

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

Work Session
October 3, 2003
10:00 a.m.

MEMBERS PRESENT

Senator Gary Stevens, Chair
Senator John Cowdery, Vice Chair
Senator Fred Dyson
Senator Gretchen Guess
Senator Lyman Hoffman

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Senator Con Bunde

COMMITTEE CALENDAR

SENATE CONCURRENT RESOLUTION NO. 12
Requesting the Local Boundary Commission to consider borough
incorporation for certain unorganized areas.

PREVIOUS ACTION

SCR 12 - See CRA minutes dated 5/07/03, 5/9/03 and 5/19/03

WITNESS REGISTER

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

POSITION STATEMENT: Sponsor SCR 12

Senator Con Bunde
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Co-sponsor SCR 12

Dan Bockhorst
Local Boundary Commission

Department of Community & Economic Development
550 West Seventh Avenue, Suite
Anchorage, Alaska 99501-3510

POSITION STATEMENT: Answered questions related to SCR 12

Ethan Schutt
General Counsel
Tanana Chiefs Conference
No address provided

POSITION STATEMENT: Testified on SCR 12

Darrol Hargraves
Local Boundary Commission
Department of Community & Economic Development
550 West Seventh Avenue, Suite
Anchorage, Alaska 99501-3510

POSITION STATEMENT: Answered questions related to SCR 12

Kevin Waring
Former Chair
Local Boundary Commission
Department of Community & Economic Development
550 West Seventh Avenue, Suite
Anchorage, Alaska 99501-3510

POSITION STATEMENT: Answered questions related to SCR 12

Gene Kane
Department of Community & Economic Development
PO Box 110800
Juneau, AK 99811-0800

POSITION STATEMENT: Answered questions related to SCR 12

ACTION NARRATIVE

TAPE 03-33, SIDE A

CHAIR GARY STEVENS called the Senate State Affairs Standing Committee meeting to order at 10:00 a.m. Present were Senators John Cowdery, Fred Dyson, Gretchen Guess, Lyman Hoffman and Chair Gary Stevens.

SCR 12-BOROUGH INCORPORATION: UNORG AREAS

CHAIR GARY STEVENS announced this was a work session for SCR 12 and testimony was by invitation. SCR 12 requests the Local

Boundary Commission (LBC) to consider certain borough incorporations. He asked the sponsor to come forward.

SENATOR GARY WILKEN, sponsor of SCR 12, described the legislation as a step toward better government and parity among Alaskans. It's an issue of personal responsibility and fairness and although some call it a mandatory borough bill, it's only mandatory "if able."

He highlighted the following:

- The slide presentation
- Tri-fold brochure his staff prepared outlining the reasoning associated with SCR 12
- A letter from Commissioner Blatchford
- The sponsor statement for SCR 12
- The first chapter of the report the LBC gave to the 23rd Legislature [Unorganized Areas of Alaska that Meet Borough Incorporation Standards dated February 2003]

He pointed out that the slide presentation would give historical background and answer why legislators should be thinking about borough incorporation and what SCR 12 does to help the effort. A copy of the CD may be found in the bill packet.

Part I

Historical Perspective

Regional government was a central topic at Alaska's Constitutional Convention.

The Committee on Local Government often focused on regional government during the 44 meetings held to draft the Local Government Article.

The Local Government Committee called for all of Alaska to be divided into boroughs - organized or unorganized.

Alaska Constitution Convention Proceedings, Alaska Legislative Council, page 2612

John Rosswog, Chair, Committee on Local Government [said they would allow boroughs to remain unorganized until they are able to take on local government functions.]

Alaska Constitution Convention Proceedings, Alaska Legislative Council, page 2673

Delegate James Hurley [asked if it was correct that no unorganized borough would become effectuated without the voice of the people in the area.]

Alaska Constitution Convention Proceedings, Alaska Legislative Council, page 2673

Vic Fischer, Secretary, Local Government Committee [said no. When a certain area can support certain services and act in its own behalf it should take on the burden of its local government.]

It provided that all of Alaska must be divided into boroughs (organized or unorganized).

It encourages the creation of organized boroughs.

It provides that there must be a rational basis for disparate treatment of Alaskans (e.g., organized vs. unorganized areas).

Local responsibility is also called for under Alaska's constitution.

It imposes a duty on the legislature to set state policy regarding establishment of boroughs.

The First Alaska State Legislature (1959 - 1960) considered several proposals for establishment of boroughs. None was adopted.

The Second Alaska State Legislature adopted the Borough Act of 1961.

At the time, state policy makers anticipated that the Borough Act of 1961 would be generally ineffective in promoting borough formation.

Arguments against boroughs in the early 1960s are the same as those voiced today.

Representative Rader's solution to the greatest unresolved political problem facing the State:

- Grant each borough 10 percent of state lands to give them a meaningful responsibility and interest in natural resource development;

- Encourage formation of large boroughs;
- Provide a reasonable period before mandatory incorporation for local initiative efforts.

With a few compromises, Representative Rader's proposal was adopted by the Legislature as the 1963 Mandatory Borough Act.

Chapter 52,
Session Laws of Alaska, 1963
Section 1. Declaration of Intent.

In 44 years of statehood, boroughs have formed under the local option process in areas encompassing just 4 percent of Alaskans.

Incentives to incorporate boroughs were generally inadequate in the early 1960s.

"Shortcomings in the manner in which the borough concept has been implemented" were studied by the Local Boundary Commission in 2001.

"The Commission 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."

