

**ALASKA STATE LEGISLATURE**  
**HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE**

February 24, 2005

8:07 a.m.

**MEMBERS PRESENT**

Representative Kurt Olson, Co-Chair  
Representative Bill Thomas, Co-Chair  
Representative Gabrielle LeDoux  
Representative Mark Neuman  
Representative Sharon Cissna  
Representative Woodie Salmon

**MEMBERS ABSENT**

Representative Pete Kott

**COMMITTEE CALENDAR**

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 133

"An Act relating to incorporation of boroughs and to regulations of the Local Boundary Commission to provide standards and procedures for municipal incorporation, reclassification, dissolution, and certain municipal boundary changes; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 121

"An Act relating to consolidating or abolishing certain service areas in second class boroughs."

- MOVED CSHB 121(CRA) OUT OF COMMITTEE

HOUSE BILL NO. 25

"An Act relating to the sharing of fisheries business tax revenue with municipalities; and providing for an effective date."

- BILL HEARING CANCELED

**PREVIOUS COMMITTEE ACTION**

BILL: HB 133

SHORT TITLE: LOCAL BOUNDARY COMMISSION REGS & POWERS

SPONSOR(S): REPRESENTATIVE(S) COGHILL

02/09/05 (H) READ THE FIRST TIME - REFERRALS  
02/09/05 (H) CRA, STA  
02/16/05 (H) SPONSOR SUBSTITUTE INTRODUCED  
02/16/05 (H) READ THE FIRST TIME - REFERRALS  
02/16/05 (H) CRA, STA  
02/24/05 (H) CRA AT 8:00 AM CAPITOL 124

BILL: HB 121

SHORT TITLE: SERVICE AREAS IN SECOND CLASS BOROUGHS  
SPONSOR(S): COMMUNITY & REGIONAL AFFAIRS

02/02/05 (H) READ THE FIRST TIME - REFERRALS  
02/02/05 (H) CRA, STA  
02/15/05 (H) CRA AT 8:00 AM CAPITOL 124  
02/15/05 (H) Heard & Held  
02/15/05 (H) MINUTE(CRA)  
02/24/05 (H) CRA AT 8:00 AM CAPITOL 124

**WITNESS REGISTER**

RYNNIEVA MOSS, Staff  
to Representative John Coghill  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented SSHB 133 on behalf of the  
sponsor, Representative Coghill.

DAN BOCKHORST, Staff  
to the Local Boundary Commission  
Division of Community Advocacy  
Department of Commerce, Community, & Economic Development  
Anchorage, Alaska

POSITION STATEMENT: Expressed concerns with SSHB 133.

BOB HICKS, Vice Chair  
Local Boundary Commission (LBC)  
Anchorage, Alaska

POSITION STATEMENT: Testified that Sections 1-2 of SSHB 133 are  
patently unconstitutional.

DARROLL HARGRAVES, Chair  
Local Boundary Commission  
Anchorage, Alaska

POSITION STATEMENT: Expressed concerns with SSHB 133.

ROBERT KALLIO

Fairbanks, Alaska

POSITION STATEMENT: During discussion of SSHB 133, expressed concerns with the aggregate voter method of annexation.

DAVE THOMAS

Fairbanks, Alaska

POSITION STATEMENT: Testified in support of SSHB 133.

LARRY MEUNIER

Fairbanks, Alaska

POSITION STATEMENT: During discussion of SSHB 133, expressed concerns with the aggregate voter method of annexation.

VICKY PADDOCK

Fairbanks, Alaska

POSITION STATEMENT: During discussion of SSHB 133, urged the committee not to take away her ability to choose [where to live].

KAREN SAVERDA

Fairbanks, Alaska

POSITION STATEMENT: Urged the committee to pass SSHB 133.

JOE CARLSON

Fairbanks, Alaska

POSITION STATEMENT: Testified that if SSHB 133 can provide protection against [large government], then he is all for it.

TIM JOYCE, Mayor

City of Cordova

Cordova, Alaska

POSITION STATEMENT: Testified that passage of SSHB 133 will prevent any future borough formation except in special interest areas.

ALAN LEMASTER

Gakona, Alaska

POSITION STATEMENT: Encouraged the committee not to pass SSHB 133, but to draft legislation that would work and not have constitutional challenges.

VICTOR FISCHER

Anchorage, Alaska

POSITION STATEMENT: Speaking as a member of the Constitutional Convention and the Alaska Territorial Legislature, expressed the hope that the committee wouldn't act on SSHB 133.

VIOLA JERREL, Ph.D  
Homer, Alaska

POSITION STATEMENT: During discussion of SSHB 133, expressed concerns with the LBC and its regulations.

CRAIG FLEENER  
Council of Athabascan Tribal Governments  
Fort Yukon, Alaska

POSITION STATEMENT: During discussion of SSHB 133, expressed concerns with the current LBC regulations.

FREDRICK SHEEN, President  
Delta Junction Chamber of Commerce  
Delta Junction, Alaska

POSITION STATEMENT: Testified in support of SSHB 133.

DICK SHULTZ  
Tok, Alaska

POSITION STATEMENT: Testified that SSHB 133 should move forward.

