

ALASKA STATE LEGISLATURE
SENATE COMMUNITY & REGIONAL AFFAIRS COMMITTEE

January 31, 2001
1:35 p.m.

MEMBERS PRESENT

Senator John Torgerson, Chair
Senator Alan Austerman
Senator Randy Phillips
Senator Georgiana Lincoln
Senator Pete Kelly

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

ANNUAL REPORT OF THE LOCAL BOUNDARY COMMISSION

SENATE BILL NO. 48

"An Act relating to the determination of full and true value of taxable municipal property for purposes of calculating funding for education and certain other programs; and relating to incorporation of second class boroughs in the unorganized borough and to annexation of portions of the unorganized borough to boroughs and unified municipalities."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

SB 48 - No previous action

WITNESS REGISTER

Senator Gary Wilken
State Capitol Building
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor

Kevin Waring, Chair
Local Boundary Commission
550 W. 7th Ave STE 1790
Anchorage, Ak 99501-3510

POSITION STATEMENT: Gave briefing on Boundary Commission

Allan Tesche

Local Boundary Commission
550 W. 7th Ave STE 1790
Anchorage, Ak 99501-3510

POSITION STATEMENT: Answered questions about Boundary Commission activity

Dan Bockhorst
Staff to the Local Boundary Commission
550 W. 7th Ave STE 1790
Anchorage, Ak 99501-3510

POSITION STATEMENT: Answered questions about Boundary Commission actions

Vic Fischer
P.O. Box 201348
Anchorage, AK 99501

POSITION STATEMENT: Commented on SB 48

ACTION NARRATIVE

TAPE 01-1, SIDE A

Number 001

CHAIRMAN JOHN TORGERSON called the Senate Community & Regional Affairs Committee meeting to order at 1:35 p.m. Members present were Senators Austerman, Phillips, Lincoln, and Chairman Torgerson. The first order of business was the annual report of The Local Boundary Commission (LBC). An overview of SB 48 followed and then Mr. Vic Fischer gave his perspective on the conflicts of SB 48.

CHAIRMAN TORGERSON announced to the teleconference audience that this was a listen-only meeting but that ample opportunity for public testimony will be provided at a later date, including a day on a Saturday. He asked that any written testimony be sent to the committee beforehand at FAX number 465-4779. That testimony will become part of the record. He then invited the chair of the Local Boundary Commission forward to introduce himself and give his report.

MR. KEVIN WARING, Chairman of the Local Boundary Commission, thanked the committee for the opportunity to speak in person. He introduced Vice-Chairperson, Kathleen Wasserman, from Pelican, the first Judicial District, and Commissioner Allan Tesche, from Anchorage, the Third Judicial District. Dan Bockhorst, staff to the commission, was also present.

MR. WARING said that Nancy Galstad, of Kotzebue, and Ardith Lynch, of Fairbanks, weren't able to attend the meeting in person.

SENATOR KELLY arrived at 1:40 p.m.

MR. WARING began his report saying that the commission had filed its annual report with the Legislature on January 17, 2001. Each member of the House and Senate were provided a copy. The report addressed three principal areas.

- Chapter 1 provides an overview of the Commission;
- Chapter 2 summarizes the Commission's activities last year along with pending proposals; and
- Chapter 3 discusses several important public policy issues concerning local government in Alaska.

•

He said that he would speak briefly about the first two topics, in order to more fully address the public policy issues in Chapter 3.

MR. WARING said that Alaska's Constitution established the Local Boundary Commission to ensure that proposals to create cities and boroughs or alter their boundaries would be dealt with objectively and from a statewide perspective.

The Commission's responsibilities include judging proposals for:

- incorporation of cities and boroughs;
- annexation to cities and boroughs;
- detachment from cities and boroughs;
- reclassification of cities;
- dissolution of cities and boroughs; and
- merger and consolidation of cities and boroughs.

The Commission has other powers and obligations established in law, including a duty to make studies of local government boundary problems.

The Commission consists of five members who are appointed by and serve at the pleasure of the Governor. One member is appointed from each of Alaska's four judicial districts. The fifth member is appointed at-large and serves as chair. Members are appointed for overlapping five-year terms. Commission members donate their time as a public service. They receive no compensation for the time contributed to Commission activities. The Department of Community and Economic Development provides staff support to the Commission.

MR. WARING went on to say that the Commission met nine times in 2000. To minimize costs and maximize efficiencies, the Commission attempts to deal with multiple issues at each meeting and conducts meetings by teleconference whenever possible.

Collectively, the five members of the Commission approved proposals for:

- incorporation of the City of Adak as a second-class city;
- annexation to the City of Palmer; and
- annexation to the City of Ketchikan.

MR. WARING pointed out that these petitions require no action by the Legislature. Adak residents will vote at a local election on April 3, 2001 to decide whether or not to incorporate the City of Adak. The City of Palmer and City of Ketchikan annexations were local action petitions that were supported by all voters and property owners in the annexed areas, and so not subject to legislative review.