CHAPTER 53,
SESSION LAWS OF ALASKA, 2002

"The Local Boundary Commission shall review conditions in the unorganized borough. ... the commission shall report to the Legislature the areas it has identified that meet the standards for incorporation."

Seven Areas Meet Standards

- Aleutians West
- Upper Tanana Basin
- Copper River Basin
- Prince William Sound
- Glacier Bay
- Chatham Area
- Wrangell/Petersburg

SENATOR LYMAN HOFFMAN asked what population percentage the seven areas would represent.

SENATOR WILKEN said he wasn't sure, but he estimated there were 10,000 people.

Part II

Public Policy Perspective

Why should state government be concerned with local government?

BOROUGHES ARE UNITS OF STATE GOVERNMENT

Boroughs carry out essential services on behalf of the State of Alaska (e.g., state's duty under Article VII, Section 1, AK Const., to establish and maintain a system of public schools is delegated to boroughs).

BOROUGHES PROMOTE ECONOMIC DEVELOPMENT

- All boroughs commonly engage in economic development activities.
- Borough governments in rural Alaska "serve as the economic engine for the area."
- The Aleutians East Borough has used its bonding capacity in the past to assist the regional fisheries, thereby promoting economic development.
- The Aleutians East Borough represents local residents before fisheries advisory and management bodies.
- The Northwest Arctic Borough was instrumental in the development of the world-class Red Dog Mine.
- The Lake and Peninsula Borough provides a variety of economic development planning functions to a number of small communities within the Borough.

BOROUGHES PROMOTE EQUITY AMONG ALASKANS

Art. I, Sec. 1 requires equal responsibility among Alaskans. Yet, statutory law singles out organized boroughs and home rule & first class cities in the unorganized borough by requiring them to provide significant support for fundamental services such as public education.

Local contributions required of municipal school districts under AS 14.17.410 reduce education foundation funding that would otherwise be paid by the state to boroughs and home rule & first class cities in the unorganized borough.

Reduction of funding conflicts with the express intent of the 1963 Mandatory Borough Act.

The requirement for local contributions for schools is, in effect, a \$165 million annual state tax levied only on organized boroughs and home rule & first class cities in the unorganized borough.

In the absence of standards and procedures to determine whether unorganized areas have the capacity to take on responsibility for their own government, the current disparate treatment of Alaskans lacks a rational basis.

SENATOR COWDERY asked who decides which area can afford to provide government.

SENATOR WILKEN said it's ultimately the Legislature, but SCR 12 asks the LBC to go through the borough standards to see whether areas have the capacity for government.

SENATOR GRETCHEN GUESS asked about Talkeetna.

SENATOR WILKEN replied he wasn't there yet, but "If you were able to organize those and have them start to contribute to education, the top of the [indec] number is about \$4 million plus or minus. Lots of things go into that calculation, but it's in the millions."

SENATOR FRED DYSON asked if that was \$4 million each.

SENATOR WILKEN clarified that it was a total figure.

SENATOR GARY STEVENS said some communities in the unorganized borough, such as Dutch Harbor, do contribute to education. He asked how that works and whether it's a 4-mil requirement.

SENATOR WILKEN said, "From my point it is. Dutch Harbor doesn't because they operate under the 45 percent rule." Home rule and first class cities within the Unorganized Borough do contribute. Pelican is in the Unorganized Borough and they contribute a bit to their education.

He clarified; everyone has the 4-mil requirement with the exception of the North Slope, the Aleutians, Valdez and Skagway.

SENATOR COWDERY asked if Anchorage is at 4-mils because they pay an 18-mil tax.

SENATOR WILKEN explained state law requires giving a minimum of 4-mils then each assembly decides what to do from there. In Fairbanks they're at 8.6-mils for education.

SENATOR GUESS advised that Anchorage contributes 8-mils to education. The minimum is 4-mils and there is also a cap.

SENATOR WILKEN said the cap relates to the federal disparity test.

SENATOR COWDERY said he knew all that he was simply asking the question for the benefit of the listening public.

SENATOR WILKEN said 4-mils applies to organized Alaska and he would suggest that there are areas of the state that have perfect capacity to contribute that 4-mils. A taxing mechanism needs to be in place and a borough provides that mechanism.

SENATOR WILKEN continued the slide presentation:

BOROUGHES PROMOTE MAXIMUM LOCAL SELF-GOVERNMENT

Practical examples of the manner in which boroughs promote maximum local self-government include:

Boroughs can supplement state funding

- An REAA can not bond but organized areas can
- Boroughs are the only regional government that can tax

SENATOR HOFFMAN asked how the other functions of government such as public health and safety might be affected and how it might compare with what exists in the unorganized areas currently.

SENATOR WILKEN said boroughs are required to do three things and anything else is local option.

- Set in place the mechanism to tax
- Take care of education
- Take on planning responsibilities

SENATOR HOFFMAN pointed out that many state services are being reduced so many areas are moving toward consolidating services and looking to the federal government for relief. Some second-class cities are discussing dissolution. He asked for a comment on the fact that Article X touches on the issue of dissolving boroughs and there are provisions for local governments to dissolve with a vote of the people. He questioned whether SCR 12 would provide provisions for borough dissolution.