#### **ACTION NARRATIVE**

**CO-CHAIR BILL THOMAS** called the House Community and Regional Affairs Standing Committee meeting to order at [8:07:27 AM](#). Representatives Olson, Thomas, LeDoux, Neuman, and Salmon were present at the call to order. Representative Cissna arrived as the meeting was in progress.

#### HB 133-LOCAL BOUNDARY COMMISSION REGS & POWERS

[8:08:10 AM](#)

CO-CHAIR THOMAS announced that the first order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 133, "An Act relating to incorporation of boroughs and to regulations of the Local Boundary Commission to provide standards and procedures for municipal incorporation, reclassification, dissolution, and certain municipal boundary changes; and providing for an effective date."

CO-CHAIR THOMAS announced that SSHB 133 wouldn't be reported from committee today.

[8:08:23 AM](#)

RYNNIEVA MOSS, Staff to Representative John Coghill, Alaska State Legislature, presented SSHB 133 on behalf of the sponsor, Representative Coghill. This legislation is about fairness and it guarantees that people will be involved in forming local governments, she said. Ms. Moss specified that SSHB 133 guarantees that when a proposal is submitted to the legislature, it has already been reviewed by those in the area [to be annexed]. Furthermore, the legislation requires at least one public hearing and an election. The legislature also requires that the proposal must be approved by the voters prior to being submitted to the legislature. Ms. Moss highlighted that SSHB 133 addresses a gray area with regard to the use of aggregate votes versus votes that are described in statute. The statute specifies that there will be a vote of the people who are going to be annexed and a vote of the people in the existing municipality. However, a regulation specifies that the Local Boundary Commission (LBC) can take an aggregate [of the aforementioned two votes] and a majority approval would allow the annexation to occur. The aforementioned is contrary to statute.

[8:10:33 AM](#)

REPRESENTATIVE LEDOUX inquired as to the history of this with regard to the LBC; and asked if there have been a number of instances involving [the aggregate vote].

MS. MOSS related her understanding that the LBC has never used an aggregate vote, although it has been the source of discussion in the Fairbanks area. This legislation specifies that the LBC won't institute regulations contrary to statute.

[8:11:38 AM](#)

REPRESENTATIVE LEDOUX expressed concern that regulations can be contrary to statute.

MS. MOSS said she was surprised as well.

[8:12:15 AM](#)

REPRESENTATIVE NEUMAN spoke in favor of SSHB 133. He suggested that perhaps new boroughs haven't formed because people haven't had a say in their communities.

[8:13:03 AM](#)

REPRESENTATIVE SALMON inquired as to how SSHB 133 would impact the current statute.

MS. MOSS clarified that SSHB 133 doesn't impact the statute at all. She pointed out that AS 29.06.040 specifies that [annexation] must be approved by a majority of votes of those residing in the area being proposed to be annexed or detached. However, the regulation refers to approval by a majority of the aggregate votes of those who vote in the area proposed for annexation as well as those who vote in the annexing borough. This legislation merely adds language in AS 44.33 that specifies the LBC has to adopt regulations, standards, and procedures that comply with existing statutes.

REPRESENTATIVE SALMON posed a situation in which Fairbanks annexed another area. He inquired as to how the vote in the area proposed for annexation would be compared with the [annexing borough].

MS. MOSS answered that there would have to be a majority vote in favor of the annexation from each group.

[8:15:18 AM](#)

REPRESENTATIVE SALMON inquired as to what occurs when the annexing borough receives a majority of votes while the area to be annexed doesn't.

MS. MOSS clarified that the statute specifies that both votes [that of the annexing area and the area to be annexed] have to approve the proposed annexation by a majority in each area, otherwise the annexation wouldn't occur.

[8:15:48 AM](#)

REPRESENTATIVE LEDOUX said she is inclined to support SSHB 133. However, she inquired as to whether Alaska's current law allows commissions to overrule statute, which she characterized as a larger problem.

MS. MOSS informed the committee that an interim project is going to be to review other regulations and whether they comply with statute.

[8:16:29 AM](#)

CO-CHAIR OLSON asked whether the Homer annexation a few years ago was an aggregate vote.

MS. MOSS said that she didn't know.

CO-CHAIR OLSON related his understanding that the Homer annexation was ambiguous enough that a lawsuit is still going on.

[8:17:34 AM](#)

DAN BOCKHORST, Staff to the Local Boundary Commission, Division of Community Advocacy, Department of Commerce, Community, & Economic Development (DCCED), explained that the Homer annexation was a legislative review annexation processed under Article X, Section 12 of the constitution. Therefore, the Homer annexation didn't involve an aggregate vote or any vote.

[8:18:08 AM](#)

REPRESENTATIVE SALMON inquired as to the process the Homer annexation followed.