Additionally, a petition to incorporate a Deltana Borough was submitted in March 2000. However, staff review found that petition had several deficiencies in form and content. With the concurrence of the Commission, that petition was returned to the petitioner for revision as provided by law.

Several important proposals are now pending before the Commission. These include petitions for:

- consolidation of the City of Ketchikan and the Ketchikan Gateway Borough;
- consolidation of the City of Fairbanks and the Fairbanks North Star Borough;
- consolidation of the City of Haines and the Haines Borough
- annexation to the City of Homer;
- incorporation of the City of Talkeetna; and
- dissolution of the City of Skagway and concurrent incorporation of a Skagway Borough.

MR. WARING was pleased to report that for the fourth year in a row there is no outstanding litigation of any Commission decision.

MR. WARING next turned to five public policy issues that the Commission raised in its Report to the Legislature. In raising these issues, the Commission is fulfilling its duty to address local government boundary problems.

These issues concern:

- disincentives for borough incorporation and annexation that are impeding the development of local government in Alaska;
- several ambiguities in State law that affect municipal

incorporation, boundary changes, dissolution, and reclassification;

- the unintended adverse impact of AHFC's Small Communities Housing Loan Program on some municipal boundary proposals;
- the lack of common interests within the unorganized borough, notwithstanding the constitutional requirement for such;
- and proposed changes to the Commission's administrative regulations.

MR. WARING said that the Commission continues to urge the Legislature to examine and address the substantial disincentives for borough incorporation and annexation and has done so since the 1980s. The Legislature and the Commission have complementary duties relating to this issue. Specifically, the Legislature had the constitutional duty to prescribe procedures and standards for borough formation. The Commission has the statutory duty to make studies of local government boundary problems.

MR. WARING pointed out that the authors of the local government article of Alaska's Constitution envisioned that organized boroughs would be established whenever citizens were ready for and capable of assuming the responsibilities of local government. The founders recognized that the Legislature would have widely divergent alternatives available to carry out its duty to prescribe methods for borough formation. Delegates preferred a voluntary, rather than compulsory, approach to borough incorporation. However, they recognized that, to be successful, a voluntary approach must be coupled with adequate inducements to establish boroughs. This issue is addressed in detail on pages 38-40 of the annual report to the Legislature.

MR. WARING said that the Commission looks forward to discussing the disincentive issue during the hearing on SB 48.

MR. WARING said that State statutes are ambiguous on certain issues common to the broad range of matters that come before the Local Boundary Commission. These concern:

- municipal authority to levy property taxes during an initial period following incorporation, boundary change, dissolution, and reclassification; and
- the effects of incorporation, boundary change, and dissolution on service areas in organized boroughs and the unorganized borough.

Regarding the issue of property taxes, there is ambiguity whether a

municipal government that incorporates or changes its boundaries after January 1 of a particular year is prohibited by AS 29.45.10(a) and AS 29.45.120(a) from levying and collecting property taxes in the area of change during that calendar year.

This matter is addressed in detail on pages 42-44 of the Commission's annual report. There, the Report also presents draft language for legislation to eliminate these ambiguities.

MR. WARING moved on to the third issue saying that certain eligibility provisions in the Alaska Housing Finance Corporation's Small Communities Housing Assistance program have influenced the outcome of important municipal boundary determinations. Incorporation, annexation, or consolidation may result in local loss of eligibility for reduced-interest home loans. This prospect has generated local opposition to some proposed boundary changes. Last summer, the Commission met in a work session with AHFC staff regarding possible changes to the Small Communities Mortgage Program to address concerns of the Commission regarding the unintended effects of that program on proposals for consolidation of local governments in Ketchikan and Haines.

The Commission is aware that Representative Williams has introduced HB 78 to address the concern. The Commission supports that bill as an interim administrative means to resolve the concern permanently.

MR. WARING said that the fourth issue is to promote maximum common interests within boroughs. He said that, as it has done previously, the Commission brings to the attention of the Legislature that the unorganized borough is configured in a manner that does not conform to Alaska's Constitution. Article X, sec. 3 of the Constitution provides that:

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...

In an effort to implement that constitutional mandate, the Local Boundary Commission recommended to the 1960 Legislature that the Commission be directed by legislative resolution to divide the whole of Alaska into boroughs, organized or unorganized, and that its proposed division be presented to the next legislature. However, that recommendation was disregarded. Instead, the 1961 legislature implemented art. X, sec. 3 by placing all unorganized

regions of the state into a single unorganized borough. Greater compliance with this common interest clause of art. X, sec 3 could be achieved with respect to the unorganized borough if AS 29.03.10 were amended to divide the single unorganized borough into multiple unorganized boroughs formed along natural regions.