SENATOR WILKEN replied,

I'm not sure, Senator, how that tribal thing works into this. And I think it works in to the benefit of the efforts. We're looking at that. The thing you talk about is that the withdrawal of the state and perhaps when Ted Stevens leaves us, we know it's going to have an impact on our state. Shouldn't we then have that group, that area of the state, have a common voice and a strong common voice to promote their needs. So it's not just this city or this village or this area coming to the feds or coming to us they band together in a political voice or certainly in a common need voice for the very reason that you state. Because the money is going away, and it seems to me that they have a stronger voice if they're banded together with common values. I think that's....'if able.' If they can't, and I think this is an important part that you brought up, if you go out and you look at these four areas, and let's just say that one of them can't support government. You go down the checklist and you say, nope, nope, nope they don't fit. What we do is we find the strong and we ask them to incorporate through a plan, which you'll see a timeline here, and when that's finished then you look to see what's left. What areas of the state need the efforts of all of the state to bring them, so the next generation to come along, they're able to incorporate. They have the wealth; they have the economic value to help themselves through a common voice. So, we separate, with SCR 12, the strong from the weak. We have the strong help, as they should, because they can and we start to look at the weak. What do we do over the next couple of generations to get the areas of the state that can't today help themselves? What do we do to get them to help themselves? It's a concentration of efforts. It's a rising tide that lifts all boats. And I think that's what we're trying to do here. And I think that's what you're talking about. There are areas of the state that are poor, but let's not waste our money on areas that aren't helping when they should. Let's focus that money on areas that truly need the help of the state so that someday they'll be able to pay their fair share.

He acknowledged he was not well versed in the area of dissolutions.

SENATOR HOFFMAN asked if he would be averse to including provisions for dissolution of boroughs since that's part of Article X.

SENATOR WILKEN replied he didn't believe he had objection, but he thought "those pieces are already in our law, on how to do that."

SENATOR HOFFMAN said that's correct with regard to local government, but he wasn't aware of any provisions in statute for dissolution of boroughs.

SENATOR WILKEN said he would look at the issue and acknowledged that the tribe issue is already on the table.

SENATOR WILKEN continued the presentation:

Part III

Legislative Perspective

SCR 12 is sponsored by Senator Gary Wilken of Fairbanks.

Eight other senators co-sponsored the resolution (45 percent of the total State Senate).

Contribution to Education:

As you recall, statutory law requires only organized boroughs and home rule and first class cities in the Unorganized Borough to operate and help fund their local public school system.

In FY04, Alaskans in borough and city school districts paid \$165.1 million to help support their local schools.

The required contribution has increased 34 percent since 1997.

SENATOR WILKEN said organized areas have contributed an additional \$42 million over the last eight years.

SENATOR HOFFMAN asked how many additional millions might be expected from the four proposed areas and how much from the seven identified areas.

SENATOR WILKEN replied they estimate that the four areas would bring in \$4 million in total and they haven't calculated what the other three areas might bring.

SENATOR HOFFMAN requested follow up on the amounts that might be expected from the other three model borough areas. He then asked why just four of the seven model boroughs were addressed in SCR 12.

SENATOR WILKEN replied the other three [Aleutians West, Prince William Sound, Wrangell/Petersburg] contribute to education, they're just not in a borough. He opined it is too difficult, politically, to address all seven at once. The focus on the four models is because they pay nothing or very little toward education.

SENATOR HOFFMAN said that if three of the models are paying their fair share then it would be easier to "slip them in the door" than the ones that aren't paying their share and they should be the first targeted.

SENATOR WILKEN said, "that except in regard to education, they are far and above paying what these four are not." For instance, Cordova and Valdez would ask why if they were told they had to form a borough.

SENATOR HOFFMAN replied it's because the constitution framers said boroughs would be formed, that's why.

SENATOR WILKEN said those areas are paying their fair share and the other four are not.

SENATOR HOFFMAN asked whether the four areas could anti-up [4-mils for education] and avoid becoming boroughs.

SENATOR WILKEN said, "Anti-up? In what respect?"

SENATOR HOFFMAN said for the same reason and in the same way that the three model boroughs aren't included in SCR 12. It's because they're paying their fair share.

SENATOR WILKEN replied the Legislature could sit as an assembly and tax people in those areas. He said, "We could do that tomorrow if we had the political will to do it."

SENATOR HOFFMAN said SCR 12 is sending the message that areas don't have to form boroughs if they pay for education.

SENATOR WILKEN replied that was probably the idea 20 years ago when third class boroughs existed.

He pointed to a chart that shows Anchorage is worth about \$17 billion and contributes \$67 million in local taxes to their school district. The North Slope school district is worth about \$10.5 billion and contributes \$9 million. Fairbanks school district is assessed at about \$4.8 billion and contributes about \$19 million.

SIDE B 10:45 am

He continued the presentation.

Two of the four areas listed in SCR 12 have very high property value.

All four areas have property value greater than 9 school districts that currently support their schools.

Model Borough Summary

Upper Tanana Basin

19 communities
6,316 residents
Delta/Greely REAA
Alaska Gateway REAA
Value - \$469,045,724
Avg. Home - \$144,044
Avg. Income - \$47,472

Copper River Basin

18 communities
3,089 residents
Copper River REAA
Value - \$502,729,199
Avg. Home - \$128,800
Avg. Income - \$43,990

Glacier Bay

7 communities
1,739 residents
Pelican Schools
Hoonah Schools
Chatham REAA
Value - \$73,526,489

Avg. Home - \$136,738
Avg. Income - \$46,563

Chatham Region
3 communities
1,354 residents
Kake Schools
Chatham REAA
Value - \$35,908,397
Avg. Home - \$132,854
Avg. Income - \$47,516

Economic Wealth [REAA Wages and Average Employment (FY 2002)
chart slide 62]

As you recall, the LBC reviewed and analyzed the Unorganized
Borough in 2003.

The four regions listed in SCR 12 met borough standards.