MR. BOCKHORST reiterated that the Homer annexation followed the proceeding set out in the constitution [under Article X, Section 12]. The constitutional proceeding has been used in excess of 125 times to initiate annexation or other boundary proceedings. Mr. Bockhorst explained that the constitutional proceeding requires an initiation of a petition by the local government or some other group of citizens. Under this process there is extensive public notice of the filing of the petition and opportunity for interested parties to file comments and responsive briefs on the proposal to which the petitioner has an opportunity to respond. The department and the staff of the LBC are required to prepare a preliminary report examining the petition, the responsive briefs, the reply briefs, as well as any independent analysis and investigation. The preliminary report is subject to a minimum of four weeks of public review and comments. After consideration of the comments on the preliminary report, the department issues the final report. The LBC is required by law to go to the area in question and hold at least one public hearing. The LBC has the opportunity to modify the petition if it finds it compelling to do so. If the LBC approves the petition and the petition is for legislative review, the full legislative review would occur during the first 10 days of the regular session. The legislature can then review

the petition for a 45-day period. If both houses don't reject the proposal, the proposal would take effect, he explained.

[8:21:46 AM](#)

REPRESENTATIVE NEUMAN pointed out that Article III of the Alaska State Constitution specifies "that in areas not subject to majority vote." However, AS 29.06.040(c)(1) specifies, "a proposed annexation and detachment must be approved by a majority of votes on the question cast by voters residing in the area proposed to be annexed or detached". Therefore, there seems to be [conflict] between the constitution and statute.

MR. BOCKHORST confirmed that there are a number of different procedures by which municipal governments can initiate boundary changes. He reminded the committee that Article X, Section 12 authorizes legislative review boundary changes, and AS 29.06.040(c) sets out an alternative procedure dealing with local action annexations in which votes are held. Mr. Bockhorst informed the committee that he has served as staff to the LBC for 25 years. During the course of that time, the vast majority of annexations to city or borough governments with a significant number of citizens have typically used the legislative review process. The local option election process has been used a small number of times. He highlighted the other options for local option annexations set out in AS 29.06.040(c). For instance, in an area in which 100 percent of the property owners and 100 percent of the registered voters want to petition for annexation, that can be done. The aforementioned is typically used for a small number of parcels, such as 1-2 lots adjoining an existing city. He recalled an instance in which the City of Palmer did a series of 40 annexations using the aforementioned method by which all the property owners and registered resident voters had to petition for annexation. Ultimately, the City of Palmer realized that the aforementioned method isn't the most efficient and effective way to deal with [annexations]. Therefore, the City of Palmer pursued a legislative review annexation. Mr. Bockhorst highlighted that the particular circumstances of a community would dictate the procedure it would use.

REPRESENTATIVE NEUMAN surmised then that the area [requesting] the annexation is the group that decides which procedure to follow.

MR. BOCKHORST clarified that the petitioner, which could be a local government or a group of citizens, makes the initial

determination as to the process it wants to pursue. However, in the course of considering the petition that process can be amended. Therefore, Representative Neuman is correct.

[8:26:32 AM](#)

MR. BOCKHORST, in further response to Representative Neuman, stated that there is substantial opportunity for individuals to express their views on annexation during the course of the consideration of the proposal before the LBC. He opined that the LBC's procedures are well designed to provide for a well-informed decision on the part of the LBC, local officials, local citizens, and the legislature. Certainly, the Homer annexation was very contentious, but the legislature itself, the House and Senate Community and Regional Affairs Standing Committees, spent a great deal of time deliberating on the issue and ultimately agreed with the LBC.

REPRESENTATIVE NEUMAN surmised then that the people who don't want to be annexed have no legal grounds to [oppose annexation].

MR. BOCKHORST reiterated that the constitution allows annexation without a vote of the people, just as the constitution has allowed the legislature to create borough governments without a vote. However, there is not an absolute guarantee that there must or will be a vote on any municipal boundary change.

[8:29:52 AM](#)

REPRESENTATIVE LEDOUX inquired as to the instances in which the LBC has used the aggregate method.

MR. BOCKHORST answered that the aggregate voter method has never been utilized to the point the LBC has rendered a decision on a proposal. He informed the committee that pending before the LBC is an annexation proposal by the City of Petersburg. The aforementioned petition is in the stage in which there is the opportunity for public comment. This is the first instance in which [the aggregate vote] process has been used, although other prospective petitioners have expressed interest in this process. Mr. Bockhorst clarified earlier testimony by specifying that there is no provision in the AS 29.06.040 that provides for separate votes in the municipal government proposing annexation and the area proposed for annexation. With regard to the aggregate vote method, Mr. Bockhorst related that during the course of the Homer annexation, some citizens in Homer expressed interest in using the aggregate vote method.

8:32:35 AM

REPRESENTATIVE SALMON inquired as to the LBC's view of SSHB 133.

MR. BOCKHORST deferred to the chair of the LBC.

8:33:02 AM

CO-CHAIR OLSON inquired as to the situation in Valdez, and related his understanding that the [Valdez petition] could [occur] without the vote of either [the area to be annexed or the annexing area].

MR. BOCKHORST informed the committee that no petition has been filed for incorporation of a borough government in Prince William Sound. However, the City of Whittier has initiated a process that could lead to the filing of a petition for incorporation of a borough government using the legislative review process. The aforementioned could result in the filing of a petition and a proposal to the legislature for review.

CO-CHAIR OLSON surmised, "We could end up in a situation where the tail is wagging the dog, with no vote."

