

HB

131

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3800

LEGISLATIVE AFFAIRS AGENCY
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Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files. .

Mary Van Nimwegen

HB 131

H. CGRA

2/9/89

HOUSE COMMITTEE REPORT

(5)

Date Referred: February 1, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 3/16/89

The COMMUNITY & REGIONAL AFFAIRS Committee recommends that:

HOUSE BILL NO. 131 [LOCAL BOUNDARY COMMISSION HEARINGS/VOTES]
"An Act relating to the Local Boundary Commission."

[] be replaced with CS HB131 CRA [] the same title
[] a new title

[] have attached amendment(s)

- do pass
- [] do not pass
- [] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- [] fiscal impact
- [] zero fiscal note
- zero with analysis CRA

APPROVES PREVIOUS:

- [] fiscal note(s) published: _____
- [] zero fiscal notes(s) published: _____

SIGNING DO PASS:

Bette Cat
Richard Sobey

Eileen P. Maclean

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

no rec *Fallyn*
No rec *Cheryl Davis*

Eileen P. Maclean
Chairman's signature

1 commission or the commissioner of community and regional affairs with
2 the consent of the chairman may call a meeting or hearing of the local
3 boundary commission. All meetings and hearings shall be public. The
4 commission shall adopt regulations for the conduct of the meeting of
5 the commission under AS 44.62.

6 * Sec. 4. AS 44.47.573 is amended to read:

7 Sec. 44.47.573. NOTICE OF PUBLIC HEARINGS. Public notice of
8 each [A] hearing of the local boundary commission shall be given in
9 the area in which the hearing is to be held at least 30 [15] days
10 before the date of the hearing. The notice of the hearing must
11 [SHALL] include the time, date, place, and subject of the hearing.
12 The commissioner [DIRECTOR OF LOCAL AFFAIRS] shall give notice of each
13 [THE] hearing at least three times

14 (1) by public service announcements on radio and television
15 stations in the area; and

16 (2) [IN THE PRESS,] through print [OTHER NEWS] media and [,
17 OR] by posting in a public place [, WHICHEVER IS MOST FEASIBLE].

18 * Sec. 5. AS 44.47.577 is amended to read:

19 Sec. 44.47.577. BOUNDARY CHANGE. A majority of the full mem-
20 bership of the local boundary commission must vote in favor of a
21 proposed boundary change before it may be presented to the legisla-
22 ture.

23 * Sec. 6. AS 44.47.581 is amended to read:

24 Sec. 44.47.581. HEARINGS ON BOUNDARY CHANGES. A local govern-
25 ment boundary change may not be proposed to the legislature unless at
26 least two hearings [A HEARING] on the change have [HAS] been held in
27 communities in [OR IN THE NEAR VICINITY OF] the area affected by the
28 change. If there is no community within the area affected by the
29 change, the commission shall hold the hearing in a proximately located

1 community. The second hearing shall be separately noticed and shall
2 be held at least 30 days after the first hearing. One of the hearings
3 may be conducted by teleconference.

4 * Sec. 7. Section 2 of this Act takes effect on the effective date of a
5 constitutional amendment proposed by the Sixteenth Alaska State Legislature
6 relating to the Local Boundary Commission.
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6-0577D
Bradley
4/13/89

Original sponsors: Shultz, Foster,
Wallis, et al.

IN THE HOUSE

CS FOR HOUSE BILL NO. 131 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the Local Boundary Commission;
and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 29.05.090 is amended to read:

Sec. 29.05.090. HEARING. The Local Boundary Commission shall hold at least two public hearings [ONE PUBLIC HEARING] in the area proposed to be incorporated for the purpose of receiving testimony and evidence on the proposal. The second hearing shall be separately noticed and shall be held at least 30 days after the first hearing. One of the hearings may be conducted by teleconference.

* Sec. 2. AS 44.47 is amended by adding a new section to read:

Sec. 44.47.568. PROHIBITED CHANGES. The commission may not propose to the legislature the annexation of an area without permanent year-round residents to an existing municipality unless the commission determines that

(1) the area to be annexed requires one or more services at a level not provided by the state that the municipality would be able to provide; or

(2) the health, welfare, or safety of the residents of the municipality is endangered by conditions existing or developing in the area being considered for annexation and the annexation will enable the municipality to relieve the conditions.

* Sec. 3. AS 44.47.569 is amended to read:

Sec. 44.47.569. MEETINGS AND HEARINGS. The chairman of the

1 commission or the commissioner of community and regional affairs with
2 the consent of the chairman may call a meeting or hearing of the local
3 boundary commission. All meetings and hearings shall be public. The
4 commission shall adopt regulations for the conduct of the meeting of
5 the commission under AS 44.62.

6 * Sec. 4. AS 44.47.573 is amended to read:

7 Sec. 44.47.573. NOTICE OF PUBLIC HEARINGS. Public notice of
8 each [A] hearing of the local boundary commission shall be given in
9 the area in which the hearing is to be held at least 30 [15] days
10 before the date of the hearing. The notice of the hearing must
11 [SHALL] include the time, date, place, and subject of the hearing.
12 The commissioner shall provide notice to radio and television stations
13 in the area and request that public service announcements be aired.
14 The commissioner [DIRECTOR OF LOCAL AFFAIRS] shall give notice of each
15 [THE] hearing at least three times [IN THE PRESS,] through print
16 [OTHER NEWS] media and [, OR] by posting in a public place [,
17 WHICHEVER IS MOST FEASIBLE].

18 * Sec. 5. AS 44.47.577 is amended to read:

19 Sec. 44.47.577. BOUNDARY CHANGE. A majority of the full mem-
20 bership of the local boundary commission must vote in favor of a
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25 ment boundary change may not be proposed to the legislature unless at
26 least two hearings [A HEARING] on the change have [HAS] been held in
27 communities in [OR IN THE NEAR VICINITY OF] the area affected by the
28 change. If there is no community within the area affected by the
29 change, the commission shall hold the hearing in a proximately located

1 community. The second hearing shall be separately noticed and shall
2 be held at least 30 days after the first hearing. One of the hearings
3 may be conducted by teleconference.

4 * Sec. 7. Section 2 of this Act takes effect on the effective date of a
5 constitutional amendment proposed by the Sixteenth Alaska State Legislature
6 relating to the Local Boundary Commission.
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DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

April 18, 1989

POSITION PAPER

RE: Committee Substitute for House Bill 131(CR&A)
Committee Substitute for House Joint Resolution 38(CR&A)

SPONSOR: Shultz

Program Effects of Bill

Committee Substitute House Bill 131 would accomplish four basic changes to existing law. 1) It would require two public hearings, rather than one by the Local Boundary Commission when an area is proposed for incorporation or an area is to be affected by a boundary change, before the proposal comes before the legislature for approval. 2) It would require 30 days public notice, rather than 15 days, before such hearings can be conducted. 3) It would require a majority of the full membership, rather than a simple majority, of the Local Boundary Commission to vote in favor of proposed boundary changes before they may be proposed to the legislature. 4) It would prohibit the Local Boundary Commission from proposing to the legislature annexations of areas in which there were no inhabitants unless the area requires services provided by the municipality or the annexation would protect municipal residents from a danger to their health, welfare or safety arising from the area to be annexed. This final provision would become effective upon adoption of a constitutional amendment proposed by HCR 26, which would allow the legislature to set standards for the Local Boundary Commission's consideration of boundary changes.

Comments

The department has a two-fold interest in this legislation, one because of the department's interest in its impact on the municipalities it serves and the other because of the department's responsibility to provide staff support to the Local Boundary Commission. In both areas of interest this legislation causes some concern.

The Local Boundary Commission was created in the constitution as a mechanism for consideration of local boundary changes. In some states there is no such mechanism and the process of annexation or detachment relies on local action by municipalities. The framers of the constitution, however, felt that reliance upon purely local interests would not adequately protect the interests of the state and provided for the creation of a local boundary agency which, under the oversight

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of the legislature, it was felt would provide a needed statewide perspective. In its actions, the Local Boundary Commission applies specific regulatory standards which were designed to balance state and local interests. The Local Boundary Commission has the authority to provide for local action boundary changes which, because they are largely uncontested, do not require the review of the legislature. Those actions which are reviewed by the legislature, therefore, tend to be controversial to a greater or lesser degree.

Recent decisions of the Commission have raised concerns that the Commission may be too responsive to local municipal interests in setting the timetable for processing annexation petitions to insure that the proposed annexations could be set before the legislature in a timely manner. It has been argued that the process did not allow full presentation of concerns by all interested parties. At least in part to address this situation, provisions relating to expanded hearings and notice (Sections 1, 4, and 6) were introduced.

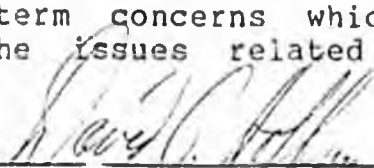
The department supports the proposed notice and hearing procedures to insure an opportunity for the presentation and careful consideration of concerns from interested parties. However, such procedures should not be so cumbersome and difficult as to inhibit legitimate municipal interests in pursuing boundary changes. The notice and hearing procedures set out in the proposed legislation, while making the process somewhat more cumbersome, would not have a prohibitive effect on municipalities. Additionally, there will be a fiscal impact on the department which must be addressed to accomplish the desired ends. In the absence of such resources, the department and Commission would be unable to provide the mandated procedural safeguards, effectively bringing the process to a halt to the detriment of municipalities putting forth good faith, legitimate proposals.

It should be noted that the Local Boundary Commission is also concerned with these problems and is proposing to address them through comprehensive formal procedures providing for broadening distribution of notice, depending upon the degree of significance of the change being considered. The Commission will be adopting procedures to formalize the review process to insure the hearing and review time line is not unreasonably compressed. The procedural requirement for action to be taken by a majority of the full membership of the Commission (Section 5 of the bill) is consistent with existing Commission practice. The Commission is also taking steps to adopt formal procedural rules.

The proposal section 4 to restrict the Commission's ability propose a boundary change of an area with no permanent residents, unless the area requires services or endangers municipal residents is a troublesome one. On the one hand, such a restriction seems to discriminate against existing municipalities. If a proposed new borough and an existing borough were competing for the same uninhabited area, the new borough would not be judged against the same standards as the existing one. This could result in the area at issue becoming part of the proposed borough even though it should more appropriately be within the boundaries of the existing borough, simply because the area does not present a danger to residents of the existing borough or have a current need for services.

The majority of the state remains unorganized. This area tends to be predominately uninhabited and is characterized by the very conditions placed upon the consideration of annexations of such territory by the Local Boundary Commission. Placing such a restriction on the Commission's activities would preclude it from considering annexations of this type of territory and may cause problems we cannot anticipate at this time as more regional governments are formed in the future.

The prohibition in CSHB 131 is dependent upon the passage of CSHJR 26 which would give the legislature the authority to establish standards for the Commission's review of boundary changes. While the legislature does not currently have the authority to establish such standards, it does have the power to approve or disapprove any boundary change brought before it. This proposal would significantly alter this framework to give the legislature a more active role in the activities currently reserved to the Commission. This presents the danger of a piecemeal approach through which standards are adopted in response to specific short term concerns which inhibit a comprehensive treatment of the issues related to boundary changes.



David G. Hoffman
Commissioner

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to the Local
 Boundary Commission..effective date."
 Sponsor: House C&RA Committee
 Requestor: _____

Agency Affected: Community & Regional Affairs
 BRU: Local Government Assistance

Components: Local Boundary Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL		44.6	44.6	44.6	44.6	44.6
CONTRACTUAL		12.3	12.3	12.3	12.3	12.3
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		56.9	56.9	56.9	56.9	56.9
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		56.9	56.9	56.9	56.9	56.9
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached

Jim Plasman

Prepared by: Jim Plasman, Deputy Director
 Division: Municipal & Regional Assistance Division

Phone: 465-4750
 Date: 4/17/89

Approved by Commissioner: *[Signature]*
 Agency: Community & Regional Affairs

Date: 18 AM 89

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

STATE OF ALASKA 1989 - 16TH LEGISLATURE
FIRST SESSION
FISCAL NOTE

Committee Substitute for House Bill 131

ANALYSIS:

Assumptions:

1. The requirements of Sections 1 and 6 of CSHB 131 apply only to petitions for municipal incorporations (AS 29.05.090), legislative review annexations and detachments (AS 29.06.040(b), AS 44.47.567(b)(2), and Article X, Section 12 of the State Constitution).
2. Five petitions for municipal incorporations and five petitions for legislative review annexations and detachments will be received each year.
3. Consistent with the Commission's policies, all public hearings will be conducted in person with all Commission members present. Therefore, in all cases, the Commission will conduct the requisite second hearings (mandated by Sections 1 and 6 of CSHB 131) on site but in a different location and at a different time than the first hearing. The additional expense will be substantial. Assumptions are as follows:

Per Diem:

Each meeting will require an average of 2 days travel time per Commission member and staff.

Per diem will be \$80/day.

\$80 x 2 (days) x 6 (5 commissioners and 1 staff)
x 10 additional meetings per year. = \$ 9,600

Travel:

Each meeting will require that each commission member and staff travel round trip from their originating points. No meetings will be "piggy-backed".

Average of \$583/person/meeting.

\$583 x 6 (5 commissioners and 1 staff) x 10
additional meetings per year. = \$34,980

Notice Requirements:

The notices for annexations will be shorter and therefore somewhat less expensive to publish than notices for municipal incorporations. Annexation notices will average \$250/newspaper. Incorporation notices will average \$350/newspaper.

