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VIA ELECTRONIC MAIL

The Honorable C.J. McCormick, Chair  
House Community and Regional Affairs Committee  
State Capitol Room 416  
Juneau, Alaska 99801

Re: HB 151 Proposing to Restrict the Legislative Review Method for Borough Incorporation

Dear Chair McCormick and Members of the House Community Regional Affairs Committee:

During its meeting yesterday, Alaska's Local Boundary Commission ("LBC" or "Commission") voted unanimously that, as chair, I express concerns related to HB 151 to you and others. HB 151 was recently scheduled to be heard by your committee.

This legislation proposes to restrict the legislative review method to borough formation to only those situations "where a majority of residents of voting age within that [affected] area support the proposal."<sup>1</sup> For the following reasons, we ask that the bill not pass from your committee, but be laid aside while its constitutional, legal, and practical ramifications are carefully researched and analyzed by your staff, legislative counsel, the LBC, and the Department of Law.

The bill's Sponsor Statement incorrectly advises you that a public process failed to be included in AS 29.05.115 and that this legislation would correct a "deficiency by requiring that a full public process be carried out before the legislature receives a proposal from the Local Boundary Commission..." To the contrary, AS 29.05.115 specially states that "the Local Boundary Commission shall hold at least two public hearings in the area proposed for incorporation" before a proposal for borough incorporation is submitted to the legislature. Of course, the legislature may conduct additional public hearings as it reviews an LBC decision endorsing borough incorporation. Additionally, any interested party that appeared before the LBC on the

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<sup>1</sup> No explanation is provided for how and at what cost this majority determination is to be accomplished. How will the LBC make this determination? How will it determine how many residents of voting age live within the affected area?

petition for borough formation by the legislative review method who disagrees with the LBC's determination also has appeal rights through the courts.

Moreover, regulatory procedures stated in 3 AAC 110.400 – 3 AAC 110.700 describe a comprehensive public process for borough incorporation petitions whether presented by the local action (vote) or legislative review method. Combined with Alaska's Open Meetings Act, legislative and regulatory requirements already call for a "full public process" throughout LBC's acceptance, consideration, and action related to municipal incorporation petitions. In reality, the purpose of this legislation is to impermissively narrow, if not eliminate, the legislative review method of borough incorporation by imposing a local action requirement on it when such legislative review is a constitutionally mandated process. In short, it may set up a barrier to borough incorporation at the state level.

The Local Government Committee of the Constitutional Convention observed that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage "... lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third party, arguments for and against boundary change can be analyzed objectively."

The constitutional framers mandated specifically in Article 10, Section 12, that the LBC has broad powers to create and alter municipal government boundaries. The section states in part:

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.

Today, under authority of our constitution, laws, and regulations, petitioners for municipal incorporation may proceed before the LBC by two distinct processes: the legislative review or local action (vote) methods. Following LBC acceptance of a municipal incorporation by the local action method, the Director of Elections will order an election be conducted in the proposed municipality to determine whether voters desire incorporation. Regulations and statutes impose many standards for incorporation of municipalities by the legislative review method including Alaska's best interests.

Does the bill propose to surrender state level local boundary decisions to local decision-making?

For these reasons, we urge that HB 151 be laid aside and that its issues, both legal and practical, be carefully analyzed. Please let me know if I can answer your questions, or provide further information.

Sincerely,

*Larry D. Wood*

Chair, Local Boundary Commission