MR. BOCKHORST said it's a complex issue that should be placed in the context of local government in Alaska. The Alaska State Constitution calls for the division of the entire state into boroughs. "The Framers of the constitution clearly intended that areas that had ... administrative and fiscal capacity to organize would do so," he related. In fact, over the 46 years of statehood, the legislature, without a vote of the people, has provided for the creation of borough governments in which 84 percent of Alaskans live today. He reminded the committee that in 1972, the legislature provided that any second-class city government with 400 residents or more would automatically be classified as a first class city.

8:36:05 AM

REPRESENTATIVE LEDOUX returned attention to AS 29.06.040(c)(1).

MR. BOCKHORST clarified that AS 29.06.040(c)(1) must be considered in context of Article X, Section 12 of the constitution, which recognizes two very distinct types of proceedings that can come before the LBC. One type of proceeding is the earlier discussed legislative review and the

other type is the local option action in which voters have an opportunity to "have some say in the matter." The statute deals with local action proceedings. Article X, Section 12 of the constitution provides the LBC express authority, subject to law, to establish additional procedures for local action boundary changes. He related that AS 29.06.040(c)(1) in its entirety provides that the LBC is obligated by statute and permitted by the constitution to establish procedures for local action boundary changes. Those procedures must include, but aren't limited to, the provisions of AS 29.06.040(c)(1)-(3).

[8:39:49 AM](#)

MS. MOSS said that in her earlier testimony she confused this with service area annexation requirements. However, [allowing] only those who would be annexed [to vote] is even more troublesome. She pointed out that the existing regulation allows those in the existing municipality the ability to vote and to dilute the vote of the people in the area to be annexed.

[8:40:40 AM](#)

BOB HICKS, Vice Chair, Local Boundary Commission (LBC), informed the committee that he spent a 30-year career as an attorney specializing in municipal law. He further informed the committee that he has worked with the LBC for a number of years on behalf of municipalities, and even assisted in the drafting of some of the LBC's regulations in the 1980s. Mr. Hicks said he will discuss some of the technicalities of the law in Sections 1-2. He characterized Section 3 of SSHB 133 as a matter of legislative discretion. Sections 1-2 are of serious concern, he opined. Section 1 prohibits the LBC from amending or imposing any conditions on a petition to incorporate a city or borough government. If the aforementioned becomes law, he questioned why the LBC would ever hold a public hearing on a petition because no matter the wishes of the people, the petition couldn't be changed. Under the aforementioned proposal, every respondent in the region, with any constructive change, goes unheard. "There isn't even a shadow of democracy in that kind of a process," he charged. In contrast, the scenario created by the framers of the constitution in Article X, Section 12, clearly says, "the commission or board may consider any proposed local government boundary change". However, SSHB 133 proposes to change the aforementioned to say, "the commission may consider only the proposed local boundary change in the petition and nothing more or less and nothing different." This, he opined, is a blatant violation of the

constitution, contrary to the delegates of the Constitutional Convention, and flies in the face of the plain English of Article X, Section 12.

MR. HICKS turned attention to Section 2 of SSHB 133, which specifies that the LBC can't submit a proposal for incorporation of a borough for legislative review unless the voters in the proposed area have first approved that incorporation. Again, the aforementioned is in conflict with Article X, Section 12. He questioned why one would bother to submit a proposal for incorporation to the legislature for review if the local voters are allowed to have approval beforehand. As indicated earlier, Article X, Section 12, provides two separate procedures: a legislative review process and a local action process. The legislative review specifies how the procedure will occur and does not say that the procedure can be changed by law or by the legislature. The next part of Article X, Section 12, provides a general statement that the LBC can establish procedures for local action elections, which, the constitution specifically says are subject to law. Therefore, the legislature can create any kind of voter or regional participation it desires in any local action petition and thus the legislature can make the changes in the aggregate voting regulation. However, the legislature doesn't have the power to change the legislative process. He characterized the democratic process in the legislative review procedure as being more detached because it isn't necessarily a direct vote.

MR. HICKS related that if SSHB 133 is enacted as written, then Article X, Section 12, will read as follows:

The commission may no longer consider any proposed change, but shall consider only the exact boundary change described in the petition without regard for glaring errors and omissions, and without regard for the advice and the opinions of anyone else in the effected community. Local action and legislature review processes are hereby merged into one procedure. The commission may not present proposed changes to the legislature during the first 10 days of any legislative session, unless the proposed changes have first been approved by voters in the effected area.

MR. HICKS, in conclusion, submitted that Sections 1-2 of SSHB 133 are patently unconstitutional.

[8:48:14 AM](#)

DARROLL HARGRAVES, Chair, Local Boundary Commission, said that he will address policy concerns regarding SSHB 133. Mr. Hargraves paraphrased from the following written testimony [original punctuation provided]:

As noted in the bill analysis, Section 1 of the bill expressly prohibits the LBC from amending and imposing conditions on a petition to incorporate city governments and borough governments. To remove such authority would render the incorporation of city and borough government particularly rigid proceedings. A petition could only be approved or denied.

If there were a fatal error in a proposal - for example, a borough assembly apportionment plan that does not meet the equal representation provisions of the State and U.S. Constitutions - the LBC would have no alternative but to deny the petition. Under existing law, the petitioners would be precluded from resubmitting a substantially similar proposal for two years.