Each notice for each meeting will run three times in at least two separate publications.

\$250 x 2 (newspapers) x 5 additional meetings
per year. (annexations) = 2,500

\$350 x 2 (newspapers) x 5 additional meetings
per year (incorporations) = 3,500

To ensure that notice is broadcast on radio and TV stations in the area as required by Section 4 of the bill, it will be necessary to pay for the service. It is estimated that each notice will require 30 seconds to broadcast. Radio broadcasts are estimated to cost \$15 each and television broadcasts are estimated to cost \$75 each. It is assumed that each notice will be broadcast on two radio stations and 1 television station. Because this requirement is new, it will apply to all 20 of the projected hearings.

\$15 x 3 (# of broadcasts) x 2 (# of stations)
x 20 (# of hearings) = 1,800

\$75 x 3 (# of broadcasts) x 20 (# of hearings) = 4,500

TOTAL: \$ 56,880

LOCAL BOUNDARY COMMISSION

949 EAST 36TH AVENUE, SUITE 404
ANCHORAGE, ALASKA 99501
PHONE: (907) 561-8588

April 7, 1989

The Honorable Peter Goll, Co-Chairman
The Honorable Max F. Gruenberg, Jr., Co-Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Representatives Goll and Gruenberg:

RE: COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 131 (C&RA)

This is to offer comments on behalf of the Local Boundary Commission (LBC) regarding CSHB 131 (C&RA), which is presently before your committee. This measure proposes to amend existing laws concerning the procedures of the LBC. In addition, the bill would (subject to approval of a Constitutional amendment proposed by CSHJR 26) impose limitations on certain municipal boundary changes.

The comments of the Commission are provided in two sections, the first addresses procedures. The second section of the Commission's comments concerns proposed standards for boundary changes.

I. COMMENTS CONCERNING PROPOSED CHANGES TO PROCEDURES

A. Hearings. Section 1 of the bill would increase the number of hearings which the LBC must conduct for a proposed incorporation from one to two. Section 6 would do the same for a proposed municipal boundary change (detachment or annexation) to be submitted to the legislature. Hearings must be held at least 30 days apart. One of the hearings may be conducted via teleconference.

It appears that the purpose of these and several other provisions of the bill is to ensure a more moderate pace in proceedings of the LBC. The Commission has already taken independent steps to accomplish this same objective, as well as to make other warranted improvements to its procedures.

Over the past two months, the LBC has conducted a series of meetings to contemplate desired changes to its procedures. As a result, the LBC is currently proposing to adopt a number of regulations and a set of bylaws which, the Commission believes, will address the legitimate concerns which have recently been raised concerning such matters.

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Adoption of these measures by the LBC to improve the existing regulations would seem to satisfy the intent of Section 3 of the bill. A copy of the proposed changes to the regulations and the proposed bylaws will be provided to you under separate cover.

Given the steps being taken by the LBC to improve its procedures, the Commission does not support a requirement that two hearings be conducted for every boundary change to be submitted to the legislature and for every incorporation. In most cases, only one hearing on such matters is necessary. If the Commission determines that more than one hearing is necessary or appropriate, it can (and, indeed, already does) conduct multiple hearings on a proposed boundary change or incorporation.

The LBC does not object to the proposed requirement for 30 days notice of a proposed incorporation or legislative review boundary change. In fact, an identical measure is included in the Commission's proposed amendments to its regulations.

With respect to teleconference hearings, the Commission's experience is that they are less effective than conventional hearings. In addition, teleconference hearings have not always resulted in significant cost savings. The Commission's experience with such matters has led it to adopt a policy that hearings will be conducted in a conventional fashion whenever possible.

B. Notice of Hearings. In addition to accommodating changes contained in Sections 1 and 6, Section 4 of the bill would require public service announcements of LBC hearings to be given "at least three times by public service announcements on radio and television stations in the area . . . and through print media and by posting in a public place".

The Commission understands from discussions with staff of the Alaska Broadcasting Commission that, contrary to common belief, radio and television stations are not obligated to broadcast public service announcements. In fact, the Commission has been advised that few, if any, commercial stations will broadcast public service announcements without a charge. While publicly owned stations might be more inclined to broadcast public service announcements, there is no practical way to ensure when and how frequently those announcements will be made, unless payment is involved (FCC regulations now permit public stations to charge for public service announcements from "non-profit groups" such as the State).

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The Commission supports provisions to enhance public awareness of its proceedings. However, here again, the LBC has already taken steps to expand the notice requirements even beyond those of this legislation (see Section I of enclosed "Report on Local Boundary Commission Worksessions").

C. Requirement for Majority of Full Membership. Section 5 of the bill would require that a majority of the full membership of the LBC must vote in favor of a proposed boundary change. Such provisions (as well as similar provisions concerning incorporations) already exist in regulations (see enclosed copy of 19 AAC 10.430 for incorporations and 19 AAC 10.580 for boundary changes).

D. Fiscal Impact. The Commission believes that it has already taken steps to remedy the procedural concerns intended to be addressed by CSHB 131 (C&RA). The improved procedures developed by the Commission will be implemented with a moderate increase in costs. However, to implement the provisions of CSHB 131 will be, in the judgment of the LBC, exceedingly expensive. The Commission understands from discussions with staff of the Department of Community and Regional Affairs that the annual fiscal impact of this measure is projected to be in excess of \$50,000.

II. COMMENTS CONCERNING PROPOSED LIMITATIONS ON BOUNDARY CHANGES

The Commission is greatly troubled by the specific standards proposed by Section 2 of the bill. That portion of the bill provides that uninhabited territory proposed for annexation must meet standards which are substantially higher than those which must be met for the inclusion of uninhabited territory in an area proposed for incorporation. These proposed standards consist of:

1. "the area to be annexed requires one or more services at a level not provided by the state that the municipality would be able to provide", or
2. "the health, welfare, or safety of the residents of the municipality is endangered by conditions existing or developing in the area being considered for annexation and the annexation will enable the municipality to relieve the conditions".

A. Provisions Establish Double Standard. Clearly, such provisions would severely discriminate against established municipalities that may need to expand their boundaries. For

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example, if a proposed new borough and an existing borough were competing to include the same uninhabited territory within their respective jurisdictions, the proposed new borough would have the overwhelming advantage. This would be the case even though annexation of the territory in question to the existing borough may satisfy far more of the relevant standards than would be satisfied by incorporating the territory in the proposed new borough (see enclosed copy of 19 AAC 10.835 governing competing petitions).

If the legislature desires to enact standards such as those set out in Section 2 of the bill, it should logically make those same provisions apply to all existing and future municipalities. In other words, in those cases where existing and proposed municipalities contain territories which do not meet the standards set out in Section 2 of the bill, those territories should be excluded from the municipalities. In reality, however, if such action were taken it would cause significant adverse consequences for virtually every borough and many cities in the state.

B. Example of Annexation Which Fails to Meet Proposed Standards. In 1974 (six years after it incorporated), the Haines Borough successfully petitioned for the annexation of approximately 317 square miles along the Chilkat Peninsula. This territory was virtually uninhabited. It appears to the Commission that the area in question did not then, nor does it now, satisfy either of the standards set out in Section 2 of the bill. Yet, the annexation was vitally important to the Borough.

As a result of the annexation, the Borough was able to generate badly needed revenues. For example, since 1980, the Borough has received an average of \$114,861 each year in National Forest Receipts. In addition, for the most recent year on record, the Borough received \$96,900 in PL 97-258 funds (federal payments in lieu of taxes) and also received \$146,749 in State shared raw fish taxes. Almost all of these funds were derived from the territory annexed in 1974. Together, these funds total \$358,510. A loss of such funding to the Borough would necessitate a projected increase of nearly 75% in the areawide property tax levy by the Borough (based upon 1988 areawide tax rate of 5.5 mills on total local assessed valuation of \$88,606,681).

C. Annexations Must be Viewed in Context. The preceding example illustrates the need to view an annexation proposal in the context of the characteristics which the annexation will

The Honorable Peter Goll
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bring to the entire municipality (as opposed to a consideration which is limited exclusively to the characteristics of the area proposed for annexation). Viewed in an isolated fashion, it would be difficult to see the merits of the annexation. However, when viewed in the context of the entire borough, it becomes more evident that the annexation was warranted.

The tax base of the Haines Borough was at the time, and still is, relatively weak (in 1988, its property tax base was 54% of statewide average per capita full value). As such, the annexation was essential in the further satisfaction of standards for incorporation of boroughs to "include all areas necessary for full development of municipal services" and to ensure that the region included the "financial resources capable of providing municipal services". In addition, the annexation provided greater satisfaction of the standard that the boundaries of the "borough conform generally to natural geography" (see enclosed copy of AS 29.05.031 - borough incorporation standards).

Similar examples could be provided for virtually every other borough and many cities in Alaska. The Commission will be pleased to provide additional examples, if you desire.

D. Annexations are Essential to Accommodate Change. It is important to remember that annexation offers the only way for a municipality to perfect its boundaries to accommodate changes which may have occurred after incorporation. A fundamental principle of local government established under the Constitution provides that "boundaries were to be left flexible in order to permit future adjustment to growth and changing requirements for the performance of regional functions" (source Borough Government in Alaska pp 39 - 40). Section 2 of the bill would severely alter that principle.

E. Proposed Standards are Reaction to Problems with Existing Structure. It is rather apparent that Section 2 of the bill stems from frustration and concern over recent actions of the Commission, particularly approval of the proposed annexation to the Fairbanks North Star Borough (FNSB). The type of conflicts generated by the FNSB annexation proposal are, unfortunately, likely to escalate until the legislature addresses growing problems with the delivery of local and regional services throughout Alaska. The Commission has formally raised concerns regarding such matters with the legislature for the past six years. Most recently, the Commission's January 26, 1989 report to the legislature contains a six page statement of these problems (see enclosed copy of Statement on Borough Government in Alaska).

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CONCLUSION

In conclusion, the Local Boundary Commission believes that the steps being taken on its own initiative to implement improvements to its procedures represent a more practical and comprehensive approach than that offered by CSHB 131. The Commission also believes very strongly that the standards proposed by Section 2 of the bill are inappropriate. Therefore, the Commission opposes CSHB 131. Further, the Commission again urges the legislature to address the problems relating to the current structure for the delivery of local and regional services throughout the state.

Thank you for considering these comments. If possible, I will be present when your committee takes up this measure to answer any questions or provide additional information.

Sincerely,



C. B. Bettisworth
Chairman

enclosures:

- "Report on Local Boundary Commission Worksessions"
- 19 AAC 10.430; 19 AAC 10.580 (regulations concerning voting by a majority of the full membership of the LBC)
- 19 AAC 10.835 (regulations governing competing petitions)
- "Statement on Borough Government in Alaska"

cc:

The Honorable Richard Shultz, Sponsor, HJR 26 and HB 131
The Honorable Eileen MacLean, Chairman, House C&RA Committee
The Honorable Ron Larson, Sponsor, HB 1
David Hoffman, Commissioner, DCRA
Scott Burgess, Executive Director, Alaska Municipal League

REPORT ON LOCAL BOUNDARY COMMISSION WORKSESSIONS
REGARDING PROCEDURES (January 30 - 31, 1989)

The following is a summary of the worksessions held by the Local Boundary Commission on January 30 and 31, 1989 to discuss procedures and rules to be used by the Commission. The Commission plans additional worksessions concerning this matter and intends to amend its existing regulations (19 AAC 10) to implement changes to its procedures.

Commission Members present:

C.B. Bettisworth, Chair
Shelley Dugan, Vice-Chair
Jo Anderson, Member
Ben Nageak, Member
Lamar Cotten, Member

DCRA Staff present

Jake Lestenkof (partial attendance)
Patrick Poland, Deputy Director, MRAD-Anchorage
Dan Bockhorst, Local Government Specialist

Others Present (partial attendance)

Phil Kelly, Aide to Senator Zharoff
Martha Stuart, Aide to Senate C&RA Committee
Louanne Christian, Aide to House C&RA Committee
Vern Roberts, Chignik City Administrator
Peter Froehlich, Assistant Attorney General
Marjorie Odland, Assistant Attorney General

I. PUBLIC NOTICE OF THE FILING OF A PETITION

A. FOR REGIONAL ACTIONS HAVING POTENTIAL FOR SUBSTANTIAL PUBLIC INTEREST (defined to include incorporations, dissolutions, legislative review annexations, step annexations, legislative review detachments and local action detachments which involve boroughs or unified municipalities).

1. All of the following parties located within the territory proposed for the change, and within each regional educational attendance area (REAA) and municipality adjoining the borough or unified municipality shall receive individual public notice of the filing of a petition:

- A. All municipalities (cities, boroughs, unified municipalities);
- B. The tribal council or recognized spokesperson of every unincorporated community having 25 or more residents;
- C. All ANCSA village corporations with core townships within the region or the adjoining regions;
- D. All ANCSA regional corporations organized for profit;
- E. All ANCSA regional non-profit corporations;
- F. Regional Educational Attendance Areas;
- G. Coastal Resource Service Areas;
- H. Regional Health providers;
- I. "Major property owners" (to the extent they are readily known).

