.* at 3.

^{lxvi} *Id.* at 35-90.

^{lxvii} AS 29.05.130-.140.

^{lxviii} AS 14.17.410(e).

^{lxix} *Unorganized Areas of Alaska that Meet Borough Incorporation Standards, supra* at 109 and Chart 3-B.

^{lxx} *Id.* at 112-130.

^{lxxi} *Id.* at 130-31 and Table 3-21.

^{lxxii} AS 29.35.150.

^{lxxiii} *Unorganized Areas of Alaska that Meet Borough Incorporation Standards, supra* at 109, Chart 3-B.

^{lxxiv} *Id.* at 131, Table 3-21.

^{lxxv} *Id.* at 109, Chart 3-B.

^{lxxvi} *Id.* at 131, Table 3-21.

^{lxxvii} *Id.* at 109, Chart 3-B.

^{lxxviii} *Id.* at 131, Table 3-21.

^{lxxix} *Id.* at 109, Chart 3-B.

^{xc} *Id.* at 131, Table 3-21.

^{xcI} *Id.* at 109, Chart 3-B.

^{xcII} *Id.* at 131, Table 3-21.

^{xcIII} *Id.* at 109, Chart 3-B.

^{xcIV} *Id.* at 131, Table 3-21.

^{xcV} *Id.* at 109, Chart 3-B.

^{xcVI} *Id.* at 131, Table 3-21.

^{xcVII} *The Need to Reform State Laws Concerning Borough Incorporation and Annexation*, Local Boundary Commission, Jan. 2001 at p. 3.

^{xcvii} *Preliminary Report to the LBC on the Delta Borough Incorporation, supra* at 26.

^{xcix} 83% of Alaskans live in boroughs that were formed under the 1963 Mandatory Borough Act and 13% of Alaskans live in the unorganized borough. *Unorganized Areas of Alaska That Meet Borough Incorporation Standards, supra* at 28.

^c *Matanuska-Susitna Borough School District et al. v. State of Alaska et al.*, 931 P.2d 391, 400 n. 13 (Alaska 1997).

^{ci} Jay Hammond, *Tales of a Bush Rat Governor* at 149.

^{cii} *Unorganized Areas of Alaska That Meet Borough Incorporation Standards, supra* at 4.

^{ciii} AS 29.03.010.

^{civ} *Unorganized Areas of Alaska That Meet Borough Incorporation Standards, supra* at 19.

^{cv} *Id.* at 64.

^{cvi} *Id.* 22.

^{cvii} *Id.* See, AS 14.12.410.

^{cviii} *Id.*

APPENDIX H

DEED PROJECTIONS FOR FY 2011: "BASIC NEED"; ADM ADJUSTED FOR COST; AND LOCAL CONTRIBUTIONS

REAA	BASIC NEED (Millions of Dollars)	ADM Adjusted for Local Cost Factor	MUNI SCHOOL DISTRICT	REQUIRED LOCAL CONTRIBUTION (Millions of Dollars)
	420.0	53,099.02	Municipality of Anchorage	101.60
	153.0	18,541.13	Mat-Su Borough	23.80
	146.0	17,336.75	Fairbanks No. Star Borough	28.00
	91.0	11,694.10	Kenai Peninsula Borough	24.40
Lower Kuskokwim REAA	69.4	9,580.79		0.00
	51.0	6,207.00	Juneau Borough	13.70
Lower Yukon REAA	36.5	5,192.77		0
Bering Strait REAA	35.5	5,032.40		0
	33.8	4,703.74	Northwest Arctic Borough	2.10
	28.5	3,833.78	Kodiak Island Borough	4.50
	26.6	3,812.31	North Slope Borough	11.40
	22.5	3,024.76	Ketchikan Gateway Borough	5.40
	19.0	527.95	City of Galena	0.10
	14.8	1,806.78	Sitka Borough	3.60
Southwest Region REAA	12.7	1,766.14		0
Yukon/Koyukuk REAA	12.3	1,004.94		0
Delta Greely REAA	10.4	1,302.82		0
	9.7	1,394.00	Lake and Peninsula Borough	0.29
	9.3	1,295.67	City of Nome	1.00
Yupiat REAA	8.7	1,249.38		0
Yukon Flats REAA	7.6	1,064.32		0
Kuspuk REAA	7.5	1,075.35		0
	7.4	992.34	City of Valdez	3.30
Copper River REAA	7.4	994.60		0
	6.8	863.21	City of Petersburg	1.20
Alaska Gateway REAA	6.6	895.72		0
	6.5	418.45	City of Nenana	0.09
	6.4	924.06	Aleutians East Borough	0.50
	6.1	841.35	City of Dillingham	0.65
	5.7	522.34	City of Craig	0.42
	5.4	780.64	City of Unalaska	1.70
Iditarod Area REAA	5.1	683.05		0
Kashunamiut REAA	5.0	696.04		0
	4.7	536.28	Denali Borough	0.70
	4.6	615.59	City of Cordova	0.78
Southeast Island REAA	4.3	595.23		0
	4.3	517.26	Wrangell City and Borough	0.67
	4.1	499.84	Haines Borough	1.00
Annette Island REAA	3.7	513.59		0
	3.2	431.71	City of St. Mary's	0.03
Chatham REAA	3.1	417.17		0
	2.7	372.92	Bristol Bay Borough	0.90
Chugach REAA	2.2	195.60		0
	2.0	254.81	City of Hoonah	0.19
	2.0	263.24	City of Klawock	0.17
Pribilof Islands REAA	1.9	283.15		0
	1.6	241.33	Yakutat Borough	0.22
Aleutians Region REAA	1.5	207.35		0
	1.5	191.25	City of Kake	0.09
	1.3	164.49	Skagway Borough	0.70
	1.1	152.13	City of Hydaburg	0.04
	1.1	145.37	City of Tanana	0.03
	0.4	56.71	City of Pelican	0.05