Greater compliance with the Common Interests Clause of art. X, sec. 3 of Alaska's Constitution could be achieved with respect to the unorganized borough as AS 29.03.10 is amended to divide the single unorganized borough into multiple unorganized boroughs formed along natural regions.

Alternatively, authorization of a new process to initiate borough incorporation petitions, as proposed by SB 48, would also promote incremental progress over time toward the constitutional goal of boroughs that "embrace an area and population with common interests to the maximum degree possible." This topic, too, can be further addressed during the hearing on SB 48.

MR. WARING said that the final policy issue is the proposed changes to the regulations. During the past year, the Commission devoted considerable effort to revise its regulations in Title 3 of the Alaska Administrative Code. The revisions were warranted since the last comprehensive review of the Commission's regulations occurred more than ten years ago. Since then, there have been numerous changes in state statutes on matters that involve the Commission. The changes proposed by the Commission also address ambiguities in current regulations and streamline procedures for non-controversial proposals. The Commission has also proposed a new requirement that local governments must hold a local public hearing on proposed annexations before submitting a petition to the Local Boundary Commission.

Work sessions to address the proposed changes were conducted in April, May, and June, and October 2000. This year, the Commission will publish notice of the proposed revisions to the regulations and will conduct one or more public hearings to solicit public comment regarding the revisions.

MR. WARING thanked the committee for hearing his report and asked for any questions.

Number 240

SENATOR AUSTERMAN asked what population base was needed for the Adak petition to be compliant and if that was part of the consideration.

MR. WARING said that was one of the standards for city

incorporation. He thought that a minimum of 25 residents is specified in the regulations. He said that there were between 100 and 120 residents in Adak and a substantial portion did come to the hearing. Adak does meet that commission standard.

SENATOR AUSTERMAN thought the Adak situation was unique since there was an existing structure, but that the population base that supported that structure had changed markedly. He asked if that had been a consideration.

MR. WARING said that was a major consideration in the commission's evaluation of that petition. There has never been a petition quite like that at Adak where it was incorporation of a new community at a decommissioned and very large federal military facility. The commission and the petitioners spent a great deal of time looking at how they would handle and finance and administratively deal with the transition from the infrastructure that is there and downsize it to something that a city, of that sort, with the resources that they have, could manage.

He said that after the first hearing at Adak they deferred action and allowed the petitioner an additional 3 months to answer a series of questions that the commission had. The questions were answered to the commission's satisfaction and it later approved the petition.

Number 273

SENATOR LINCOLN had a number of questions about the report and some that overlapped to SB 48. First she asked about the petition to incorporate a Deltana Borough that was submitted 10 months ago and that had been sent back for deficiencies within that petition. She wondered what happened after the 10-month period. She asked if the petitioner is told that they have a certain number of months to respond and then the process is started over again?

MR. WARING said that petition never got to the commission. There had been consultations between the commission and staff but the petition itself never went before the commission. At this point, he asked Mr. Dan Bockhurst to help with the explanation.

Number 296

MR. DAN BOCKHURST, staff to the Local Boundary Commission, said that the commission and staff did confer but that, with respect to the technical sufficiency of the proposal, there were concerns about the charter, the adequacy of the transition plan, the budget and other areas. He has a detailed letter outlining the nature of the concerns. The petitioners were invited to address those

concerns. Staff support was offered, and had been provided in the several months leading up to that petition effort, to work with them and develop a credible, thorough and adequate petition. The petitioners haven't availed themselves of that help and there is no active petition pending at this time. It is up to them to take further action but he has no indication that they are in the process of refining that petition.

SENATOR LINCOLN next wanted to know about the disincentives from pages 40 & 41 in the annual report. She asked Mr. Waring to speak to disincentives and how they work.

MR. WARING summarized in saying that, over the years, the legislature has passed a number of bills that provide financial and other assistance under various programs to local communities. In the unorganized areas there is the unintended consequence of the loss of benefits if the community were to incorporate. So while they are meritorious, on their own account, there is reluctance to incorporate as boroughs. It is the unintended side effect that is of concern to the commission. He told members, "We have no desire to withdraw these benefits; that is not the point. We would wish for a way to deliver these benefits that wouldn't disincline communities to incorporate."

SENATOR LINCOLN'S second question dealt with communities that wanted to form a borough or enjoin with an existing borough or have the city and borough join together. She asked if, in each case, the citizens would always have the opportunity to vote on the issue of whether they wanted a borough or not.

MR. WARING said that is presently the law. Municipal incorporations, city or borough, now require a local election. The exception to this is historic and it is those boroughs that were incorporated under the Mandatory Borough Act. Under present law, a local election is required to incorporate. When it comes to annexations, some may be effected without local elections, in fact, most are. They are approved by decision of the commission if they meet the standards set out in statutes and regulations. The commission's actions are subject to veto by the legislature if the legislature feels that the commission has overstepped. Most significant annexations occur without an election because the significant ones tend to be controversial.