2. All of the following additional parties shall receive individual notice of the petition:
 - A. Legislators (at a minimum, all legislators serving the region and the adjoining regions should be notified; for issues of statewide importance all legislators should be notified);
 - B. Media (newspapers, radio stations and television stations serving the areas in question);
 - C. The petitioners' representative;
 - D. The Local Boundary Commission;
 - E. Appropriate State and federal agencies;
 - F. Other parties which the Department believes would be interested in this matter (e.g. financial institutions in the event of a proposed dissolution).
 3. Notice described in 1 and 2 above shall be mailed via first class mail (except for that processed through the State mail distribution system). Certified mailings will not be used. Staff will prepare an affidavit of mailing identifying the date of the mailing and the mailing address for each party.
 4. Notice shall be published as display advertisements in newspapers of circulation in the regions specified. [Note: standards for publication (e.g. number of times, minimum size) to be developed at subsequent worksessions of LBC].
- B. FOR COMMUNITY ACTIONS HAVING POTENTIAL FOR SUBSTANTIAL PUBLIC INTEREST (defined to include incorporations, dissolutions, legislative review annexations, step annexations, legislative review detachments and local action detachments which involve cities).
1. All of the following parties located within 10 miles from the perimeter boundary of the proposed change and/or existing boundary of the city, whichever is further, shall be provided with individual notice.
 - A. All municipalities (cities, boroughs, unified municipalities);
 - B. The tribal council or recognized spokesperson of every unincorporated community having 25 or more residents;
 - C. All ANCSA village corporations with core townships within the defined area;
 - D. All ANCSA regional corporations organized for profit;
 - E. All ANCSA regional non-profit corporations;
 - F. Regional Educational Attendance Areas;
 - G. Coastal Resource Service Areas;
 - H. Regional Health providers;
 - I. "Major property owners" (to the extent they are readily known).

2. All of the following additional parties shall receive individual notice of the petition:
 - A. Legislators (at a minimum, all legislators serving the territory defined should be notified; for issues of statewide importance all legislators should be notified);
 - B. Media (newspapers, radio stations and television stations serving the areas in question);
 - C. The petitioners' representative;
 - D. The Local Boundary Commission;
 - E. Appropriate State and federal agencies;
 - F. Other parties which the Department believes would be interested in this matter (e.g. financial institutions in the event of a proposed dissolution).
3. Notice in 1 and 2 above shall be mailed via first class mail (except for that processed through the State mail distribution system). Certified mailings will not be used. Staff will prepare an affidavit of mailing identifying the date of the mailing and the mailing address for each party.
4. Notice shall be published as display advertisements in newspapers of circulation in the territory specified. [Note: standards for publication (e.g. number of times, minimum size) to be developed at subsequent worksessions of LBC].

C. FOR REGIONAL AND COMMUNITY ACTIONS HAVING LIMITED POTENTIAL PUBLIC INTEREST (defined to include mergers and consolidations involving boroughs, unified municipalities and cities, as well as local action annexations to boroughs, unified municipalities and cities).

Public notice of such types of actions will be much less than that described in I A and B. [Note: to be more clearly defined at subsequent worksessions of LBC]. Since mergers and consolidations involve a restructuring of existing governments, as opposed to a change in the boundaries of any government, notice will likely be limited to interested parties within the existing governments to be merged or consolidated.

With respect to local action annexations, there are three types of annexations. These are: annexations involving strictly municipally-owned property, those which have been requested by all of the property owners and resident voters in the territory proposed for annexation and those for which the annexation will be ultimately determined by an election of the voters within the territory. The overwhelming majority of these types of annexations are small in scale and are of little or no interest to the general public. In the event a local action proposal is

filed which has the potential for substantial public interest, appropriate notice will be given.

II. ADDITIONAL INFORMATION

Discussions were held by the LBC concerning the extent to which parties potentially interested in a particular proposal should be made responsible to ask for any information beyond that provided by the notice of the filing of the petition. These additional materials would include a copy of the petition, responsive briefs and written comments in favor or opposition to the petition, replies to the responsive material; from the petitioners' representative, correspondence from DCRA, DCRA draft reports, DCRA final reports, notice of meetings, hearings, et cetera. The Commission's discussion centered around the need to keep potentially interested parties informed, yet not incur undue costs of copying and mailing substantial materials to what would typically amount to 200 or more parties. The Commission was inclined limit the such information, UNLESS INDIVIDUALS SPECIFICALLY REQUESTED ADDITIONAL MATERIALS IN WRITING.

III. ADMINISTRATIVE PROCEDURES

Peter Froehlich, Assistant Attorney General, expressed the opinion that State Statutes [AS 29.05.100(b), 29.06.040(a), 29.06.130(b) and 29.06.500(b)] subject the Commission only to limited provisions of the Administrative Procedure Act. Specifically, these consist of AS 44.62.560 - 570 concerning a judicial appeal of a decision of the Commission.

Mr. Froehlich specifically indicated his belief that the provisions of AS 44.62.540 concerning reconsideration did not apply to the Commission. Mr. Froehlich suggested that the Commission adopt a regulation setting up a procedure for reconsideration based upon the process set out in the State court rules.

Mr. Froehlich recommended that the Commission adopt a regulation clearly establishing an effective date for its decisions.

The Commission discussed the need to formally adopt parliamentary rules. Assistant Attorneys General Marjorie Odland and Peter Froehlich recommended that the Commission adopt bylaws rather than a set of pre-established parliamentary rules. Ms. Odland indicated that she would provide the Commission with sample bylaws for consideration.

IV. SCHEDULE OF PROCEEDINGS

The Commission expressed the belief that a more moderate pace in future proceedings would likely accommodate nearly all of the concerns recently expressed regarding the procedures used by DCRA and the LBC.

It was agreed that the Commission should adopt a regulation allowing the Commission (or Chairman) to set a formal schedule for each proceeding. A typical schedule concerning DCRA and LBC activities leading to a decision concerning a legislative review boundary change, incorporation or dissolution was outlined as follows:

- STEP 1. Form and content of petition reviewed for compliance with law by DCRA. If form and content is accepted, individual public notice of the filing of petition is given. Arrangements are also made for publication in appropriate newspaper at least once each week for four weeks. (see sample notice - petition for dissolution of City of Akiachak). These tasks would typically be accomplished within 2 weeks.
- STEP 2. Chairman of the LBC sets the formal schedule for the proceedings. This would occur sometime around the 2nd or 3rd week of publication of the notice of the filing of the petition.
- STEP 3. Deadline for receipt of responsive briefs and written comments in support of or in opposition to the petition. This would be determined in Step 2, but would typically be set for at least 7 weeks following the distribution and initial publication of the notice of the filing of the petition.
- STEP 4. Deadline for receipt of answering brief from the petitioners' representative in reply to responsive briefs and written comments. This would be determined in Step 2, but would typically be set for 2 weeks following the deadline for responsive briefs.
- STEP 5. Distribution of draft report and recommendation on the petition by DCRA. This would typically occur 4 weeks following the deadline for the answering brief.
- STEP 6. Deadline for comment on DCRA draft report and recommendation. Possible public meeting(s) conducted on the petition by DCRA. These activities would typically occur 4 weeks following the distribution of the draft report.

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**IMPORTANT NOTICE
FILING FOR DISSOLUTION OF THE CITY OF
AKIACHAK**

Voters of the community of Akiachak (located approximately 20 miles northeast of Bethel) have petitioned the State of Alaska to dissolve their city government. A copy of the petition and supporting materials is available for review at the Akiachak Native Community Office in Akiachak and at the Department of Community and Regional Affairs (DCRA) in Bethel and Anchorage.

BOUNDARIES. The boundaries of the city proposed for dissolution encompass approximately 12 square miles in and around the community of Akiachak.

WRITTEN COMMENT PERIOD. Individuals may file briefs or written comments in support of or opposition to this petition. To ensure consideration, such materials must be submitted in accordance with the schedule set by the Chairman of the Local Boundary Commission (LBC) as outlined below.

SCHEDULE. The Chairman of the LBC will formally set the schedule for action by the LBC concerning this matter on February 27, 1989. The following is the tentative schedule of the proceedings.

- 03/13/89 - Deadline for filing briefs and/or written comments in support of or opposition to the proposed dissolution.
- 03/27/89 - Deadline for submission of answering briefs by petitioners' representative.
- 04/24/89 - DCRA releases (for public review) draft report and recommendation to the LBC concerning the proposed dissolution.
- 05/22/89 - Deadline for receipt of comments on draft report and recommendation from DCRA.
- 06/05/89 - DCRA releases final report and recommendation.
- 06/26/89 - LBC conducts hearing in Akiachak.
- 11/07/89 - State conducts election on dissolution (assuming LBC approves petition - actual election date will be set by Director of Division of Elections).

SPECIAL NOTICE TO CREDITORS AND OTHERS WITH A FINANCIAL INTEREST. Any party to whom a debt is owed by the City of Akiachak or who holds assets of the City of Akiachak is asked to notify (INSERT NAME, ADDRESS AND TELEPHONE NUMBER OF AUDITOR).

FURTHER INFORMATION. Questions and requests for a copy of the petition for dissolution, DCRA's reports, briefs, correspondence and/or other materials concerning this matter should be directed to Dan Bockhorst, Department of Community and Regional Affairs, 949 East 36th Avenue, Suite 405, Anchorage, AK 99508 (telephone: 561-8586).

STANDARDS ESTABLISHED BY THE LOCAL BOUNDARY COMMISSION CONCERNING THE ETHICAL CONDUCT OF COMMISSION MEMBERS PROHIBIT INDIVIDUAL MEMBERS OF THE COMMISSION FROM DISCUSSING ANY ASPECT OF THIS MATTER, OTHER THAN PROCEDURES TO BE USED.

public comment on a particular issue or issues. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

19 AAC 10.430. DECISIONAL MEETING. (a) Within 90 days after a public hearing held pursuant to 19 AAC 10.400, the commission shall convene a decisional meeting to examine all aspects of the written and oral testimony before it, to consider other relevant and reliable information available to it, and to enter a decision. A majority of the total membership of the commission voting in favor of accepting a proposed incorporation is needed to decide the issue. The votes for and against the proposed incorporation shall be recorded. A petition is rejected if not accepted. If unable to meet as one body, the commission will, in its discretion, provide for a conference telephone or radio phone decisional meeting open to the public at a time and place to be determined by the commission.

(b) The commission will keep written minutes summarizing its decisional meetings. The minutes approved by the commission are a public record. The votes taken by the commission shall be entered into the minutes.

(c) Within 30 days after the date of reaching its decision, the commission will prepare a written statement of its decision, including an explanation of the major considerations upon which it relied in reaching its decision.

(d) The commission will immediately mail its written decision to the petitioner and to other interested parties who give written notice that they desire a copy of the decision. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

19 AAC 10.440. PUBLIC MEETINGS. The commission will, in its discretion and before consideration of a petition requesting incorporation of a municipality, require a petitioner to conduct informational meetings or hearings in the area proposed for incorporation to acquaint the residents of the area with the purposes sought to be accomplished and the benefits which are expected to be derived by the residents should the incorporation be made and to solicit public opinions on the proposed incorporation. The commission will, in its discretion, require that transcripts or minutes be taken of the meetings or hearings for the commission's use and require that the petitioner's representative certify to the commission that the meetings or hearings were conducted as directed by the commission. (Eff. 2/21/82, Register 81)

Authority: Art. X
AS 41

Article

- Section
- 450. Applicability
- 460. Petition
- 470. Petitioner
- 480. Form and content
- 490. Exhibits
- 500. Briefs
- 510. Service
- 520. Review of petition
- 530. Notice of petition

19 AAC 10.460 — 19 AAC 10.469. Preceding initial publication. (Eff. 2/21/82, 1)

Authority: Art. X
AS 41

19 AAC 10.470. boundary change by filing an order with the commission

Authority: Art. X
AS 41

Editor's notes based on a form 10.010.

- 19 AAC 10.480.**
- (1) the geographic boundary is to be changed;
- (2) the geographic boundary is to be changed;
- (3) at least one territory to be solved, or
- (4) the commission
- (b) The petitioner

Authority: Art. X
AS 41

prescribed in this chapter. The brief shall include a discussion of the considerations set forth in 19 AAC 10.500. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.507

Editor's notes. — 19 AAC 10.550 is based on a former version of 19 AAC 10.100.

19 AAC 10.560. REPLY BRIEF. Before a hearing is held pursuant to 19 AAC 10.540, the petitioner may file a brief in reply to any new matter raised in an answering brief. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.560 is based on a former version of 19 AAC 10.110.

19 AAC 10.570. DEPARTMENT REPORT. The department will prepare a report on the proposed boundary change. The report will summarize the issues raised in the petition and briefs and may comment upon those issues or any other issue which the department considers relevant to the proposal. The report will contain recommendations to the commission. The report will be filed with the commission before the date of the hearing established under 19 AAC 10.540. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.570 is based on a former version of 19 AAC 10.120.

19 AAC 10.580. HEARING AND DECISIONAL MEETING. The commission's public hearing and decisional meeting concerning a proposed boundary change will be conducted in the manner set forth in 19 AAC 10.420 — 19 AAC 10.430. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.580 is based on former versions of 19 AAC 10.130 and 19 AAC 10.140.

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19 AAC 10.820. SEVERABILITY OF PARTS OF REGULATIONS. The provisions of this chapter are severable, and if any provision of this chapter is declared invalid by a court of competent jurisdiction, the invalidity does not affect the remaining provisions of this chapter. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.820 is based on a former version of 19 AAC 20.010.