Including the fiscal and administrative capacity to operate a
borough

Timeline for Incorporation

Senate Concurrent Resolution 12

Acknowledges that some Alaskans are required to operate and fund
local schools and some Alaskans are not.

Recognizes and addresses this inherent inequality.

Requires an arms-length review of 4 areas to determine ability
to support their local schools.

Senate Concurrent Resolution 12 [Timeline for Incorporation
chart, slide 67]

Provides a lengthy, public review process.

Allows for gradual change.

Answers the fundamental questions: [Can you help? Can you pay
your fair share?]

SENATOR WILKEN concluded the presentation.

CHAIR GARY STEVENS asked why the State Affairs Committee is
addressing an issue that is the purview of the Local Boundary
Commission. He asked whether they had the power to act without
receiving legislative direction.

SENATOR WILKEN said they have the power to act then outlined the composition and history of the LBC. He then explained that the LBC has asked for legislative help. SCR 12 is an effort to measure support.

CHAIR GARY STEVENS recognized Senator Con Bunde and thanked him for attending the meeting.

SENATOR BUNDE asked whether any of existing boroughs incorporated willingly.

SENATOR WILKEN said between four and eight boroughs incorporated voluntarily.

DAN BOCKHORST, Department of Community and Economic Development, clarified that the North Slope Borough, Denali Borough, Northwest Arctic Borough, Lake & Peninsula Borough, Bristol Bay Borough, Aleutians East Borough, Yakutat Borough, and Haines Borough incorporated voluntarily.

CHAIR GARY STEVENS announced that Eddie Jeans with the Department of Education, John Walsh, Kate Tesar, Senator Ben Steven's staff and Representative Mike Chenault's staff were listening from off-net sites.

SENATOR BUNDE expressed surprise at the number of voluntary incorporations.

SENATOR WILKEN acknowledged there has been stiff opposition and even Fairbanks voted against incorporation.

SENATOR GUESS asked about the reference to three ways to resolve the issue. One is SCR 12, another is that the current incentives are working as disincentives and the third is for the Legislature to be the overseeing body. She asked why he selected the resolution approach and did he have any insight on using the other two approaches.

SENATOR WILKEN said this is the most difficult way, but the "more surgical." He stated there are pockets of both wealth and poverty in unorganized Alaska and it's incumbent upon the Legislature not to take the easy way out and penalize people that are struggling in areas of the state that need help.

SENATOR GUESS asked about his thought process regarding reworking the incentives so that they aren't viewed as disincentives.

SENATOR WILKEN said there are incentives and disincentives. The incentive is for the Legislature to identify what would make an area more viable and the hammer is for the Legislature to require everyone to pay. That's the easy way out and it's not fair.

SENATOR GUESS agreed with Senator Hoffman's logic with regard to the other three areas. Seven areas were identified and SCR 12 looks at just four. She thought it somewhat odd that the areas that can and do contribute to education were not included in the resolution while the questionable areas were included.

SENATOR WILKEN used Prince William Sound [model borough] to explain that Cordova and Valdez pay their fair share. "You go in and try to bring those people together. It's a rat's nest...You won't get through." They're paying their fair share so that discussion is for another day and another effort.

SENATOR GUESS questioned it's "if able" and they are able, but it would be too difficult.

SENATOR WILKEN disagreed; they are able and participating.

SENATOR GUESS said they're participating in one area, but not necessarily in others.

SENATOR WILKEN agreed.

CHAIR GARY STEVENS said the larger communities in a borough are taxed at the cap and frequently the money is spent in areas with no tax base. He used his community of Kodiak and the smaller community of Karluk as examples. He said he was not unhappy that his tax money was helping support the schools in the smaller community. He questioned whether there were smaller communities that might benefit from the tax base in Cordova and Valdez. He then pointed to Dutch Harbor. It has a large tax base and isn't funding smaller villages in the area, but they would under this system. Simply saying Cordova pays its own way may not be enough if they aren't helping the less advantaged communities that are unable to fund education.

SENATOR WILKEN replied that if all the areas were rolled together then all the money that flows into separate pockets would flow into a common government to be distributed as an assembly saw fit.

SENATOR DYSON said that in Prince William Sound there are also ethnic differences to be considered.

He asked what happens after the LBC does what it is directed to do in SCR 12.

SENATOR WILKEN said it comes before the Legislature and they would have 45 days to turn it down. If they don't turn it down in that timeframe then the areas would become a borough.

SENATOR DYSON said the Legislature has formed boroughs in the past and asked whether he had any sense of the history for that.

SENATOR WILKEN stated he wasn't familiar with any mandatory boroughs beyond the original ones.

MR. BOCKHORST advised it was legislative action that created the Eagle River- Chugiak Borough in 1974, but it was determined to be an unconstitutional act.

SENATOR DYSON asked if it might be advantageous for the legislation to be addressed early in the session.

SENATOR WILKEN said there is a time line, but he didn't know what it is.

MR. BOCKHORST said the constitution prescribes that the LBC may present its recommendations only during the first ten days of a regular session.

SENATOR HOFFMAN said a major problem in the unorganized areas is that much of the land is federal or corporation land. Those lands are exempt so there is limited land available for taxation. He asked what suggestions Senator Wilken had to help those areas come up with the needed money.

SENATOR WILKEN said there are many facets to the question. He concentrated on education and used Tok as an example because it has considerable federal land in the area. When calculating the 4-mil requirement, the federal land isn't calculated so their 4-mil requirement would be small. He suggested they could raise the money through an income tax, or a gas tax. The point is that the areas of the state that have the capacity to support local government may be surprised to find how little it takes to fund local government. Local government can fund itself through property taxes, sales taxes, bed taxes, fish taxes, severance taxes, timber taxes and others.