SENATOR LINCOLN gave a hypothetical example of Fairbanks wanting to annex Delta and asked how that would occur.

MR. WARING said that the City and Borough of Fairbanks would submit a petition that would prompt a local meeting by staff. Staff would

prepare a preliminary report assessing the information as to whether it met the standards. Public comment would be gathered and a recommendation to the commission would be prepared. The commission would then hold one or more public hearings in the affected areas, take testimony, review the information in the records, seek information it needed and, based on the facts set out in the case, and the standards set out in law, make a determination. At this point, the annexation could be approved, without local vote but subject to legislative veto. This is actually the process that has been in place since statehood.

SENATOR LINCOLN asked, "How much credence do you put into that public testimony?"

MR. WARING said that public testimony was given great weight. From his own case, he has learned things from public testimony and hearings that have caused him to change his mind after he arrived at the meeting. He said that they have high regard for staff but the commission is independent of the staff recommendations. Public testimony is important.

Number 395

CHAIRMAN TORGERSON asked if that was a good policy, to not require a vote in cases such as the example given, or whether some changes should be made and a vote required.

MR. WARING said that is very much the topic of SB 48. It is very much rooted in the Constitutional Convention and reflects the temper of those times. Incorporations and annexations, particularly, are controversial and often the parochial interests involved are not able to resolve issues in a manner to the area's or state's best interest. The LBC is able to be more objective and can decide, in an administrative fashion, what is best for the state. Since the legislature is checking this authority, it is not unchecked power.

CHAIRMAN TORGERSON asked about local action petitions: What is the difference between Ketchikan and Palmer, where a local vote wasn't required, and the example given?

MR. WARING said that local action petitions are usually small. They are sometimes a result of land abutting a city and the landowner wants access to city services. There have been many of these in Palmer and Wasilla, as those towns have grown. They are typically uncontroversial and supported by the residents being annexed.

CHAIRMAN TORGERSON asked if there were any terms other than local action petitions that might be of interest.

MR. WARING said that there are local action petitions and legislative review petitions. The latter are the ones upon which the LBC is empowered to make a decision. He wanted to mention that there have been about 100 legislative review annexations, since statehood, and, to this point, there is only one the legislature has not approved. He thinks that this is a method that works.

Number 433

SENATOR AUSTERMAN said that the AHFC'S loan classification is already set but he wanted to clarify that the commission is really not taking a stance of getting rid of the program but to highlight the problem that has been created.

MR. WARING said that an artificial line with people living on both sides and having different interest rates had been created. The folks with the lower interest rate don't want to lose that. The LBC is not against the program, but there needs to be an elimination of the inequity. The incentive to be on one side of the boundary or the other needs to be removed.

SENATOR LINCOLN asked how many legislative review petitions have been submitted to the boundary commission that would have gone to the legislature if it weren't for the commission not forwarding them.

MR. WARING wanted Mr. Bockhorst to answer the question.

MR. BOCKHORST estimated that a rough guess would be 120.

Number 456

MR. WARING added that, in some cases, and the Adak petition was such an example, the commission may approve the petition with lesser boundaries than sought by the petitioner.

Number 460

SENATOR LINCOLN asked if legislative majority didn't play a role in determining whether a petition would be successful once it got to the legislature.

MR. WARING said that he had limited history, but that legislative majority plays less a role than the support given or withheld by the legislators in the area affected.

CHAIRMAN TORGERSON asked if he was correct that they had 45 days to turn down a commission ruling and that there would need to be a positive resolution for a negative result and that someone would

have to introduce the resolution to deny the action taken by the LBC or it becomes law.

MR. WARING said that was correct, that it was like a veto. A concurrent resolution of each house is needed.

Number 481

#SB48

SB 48-MUNICIPALITIES:INCORP/PROPERTY VALUATION

CHAIRMAN TORGERSON closed that portion of the meeting and moved to SB 48. He asked Senator Wilken, bill sponsor, to come forward to give an overview. He acknowledged that the meeting was on teleconference for listen only.

SENATOR WILKEN said that SB 48 tries to answer two broad questions:

1. Why is Alaska the only state in the nation that has an unorganized borough?
2. What is the validity of the \$125 million that has gone into the educational operations of the unorganized borough in the last six years?

Number 509

SENATOR WILKEN then delivered the following sponsor statement for SB 48.

Last year the Department of Education and Early Development distributed over \$21 million in General Fund money to fund K-12 educational programs in 19 Regional Educational Attendance Area (REAA) school districts from which no local match dollars were required from its local residents to help support their children's educational needs. Meanwhile, citizens residing in Alaska's organized municipal school districts were required by state law to contribute \$144 million local dollars to support their local education.