19 AAC 10.830. GENERAL PROVISIONS. (a) Nothing in this chapter may be construed to require the commission to approve a boundary change which the commission determines not to be in the best interest of sound local government.

(b) The enumeration in this chapter of standards or factors for consideration may not be construed as exclusive of other factors which, in the view of the commission, are relevant to the decision in question.

(c) Before incorporation of a borough located wholly or partially within an existing borough or of a city located wholly or partially within an existing city may become effective, the commission will submit the proposed incorporation to the legislature in the manner provided for boundary changes. In addition, the commission will, in its discretion, condition the incorporation on approval by a majority of the voters of the existing borough or city. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.830 is based on a former version of 19 AAC 20.020.

19 AAC 10.835. COMPETING PETITIONS. (a) The commission will, in its discretion, act concurrently upon separate petitions filed under this chapter which embrace some or all of the same territory.

(b) Notwithstanding other provisions of this chapter, the commission will, in its discretion, postpone proceedings on a petition filed under this chapter in order to allow concurrent action on another existing or anticipated petition that will embrace some or all of the same territory. Except as provided in (c) of this section, in order to be considered concurrently, a competing petition must be received by the department within 90 days after the date of receipt of an earlier petition that embraces some or all of the same territory.

(c) In addition to the 90-day filing period specified in (b) of this section, the commission will, in its discretion, allow a 60-day or less

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extension for receipt of a competing petition to be considered concurrently with an earlier petition. An extension under this subsection will not be granted by the commission if it will delay legislative action under art. X, sec. 12 of the Alaska Constitution on the earlier petition if the earlier petition is approved by the commission under this chapter.

(d) In considering competing petitions concurrently, the commission will give precedence to the petition that, in the judgment of the commission, serves the best interest of the state. In determining the best interest of the state, the commission will consider, but is not limited to, the following factors:

(1) an existing or prospective municipality's ability to better serve the territory embraced by the competing petitions;

(2) the extent to which approval of a petition would affect the financial viability of the existing or prospective municipalities that have filed competing petitions; and

(3) the extent to which each competing petition satisfies the standards required under this chapter for the action proposed by the competing petitions.

(e) The provisions of this section supersede the common law relating to the doctrine of prior jurisdiction to control competing petitions submitted under this chapter. (Eff. 8/19/88, Reg. 107)

Authority: Art. X, Sec. 12, Ak. Const.
AS 29.06.040

19 AAC 10.840. DEFINITIONS. (1) "annexation" means an alteration of municipal boundaries which adds territory;

(2) "commission" means the Local Boundary Commission;

(3) "commissioner" means the Commissioner of the Department of Community and Regional Affairs;

(4) "contiguous" means territory which is immediately adjacent to or which is separated only by natural or artificial barriers which do not disrupt or impede the supplying or receiving of municipal services;

(5) "date of annexation, detachment, merger or dissolution" means the day on which the proposed boundary change becomes effective pursuant to Article X, Section 12, of the Alaska Constitution;

(6) "department" means the Department of Community and Regional Affairs;

(7) "detachment" means an alteration of municipal boundaries which deletes territory;

(8) "differential taxation zone" means an area within the boundaries of a city which receives a different level of service than that

STATE OF ALASKA LOCAL BOUNDARY COMMISSION

949 EAST 36TH AVENUE, SUITE 405, ANCHORAGE, ALASKA 99508
TELEPHONE 561-8586

C.B. BETTISWORTH, CHAIRPERSON
JO ANDERSON, 1ST JUDICIAL DISTRICT
BEN NAGEAK, 2ND JUDICIAL DISTRICT
LAMAR COTTEN, 3RD JUDICIAL DISTRICT
SHELLEY DUGAN, VICE CHAIRPERSON, 4TH JUDICIAL DISTRICT

STATEMENT ON BOROUGH GOVERNMENT IN ALASKA

The Local Boundary Commission (LBC) was established under Alaska's Constitution to deal with certain critical local government matters. Its constitutional and statutory duties include making studies of local government boundary problems and judging proposals for borough incorporation and annexation. The LBC consists of five members appointed by the Governor. It is independent of all State agencies and other boards.

Due to a substantial increase in interest concerning borough government, conflicts over regional jurisdiction have begun to surface in several areas of the state (e.g. annexation by existing boroughs vs. incorporation of new boroughs). The LBC feels that dealing with such matters on a piecemeal basis is neither efficient nor effective. Therefore, the LBC has developed this statement in an effort to generate discussion among citizens of the state, policy makers and lawmakers concerning future regional service delivery in Alaska. This statement was formally adopted by the LBC on December 2, 1988.

INTRODUCTION

The structure for the delivery of regional services in Alaska is in need of improvement. It can be argued that the evolution of regional government over the past thirty years appears to have fallen short of the intent of the State Constitution. The present system for the delivery of regional services is inequitable and, in some respects, inefficient. While there is a strong need to change the system in order to improve the delivery of local government services to all Alaskans, substantial barriers stand in the way.

CONSTITUTIONAL INTENT FOR THE FORMATION OF BOROUGHS¹

The State Constitution provides the framework for borough governments. Article X, Section 3 of the Constitution provides that "The entire state shall be

divided into boroughs, organized or unorganized." Senator Vic Fischer, a member of the Committee on Local Government at the Constitutional Convention, wrote that the initial principles set forth by the Committee included the guideline that "*provision should be made for subdividing all Alaska into local units (boroughs) based on economic, geographic, social, and political factors; initially not all need be organized*" (emphasis added).²

It was clearly the position of the Local Government Committee that "*although voluntary incorporation was preferable, organized boroughs should be created without approval in the area if considered necessary by the state.*" Further, the Committee believed that "*the state may want to mandate incorporation if an area is deemed to have reached a position where it should take on the burden of its own government.*"³

INTENT VS. IMPLEMENTATION

During the first four years of statehood, only one borough had formed. The area encompassed by that borough was a mere 873 of Alaska's 586,400 square miles. By 1963, the need for the creation of boroughs in other areas of the state became so apparent that the Legislature was willing to adopt "*one of the most controversial statutes ever passed by an Alaskan legislature*" — the Mandatory Borough Act.⁴ This act required the formation of boroughs in the regions encompassing Ketchikan, Juneau, Sitka, Kodiak, the Kenai Peninsula, Anchorage, the Matanuska and Susitna Valleys, and Fairbanks.

Presumably, boroughs were mandated for those regions because, in the words of the Local Government Committee, they were "*considered necessary by the state*" and each area was "*deemed to have reached a position where it should take on the burden of its own government.*"

public comment on a particular issue or issues. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

19 AAC 10.430. DECISIONAL MEETING. (a) Within 90 days after a public hearing held pursuant to 19 AAC 10.400, the commission shall convene a decisional meeting to examine all aspects of the written and oral testimony before it, to consider other relevant and reliable information available to it, and to enter a decision. A majority of the total membership of the commission voting in favor of accepting a proposed incorporation is needed to decide the issue. The votes for and against the proposed incorporation shall be recorded. A petition is rejected if not accepted. If unable to meet as one body, the commission will, in its discretion, provide for a conference telephone or radio phone decisional meeting open to the public at a time and place to be determined by the commission.

(b) The commission will keep written minutes summarizing its decisional meetings. The minutes approved by the commission are a public record. The votes taken by the commission shall be entered into the minutes.

(c) Within 30 days after the date of reaching its decision, the commission will prepare a written statement of its decision, including an explanation of the major considerations upon which it relied in reaching its decision.

(d) The commission will immediately mail its written decision to the petitioner and to other interested parties who give written notice that they desire a copy of the decision. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

19 AAC 10.440. PUBLIC MEETINGS. The commission will, in its discretion and before consideration of a petition requesting incorporation of a municipality, require a petitioner to conduct informational meetings or hearings in the area proposed for incorporation to acquaint the residents of the area with the purposes sought to be accomplished and the benefits which are expected to be derived by the residents should the incorporation be made and to solicit public opinions on the proposed incorporation. The commission will, in its discretion, require that transcripts or minutes be taken of the meetings or hearings for the commission's use and require that the petitioner's representative certify to the commission that the meetings or hearings were conducted as directed by the commission. (Eff. 2/21/82, Register 81)

Authority: Art. X
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Article

Section
450. Applicability
460. Petitioner
470. Petitioner
480. Form and content
490. Exhibits
500. Briefs
510. Service
520. Review of petition
530. Notice of petition

19 AAC 10.460 — 19 AAC 10.470. Proceeding initiated by filing an original or copy with the commission. (Eff. 2/21/82, Register 81)

Authority: Art. X
AS 44

19 AAC 10.480. boundary change by filing an original or copy with the commission.

Authority: Art. X
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Editor's notes based on a form 10.010.

19 AAC 10.490.
(1) the geographic area to be changed;
(2) the geographic area of the territory is located;
(3) at least one person in the territory to be changed, or interested party, has been contacted;
(4) the commission has received a petition from the petitioner.

Authority: Art. X
AS 44

prescribed in this chapter. The brief shall include a discussion of the considerations set forth in 19 AAC 10.500. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 10 AAC 10.550 is based on a former version of 19 AAC 10.100.

19 AAC 10.560. REPLY BRIEF. Before a hearing is held pursuant to 19 AAC 10.540, the petitioner may file a brief in reply to any new matter raised in an answering brief. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.560 is based on a former version of 19 AAC 10.110.

19 AAC 10.570. DEPARTMENT REPORT. The department will prepare a report on the proposed boundary change. The report will summarize the issues raised in the petition and briefs and may comment upon those issues or any other issue which the department considers relevant to the proposal. The report will contain recommendations to the commission. The report will be filed with the commission before the date of the hearing established under 19 AAC 10.540. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.570 is based on a former version of 19 AAC 10.120.

19 AAC 10.580. HEARING AND DECISIONAL MEETING. The commission's public hearing and decisional meeting concerning a proposed boundary change will be conducted in the manner set forth in 19 AAC 10.420 — 19 AAC 10.430. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.580 is based on former versions of 19 AAC 10.130 and 19 AAC 10.140.

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19 AAC 10.820. SEVERABILITY OF PARTS OF REGULATIONS. The provisions of this chapter are severable, and if any provision of this chapter is declared invalid by a court of competent jurisdiction, the invalidity does not affect the remaining provisions of this chapter. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.820 is based on a former version of 19 AAC 20.010.

19 AAC 10.830. GENERAL PROVISIONS. (a) Nothing in this chapter may be construed to require the commission to approve a boundary change which the commission determines not to be in the best interest of sound local government.

(b) The enumeration in this chapter of standards or factors for consideration may not be construed as exclusive of other factors which, in the view of the commission, are relevant to the decision in question.

(c) Before incorporation of a borough located wholly or partially within an existing borough or of a city located wholly or partially within an existing city may become effective, the commission will submit the proposed incorporation to the legislature in the manner provided for boundary changes. In addition, the commission will, in its discretion, condition the incorporation on approval by a majority of the voters of the existing borough or city. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.830 is based on a former version of 19 AAC 20.020.

19 AAC 10.835. COMPETING PETITIONS. (a) The commission will, in its discretion, act concurrently upon separate petitions filed under this chapter which embrace some or all of the same territory.

(b) Notwithstanding other provisions of this chapter, the commission will, in its discretion, postpone proceedings on a petition filed under this chapter in order to allow concurrent action on another existing or anticipated petition that will embrace some or all of the same territory. Except as provided in (c) of this section, in order to be considered concurrently, a competing petition must be received by the department within 90 days after the date of receipt of an earlier petition that embraces some or all of the same territory.

(c) In addition to the 90-day filing period specified in (b) of this section, the commission will, in its discretion, allow a 60-day or less

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extension for receipt of a competing petition to be considered concurrently with an earlier petition. An extension under this subsection will not be granted by the commission if it will delay legislative action under art. X, sec. 12 of the Alaska Constitution on the earlier petition if the earlier petition is approved by the commission under this chapter.

(d) In considering competing petitions concurrently, the commission will give precedence to the petition that, in the judgment of the commission, serves the best interest of the state. In determining the best interest of the state, the commission will consider, but is not limited to, the following factors:

(1) an existing or prospective municipality's ability to better serve the territory embraced by the competing petitions;

(2) the extent to which approval of a petition would affect the financial viability of the existing or prospective municipalities that have filed competing petitions; and

(3) the extent to which each competing petition satisfies the standards required under this chapter for the action proposed by the competing petitions.