SENATOR HOFFMAN said he was thinking about payroll deduction tax because a homesteader's ability to pay the necessary value of his of her 160 acres of land might be limited. The taxes just mentioned are small in comparison to property tax on a 160-acre homestead.

SENATOR WILKEN replied "We shouldn't just assume that this new government will fund itself by property taxes." In fact there are a number of boroughs that have no property tax at all.

SENATOR JOHN COWDERY commented that the taxes on his five acre homestead property in the Mat-Su Borough have increased a great deal since 1951 when he acquired the land. He then pointed out that someone with 160 acres would receive the same education benefits as someone with five acres.

SENATOR WILKEN said, "On a bigger scale, if we did this over the next few generations, exactly right. Then that property that those people hold and we protect through a system that we develop, that property increases in value so it doesn't detract from their lifestyle, it indeed through economic development it increases the assessed value, which is money to them in the bank."

He thanked Dan Bockhorst and Sheila Peterson for preparing the presentation.

CHAIR GARY STEVENS thanked Senator Cowdery's staff member, Annette Skibinski, for taking notes and his staff member, Katrina Matheny, for organizing the meeting.

He announced public testimony would begin.

ETHAN SCHUTT, general counsel for the Tanana Chiefs Conference in Fairbanks, stated the resolution has inconsistencies on a policy basis. He has seldom heard and doesn't necessarily agree with the proposition that more government creates economic development.

While local government can enhance economic development, there must be something there first. For instance, the Red Dog Mine was discovered and developed before the Northwest Arctic Borough began to capture that economic development. Similarly, putting local government into the Tok Delta area without some great resource base won't necessarily create any economic development.

He assumed that the assessed valuation numbers for the Tok Delta region were drawn from the fact that the pipeline runs through the area. As far as state funds are concerned, that would approach a wash because that would reduce the amount the state is paid at the wellhead by the way the tax system works. Similarly, federal properties that aren't taxable have the payment in lieu of taxes (PILT) system and currently 90 percent of that payment is rolled into the state's general fund whereas only 10 percent goes to the REAAs in that area. That 90 percent federal payment would be rolled back into the borough in that area. The same two points would apply in the Copper River Basin Borough.

It's not correct to say that those areas aren't paying their own way because there are economic generators that are putting money in the state general fund that may or may not come back in proportion to those areas.

If the state government rearranges the school funding formula there would be no way for those communities to recapture that money. If they lose funding and must cut a teacher from the local school, they cannot raise revenue to re-fund that position so they are making a local choice to sacrifice that position. Whether it makes sense to cut education is debatable and he is not in favor of that, but this is a government by the people of the people and for the people and if that local population chooses to go without, to the detriment of themselves and their own children, that is a principle of government that is adhered to and it is their choice.

He questioned the point that there would be better political representation through the unified political voice of a borough. It wouldn't change the political calculus of the south central caucus from Anchorage, Mat-Su, and Kenai. That area has an overwhelming majority of the state's population and it is not going to be undone by the fact that Tok Delta or Copper River Basin has an organized borough. The proposed boroughs would still have to approach the Legislature to ask for projects and funding for their programs.

It's important to acknowledge that the primary purpose and likely the sole purpose of the proposed boroughs would be to fund schools at the statutory minimum limit. It's doubtful that there would be excess revenue to fund any services other than the necessary and statutorily required government. It would be necessary to develop the mechanism and physical infrastructure to assess and collect taxes, which would result in carrying and

operational costs. It's likely that those required functions would be the only thing funded other than education with the small boroughs.

There are 6,300 people in the proposed Upper Tanana Basin borough and they are spread over a geographic area the size of New York. Delta and Tok are the predominant communities and would displace the political voice of the other 17 small isolated villages. He asked what services they might receive other than a little money into the school and questioned whether it made good policy sense.

SENATOR COWDERY said that all areas require the same mechanism and infrastructure for government.

MR. SCHUTT agreed then pointed out that the economies of scale must be considered. The smaller an organization is the higher the cost per employee.

SENATOR BUNDE assumed it would be good for the state if everyone reached into their own pocket to help fund schools. He asked whether the people in the Upper Tanana Basin would support the Legislature sitting as their borough assembly to impose taxes to avoid the cost of local government.

MR. SCHUTT said that if the Legislature decided to sit as a local assembly, it would have political ramifications that might provide incentive to form a borough, but there are better ways to capture the economies of scale. One way might be the imposition of a broad-based statewide tax with an offset to the boroughs that already pay property taxes.

SENATOR DYSON informed members he was unsuccessful in his effort to institute a new category for small communities to give them freedom to write their own charter and organize themselves. He asked Mr. Schutt if he could see a way for communities that want to organize along tribal lines to do so under state law while enhancing their relationship with the federal government and its funding sources in particular.

MR. SCHUTT replied that is a complicated topic, but he could imagine scenarios that would work for the state, for local communities and for Native and tribal governments. Certainly there is increased fiscal reality in rural communities and there is interest in working cooperatively.

SENATOR DYSON said he worked in communities that had three governments and they struggled to work together. He has dreamed of creating state law so that the federal entities could be integrated in a way that makes sense to individual communities.

MR. SCHUTT agreed that duplicative local governments are problematic.

SENATOR COWDERY asked Mr. Schutt what the future economic potential might entail.