Experience has clearly demonstrated that flexibility is needed in carrying out the duties of the LBC. That is why the legislature has long provided express statutory authority for the Commission to amend and impose conditions for all matters that come before the LBC. That includes proposals for city reclassification and each of the six fundamental boundary changes that come before the LBC (incorporation, annexation, detachment, dissolution, merger, and consolidation).

Section 1 of the bill would impose great obstacles with regard to city and borough incorporation proposals. Additionally, . . . , we believe that Section 1 has substantial legal flaws.

Section 2 of the bill would only allow the LBC to submit a legislative review borough incorporation proposal if the voters of the area first approved the proposal.

The framers of Alaska's Constitution expressed a preference for voluntary borough incorporation. The LBC shares that preference. However, those who wrote

our Constitution recognized that the State could compel a region to incorporate if that region had the administrative and fiscal capacity to do so, but took no initiative to organize. (See: *Borough Government in Alaska*, Thomas Morehouse and Victor Fischer, p. 61 - 62 (1971)).

In 1963, the State Legislature established a clear policy that areas with the capacity to organize must do so. The 1963 Legislature mandated boroughs encompassing eight regions and more than 80 percent of all Alaskans. Voters in those eight regions were given no choice as to whether they would organize.

Nine years later, the State Legislature instituted a similar policy by mandating that every second-class city with at least 400 residents be reclassified, without a vote, to first-class city status. First-class cities in the unorganized borough have the same duties and obligations as boroughs. Thus, the effect of the 1972 Act was similar to the 1963 Mandatory Borough Act.

Section 2 of SSHB 133 represents a clear reversal of the legislative policies of 1963 and 1972. If the Legislature now chooses to annul those long-standing policies, it could generate fundamental questions of fairness among the 84 percent of Alaskans that today live in boroughs that were formed under the 1963 Mandatory Borough Act. The same issue exists with regard to residents of cities in the unorganized borough that were reclassified without voter approval by the 1972 Mandatory City Reclassification Act.

Section 3 of the bill is apparently intended to nullify the aggregate voter method of annexation. That method was established by the LBC under its constitutional authority to "establish procedures whereby boundaries may be adjusted by local action" (Article X, Section 12, Constitution of the State of Alaska) and the Commission's statutory duty to do so. It is unclear, however, whether Section 3 of the bill actually accomplishes that end.

The aggregate voter method of annexation provides local governments and resident's additional tools to seek boundary changes. Some local governments and

some local residents prefer that method to others. If that option is eliminated, petitioners will likely rely on the legislative review method of boundary change, which provides for no local vote.

Section 4 of the bill nullifies any proposal pending before the LBC that does not comply with the new terms of this bill. As noted, I have questions whether Section 3 actually accomplishes what it is apparently intended. Moreover, a petition for annexation using the aggregate voter method is currently pending before the LBC. I question whether Section 4 runs afoul of the prohibition in Article I, Section 15 of our Constitution that prohibits the passage of any ex post facto law.

8:56:52 AM

REPRESENTATIVE NEUMAN expressed concern with Mr. Hicks' statement that SSHB 133 doesn't provide a shadow of democracy. Representative Neuman opined that this legislation allows people being incorporated into areas to speak.

8:57:55 AM

ROBERT KALLIO informed the committee that he is a resident of the area on the Elliot Highway proposed to be annexed. Mr. Kallio provided the following testimony:

The only issue I wish to address is the aggregate vote regulation of the Local Boundary Commission. This hearing is not about borough organization, but is about annexation only. And this is the only real issue that I am concerned about. I would like to thank Mr. Coghill and Mr. Harris for having realized the unfairness of the aggregate vote section of the Local Boundary Commission regulation. Recent statements made by Mr. Jim Whitaker, Mayor of Fairbanks North Star Borough, that he would use the aggregate vote section as the method to annex a relatively low populated area in order to generate between \$8-\$9 million in real estate taxes, mainly from the oil, gas, and mining industries, while showing complete disregard for the actual residents of this area is truly unfair. This aggregate vote method truly represents fraud by allowing a densely populated borough to annex any low populated area deemed as a

target. A population of any target area must be allowed to vote if they wish to be annexed ... and that vote must count and must not only be part of an aggregate vote, which greatly out numbers the area residents to be annexed. The current aggregate vote regulation of the Local Boundary Commission ... is quite similar to pre-war Germany's annexation of Czechoslovakia and Poland .... We are supposed to have a government of the governed, not a government that dictates to the governed. Let those people in the area proposed to be annexed vote yes or no to be annexed or not. This aggregate vote method is not fair, it is not moral, and it is not right.

[9:00:46 AM](#)

DAVE THOMAS informed the committee that he, too, lives in [the area on the Elliot Highway proposed to be annexed]. Mr. Thomas related his support of SSHB 133. He recalled earlier testimony that this is a complex issue, but he suggested that such is said as a befuddlement.

[9:02:10 AM](#)

LARRY MEUNIER suggested that if Sections 1-2 of SSHB 133 are of legal concern, perhaps they need to be reviewed. Mr. Meunier expressed concern with the aggregate vote [method], which he characterized as a means of annexation without those being annexed having a say. Addressing the aggregate vote method doesn't take anything away from the LBC's ability to alter portions of the proposal.