(e) The provisions of this section supersede the common law relating to the doctrine of prior jurisdiction to control competing petitions submitted under this chapter. (Eff. 8/19/88, Reg. 107)

Authority: Art. X, Sec. 12, Ak. Const.
AS 29.06.040

19 AAC 10.840. DEFINITIONS. (1) "annexation" means an alteration of municipal boundaries which adds territory;

(2) "commission" means the Local Boundary Commission;

(3) "commissioner" means the Commissioner of the Department of Community and Regional Affairs;

(4) "contiguous" means territory which is immediately adjacent to or which is separated only by natural or artificial barriers which do not disrupt or impede the supplying or receiving of municipal services;

(5) "date of annexation, detachment, merger or dissolution" means the day on which the proposed boundary change becomes effective pursuant to Article X, Section 12, of the Alaska Constitution;

(6) "department" means the Department of Community and Regional Affairs;

(7) "detachment" means an alteration of municipal boundaries which deletes territory;

(8) "differential taxation zone" means an area within the boundaries of a city which receives a different level of service than that

STATE OF ALASKA LOCAL BOUNDARY COMMISSION

949 EAST 36TH AVENUE, SUITE 405, ANCHORAGE, ALASKA 99508
TELEPHONE 561-8586

C.B. BETTISWORTH, CHAIRPERSON
JO ANDERSON, 1ST JUDICIAL DISTRICT
BEN NAGEAK, 2ND JUDICIAL DISTRICT
LAMAR COTTEN, 3RD JUDICIAL DISTRICT
SHELLEY DUGAN, VICE-CHAIRPERSON, 4TH JUDICIAL DISTRICT

STATEMENT ON BOROUGH GOVERNMENT IN ALASKA

The Local Boundary Commission (LBC) was established under Alaska's Constitution to deal with certain critical local government matters. Its constitutional and statutory duties include making studies of local government boundary problems and judging proposals for borough incorporation and annexation. The LBC consists of five members appointed by the Governor. It is independent of all State agencies and other boards.

Due to a substantial increase in interest concerning borough government, conflicts over regional jurisdiction have begun to surface in several areas of the state (e.g. annexation by existing boroughs vs. incorporation of new boroughs). The LBC feels that dealing with such matters on a piecemeal basis is neither efficient nor effective. Therefore, the LBC has developed this statement in an effort to generate discussion among citizens of the state, policy makers and lawmakers concerning future regional service delivery in Alaska. This statement was formally adopted by the LBC on December 2, 1988.

INTRODUCTION

The structure for the delivery of regional services in Alaska is in need of improvement. It can be argued that the evolution of regional government over the past thirty years appears to have fallen short of the intent of the State Constitution. The present system for the delivery of regional services is inequitable and, in some respects, inefficient. While there is a strong need to change the system in order to improve the delivery of local government services to all Alaskans, substantial barriers stand in the way.

CONSTITUTIONAL INTENT FOR THE FORMATION OF BOROUGHS¹

The State Constitution provides the framework for borough governments. Article X, Section 3 of the Constitution provides that "The entire state shall be

divided into boroughs, organized or unorganized." Senator Vic Fischer, a member of the Committee on Local Government at the Constitutional Convention, wrote that the initial principles set forth by the Committee included the guideline that "provision should be made for subdividing all Alaska into local units (boroughs) based on economic, geographic, social, and political factors; initially not all need be organized" (emphasis added).²

It was clearly the position of the Local Government Committee that "although voluntary incorporation was preferable, organized boroughs should be created without approval in the area if considered necessary by the state." Further, the Committee believed that "the state may want to mandate incorporation if an area is deemed to have reached a position where 'it should take on the burden of its own government'."³

INTENT VS. IMPLEMENTATION

During the first four years of statehood, only one borough had formed. The area encompassed by that borough was a mere 873 of Alaska's 586,400 square miles. By 1963, the need for the creation of boroughs in other areas of the state became so apparent that the Legislature was willing to adopt "one of the most controversial statutes ever passed by an Alaskan legislature" — the Mandatory Borough Act.⁴ This act required the formation of boroughs in the regions encompassing Ketchikan, Juneau, Sitka, Kodiak, the Kenai Peninsula, Anchorage, the Matanuska and Susitna Valleys, and Fairbanks.

Presumably, boroughs were mandated for those regions because, in the words of the Local Government Committee, they were "considered necessary by the state" and each area was "deemed to have reached a position where it should take on the burden of its own government."

Following the Mandatory Borough Act, only four more boroughs were formed. Today, more than 30 years after Alaskans ratified the State Constitution, only one-third of the state lies within boroughs.

THE PRESENT SYSTEM OF GOVERNMENT IS INEQUITABLE

Flaws in the present system become apparent when an examination is made of who bears the burden of providing municipal services. Boroughs are obligated by law to provide certain services, including education. Education is the largest expenditure of virtually every borough. The budgets of some boroughs dedicate as much as 90% or more of their total revenues for education.

Residents of municipal school districts will contribute more than \$125 million statewide to support the operation of their schools during this year.⁵ Substantial additional local funds will be spent on debt service for capital improvements to educational facilities in municipal school districts.

However, those who live outside municipal school districts pay no taxes in support of school operations or capital construction. As a consequence, the State has to provide substantially higher financial aid to the non-municipal school districts. In fact, 25% of the total State aid for operation of schools is dedicated to non-municipal school districts. The student population of these districts equals 12.7% of the total student population in the state.⁶

Ironically, one of the principal factors leading to the 1963 Mandatory Borough Act was the desire to "provide for tax equalization." Representative John L. Rader, the author of the Act, noted that, "if tax equalization was to be meaningful, it could not be piecemeal. Mandatory incorporation of boroughs would be necessary in all areas which could feasibly be included within a borough and which did not incorporate on local initiative" (emphasis added).

While education funding epitomizes the inequities in the current structure, it alone is not the only disparity. Similar concerns can be expressed over public safety, maintenance of transportation facilities, public planning and other services. There are a number of regions in Alaska where no taxes are levied in support of public services.

THE DISTRIBUTION OF RESOURCES IS INEQUITABLE

A recent study by the Department of Community and Regional Affairs noted vast inequities in the resources available to support existing and potential boroughs in the state. Nowhere is this more evident than in the area of property available for taxation. On the prosperous end of the spectrum, one borough in Alaska enjoys a property tax base equal to \$11,024,197 per student. The tax base of the borough on the other end of the spectrum is less than 2% of that figure (\$143,583 per student).

Like boroughs, some unincorporated regions of the state have substantial resources and some have few. For example, one unincorporated region has a potential tax base amounting to \$2,654,954 per student.⁴ A number of other unincorporated regions of the state have so little in the way of resources, that there is virtually no potential that any borough could be formed *under the present structure*. However, property values are not the only measure of a region's ability to support a borough. A number of regions may have limited property values but contain substantial resources (e.g. fish and timber) which could serve as a means to support a borough. The disparities in resource distribution are a major impediment to the formation of boroughs in several regions throughout Alaska.

STATE FINANCIAL AID PROGRAMS NEED MODIFICATION

Some of the State's most important municipal financial aid programs (e.g. school foundation formula, municipal assistance, state revenue sharing and state-shared fisheries taxes) have traits which warrant examination.

The inequity of the school foundation formula with respect to unincorporated regions vs. municipal school districts was discussed earlier. However, there are other significant inequities in that program. For example, municipal school districts are required to contribute to their schools, the lesser of: 1) the equivalent of a 4 mill property tax or 2) 35% of a level of "basic need" calculated by the State. Thirty-one of the state's thirty-three municipal school districts fall under the requirement to contribute the 4 mill equivalent. However, the other two fall under the optional provision.³ Both of these municipalities enjoy relatively high

property values. In one case, the law requires that the borough contribute a millage rate equivalent of only 0.33 mills in support of education. *This is only one-twelfth of the amount required for the 31 other municipal school districts.* Elimination of this inequity would save the State in excess of \$10 million annually.¹⁰

Inequities are found in programs other than those relating to education. The Municipal Assistance Program has elements which are not only inequitable, but extremely arbitrary. Under that program, a borough formed after June, 1977 with a population outside of cities ranging from 2,207 to 4,097 would receive vastly greater aid over what it would receive if its population were either higher or lower by even one person. Thus, a new borough with a population of 2,207 would receive nearly \$1.4 million in annual program funds while a borough with a population of 2,206 would receive less than \$200,000 in annual payments.

Policy concerns abound with respect to factors used in the State Revenue Sharing Program (e.g. population and local tax effort determination). Concerns over perceived inequities in this program have led to court challenges in the past.

The structure of the State-shared fisheries tax program actually serves as a substantial disincentive to the formation of boroughs in certain areas of the state. Under the present law, some cities outside of boroughs would lose several hundreds of thousands of dollars in annual program payments if their regions incorporated.

SOME BOROUGH BOUNDARIES ARE NOT REASONABLE

Some of today's boroughs have boundaries which present unique problems for efficient delivery of regional services. An interesting example of this is the Haines Borough. Klukwan, which is located well within the borders of the borough, exists as a "jurisdictional hole" in the borough. Educational services in Klukwan are not provided by the borough, but by the State operated Chatham Regional Educational Attendance Area (REAA). The seat of the school district is located in Angoon, a community approximately 170 air miles distant. It is apparent that a more reasonable approach to serving Klukwan's education needs would likely be through the borough surrounding it.

It should also be noted that the boundaries of four of the eight boroughs formed pursuant to the mandatory

Borough Act were not originally set according to standards used today. Rather, those boroughs had their boundaries set along State election district lines. The LBC substantially modified the boundaries of one of those boroughs upon petition shortly after incorporation. However, the boundaries of the remaining three boroughs are substantially unchanged.¹¹ Their borders would not necessarily meet today's standards for the formation of boroughs. Boundaries of other boroughs in the state have not necessarily kept pace with development within their regions.

CURRENT STRUCTURE IS INEFFICIENT

The present configuration of school districts surrounded by other school districts is one example of the inefficiencies of the current structure. Regardless of the size of each district (which can be either an REAA, a first class/home rule city in the unorganized borough, or a borough) each maintains independent administrative structures. Establishing boroughs throughout the state would consolidate many of the smaller school districts and produce millions of dollars in savings throughout the state. The most dramatic example of this can be found in Southeast Alaska. If a borough were formed along the lines of the Southeast Island REAA (including Metlakatla), eight separate school districts would be consolidated into one. It is projected that savings from reduced administrative costs from this one consideration alone would total \$1,400,000.¹²

BARRIERS TO CHANGE

Unless there are overwhelming advantages to entice residents of a region to form a borough, it seems clear that if most Alaskans were given a choice, they would prefer to remain outside any regional government. Before the mandatory creation of their borough, residents of Anchorage rejected a proposal to incorporate by a margin of more than 3 to 1. Residents of Fairbanks also rejected a voluntary borough by a margin of nearly 3 to 2.¹³ It is even more telling that today nearly 96% of borough residents live in boroughs which were formed under the Mandatory Borough Act.

CONCLUSION AND RECOMMENDATIONS

The LBC has formed the following conclusions:

- Because of the disparity of resources and problems with current State aid programs, a comprehen-

sive evaluation of formulas for State aid to municipalities and related matters is warranted.

- It is likely that there are unincorporated regions of the state which are presently able to support borough government. A restructuring of funding programs could likely extend financial viability for borough formation to all regions of the state.
- The concept of home rule boroughs seems to offer the greatest opportunity for residents of a region to tailor the form of government to best meet their needs. Under home rule, residents of each new borough would adopt a charter (constitution) establishing the powers and duties of the borough. State law requires only that a home rule borough provide areawide education and planning (as well as tax assessment and collection, if necessary).
- Few regions of the state are likely to seek formation of boroughs through the local initiative process.
- There is a need to re-examine existing borough boundaries.

Therefore, the LBC recommends that the legislature carefully consider the circumstances discussed in this statement and examine alternative means to deal with the issues raised. Although there may be several others, the following alternatives would seem appropriate for consideration: 1) identifying and eliminating disincentives for the formation of boroughs, 2) revising State laws and programs to provide greater equity in the distribution of financial aid to municipalities, 3) providing for the incorporation of boroughs only in those areas which are presently financially viable and which otherwise meet the standards for borough formation and 4) providing for the formation of boroughs in all parts of the state, coupled with a mechanism to ensure that all boroughs created in this fashion are financially viable.

These recommendations of the LBC have not been made lightly. It is recognized that any proposal to change the status quo is certain to generate intense opposition. Further, it is recognized that the issues and problems identified in this statement will not be resolved overnight and will require the commitment of substantial resources. Nonetheless, this statement is issued as a good faith attempt to carry out the constitutional and statutory duties of the LBC and to seek improvements in the delivery of regional services throughout the state.

While this statement has focused largely on problems concerning the current structure, readers are encouraged to consider the positive aspects of the issue. The creation of boroughs throughout the state would provide residents with a meaningful responsibility and interest in the development of each region. Boroughs offer effective tools to deal with a number of the social problems affecting many parts of Alaska (e.g. alcohol control and mental health).

Further, by improving economies of scale, a borough may be able to offer vast improvements in the delivery of services within a region. Improvements to the structure of service delivery will become even more critical as State funds available for public services continue to shrink.

FOOTNOTES

¹ As used in this statement, the term "borough" means organized boroughs and unified municipalities.

² Victor Fischer, Alaska's Constitutional Convention (Fairbanks: University of Alaska Press, 1975) p. 119.

³ Ibid, p. 120.

⁴ Ronald C. Cease and Jerome R. Saroff, The Metropolitan Experiment in Alaska - A Study of Borough Government (New York: Frederick A. Praeger, Publisher, 1968) p. 32.

⁵ Department of Education, Alaska Public School Foundation Funding Program (March 21, 1988), p. 1.

State aid to the total of daily member- while projected total schools is

pp. 87-89, 93,

and Regional Af- Anchorage; Janu- for a discussion of other resources operated regions.

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school district to 4 mill equivalent or 2) deductible PL-874), a result in the current year. have the districts with than a 4 mill equivalent 42 mills in the other case). in the formula could be equalization require- port of schools.

the Fairbanks North Star some 23,110 square borough was incorporated borough Act, the LBC approved 17,182 square miles to the some 1,333 square miles to the Kenai, Anchorage and boroughs remain largely un- established 25 years ago.