MR. SCHUTT said he would hate to say mining because it sometimes works well for jobs, but it doesn't work well for local revenue because mines don't always generate income on the books. There are potential oil and gas projects in rural Alaska that haven't been developed and they pay their way, but beyond that he was unsure.

SENATOR COWDERY asked if the missile defense project in his area might spur the economy and did he think they should contribute.

MR. SCHUTT said the project would provide economic benefits to the community of Delta Greely, but the majority of the infrastructure is on a federal reserve so that would be a PILT program where 90 percent currently goes into the state general fund as far as the value of that land.

SENATOR COWDERY asked whether there would be a population increase with new homes built as a result of the missile project.

MR. SCHUTT understood the project was in the construction phase and many of the workers are coming from the Fairbanks area so that tax base is already capturing most of those benefits. Of course some is probably going to the Delta area as well.

SENATOR COWDERY asked if he thought the local area should contribute to education if the economy is up.

MR. SCHUTT replied that his point on the Payment in Lieu of Taxes System is that because that is in the geographic area in which they live, they are indirectly contributing significantly already.

SENATOR GUESS asked whether he considered Delta Greely part of his area.

MR. SCHUTT said he does because it is in the proposed Upper Tanana Basin model borough.

SENATOR COWDERY said the tax base would come from improvements on private land.

MR. SCHUTT replied there are some significant improvements on private land, but when the construction phase is complete they may be less significant than they are now.

TAPE 03-34 SIDE A, 11:30 am

DARROL HARGRAVES, Chair of the LBC, reported that the 22nd Legislature passed SB 359 directing the LBC to review the Unorganized Borough in terms of standards for borough incorporation. The report was filed in February 2003 and he believes the new commission concurs with the past commission's work.

SCR 12 is a natural result of the review and if adopted, the commission will proceed with formal consideration of the areas listed in the resolution. The commission could act without legislative directive, but he can't conceive of acting without a prompt and in the absence of a local petition coming from a group of people asking for organization.

The commission recognizes that organized boroughs are fundamental to promoting maximum local self government for Alaskans. They promote local responsibility and provide a structure for efficiency and effective delivery of public services.

SENATOR HOFFMAN said many of the people he represents are asking about the promises of statehood. Municipal assistance and revenue sharing are gone, the VPSO system has been cut and many of the communities that were promised education are still using substandard BIA facilities. They're asking how they benefited from becoming a state and saying that perhaps they made the wrong decision. Some believe moving back toward the federal government might not be a bad idea. This is a bigger question than borough formation and he would like to know what he should say to those people.

MR. HARGRAVES acknowledged that was a good question and he wasn't prepared to offer an answer.

SENATOR GUESS asked why there were just four areas included and not all seven.

MR. HARGRAVES said he didn't know why just four were included. The LBC wasn't looking at education funding, they were looking at what would constitute a unit and meet the standards for a borough.

KEVIN WARING advised he was the chair of the LBC when the report was prepared and he was prepared to answer questions in that regard.

SENATOR HOFFMAN asked him to respond to his previous question. Senator Wilken has said that SCR 12 is an effort to get these areas to pay for education. The villages he represents are asking about the promises that were made when Alaska became a state. What benefits would these largely Native villages receive from a borough?

MR. WARING said the LBC isn't powerful enough to answer that question; the answer lies with the Legislature. The report deals with the question of which areas of the state have the capacity to support borough government. He said, " All seven of those areas have more substantial tax bases, higher incomes, often lower unemployment rates than several of the areas that now support borough government."

SENATOR HOFFMAN asked whether the Legislature is moving toward fulfilling the promises made at statehood in passage of SCR 12. It seems as though many of the people he represents are saying no, this will not fulfill the promises.

MR. WARING said the report sets out to fulfill part of Article X of the Alaska State Constitution and the broader question is a policy question for legislators.

GENE KANE, Director, Division of Community Advocacy, Department of Community & Economic Development, reported they provide staff support and administrative support to the LBC. In matters of policy, the LBC is independent of the department. The commission members are appointed by and serve at the pleasure of the Governor.

He reiterated Commissioner Blatchford's letter saying the department recognizes that the Legislature has the duty, under Article X, Sec. 3, to set state policy regarding establishment of boroughs, both organized and unorganized, throughout the

state. It encourages organized boroughs encompassing large, natural regions that have the fiscal capacity to support regional government. "Organized boroughs are fundamental to promoting maximum local self government, local responsibility, more efficient and effective delivery of public services, and economic development."

SENATOR GUESS asked whether the administration supports SCR 12.

MR. KANE replied his statement was that his department supports the Legislature in its efforts to address SCR 12. He was not speaking on behalf of the Governor. He couldn't respond to the question of mandating borough formation.

SENATOR GUESS said she would like to know where the administration stands when the committee hears the bill during the next regular session. She would also like to know the administration's position with regard to considering just four of the seven model boroughs in SCR 12.

MR. KANE said they would get some clarification.

DAN BOCKHORST, local government specialist, Department of Community & Economic Development, stated he is candid in his remarks and he believes the state is better served by such discussions.

SCR 12 deals with the fundamental question of the policy of how borough government will be established. He considers the policy of the last four decades to be incomplete, ineffective, inequitable and inconsistent with the vision of the constitution framers.

The 1963 Legislature mandated borough incorporation, but inexplicably returned to the local option policy following the implementation of the Mandatory Borough Act. With few exceptions, the incentives have never been sufficient to voluntarily incorporate borough government on a broad spectrum in the state. In fact, the level of incentives has declined since the 1960s.