[9:04:41 AM](#)

VICKY PADDOCK informed the committee that she lives in Joy, Alaska because it's the Last Frontier. She related that she hauls her own water and cuts her own wood and nature walks through her yard. Ms. Paddock emphasized that she chose this way of life and lives [in Joy] because she can't afford to live in town. Furthermore, she said she enjoys her freedom and peace in Joy. Ms. Paddock opined that Mayor Whitaker is "out there" for the larger entities, such as the oil and gas entities. She recalled that Mayor Whitaker has said that the [Fairbanks North Star Borough] is in the black, and therefore she questioned why the borough needs [to annex] this small community. She predicted that as soon as [Joy] is annexed, the people in the area will lose their homes because of their inability to pay the

taxes. Ms. Paddock concluded by urging the committee to not take away her [ability] to choose [where to live].

[9:07:24 AM](#)

KAREN SAVERDA informed the committee that she, too, is a resident of Joy, Alaska. She related her own experience in which she was able to make a life and own property [in Joy] on a widow's pension. The mistakes that may have been made in the past by government with regard to [consolidation and taxation] should stop, she stated. Since the [Fairbanks North Star Borough] is in the black, she, too, questioned why the borough can't manage its money and do without hers. She said that she didn't want to lose the lifestyle she has worked so hard to achieve and that she enjoys. Ms. Saverda opined that she has a right to vote when someone wants to [tax] her property. She urged the committee to pass SSHB 133 so that she can vote [on these annexation matters] and continue her lifestyle in Alaska.

[9:11:42 AM](#)

JOE CARLSON related that he is probably the largest landowner in the [Joy] area. Mr. Carlson echoed the earlier testimony with regard to the rural lifestyle that he tries to maintain. This legislation is trying to provide people a tool, he surmised. However, he said he didn't want to be part of large government. Mr. Carlson stated that [those in the Joy/Livengood area] are looking for help because they feel they're being oppressed by large [government]. If SSHB 133 can provide protection [against large government], then he said he's all for it. Mr. Carlson recalled that in 1989 the Fairbanks North Star Borough wanted to annex the area, but somehow the LBC said "no." Mr. Carlson stated that he spends all his money in the borough, and therefore he questioned why it needed more of his money.

[9:15:17 AM](#)

TIM JOYCE, Mayor, City of Cordova, paraphrased from the following written testimony [original punctuation provided]:

William Egan expressed the view that boroughs represented a "better form of local government." In 1963, Governor Egan signed the Mandatory Borough Act into law. This created 8 boroughs, which today encompasses almost 84% of the state's population. These people did not vote to form a borough, but those

borough governments have been working fine for the past 42 years.

A borough is an important if not essential tool to respond to the impacts of low levels of education funding and in dealing with continued cuts in funding for local governments, i.e. revenue sharing. It is also the most effective means to address important regional planning and economic development issues. Borough formation represents good public policy from a statewide perspective in several important aspects.

1. It fosters greater compliance with the equal protection clause of Article 1, Section 1 of the state constitution. Specifically, it would increase the extent to which citizens of Alaska have comparable obligations to support local services.

2. Article 10, Section 1 of the state constitution encourages borough formation. The constitutional concept of municipal government in Alaska is predicated upon the presumption that organized boroughs will exist wherever areas are capable of supporting them.

3. Creation of boroughs would dramatically ease the financial burdens on the state. For example, education costs for the state would decline because local contributions required of borough school districts would increase.

In 1988, the city of Valdez organized a PWS [Prince William Sound] Borough Feasibility Study Group. The group hired Darbyshire & Associates to conduct the study, which was completed in April of 1988. The conclusions reached by the study indicated that a basic borough exercising only mandatory powers is a very viable proposition for residents of the area.

Another study was conducted for PWS by Northern Economics, ResourceEcon and Darbyshire & Associates in 1997, which concluded that the people of PWS would be better served by leaders who are proactive in the matter of borough formation rather than waiting to react to other borough annexation requests or the state legislature. yy

Requiring a vote on every borough formation can be likened to an annexation into a city. Those people that are outside the city limits reap the benefits of

schools, libraries, roads and more, yet pay little or nothing in taxes to support those services. They resist annexation to avoid paying those taxes and would certainly vote against it. In 1992, the City of Cordova passed a resolution requesting to annex population developments near the old city. In 1993, the Local Boundary Commission approved the annexation and passed that recommendation along to the state legislature, which approved it by legislative review. No vote was cast in this annexation.

The same issues arise with borough formation, but can be taken one step further. When local officials in some areas are strongly opposed to being included with other communities in regional boroughs, their views are likely shared by many of the voters in the area as well. Thus, voters in parochial or special interest areas would most times dictate the outcome of an election, in effect preventing any borough formation. Passage of HB 133 will prevent any future borough formation except in special interest areas, which will insure that only small special interest boroughs will ever form in the future, which is contrary to the ideas of the framers of the state constitution.

[9:19:45 AM](#)

ALAN LEMASTER recalled reading that there is consideration in Juneau to provide some incentive for areas to form boroughs with \$5 million in seed money and half of the state lands being given to the boroughs. He asked if the committee has heard of the aforementioned and whether it's going anywhere.

CO-CHAIR THOMAS answered that Mr. LeMaster was referring to the LBC's [suggestion] for an incentive to encourage the formation of boroughs, but noted that nothing has happened.