A New Mandatory Borough
Costs and Potential Revenues of
by House Research Agency
Legislature, February, 1988.

p. 30.

(The following page is a map of Alaska showing which regions of the State are incorporated and which are not.)



Unified Home Rule Municipalities

1. Municipality of Anchorage
2. City and Borough of Juneau
3. City and Borough of Sitka

Home Rule Boroughs

4. North Slope Borough
5. Northwest Arctic Borough

Second Class Boroughs

6. Aleutians East Borough
7. Bristol Bay Borough
8. Fairbanks North Star Borough
9. Kenai Peninsula Borough
10. Ketchikan Gateway Borough
11. Kodiak Island Borough
12. Matanuska-Susitna Borough

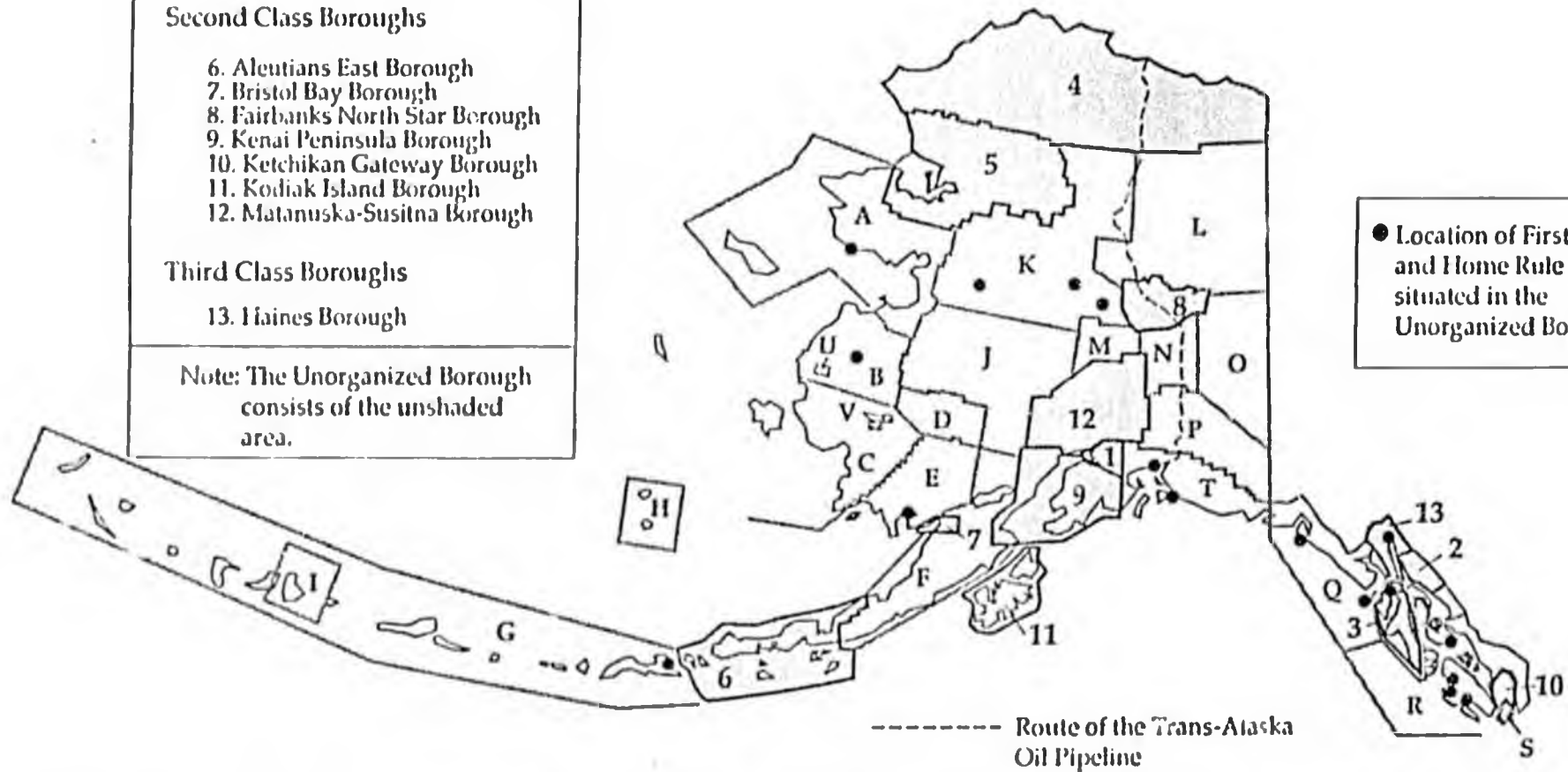
Third Class Boroughs

13. Haines Borough

Note: The Unorganized Borough consists of the unshaded area.

Regional Educational Attendance Areas

- | | |
|---------------------|-------------------------------|
| A. Bering Stralts | L. Yukon Flats |
| B. Lower Yukon | M. Railbelt |
| C. Lower Kuskokwim | N. Delta/Greely |
| D. Kuspuk | O. Alaska Gateway |
| E. Southwest Region | P. Copper River |
| F. Lake & Peninsula | Q. Chatham |
| G. Aleutian Region | R. Southeast Island |
| H. Pribilof Islands | S. Annette Island |
| I. Adak Region | T. Chugach |
| J. Iditarod Area | U. Kashunamiut (not to scale) |
| K. Yukon - Koyukuk | V. Yupiit (not to scale) |



● Location of First Class and Home Rule Cities situated in the Unorganized Borough

----- Route of the Trans-Alaska Oil Pipeline



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Increase In Minimum Entitlements under the State Revenue Sharing Program

The Alaska Municipal League supports an increase in the minimum entitlement level under the State Revenue Sharing Program from \$25,000 to \$50,000 to benefit Alaska's smallest, and most needy, communities and an increase in the FY 90 appropriation for the State Revenue Sharing Program to fully fund this increase without penalizing other communities.

Background

The 1980 revision of the State Revenue Sharing Program included a provision that each incorporated community would receive a minimum entitlement of \$25,000, to be adjusted by an area differential for the cost of living. Each unincorporated community is also entitled to a minimum entitlement of \$25,000, to be used for a public purpose. The intent of this legislation was to ensure a sharing of the State's resource wealth by all its residents, no matter how small the area in which they lived. Over time the buying power of these dollars has declined, and many of the State's smallest communities are not able to operate with the minimum entitlement grants they receive. As a result, these communities have been forced to cut back on basic life, health, and safety services.

In FY 88, 83 municipalities received the minimum grant of \$25,000 (with adjustments for geographic differentials) under the minimum municipal entitlement program. It was estimated that an increase in the base level to \$50,000 would add an additional 25 municipalities to the group receiving the minimum grant.

The 74 unincorporated communities eligible for the minimum entitlement would benefit from an increase in the minimum entitlement level as well as full funding of the Miscellaneous Municipal Services Account. The payments to unincorporated communities come from that account, and they have been prorated because of continuing underfunding of the account. In FY 88, the entitlements to the unincorporated communities eligible for these payments were prorated at about 55.52 percent, so that they received only \$13,898 of the \$25,000 to which they were entitled.

Inflation is not the only factor affecting the communities' ability to survive financially: Alaska's smallest cities have been hurt the most by the decreases in federal and state funds, and the cities with small populations and tax bases have the most trouble raising local revenues. An increase in the minimum entitlement will benefit both small municipalities and unincorporated communities and enable the State to protect its investment in rural Alaska by helping the small communities maintain their infrastructure.

It is important to note that increasing the base amount will require an increase in the total appropriation for the State Revenue Sharing Program so that existing municipalities are not penalized. It is estimated that \$3.51 million will be necessary to hold communities harmless given current funding levels of other parts of the program.

HOUSE BILL 131

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1 IN THE HOUSE

BY SHULTZ

2

HOUSE BILL NO. 131

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the Local Boundary Commission."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 44.47.573 is amended to read:

9 Sec. 44.47.573. NOTICE OF PUBLIC HEARINGS. Public notice of a
10 hearing of the local boundary commission shall be given in the area in
11 which the hearing is to be held at least 30 [15] days before the date
12 of the hearing. The notice of the hearing shall include the time,
13 date, place, and subject of the hearing. The commissioner [DIRECTOR
14 OF LOCAL AFFAIRS] shall give notice of the hearing at least three
15 times in the press, through other news media, or by posting in a
16 public place, whichever is most feasible.

17 * Sec. 2. AS 44.47.577 is amended to read:

18 Sec. 44.47.577. BOUNDARY CHANGE. A majority of the full member-
19 ship of the local boundary commission must vote in favor of a proposed
20 boundary change before it may be presented to the legislature.

21 * Sec. 3. AS 44.47.581 is amended to read:

22 Sec. 44.47.581. HEARINGS ON BOUNDARY CHANGES. A local govern-
23 ment boundary change may not be proposed to the legislature unless at
24 least two hearings [A HEARING] on the change have [HAS] been held in
25 [OR IN THE NEAR VICINITY OF] the area affected by the change.



Alaska State Legislature

1

REPRESENTATIVE DICK SHULTZ

1911 BOX A
JUNEAU, ALASKA 99801
(907) 465-4940
HOME: PO BOX 487
JUNEAU, ALASKA 99801

Member
LEGISLATIVE COUNCIL

MEMORANDUM

TO: All Legislators
FROM: Rep. Dick Shultz *DS*
DATE: February 2, 1989
RE: House Bill 131

This legislation is designed to help bring about greater public participation in the affairs of the Local Boundary Commission.

HB 131 amends existing statute by requiring:

1. That there be earlier notification of Commission hearings.
2. That at least two public hearings be held instead of just one.
3. That hearings be held in the area effected.
4. That a vote of three members out of five of the Commission, instead of two out of the five, be required in accepting or rejecting a proposal.

I am open to other suggestions which would strengthen public participation in the Commission process. Please feel free to give me your thoughts and ideas.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: DCBA
 Title: "An Act relating to the Local Boundary Commission" BRU: Local Government Assistance
 Sponsor: Representative Shultz Components: Local Boundary Commission
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL	8.0	8.0	8.0	8.0	8.0	8.0
CONTRACTUAL	1.5	1.5	1.5	1.5	1.5	1.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	9.5	9.5	9.5	9.5	9.5	9.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	9.5	9.5	9.5	9.5	9.5	9.5
FEDERAL FUNDS						
OTHER						
TOTAL	9.5	9.5	9.5	9.5	9.5	9.5

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

(See Attachment)

Prepared by: _____ Phone: 465-4750
 Division: Municipal and Regional Assistance Date: _____
 Approved by Commissioner: [Signature] Date: 2-7-89
 Agency: Community and Regional Affairs

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

FISCAL NOTE ATTACHMENT

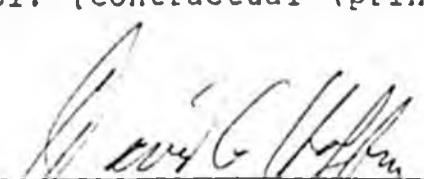
RE: House Bill 131

SPONSOR: Representative Shultz

ANALYSIS

Assumptions:

1. The requirements of Section 3 of HB 131 apply only to petitions for legislative review annexations and detachments (AS 29.06.040(b), AS 44.47.567(b)(2) and Article X, Section 12 of the State Constitution).
2. Five petitions for legislative review annexations and detachments will be received each year.
3. In four of the five cases, the Commission will conduct the requisite second hearing required by Section 3 of HB 131 via teleconference or alternatively on the same day (but in a different location) as the first hearing. The additional expense will be minimal, consisting of 1 additional day of per diem for the 5 commission members and 1 staff plus an additional \$400 in added travel or teleconference/notice fees for each hearing. [Per diem \$1,920, travel/contractual \$1,600 - total \$3,520].
4. In the fifth case, the Commission will conduct two hearings at substantially separate times in the course of the proceeding. Because members of the Commission are appointed from each of the four judicial districts in the state and because the hearing locations are typically remote, the cost of travel is significant. [Per diem \$960, travel \$3,500, contractual (postage and printing of public notice) \$500 - total \$4,960].
5. The notice of each hearing will be published two additional times during the additional 15 day public notice period provided by Section 1 of HB 131. [Contractual (printing of public notice) \$1,000].



David G. Hoffman, Commissioner

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

February 8, 1989

POSITION PAPER

RE: House Bill 131

SPONSOR: Representative Shultz

Program Effects of Bill

This bill addresses certain procedures of the Local Boundary Commission. Section 1 would increase the length of time for notice of a hearing from 15 days prior to the hearing to 30 days. Section 2 would require a majority of the full membership to vote in favor of proposed action instead of a majority of the membership. Section 3 would require a minimum of two hearings to be held in the area affected by a local government boundary change rather than a single hearing.

Comments

In general, the Department supports provisions strengthening the ability of the public to participate in important policy decisions as long as the mechanism for such is fiscally responsible. The increase in the time required for notice is not unreasonable in light of the importance of the decisions being made by the Commission and some of the difficulties in communication in rural Alaska. The requirement that action on a boundary change be taken by a majority of the full membership of the Commission is consistent with existing procedures of the Commission. In a situation where three members have conflicts of interest on the boundary change before the Commission, this provision would seem to require participation of those members in order for the Commission to conduct its business. The increase in the number of hearings from one to two in the area affected by the change will have a potentially significant fiscal impact with the continuing increase in local boundary activity. Unless funding is provided to meet the expenses necessary to meet this requirement, the Department will be unable to support this provision.