The existing policy is incomplete from the standpoint that Alaska's Constitution requires that the Legislature enact laws to provide standards and procedures for the establishment of both organized and unorganized boroughs. The Legislature has provided standards and procedures for the creation of organized boroughs, but it has never established standards and procedures

for the establishment of unorganized boroughs and this has been a large part of the problem.

The Alaska Constitution compels the state to treat its citizens equally and he contends that the failure to adopt standards to make distinctions between organized boroughs and unorganized boroughs fosters inequitable treatment. There are strong parallels between the promises that were forsaken by the federal government at statehood and the promises that were forsaken to boroughs by the State of Alaska. Senator Wilken touched on the foremost one in which the 1963 State Legislature picked eight areas and said they must organize borough government and take on the responsibility for schools, for planning, for land-use regulation, and for tax assessment and collection. In addition they have paid significant amounts of money that the state would otherwise have paid, to support those services.

The policy is inconsistent in that Article X, Section 3 says that each borough would embrace an area and population with common interests to the maximum degree possible yet the first borough that was established was the Unorganized Borough. Rather than defining how unorganized boroughs would be established and providing standards, it simply divided the entire state into a single Unorganized Borough. He opined it creates a situation where there is no review or consideration of how to move from unorganized to organized status. The Unorganized Borough has always encompassed an area of great diversity.

The framers envisioned the creation of incentives to organize, but dis-incentives to organize borough government have been created instead. The basic tenet of the local government article in the constitution is that there would be a maximum of local self government with a minimum number of government units and that occurs in organized boroughs.

When organized boroughs were first established, 50 percent of the people that lived within organized boroughs also lived within a city government. Over the last four decades, that number has declined substantially. With regard to economies of scale, borough governments have the capability of providing services on a regional level and a community level. People have taken advantage of that capacity to make their local government more efficient. The continued evolution of the structure is evidenced by the consolidation of the Haines Borough and the City of Haines where 75 percent of the people that lived in the Haines Borough also lived in the City of Haines. He reported that the voters in Ketchikan would soon vote on a proposition to

develop a petition to consolidate the City of Ketchikan and the Ketchikan Gateway Borough. There is no regional structure in the unorganized areas and people are forced to deal with the delivery of services on a very fractionalized method. They don't have the benefit of the economies of scale that are achieved through local government.

SENATOR HOFFMAN restated his position that many of his constituents are reevaluating the decision to become part of the state. He questioned whether the state should be required to divide into mandatory boroughs. Ninety percent of the PILT money goes directly into the state general fund so areas that receive those moneys are already paying their fair share.

The LBC is working to form boroughs to follow the intent of the constitution and Senator Wilken's intent is to get more money into the state coffers to pay for education. SCR 12 focuses on four model boroughs while passing on three areas that are closer to formation.

MR. BOCKHORST said others have spoken on those issues and he agrees in particular with Senator Wilken when he said if the state encourages those areas to form that have the capacity to organize borough government it enables the state to focus on and help areas that don't have the capacity to deliver essential services and promote their own economies.

He said the Gustavus petition to organize has actually become more compelling now that they won't receive state capital matching grants and municipal assistance and revenue sharing in the foreseeable future. They have the capacity to generate local income to help support those services that they have enjoyed.

With regard to areas with local land, he said that circumstance exists all over Alaska. Close to 99 percent of the land in the City and Borough of Juneau is not privately owned.

Whether or not to direct the LBC to review all seven proposed model boroughs or just four is a policy question. Certainly SCR 12 could be amended to include all seven areas.

SIDE B, 12:15 pm

SENATOR HOFFMAN said the constitution addresses the dissolution of boroughs and he questioned whether Mr. Waring thought it was an important part of the constitution that needed to be addressed.

MR. BOCKHORST agreed it is an important part of the constitution and he believes that the provisions in the statutes are suitable for current and projected circumstances regarding borough dissolution.

SENATOR GUESS asked how the Unorganized Borough was formed.

MR. BOCKHORST explained that in 1961 the Legislature passed Title 29 that says, "All of Alaska that is not within an organized borough shall constitute a single unorganized borough." He repeated his earlier assertion that the provisions in current law do not fulfill the constitution from the standpoint that they make no provision and provide no procedures for establishing unorganized boroughs. It would take legislative action to establish such mechanisms. In the early 1990s the LBC did address this issue and their product is the model borough boundaries definitions.

SENATOR GUESS referred to the map on the front of the February 2003 report and asked who drew all the lines.

MR. BOCKHORST said there are 16 organized boroughs in Alaska and the rest of Alaska is the single Unorganized Borough. In the early 1990s the commission held hearings in 88 communities in the Unorganized Borough and examined the standards, but they didn't look at economic viability. The product is reflected on the map and it defines the model borough boundaries for the unorganized areas if they were to be organized into boroughs.

SENATOR GUESS asked whether he supports the process Senator Wilken laid out as the best long-term process for organizing boroughs "if able."

MR. BOCKHORST restated his belief that the process that has been in place for 40 years has been a failure. There are a number of different options for coming up with a better process and SCR 12 is a reasonable approach. Several years ago Senator Wilken worked unsuccessfully on SB 48, which was patterned after an LBC proposal and it too was a reasonable approach. This points to the fact that there are many ways that it could be done.

SENATOR GUESS asked who is responsible for public safety and noted that the City of Anchorage has the Anchorage Police Department.

MR. BOCKHORST replied the Municipality of Anchorage is a borough government that exercises police protection as a discretionary function. The state troopers have statewide jurisdiction for public safety. Many borough governments do exercise police protection, but state statute does not require either borough or city governments to exercise that power.