The reason for this apparent unfair disparity in state law is simple; residents of an REAA school district live within a community or area of our state that does not have the authority to levy or collect taxes and, therefore, cannot be mandated by the State to contribute any local dollars towards education. Senate Bill 48

recognizes this unequal level of personal responsibility and establishes a procedure to analyze the readiness of the people in unorganized Alaska to establish a system of local government with the powers of taxation and thereby the capability of assisting in funding the K-12 education of their children.

This legislation acknowledges that, while all communities of Alaska are perhaps not financially able to sustain a borough government, some areas of the state may very well have developed the capacity to operate boroughs or may meet applicable standards for annexation to current boroughs. Senate Bill 48 directs the Department of Community and Economic Development to annually present to the Local Boundary Commission a list of areas in the unorganized borough that reasonably appear to satisfy existing standards for borough incorporation or annexation.

The Local Boundary Commission will consider and then select from this list areas that may warrant incorporation or annexation. The Department of Community and Economic Development will then draft an incorporation or annexation petition for the selected area, hold local public meetings, and finalize and file the petition. Upon receipt of the final petition, the Local Boundary Commission will hold additional local public meetings and either accept or reject the petition as conforming or not conforming to existing applicable incorporation standards.

If, after a thorough review, the Local Boundary Commission accepts the incorporation or annexation petition, the decision will be submitted to the Legislature for an additional legislative review. If the Legislature does not reject the recommendation within a prescribed period of time, the new borough or annexation is approved.

It is important to note that SB 48 merely creates a new option in which a petition for borough incorporation or annexation is originated. After the petition is filed, the Local Boundary Commission will follow a process for legislative review that has been in place since statehood. That is, the current standards for incorporation will be followed as well as the current procedural requirements currently in state law. The selected area population must be suitably large,

homogenous, and demonstrate the stability to support borough government before it is considered for incorporation or annexation.

Delegates to the Alaska State Constitutional Convention clearly envisioned in art. X that organized boroughs would be established wherever citizens were ready for and capable of assuming the responsibilities of local government. Senate Bill 48 assists in the formation of these boroughs. With the creation of an organized borough, its citizens will be empowered to contribute local dollars to supplement State funding for the operation of their schools, assist in the financing of new schools, and through cost efficiencies, be able to direct more local funds toward student instruction. In other words, the new borough residents will have an opportunity to improve their local educational system with their own local dollars.

Senate Bill 48 continues a process that began some 40 years ago with the passage of the Borough Act of 1961. A stronger, financially sound educational system throughout all areas of the State will be one of the major benefactors of this legislation.

I respectfully request your consideration and support of SB 48.

Number 539

SENATOR WILKEN briefly addressed materials in the bill sponsor packet. The first page is a two-section memo from Legal Services outlining what the bill would do. The next two pages show a chart titled "The Structure of Local Governments in Alaska." It shows the options for organization for both organized and unorganized boroughs such as home rule cities, first-third class cities or boroughs and unified municipalities. It is good reference material as the bill works its way through the legislature. The third section is a two-part chart titled "Legislative Review Annexation Process and Proposed New Option for Borough Incorporations/Annexations." This was included to make it clear that there is a process by which an area of the state can be considered for incorporation. Areas under consideration must pass a test in order to be successfully incorporated. There is constitutional encouragement for an organized Alaska and Senator Wilken believes local governments are most satisfactory.

SENATOR WILKEN quoted from state statute saying, "Borough incorporation must be in the best interest of the state." It is

state law that "Borough residents must be socially, culturally and economically interrelated and integrated. Population must be large and stable enough to support a borough government. Boundaries must conform to natural geography and include all areas necessary for development. There must be adequate human and financial recourses to provide services. There must be adequate facilities to allow communities to develop an integrated rural government." This is the checklist to determine whether or not an area should be nominated and presented for organization.

The next page is titled "Profile of the Unorganized Borough" and shows a map of the state with unorganized areas highlighted and lists information on unorganized areas.

Number 574

SENATOR WILKEN said that a frequently used argument against organization is that there is no tax base, no way for people in unorganized Alaska to provide some sort of help for education. He said that he had three sheets in the packet to show that perhaps there is a way. The first is a bar chart titled "General Fund Contribution Regional Educational Attendance Areas FY 97-FY 02." It shows what the unorganized areas cost in terms of contributions of general fund money over the last six years. The chart shows that roughly, \$125 million in general fund money has been spent to operate schools in the REAAs. This represents about 21 percent of the budget.

SENATOR WILKEN then showed a 10-year REAA School Capital Funding History chart. It shows about \$200 million for capital spending in unorganized Alaska. He noted that there has been minimal or no local contribution on behalf of the residents of the REAA in unorganized Alaska.

SENATOR WILKEN believes there is an asset base to support educational funding. He produced a November 16 classified advertisement from an unorganized area showing that there are homes in that area that are offered for sale for more than \$200,000. He said that this isn't an amorphous area that has no commerce.