Additionally, the Department notes that the provisions of law which are proposed for amendment by HB 131 have remained unchanged since their enactment in 1960. At the time the original law was passed, the responsibilities of the Local Boundary Commission were limited only to boundary changes involving cities.

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Today, the Commission's responsibilities include incorporation of cities and boroughs; dissolutions of cities, boroughs and unified municipalities; annexations to and detachments from cities, boroughs and unified municipalities; and mergers and consolidations of cities, boroughs and unified municipalities. Further, in 1960 there were only about 30 municipal governments in the state. Today, there are 161 municipal governments in Alaska.

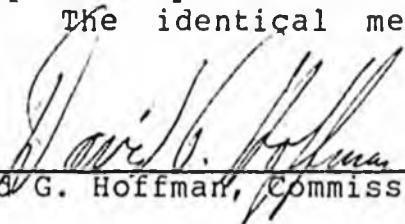
The substantial changes concerning the Local Boundary Commission which have occurred over the past three decades may warrant a more comprehensive approach to revisions of the laws governing the procedures of the Commission. For example, Section 3 of HB 131 would require an increase in the number of hearings on proposed boundary changes to be submitted to the legislature. However, the requirements for hearings on other important issues before the Commission (e.g. borough incorporations) would not be affected by the bill.

The Department also notes that certain language in the existing law is ambiguous. For example, AS 44.47.581 requires a hearing "in or in the near vicinity of the area affected by the change". Of course, it could be argued that many areas are "affected" by a boundary change (e.g. the territory proposed for annexation, the municipality to which the annexation is proposed and the area from which the annexation is proposed). The phrase in question has historically been interpreted to mean the area proposed to be annexed or detached. Section 3 of HB 131 would require two hearings in this area. In a number of cases the territory proposed to be annexed or detached is uninhabited or undeveloped. As such, it would seem best to retain the current language allowing the hearings to be held in the territory "or in the near vicinity".

Finally, it must be noted that the Local Boundary Commission (which is independent of the Department) has not had the opportunity to review or comment on HB 131. Provisions for such input should be made before the bill is passed out of the House Community and Regional Affairs Committee. The Commission is currently developing revisions to its existing procedures. In addition to the comments expressed above, the Department expects that the Commission would raise the issue of compensation for the Commission. The additional responsibilities imposed by this bill could potentially cause a substantial increase in the workload of the Commission. As noted earlier, the responsibilities of the Commission have grown significantly over the past 3 decades.

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Page Three

As a consequence, the Commission has been seeking compensation from the legislature for the past several years. A measure to provide compensation to the Commission was approved by the Senate last year and was also approved by the House Community and Regional Affairs Committee. The identical measure was introduced this year as SB 11.



David G. Hoffman, Commissioner

BRISTOL BAY NATIVE ASSOCIATION
P.O. Box 310
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January 31, 1989

Senator Fred Zharoff
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Re: Comments on Local Boundary Commission Process

Dear Senator Zharoff:

As you know, Phil Kelly of your office asked B.B.N.A. to provide comments on the process used by the Local Boundary Commission to make borough decisions.

After observing the LBC process three times since 1987 we can only conclude it is fundamentally flawed. Considerable controversy has resulted from LBC actions in our region, and we believe that if changes aren't made more and more litigation and conflict between villages and between regions will occur.

The current statutory and regulatory framework for considering borough proposals was established before the political pressure to form boroughs began with the introduction of House Bill 1. It seems designed for the more populated and developed areas of the state and for dealing with slow incremental change, not for dividing vast, sparsely inhabited regions in a short time. If the political and economic realities are now such that all or most of the unorganized borough should incorporate, then the system has to be redesigned with that in mind.

Very Truly Yours,



Deborah Tennyson
Executive Director

COMMENTS ON LOCAL BOUNDARY COMMISSION PROCESS
FOR CONSIDERING BOROUGH PROPOSALS

January 31, 1989

The following comments are based on the three borough proposals within the the Bristol Bay region in the last two years: the Aleutians East incorporation in 1987; the Lake and Peninsula incorporation which will go to public vote this spring, and the Kodiak annexation currently before the legislature.

The proposals have generated much controversy within the region and have highlighted serious flaws in the Local Boundary Commission (LBC) process. Indeed the process is so flawed as to almost guarantee arbitrary and short-sighted results. In large areas of the unorganized borough continue to be carved into jurisdictional units under existing LBC practice, a statewide planning disaster of monumental proportions is in the making.

Most of the problems fall into three broad categories: 1) lack of meaningful standards, 2) procedural, particularly relating to public notice and the ability to contest particular proposals, and 3) problems in substantive decision-making, which involve institutional or structural problems with the LBC and its inability to follow statutory and regulatory mandates.

Each of these areas concern will be discussed below. However, these comments are not intended to be a thorough analysis of the LBC or its procedures but rather concern particular problems identified from its actions in Bristol Bay. And although examples will be used to illustrate the problems, the comments are not intended to address the merits of any pending proposal.

I. Standards

A. Incorporation

1. Statutory standards

The four statutory standards for incorporation of AS 29.05.031 would be adequate if they were evenly applied and properly construed. However, in practice they have given inadequate guidance for drawing territorial boundaries between widely separated population centers.

The first standard requires that "the population of the area [be] interrelated and integrated as to social, cultural and economic activities" and be large and stable enough for borough government.

The second requires that the borough boundaries "conform generally to natural geography and include all areas necessary for full development of municipal services." The third requires the economy of the area to include the human and financial resources necessary for municipal services, and lists a number of factors to be considered. The fourth speaks to transportation facilities.

Except for the requirement for following natural geography, all deal more with population characteristics and with developed areas rather than with the vast uninhabited areas in the unorganized borough.

The standards would be improved by clearly specifying that traditional use patterns and existing land planning units be followed in unpopulated areas.

2. Regulatory standards.

The regulatory standards of 19 AAC 10.160 also need improvement. 19 AAC 10.160(5) requires a new borough to include at least one entire REAA, and as interpreted it seems to create a bias in favor of following REAA lines. Yet as pointed out in the 1988 DCRA Regional Government study, following REAA boundaries for borough formation results in conflicts with other standards. Some REAAs have only one community or less than 1,000 people; some form enclaves within others, which may violate constitutional and statutory standards.

Worse, the external boundaries of REAAs often cut across natural geography and socio-economic use patterns, thereby violating the mandatory statutory standards for borough formation. REAAs should not be used to determine the external territorial boundaries of boroughs. The intent of 19 AAC 10.160(5) can be met by using REAAs merely as a guideline for deciding which community should go with which borough.

There is also a problem with the "transportation" standard of 19 AAC 10.160(2). This standard requires that communities within a new borough be connected by road or have transportation services "available at least once a week ... on a regularly scheduled or chartered basis." Chartered services are almost universally available and it is difficult to see how any two Alaskan communities could fail to meet this standard. Although the intent of the provision may be sound, standards that are always met are no standards at all, and this provision should either be rewritten or deleted.

B. Annexation.

There are no statutory standards for annexation. The LBC by regulation (19 AAC 10.190) has set up separate standards for the annexation of contiguous territory and of non-contiguous territory. The latter, for obvious reasons, is much more stringent.

1. Definition of "Contiguous."

The LBC recently approved the annexation of a large area on the Alaska Peninsula to the Kodiak Island Borough under its standards for annexation of contiguous territory. The annexed area is separated from the Kodiak Island Borough by Shelikoff Strait, the center of which for its entire course is federal water beyond the territorial limit of Alaska. The LBC rejected Lake and Pen's competing claim for the same territory.

Neither the LBC decision nor its staff report discuss the crucial preliminary issue of whether the annexed territory is contiguous to the original Kodiak Island Borough. Under a dictionary or common sense definition, it surely is not contiguous. However, contiguous is defined at 19 AAC 10.840(4) "as territory which is immediately adjacent to or which is separated only by natural or artificial barriers which do not disrupt or impede the supplying or receiving of municipal services."

The problem with that definition, as apparently construed by the LBC in the Kodiak decision, is that the exception swallows the rule. Boroughs provide very few municipal services in roadless, unpopulated areas, and those services they do provide (i.e., planning) are not hampered by geographic barriers. If the Alaska Peninsula is "contiguous" to Kodiak Island despite the jurisdictional barrier of federal waters, it is difficult to conceive of any roadless, sparsely populated area of the state that is not contiguous to any other area. An ocean, another borough, a mountain range, or 500 miles of land are just barriers which do not "disrupt or impede" borough services when those services are almost non-existent to begin with.

The definition of contiguous in 19 AAC 10.840(4) could be salvaged if the LBC were to construe it more closely to the dictionary definition. But following the Kodiak decision, there is no longer a distinction between contiguous and non-contiguous lands for purposes of borough annexations, and the whole framework of 19 AAC 10.190 is undermined.

2. Standards for contiguous annexations.

Eight standards are set forth in 19 AAC 10.190(a) for annexation of contiguous territory. Only one of these standards must be met for the annexation to be approved. In addition, the annexation must meet the four statutory standards for borough incorporation of AS 29.05.031.

Some of the eight standards of 10.190(a) are relatively straight-forward and easy to apply, i.e. whether the land is totally surrounded by the borough or wholly owned by the borough. Others, however, have been so watered down by the LBC that virtually any proposal will meet them. Such standards are meaningless.

The problem can best be illustrated by reference to an LBC decision. In the Kodiak decision the LBC found that three of the regulatory standards for annexation were met, those of 19 AAC 10.190(a)(3), (4) and (8).

(a) Application of 10.190(a)(3)

The LBC found that the Kodiak annexation met the third regulatory standard: "the territory is in need of municipal services which the organized borough can provide more efficiently than another municipality or the state." Specifically, the LBC found that the area was in need of "planning, economic development and solid waste collection and disposal which can best be provided by the Kodiak Island Borough."

This ruling is particularly surprising since earlier in the decision the LBC said: "The contested area is uninhabited. Therefore, the need for services in that area is greatly limited."

In regard to "planning," the area consists almost entirely of state and federal land (with some subsurface rights owned by a Native regional corporation). Coastal management and state and federal land use plans are already in place and could not easily be changed by a borough, nor did Kodiak indicate it would try to do so. The decision offered no explanation at all of how planning services would be improved; arguably planning services could suffer due to the dismemberment of the CRSA.

The "economic development" consisted of "salmon enhancement projects" which were never identified in the decision, the DCRA report, or testimony. Worse, there was no finding or evidence that salmon enhancement is actually needed, which would be necessary to meet the standard. Moreover, given exclusive federal jurisdiction on federal lands and ADF&G's authority over fish stocks, it is doubtful that any such borough-sponsored project is feasible. (The LBC decision did not discuss the legal obstacles to it.)

As for "solid waste collection and disposal," the opinion discussed fisheries-related waste disposal in the City of Kodiak and at the Borough's landfill on Kodiak Island. It did not find that such services were needed within the annexed area. Indeed, there was no discussion of such services within the annexed area and the Kodiak Borough did not indicate it would extend such services into the area.

Since there is no population to be served and since planning services are already in place, it is apparent that the LBC bent over backwards to find this standard met. It is quite difficult to conceive of any area in the state which would not meet it as applied.

(b) Application of 10.190(a)(4)

The LBC also found the fourth standard met, that "there is a reasonable likelihood that future growth and development will occur within the territory considered for annexation and that annexation of that territory will enable the borough to plan for and control that development."

The LBC cited testimony from Kodiak officials that "there is potential for development of mineral, oil and gas and fishing activities in the area considered for annexation." The specific examples cited were the federal oil and gas lease sale scheduled for 1990, "likely" growth in the number of offshore processors, and Kodiak's complaint it hadn't been consulted on federal land use plans.

One problem with this analysis is that both the federal lease sale and the growth of offshore processors apply only to the waters and not to the annexed territory on the Alaska Peninsula. Indeed, the federal lease sale will occur by definition outside of state and borough jurisdiction. Likewise, there was no discussion of how the borough could plan for and control the growth of offshore processors, a process that (if true) will likely occur outside the boundary of the state. The reference to federal land use plans is a non sequiter, irrelevant to the issue of whether there is a reasonable likelihood of growth and development.

There was no finding of fact and no evidence of any projected shoreside development in that part of the Alaska Peninsula. No land disposals, no mineral discoveries, no development of canneries or other fishery-related infrastructure were indicated. The LBC did not even look behind the federal lease sale to find if oil is actually expected to be discovered. (In fact, the Shelikoff Strait is not considered a good oil prospect and the lease sale has generated little interest by the oil industry.)

A better interpretation of this standard would apply it to areas experiencing specific, identifiable development that distinguishes them from the unorganized borough in general, or in which such development is planned. Examples would include rapid population growth or industrial or mineral development such as the Red Dog Mine. To extend the standard to areas such as the south side of the Alaska Peninsula, which at most is experiencing slow incremental development no different in scope from that in any other unpopulated area, is to render the standard meaningless.

(c) Application of 10.190(a)(8)

The LBC also concluded that the eighth standard was met, that "the annexation is otherwise necessary to accomplish a valid public purpose." The decision refers to the growth of offshore fish processors which are replacing shore-based processors, thereby diminishing local employment and depriving municipal governments of raw fish taxes. It concludes: "Annexation of the area in question would mitigate these negative effects."