MR. LEMASTER opined that in the event SSHB 133 passed, it would be years, possibly even decades, before areas such as Copper Valley would become boroughs. Mr. LeMaster announced that he is opposed to [his area] becoming a borough. He opined that the only option [for the Copper Valley], if it doesn't want to be annexed into another borough, is to create its own borough. He said that putting [annexation] to a vote will result in the [annexation] being voted down, which is an advantage. Mr. LeMaster said that he disagrees with the provision whereby the LBC would be restricted from providing any assistance in the way

of review or change in a proposal. Therefore, the aforementioned portion of the legislation has to be eliminated, he said. The LBC, the experts on these matters, must be kept in the loop. He indicated that those living in Copper Valley live in the area for the same reasons as those in Joy. In conclusion, Mr. LeMaster encouraged the committee to not pass SSHB 133, but to draft legislation that would work and not have constitutional challenges.

[9:24:58 AM](#)

VICTOR FISCHER spoke as a member of the Constitutional Convention and the Alaska Territorial Legislature. Mr. Fischer paraphrased from the following written testimony [original punctuation provided]:

Mr. Chairman, as you probably know, I have spent almost 55 years on issues of local government in Alaska. And I was a member of the Constitutional Convention; I was a member of the last Alaska Territorial Legislature; back in the 80s, I served in the Alaska State Senate.

I have continued to be concerned about the Constitution, about the implementation, in particular, of the local government article. I think, of all the parts of the Constitution that have not been adequately dealt with, it is the local government article. I might say that HB 133 would be a big step backward from where we are today - and today we are not where we should be.

I don't want to address the specific issues of annexation right now, I would be glad to get into that some other time.

One of the key elements of the local government article of the Constitution was the division of all of Alaska into separate boroughs - organized and unorganized.

Through early actions and inactions after statehood, we have ended up with a series of organized boroughs. Reference has been made to those that were incorporated by legislative action. We've had an equal number of boroughs that were established as organized by local action - by desire of regions

throughout Alaska to become organized. There were various reasons for ....

We have very effectively functioning boroughs. We have a whole series of home-rule boroughs exercising the ultimate authorities of self-government. And I would say that if you did put borough status to a vote in all of these, I have a hunch that all of them would vote to keep the borough status rather than reverting to the amorphous unorganized borough that really is not a creature of self-government whatsoever.

The initial concept was, again, that all of Alaska, including unorganized areas, would be established as boroughs. Many would remain unorganized, but they would allow the people in the particular area a measure of self-governance, of participation in planning for their particular region in the delivery of coordinated delivery of State services and so on. We can discuss this for hours - so I will not do it.

I mainly want to emphasize that the time right now is to help make the local government system work rather than undermine it. And I think that SSHB 133 would undermine the existing effort to make something out of the local government system of Alaska.

The Local Boundary Commission was established specifically for the purpose of rationalizing boundaries in Alaska. It was established with the realization that it takes a State level body to look at Alaska, to look at issues more than local self-interest - and look at boundary issues from the standpoint of what is best for all of the people of a region; what is in the interest of the State. And therefore, limiting the jurisdiction and the ability of the Boundary Commission to be effective would be a very, very negative step - a horrendous step backward. And as Hicks said in the beginning - my first reaction was exactly the same language - that the provisions in Sections 1 and 2 are *patently* unconstitutional. They go against every intent of the Constitutional Convention; they go against the language of the Constitution, and against all the court decisions that have been rendered regarding the authority of the Local Boundary Commission in making changes and making proposals to the legislature.

I hope that you will not act on House Bill 133, and I truly hope that you will devote some real solid time to looking at all of Alaska - to looking at it from the standpoint of the basic responsibility of the Community and Regional Affairs Committee to help make the system work rather than undermining the system.

And if I can be of any help whatsoever, I am at your disposal.

9:32:00 AM

VIOLA JERREL, Ph.D, disagreed with Mr. Bockhorst's testimony. The current and previous LBC, she opined, have dictated and exceeded its authority under the Alaska and US constitutions. She discussed the need for due process of law. She charged that those in Homer were robbed of the right to vote [during the last annexation] and that annexation is still being opposed. Alaskans Opposed to Annexation, a group which she helped form, hired Attorney Robert C. Erwin, who is a former Alaska Supreme Court justice. Mr. Erwin issued a legal opinion regarding the right to vote under statute. She turned attention to AS 29, which refers to the requirement of annexation to be approved by a majority of the voters [in a vote] cast by voters residing in the area proposed to be annexed. She charged that the City of Homer annexation was illegal. Dr. Jerrel related her opposition to the LBC regulations regarding the aggregate vote method and the approval of the majority of the voters in the annexing area when annexing an uninhabited territory. Dr. Jerrel reviewed her extensive education. She went on to emphasize that this annexation process is all wrong and the LBC has too much authority. Dr. Jerrel recalled a November hearing in Homer when audio was so bad and people weren't being heard. She opined that the LBC doesn't listen to the people, but only to Mr. Bockhorst. She suggested that when considering SSHB 133, it would help to consider 3 AAC 110.010 and 3 AAC 110.990. Dr. Jerrel related her belief that the [LBC's] conditions for annexation aren't legal. She then highlighted the limitations of advocacy, which she said discourages people from responding. Dr. Jerrel related how the LBC has misinformed the public with regard to taking testimony. In response to Co-Chair Thomas, Dr. Jerrel agreed to fax any information she had on this topic to the committee. Dr. Jerrel then mentioned 16 American Jurisprudence 2d, [section] 256, which generally provides all information on constitutional rights.