The next two sheets titled "REAA Wages and Average Employment (FY 1999) & (FY 2000)" show that \$388,546,000 was earned by 15,848 workers in 1999 in certain REAA census areas. These are wages reported under law to the Department of Labor. These are only earned wages, not barter, trade, or dividend earnings. In 2000 the figures were similar. Although the workers may not always live in the unorganized area, the paycheck is earned in that area.

Number 535

SENATOR WILKEN summarized the positive aspects of the Equity in

Education Funding Act as:

1. Alaskans who are able to fund education should do so.
2. Existing state law regarding borough incorporation remains in place as an option.
3. Local citizen participation in education is increased.
4. More money is available statewide to increase the Education Funding Formula.
5. Proactive steps are taken to fulfill the intent of art. X of the state constitution.

He considers the upfront costs to be the only drawback. However, it is his hope that the long-term costs are carefully considered and the short-term costs accepted.

SENATOR WILKEN thanked the committee for hearing the bill and said that he was available for questions.

SENATOR PHILLIPS asked what percent of total state enrollment was represented by the REAA group.

SENATOR WILKEN said it was about eight percent and that several years ago 21 percent of the general fund budget went to eight percent of the students.

SENATOR LINCOLN said that the majority of her district is unorganized. There is concern in her district because larger communities are looking at extending into her district by pulling those areas into their borough. Of major concern to her is the fact that the people won't have the opportunity to vote on the issue, other than to testify. A few people will make the decision for many and she is uncomfortable with this option. She wondered why the bill wasn't written so that the issue could go to a vote.

SENATOR WILKEN responded that he wasn't any fonder of government than the next individual. He suggested that if you went to any organized area and asked if you like government or not, the answer would most likely be no. With this in mind, it's not practical to think that individuals would vote to bring in government when there has been none. However, 83 percent of the people of Alaska live under boroughs that were imposed on them. Just four percent of the people in Alaska living in organized Alaska live under voluntary local government. He takes great faith in the fact that the LBC has shown sensitivity to local control, that there are five people from across the state from each judicial district that have no political agenda and are working for the betterment of the state. He recognizes that it is sometimes difficult for individuals to accept personal responsibilities that government brings.

SENATOR WILKEN went on to say that if the constitutional suggestion to organize continues to be disregarded, the option remains to take the process, as it is today, with a vote. However, if that isn't

done, there has to be a process by which it is accomplished. That is SB 48, which provides another way to choose government.

Number 45

SENATOR LINCOLN said she was certain that would be debated further. She then asked if there has been consideration given to the amount of federal monies brought in by the REAAs that would be lost to the state if they were in a borough. She referenced payment in lieu of taxes (PILT) money in particular. She said there was also money coming in that wouldn't necessarily be lost, such as revenue sharing, the national forest receipts, fisheries business tax program and landing tax monies. However, the PILT monies brought in by the REAAs would no longer be available if they were in a borough.

SENATOR WILKEN was not aware of any monies that would be lost by choosing local government. He asked Senator Lincoln to provide her list and he would address it. He wanted to know if PILT money is 874 money.

SENATOR LINCOLN said PILT money is payment in lieu of taxes. Delta Junction, for example, has \$235,433 contributed that wouldn't be there if they are forced into a borough.

SENATOR LINCOLN said that there are areas such as Deltana that did petition for consideration in a borough. They apparently didn't meet the guidelines but the commission did review and accept a number of communities that wanted annexation or consideration for borough status. She doesn't believe that communities are choosing to not organize because someone else is paying the tab; it is because they can't afford to do so.

SENATOR WILKEN couldn't speak to the Deltana situation other than that there were some provisions in the petition that weren't in the best interest of the state. He went on to say that SB 48 allows people to help their schools with local governance.

SENATOR WILKEN told members that education reform studied about three years ago used LBC analysis of the worth of certain areas and came up with a rough estimate of property values, given other assets available to that particular area of the state. That area is now a second-class city and doesn't assume responsibility for their education. If you took the assessed value and divided it by the number of students you would have had the fifth richest borough in the state in terms of asset value per student. That area has the ability to fund education but has chosen not to do that. He said that those that can't afford shouldn't and those that can afford should.

SENATOR LINCOLN asked about improving local educational systems

with local dollars. She thought that money brought in by borough formation would go into the general fund and then legislators would determine how that money is distributed.

SENATOR WILKEN said that was correct and that the educational lobby is one of the strongest. He would support every dollar coming from unorganized Alaska to help fund education would be a dollar that goes to education.

SENATOR LINCOLN asked if educational dollars could be tracked carefully enough to ensure that every dollar collected from a specific area would be returned to that area for education.

SENATOR WILKEN said it was difficult to track the dollar that way but that the hypothetical community would not lose any educational dollars because of the legislation. Local communities will get more money through 874 and through more money in the formula.

SENATOR LINCOLN said that was more a question of improving their quality of education because of additional dollars coming into the community.