SENATOR GUESS questioned whether the state would shoulder the cost of providing troopers if Anchorage decided not to provide police protection.

MR. BOCKHORST said there is nothing in state law that obligates Anchorage to exercise police protection, but arguments could be made regarding the moral obligation.

SENATOR GUESS asked if there is a difference between what a first or second-class borough, a unified municipality, or a home rule borough must provide.

MR. BOCKHORST answered there is no difference. Any borough government formed today is obligated to provide three broad functions.

SENATOR DYSON asked what the Legislature could statutorily impose on the Unorganized Borough.

MR. BOCKHORST replied the Legislature has the capacity to provide for any service or exercise any power within the Unorganized Borough that the assembly of an organized borough has.

SENATOR DYSON asked whether the Legislature could " create in statute an unorganized borough assembly elected either from regional or at-large in the Unorganized Borough that we delegated then the responsibilities to."

MR. BOCKHORST said the constitution gives that responsibility to the Legislature and he was unsure whether that could be delegated, but it would seem to be contrary to notions of democratically elected governing bodies.

SENATOR DYSON said he assumed that the Legislature sitting as the assembly for the Unorganized Borough could develop a taxing scheme that was just for that area.

MR. BOCKHORST said that is correct.

SENATOR DYSON commented difficulties associated with unequal treatment might arise.

MR. BOCKHORST advised the Mat-Su Borough raised an equal treatment challenge regarding the state education funding structure asking why they were being penalized as an organized area. They challenged based on the equal protection provision of the constitution. The supreme court responded that it is a problem, but it is a policy fix that the Legislature has the responsibility to make. The Legislature has the capacity to levy taxes on the Unorganized Borough and that is one way to attain equity.

SENATOR BUNDE announced he wanted to make a statement as a co-sponsor. He said:

For a very important reason I am concerned about our fiscal gap challenges and I think this issue is an important aspect of solving that fiscal gap. Not so much financially as it is politically and psychologically. We saw the presentation that basically said those that could, should pay a fair share. So I think that is going to be an overriding challenge to the 80 some percent that are providing could impart the argument of fair share. So I think that needs to be a part of discussion as the committee addresses that.

Two other comments: Just a caution for those that are hanging their hat on federal funding, with the growing federal deficit I think that is a very short term solution for people who are questioning...the wisdom of statehood. The other is the wisdom of any part of our constitution including Article X...People can always submit legislation for a constitutional amendment.

CHAIR GARY STEVENS restated that the committee was not taking public testimony, but would do so early in the next session. He asked Senator Wilken to come forward to answer final questions and give any closing remarks.

SENATOR GUESS said there is an underlying assumption that adding another layer of government would be a good thing. She asked if he had examined whether it would be efficient to move forward; whether the current government structure is working; and whether this pulls areas together.

SENATOR WILKEN replied it is common sense to think that a group of people that gets together on their common needs and wants would be more efficient than individuals trying to carry their needs and wants on their own. Although everyone wouldn't get everything they want the majority would certainly benefit.

SENATOR GUESS asked what he knew about whether the state would or would not lose oil revenue by creating boroughs.

SENATOR WILKEN said the answer is a definite maybe. Many people believe that Delta Greely, including Tok, Tetlin, Northway, and Eagle, could support local government without touching the pipeline. He explained that the pipeline is taxed at 20 mils and boroughs that have oil and gas properties within their boundaries are able to tax it as well, but only at the level that they tax themselves. The wealth in Delta Greely from the development of missile defense, a gold mine, the potential of increased tourism and the potential of a gas line railroad makes it likely that they wouldn't tap the pipeline because they wouldn't want to impose the same tax on themselves. People will make that decision based on what it would take to raise the required minimum 4 mils for education and whether they want to do more and what they want to do for government in general.

SENATOR GUESS asked if he had considered a policy that would give areas a choice of organizing as a borough and becoming responsible for more than the 4 mil education requirement or simply paying the 4 mils for education.

SENATOR WILKEN said that would take care of his issue, but the bigger issue asks whether local government shouldn't be delivered to those places that would benefit. He believes that in a generation or two the four areas under consideration have the potential of benefiting by organizing and having government. Better and more efficient government starts at the local level.

SENATOR GUESS questioned the issue of services and whether they are mandatory or discretionary. Anchorage provides and pays for police services while Fairbanks relies on troopers for which the state picks up the tab. She asked whether the Legislature should consider more than education and revisit which services are mandatory and which are discretionary in the context of what an area is able to pay.

SENATOR WILKEN acknowledged that Fairbanks funds their public safety department while the borough does not and he didn't know how it got to be that way.

He said the rural Alaska assertion that PL874 money is their local contribution to education should be challenged a bit. The federal government doesn't look at it that way and organized Alaska isn't allowed to use that argument. When the Legislature looked at the issue some years ago they determined that there would be a \$34 million impact to the general fund if organized Alaska could use PL874 money as their local contribution.

SENATOR HOFFMAN asked why they call it payment in lieu of taxes.

CHAIR GARY STEVENS thanked Senator Wilken for presenting the history and asked whether he had any closing remarks.

SENATOR WILKEN thanked everyone for participating and said there certainly is a great deal to learn and every discussion helps. He stated he is willing to travel to any area in the state to give his presentation and answer questions.

CHAIR GARY STEVENS advised he would schedule a hearing in Juneau as early in January as possible. There being no further business to come before the committee, Chair Gary Stevens adjourned the meeting at 12:35 pm.