[9:41:14 AM](#)

CRAIG FLEENER, Council of Athabascan Tribal Governments, informed the committee that the Council of Athabascan Tribal Governments is a consortium of the 10 tribes in the Yukon Flats. He said that he would discuss his concerns with annexation and what it means for those in the Yukon Flats. Mr. Fleener stated that since Mayor Whitaker expressed interest in annexing land in the Yukon Flats up to the south bank of the Yukon River, the people in the area have been living in fear. Mr. Fleener related that no one in the Yukon Flats supports being annexed. He likened the proposed [Fairbanks] annexation to being colonized by rich neighbors who see potential oil and gas development. The [rich neighbors] want to seize that [oil and gas] wealth from the Yukon Flats and provide little or no services. Although the proposed annexation would leave the majority of the Yukon Flats' communities out of the annexation, [the people in the area] own a lot of land on the south bank of the Yukon River. He opined that if the current LBC [regulations] are left as they are, there will be annexation without representation.

MR. FLEENER turned to the intent of the framers of the Alaska State Constitution. He related his belief that the framers had the notion that many Alaskans would be wealthy with things to export from all over Alaska. However, that isn't the case. In fact, the Yukon Flats area has the second lowest income level in the state, and therefore the area wouldn't be able to pay the taxes required [were the area to be annexed]. Furthermore, the Yukon Flats is not an exporter of goods. Mr. Fleener said that he didn't believe the notion that all [areas] should become boroughs is a good model. He stated that the Fort Yukon area doesn't have the revenue to support its own borough or being included in the expansion of another borough. In conclusion, Mr. Fleener opined that those in an area of a proposed annexation need to have say on any such proposal.

[9:45:22 AM](#)

MR. FLEENER, in response to Representative Salmon, explained that the area within which the Council of Athabascan Tribal Governments works is about 55,000 square miles, including the Venetie Reservation. Around the [55,000 square miles] is the Yukon Flats National Wildlife Refuge, Yukon Charlie National Park and Preserve, and some Bureau of Land Management land. He noted that there are no roads leading into the Yukon Flats.

[9:46:57 AM](#)

FREDRICK SHEEN, President, Delta Junction Chamber of Commerce, announced that he is in favor of SSHB 133. He informed the committee that he is a commissioner of a borough charter commission in Delta Junction that has just completed a charter and is just moving toward a petition. At this point, there are no legal grounds to stop an annexation of the Pogo gold mine, which is a key component of the charter. Mr. Sheen related his belief that the LBC has too much power and a vote of the people is necessary.

[9:48:23 AM](#)

REPRESENTATIVE NEUMAN surmised that Mr. Sheen is in favor of SSHB 133 because he feels that the area's ability to grow its own local government would be imposed upon.

MR. FREDRICK agreed.

[9:49:07 AM](#)

DICK SHULTZ, former Senator, remarked that the system is broken and needs to be fixed. He related his belief that Mr. Bockhorst is part of the problem. Mr. Shultz recalled discussions and notes with some of the survivors of the constitutional framers, specifically Jack Coghill, which significantly differ from Mr. Fisher's interpretation. Mr. Shultz disagreed with the earlier testimony that [SSHB 133] is unconstitutional. In conclusion, Mr. Shultz emphasized that SSHB 133 should move forward.

[9:52:34 AM](#)

MR. SHULTZ, in response to Representative Neuman, informed the committee that he served in the legislature from 1982-1992. Mr. Shultz opined that there are some good things happening in this legislature, in particular reviewing allowing unorganized areas to remain unorganized if they so choose. He related his belief that the constitution clearly specifies the right for areas to remain unorganized. Mr. Shultz turned attention to Senator Bunde's head tax legislation, and opined that those in unorganized boroughs would prefer to pay their fair share rather than be included in an additional layer of government.

[9:54:22 AM](#)

MR. FISHER clarified that he didn't say or imply that all of Alaska should become organized boroughs. He said that the constitution, the record, and his statements have been to the effect that Alaska is to be divided in levels of organized and unorganized boroughs with maximum local participation.

[9:55:59 AM](#)

CO-CHAIR THOMAS closed public testimony and held SSHB 133.

HB 121-SERVICE AREAS IN SECOND CLASS BOROUGHES

[9:56:16 AM](#)

CO-CHAIR THOMAS announced that the final order of business would be HOUSE BILL NO. 121, "An Act relating to consolidating or abolishing certain service areas in second class boroughs."

[9:56:41 AM](#)

REPRESENTATIVE OLSON moved to report CSHB 121, Version 24-LS0396\Y, out of committee with individual recommendations [and the accompanying fiscal notes]. There being no objection, CSHB 121(CRA) was reported from the House Community and Regional Affairs Standing Committee.

#### **ADJOURNMENT**

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at [9:57:05 AM](#).