Number 384

SENATOR WILKEN said there were two ways to improve education. First, more money is put in and more accountability is expected and capital and operations improvements are expected. Second is the link between the parent's checkbook and the child in school. He believes that people care more about their schools when they are contributing to them financially.

SENATOR KELLY was also interested in loss of funds if unorganized areas were to become organized.

CHAIRMAN TORGERSON said that "there is a potential reclassification of an allocation of funds to an unorganized area to one that is organized, such as the fish tax, may go to a larger group versus a smaller focus group that hasn't organized, depending on the boundaries. PILT payments won't be lost but they will lose the classification of having PILT money come into the total unorganized borough and then being hypothetically, mechanically or mathematically divided by the department. It will be given to the organized area of the new borough based upon geographical boundaries and how much federal land is located with in those boundaries." There could be a loss, but not directly related to this but by directly relating a different allocation formula. Communities are still eligible for the same thing.

Number 365

SENATOR WILKEN said that there is a suggestion that the 874 money

is a local contribution and that is the unorganized area's contribution to education. Understanding 874 money is a subject for another day but he is ready to discuss it.

CHAIRMAN TORGERSON invited Senator Fischer, a member of the Constitutional Convention, to come forward for testimony.

MR. VIC FISCHER, a former Alaska Senator, said that SB 48 was an important step toward implementing Local Government Article of the Alaska Constitution. He gave a bit of background from Constitutional Convention days, 35 years ago next week. At that time, Alaska had no regional structure of governance. In passing the Organic Act in 1912, Congress specifically said that territories could not establish counties. The purpose of this was to avoid any possibility of taxes being levied on mining properties and fish plants.

He said the Constitutional Convention Committee on Local Government essentially had a blank slate. They looked at other states, Canada and Finland for guides. They set certain parameters and the borough concept was developed.

The Constitutional Convention had in mind that, upon statehood, there would be a gradual evolution of regional governments. The state had a major interest in effective local government in terms of furthering the purpose of maximum local government with minimal overlapping and separate taxing jurisdictions and as a means of regionalizing and decentralizing the state roll. The entire state was to be divided into separate regional borough units.

There were provisions for organized and unorganized boroughs. The single unorganized borough is essentially unconstitutional under the state constitution. The concept was that there would be unorganized boroughs all over the state that would gradually organize, voluntarily, by local initiative. The state would provide incentives and support for organization. The expectation was that people would want this kind of regional self-government process.

Number 280

MR. FISCHER said that the 1964 Mandatory Borough Act provides that only boroughs and cities can exercise local government and taxation powers and that special districts will be dissolved. This meant that independent school districts, outside of cities, could no longer exist. The State of Alaska told schools that bonds could no longer be sold because the districts didn't exist constitutionally. In the eight situations where there were independent school districts, the legislature said "Thou shalt have boroughs." and that is how those original boroughs were organized. It was by state mandate. Although it was expected that areas would organize, the state could exercise its authority and mandate organization of the

boroughs.

Number 249

MR. FISCHER told members that when oil wealth came to the state there were proposals to do what was discussed in the convention to regionalize the entire state and use the organized and unorganized areas as a means of sharing the expected wealth coming to the state. He said the pipeline hadn't been built yet and that, for a variety of reasons that he wouldn't go into, this didn't happen.

MR. FISCHER commented specifically of SB 48 saying that he is concerned about the title of the bill. Rather than Equity in Funding Education, he thought it preferable to call it a local government act. The existence of the eight boroughs established under mandate is not under question today. Something that seems controversial now, will be part of the Alaska scene in ten to twenty years. Another area of concern is that the language and explanations of this legislation must not give the impression that it is punitive in nature.

MR. FISCHER said that the legislature does have an alternative. It is the assembly for the unorganized borough, for all the service areas and all the REAAs and could go out and establish a property tax in the unorganized areas.

SENATOR LINCOLN said she continues to struggle with the idea that the 60 legislators determine the fate of the unorganized area and wondered what the framers had in mind.

MR. FISCHER said that they did not have in mind that the legislature would sit in joint session as the assembly of the unorganized borough. The evolution was seen as the state being divided into regions. Each region would move toward maximum self-government that it could support and accommodate. There would be local participation in the provision of services to the area. Each region would be looked at separately with much local input. The assembly was written in to fill a void until there was local participation organized.

SENATOR KELLY asked about mining properties and fish processing plants.

MR. FISCHER said that Congress imposed taxation restrictions on the mining and fishing properties in territories. Counties could not be formed in territories becoming states making it clear that taxes could not be collected from these areas.

CHAIRMAN TORGERSON said they would return to Mr. Waring for his comments of SB 48.

Tape 01- 2 side A
Number 72

MR. WARING opened by saying that he would skip most of his prepared remarks. He then referred members to the two handouts. The first lays out the background considerations for reform of existing legislation. The second is a time line showing the series of actions involved from beginning to conclusion of a petition process.

MR. WARING moved to page three of his prepared remarks expressing the commission's view of its role in implementing SB 48.

First, in the view of the Commission, SB 48 is not the second coming of the 1963 Mandatory Borough Act, or any similar legislation. Unlike the Mandatory Borough Act, SB 48 authorizes a measured, case-by-case evaluation of proposed incorporations. Each petition will be evaluated on its merits. Proposals that do not meet the standards will not be approved. And, as under current law, even if a petition meets statutory standards, the Commission can reject the petition if there are sound public policy grounds to do so.

I want to assure the legislature and other interested parties that the commission does not have a mission to foster boroughs for the sake of boroughs. We don't see any purpose in worsening the standing of local government in rural Alaska by prematurely creating borough governments that are destined to fail. In this regard, I will point to the commission's record. The record shows that in recent years the commission has rejected several petitions to incorporate boroughs or annex unorganized areas to boroughs because those petitions did not meet applicable standards. Commission staff, with commission concurrence, also returned two incorporation petitions that were deficient in content.

The commission recognizes that some rural regions do not have the economic and financial resources needed to fund borough governments. The fiscal note that accompanies this bill reflects the concern that any borough established under SB 48 has a solid chance for success. The only new cost identified in the fiscal note, apart from already mandated organization grants, is the expense of conducting a thorough and independent analysis of the fiscal viability of each proposed borough.

Establishment of borough governments has been a matter of conflict for as long as Alaska has been a state. With that contentious history, it is easy to lose sight of the fact that borough governments have played an enormously positive role in Alaska's development. Boroughs have been our main tool to influence economic development for community benefit. For example, it is hard to believe that urban and rural communities affected by oil pipeline construction, oil and gas and mining development, management of forestry and fishing resources, growing energy demands, growth in tourism, and rapid urbanization would have managed better without borough government. Likewise, boroughs have been the means to fund and deliver better public services, accountable to local residents. In most matters, local government governs best.

Finally, let me note that the proposed legislation does remove one major disincentive to borough government. Section 1 (a) excludes locally untaxed oil and gas property from calculation of the required local contribution to education. Otherwise, SB 48 does not address other significant disincentives that have proven difficult to reform. The proposed legislation simply accepts those disincentives as a matter of fact, and leaves them to be addressed elsewhere.

In closing, the commission has done its best to meet its goal of an approach that is uniformly fair, accountable, and within the framework of existing law. We believe the proposed approach:

- uniformly implements the standards for borough incorporation in existing law, but respects the diverse circumstances in different rural regions;
- provides checks and balances; and
- is modeled on existing law and minimally changes law.

MR. WARING said that concluded his remarks and that he would be happy to answer any questions.

SENATOR LINCOLN noted that in the fiscal note there were provisions for a financial consultant for each petition. She wondered whether there would be increased commission activity if the bill were to pass in current form.

MR. WARING did not presume that there would be and additional workload for the commission members but that was difficult to predict since they have no control over the number of petitions

submitted each year. Additionally, if there are expenses it is because they are doing work they are supposed to be doing.

SENATOR LINCOLN asked that figures for reduction of capital match, 50 percent reduction of fisheries tax and PILT monies be provided for the next meeting.

MR. WARING said they could be provided.

CHAIRMAN TORGERSON asked if there were any questions or other testimony.

ALLEN TESCHE, Local Boundary Commission member, came forward to address several fundamental policy issues that had been raised in the current legislation.

The first fundamental policy issue concerns the right of individuals to vote on organization. When the Mandatory Borough Act was adopted in the mid 1960's, it was in response to the fact that the pace of forming local governments was slow. The legislature had to step in and force the organization and incorporation of local governments. Many times this was against the will of the people. Although the right of people to vote is important and should be guarded, it is important to have a system to bring about the creation of new local governments when people are unable to look at the situation with a long range time frame. What may be distasteful today may be an accepted and desirable fact in 50 years.

The second question asks whether local government should be forced on people when it would effect economic strain. He wanted committee members to refer to page 32 of the annual report provided by LBC staff to committee members. This outlines the list of standards that are gone through to determine whether or not a particular area meets the test for incorporation. Among the standards, the most important is the ability of the local community, through its economy, its people, and its resources, to support local government. It is not the desire of the commission to bring about the formation of local government, which ultimately fails. He referred to the Adak petition discussed earlier and said that a primary question was "Was there enough of a local economy to support people who, in turn, would support local government?". Ultimately, the decision was yes, but not until much study had been undertaken.

MR. TESCHE thanked the committee for the opportunity to address the questions raised by the committee.

CHAIRMAN TORGERSON said that the issue would be brought up again and that there would be a Saturday meeting providing the public an opportunity to testify.

There being no further business before the committee, meeting was adjourned at 3:35 p.m.

#