This again is completely irrelevant as applied to the annexed land on the Alaska Peninsula. Even in regard to the waters it is difficult to see how annexation to the borough could curtail the growth of offshore processors, or confine them to the three-mile limit. Although the annexation may give Kodiak more raw fish tax revenues simply by increasing the area in which it collects them, if that is all the standard means then raising revenue alone becomes a "valid public purpose" sufficient to justify annexation.

I. Procedural Problems

A. Timeframe.

The timeframe used by the LBC to reach borough decisions precludes rational decision-making and may in itself violate constitutional standards of due process. The Aleutian's East process took just two months from the filing of the petition to the decisional meeting (May 7 - July 8, 1987). The Kodiak process took just over seven weeks (Oct. 14 - Dec. 4, 1988), and the Lake and Pen process lasted just three and one-half weeks (Nov. 10 - Dec. 4, 1988). It is inconceivable that all factors relevant in applying all the standards to all the boundaries can be adequately weighed in those time frames.

DCRA is under statutory duty to investigate borough proposals. AS 29.05.080. Some indication of the depth of investigation which should be required may be found in the

legislation which authorizes DCRA to contract for borough studies and allows up to three years for completion of the studies. AS 44.47.730. Nowhere near that depth of analysis was given to any of the Bristol Bay proposals.

It is equally impossible for an opponent of a borough proposal to adequately respond in the time allowed. The borough petitioners have months or years to prepare the proposal, and an adequate response would require considerable marshalling of facts, evidence and legal arguments. The LBC's own regulations call for "answering briefs" to be filed (19 AAC 10.390), but no time is provided to prepare them, especially considering that the governing bodies of cities and most other organizations are not in continuous session and need time to react.

Ironically, the LBC has no legal deadline for considering borough petitions. It rushes decisions only as a matter of policy. (Deadlines come into play only after the LBC's public hearing. And, in practice, the LBC doesn't take as long as those deadlines allow.)

B. Notice.

1. Outside the boundary.

One major flaw with the regulations governing notice and public hearings is that as interpreted they don't recognize the rights of those outside of proposed boundaries.

AAC 10.370(a) requires that the petition be served directly on "every municipality in or adjoining the territory." In the unorganized borough, of course, municipal boundaries rarely meet. The only interpretation of this regulation that makes sense in the unorganized borough is to apply it to communities in the adjoining geographical area. The regulation should also be expanded to include unincorporated communities.

The LBC, however, and its staff interpret it to require direct notice only to municipalities with a common legal boundary with the new borough. As a result, in the Lake and Pen process villages in the Nushagak drainage did not receive direct notice of the Lake and Pen proposal, and at the time the decision was made DCRA's mailing list did not include one village or village corporation on the western side of boundary. Nor did it include BBNA or the Southwest Region School District - even though the latter would lose one of its villages to the proposal.

Likewise, in the Aleutians East incorporation the villages of Ivanof Bay and Port Heiden were not "entitled" to direct notice even though the proposed boundary included an airstrip, a proposed new village site and Native corporation lands of Ivanof Bay and the traditional village site (Ilnik) and much of the subsistence territory of Port Heiden. (DCRA did put these villages on its mailing list, however.)

The LBC believes that publishing notice in the newspapers is sufficient protection for those outside proposed boundaries. But 19 AAC 10.380(a) only requires the petitioner to publish notice of the petition "in a newspaper of general circulation in the territory." Lake and Pen published this notice in the Borough Post, which is distributed only within the Lake and Pen school district and the Bristol Bay Borough, not in the Nushagak villages. This particular notice was the only one ever published containing critical information such as the place for inspecting the petition and brief and the right to file an answering brief.

In any event, few people even in urban areas read legal notices in the newspapers. And the Bristol Bay newspapers are mailed fourth class and are not reliably delivered or read in the villages. Anchorage newspapers rarely make it to most villages at all. Direct notice would be much more effective, and cheaper.

2. Noncompliance with regulations.

The LBC does not strictly follow its own regulations on notice and scheduling. For example, it is required to publish notice of its public hearing "at least 15 days before the date of the hearing, at least three times in a newspaper of general circulation in the territory" That was not followed for Lake and Pen, at least as publication rules are normally construed by the courts. The third publication was on November 25, a week before its public hearings began.

Regardless of technical procedural arguments, it is crystal clear from an overview of the regulations regarding incorporation petitions, 19 AAC 10.325-10.440, that the process is designed to take several months at a minimum and that the LBC bends over backwards to rush decisions. For example, the LBC decisional meeting on Lake and Pen was one day after its public hearings concluded, although 90 days is allowed. Another example is the speed with which the LBC scheduled the public hearings. The regulations provide that a petition isn't considered pending until proof of publication of the notice required by 19 AAC 10.380(a) is received. That publication did not occur until November 18. Yet the first notice of the LBC hearing was published November 11, and because of ad deadlines had to be placed several days before that. The petition wasn't even filed with DCRA until November 10, and it is clear the LBC scheduled action on the petition before it had it!

C. Hearings.

Current law requires very little in the way of public information and decisional hearings. By statute, DCRA is required to have one public informational meeting in the area and the LBC to have one public hearing. AS 29.05.080 and 090. (More may be held at the discretion of the LBC.) A decisional meeting must be held within 90 days of the LBC's public hearing. In recent practice, most of the LBC hearings have been teleconferenced rather than held in the area.

Again, there is no built-in practical mechanism for involvement of villages immediately outside the boundaries. Port Heiden or Ivanof Bay residents would have had to go to Cold Bay or False Pass in the middle of fishing season to participate in the Aleutians East hearings. Nushagak village residents would have had to go to Anchorage or the Iliamna Lake area to attend Lake and Pen's hearings. (The LBC later scheduled teleconference hearings in the Nushagak, but that was to consider a reconsideration request after the decision had already been made.)

The existing requirements for informational meetings and formal public hearings are clearly inadequate given the importance of the decision, the lack of general public knowledge about boroughs, and the vast territory involved.

Moreover, villages a few miles outside borough boundaries have as much at stake in determining where the line is drawn as communities within the boundary - which may be much farther away. The Aleutians East line was drawn far closer to Port Heiden and Ivanof Bay than to any populated area within the borough; Ekwok is only 12 miles from the new Lake and Pen boundary. To give such villages substantially less procedural protection than communities within the borough likely violates the constitutional standards of due process and equal protection.

III. Substantive Decision-Making

A. The Problems

The LBC Board is charged with a statutory and constitutional duty to consider proposed changes in the boundaries of local governments. Its duties have been elaborated by the legislature, which has also established specific standards for the LBC to apply in AS 29.05.031. Through its regulatory power the LBC has established further standards and established basic procedures.

Although the commissioners are not judges, they are

nonetheless charged with making quasi-judicial decisions, applying law to facts. Part of their duty is to serve a "watchdog" function, ensuring that boundary changes which do not meet the legal standards fail. Each of the statutory incorporation standards, for example, is mandatory as written and must by law be applied. While under normal rules of statutory construction the statutory standards can be balanced against each other, they must be evenly applied. The regulations must conform to them.

Although some of the statutory standards, such as the one dealing with socio-economic interrelationships, are difficult to apply, it is possible to do so if enough research is done. A great wealth of information on land and resource use patterns is available from agencies such as ADF&G, USF&W, CRSAs, and so forth. In Bristol Bay, massive resource inventories with much relevant data were compiled in the context of various management plans.

Particularly given DCRA's statutory duty to investigate borough proposals, one would think that this wealth of information and expertise on land use would be used to make rational boundary decisions. The process should be time-consuming but rather straight-forward.

The actual practice is far different. Some of its worse characteristics follow:

1. The statutory standards are not applied. The requirement regarding natural geography, for example, was completely ignored for the northwestern boundary of Lake and Pen, and was brushed over in the decision on the eastern boundary of Aleutians East.

LBC decisions focus too much on borough finances. While this is important, the standards only require that a borough be able to support itself. In practice, the LBC has allowed expanded boundaries which violate the other standards in order to put the borough in an better financial posture. For example, the Aleutians East boundary was allowed to extend into the Bristol Bay region primarily so that the borough would not have to rely on a property tax, despite a finding that this was not necessary to ensure the borough's financial viability.

Subsistence and traditional land use patterns patterns are rarely considered despite their importance in determining the socio-economic unity of a region.

2. Similarly, the LBC treats the unorganized borough as a blank slate, ignoring and jeopardizing years of planning already in place. For example, the Bristol Bay CRSA - widely viewed a model program - has been dismembered into a minimum

of four parts, assuming the current borough proposals go through. This makes no sense from a planning perspective.

3. The LBC renders conflicting decisions and applies "standards" not found in the law. For example, the LBC would not even consider Nushagak village arguments based on a borough's potential impact on natural resource management. Yet the identical argument was found a valid basis for the Kodiak annexation. The LBC's focus on commercial fishing districts to the exclusion of other economic activities is a "standard" not found in the law, as is the "maximizing fish tax revenues" rationale applied for Kodiak and Aleutians East.

4. LBC decisions are based primarily on the bare assertions of fact in the petition and unsworn "testimony" at public hearings. There is rarely any checking of facts or reliance on experts such as ADF&G or the CRSA. This factor, coupled with the failure to seriously follow the standards, results in the decisional process being little more than a shuffling of words on paper, divorced from reality.

5. The DC&A and the LBC will not consider any factor not raised by a party, despite DCRA's duty to investigate. While to a certain extent this is understandable, there is no excuse for not analyzing glaring problems such as the "contiguous" issue in Kodiak's annexation or the failure of a boundary to generally conform to natural geography.

B. Causes and Possible Remedies

Some of these problems are due to the following "institutional" flaws:

1. The existing standards and regulations were promulgated before the political and economic climate changed dramatically in favor of boroughization. There is now an institutional bias in favor of boroughs which creates a tendency on the part of the LBC and its staff to neglect its "watch-dog" duty and ignore rules which "get in the way" of borough formation. This results in a standardless system, creating a land-grab mentality where anything goes, first-come first-served.

If circumstances are now so changed that it is desirable for all or most of the unorganized borough to incorporate, the rules should also be changed and meaningful standards established for drawing lines in unpopulated areas. It is imperative that regions be looked at as a whole.

2. The LBC and its staff seem to lack understanding of the basic rules of statutory construction and administrative analysis. Although they are laymen, they are nonetheless charged with a quasi-judicial duty. This flaw was exemplified by comments by commissioners at a recent reconsideration hearing on the Lake and Pen proposal.

One commissioner said that the Nushagak villages arguments relating to subsistence use had no merit because state and federal government have exclusive jurisdiction over their respective lands and the borough could have no impact them. Two things are wrong with that statement: 1) it ignores the fact that subsistence and other resource use is the primarily indicia of the socio-economic ties of the region, which by law is something the LBC has to consider; 2) it is an incorrect statement of law and actual practice in regard to state lands.

Other commissioners indicated that their decision to favor Kodiak's annexation at the expense of Lake and Pen made them unwilling to adjust Lake and Pen's western boundary. That shows remarkable willingness to disregard the LBC's statutory duty to impartially apply law to facts.

3. There seems to be an institutional confusion about the nature of the proceedings. Case law has made clear that they are legislative rather than adversarial in nature. In practice, they are treated as adversarial in many respects but without the procedural safeguards that normally exist in adversarial proceedings.

4. The same DCRA staff who investigate proposals and prepare recommendations for the LBC provide technical assistance to those putting together proposals. This creates a built-in bias in favor of the petition. These two functions should be separated, with the DCRA investigation and report and recommendations done by neutral parties after the petition is filed.

5. Neutral hearing officers, with legal training and preferably a land-use background, should conduct public hearings and make recommended decisions whenever contested issues arise. This would alleviate some of the problems discussed above.

Conclusion

Borough decisions are quite important and have long-range implications not fully understood even by the LBC and DCRA. This is particularly true in regard to land and

resource management, local influence on which is one of the major incentives for forming boroughs. Judging from our region's experiences, the LBC process results in short-sighted and arbitrary decisions. It is absolutely astounding that any agency would think that it can rationally make decisions redrawing the map of southwestern Alaska in a process taking less than two months.

Moreover, the process and the implications of borough formation are poorly understood by the public in Bristol Bay. This factor, combined with procedural impediments imposed by the LBC, greatly diminishes the ability of the local populace to have a meaningful voice in the decisions. A great deal of unnecessary divisiveness has resulted.

This situation can only serve to harm the state in the long run.

4 B

February 7, 1989
Box 762
Dillingham, Ak 99576

Sen. Al Adams, Chairman
Senate Community and Regional Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Rep. Eileen Maclean, Chairman
House Community and Regional Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: Local Boundary Commission - HB-131, Kodiak Island Borough
annexation, Lake and Peninsula incorporation

Dear Sen. Adams and Rep. Maclean:

I write to urge your committees to consider a major overhaul of the Local Boundary Commission process for considering borough incorporations and annexations. I also urge you to put borough decisions on hold in the meantime, and more particularly to veto the Kodiak Island Borough annexation and, if possible, to remand the Lake and Peninsula decision to the LBC for further consideration.

As a Dillingham city councilman, an attorney employed by a Native association, and a former newspaper writer in Bristol Bay I have closely scrutinized the above-referenced actions and also the 1987 Aleutians East incorporation. In terms of substantive analysis these three LBC decisions are probably the worst administrative decisions I have seen in ten years of legal practice.

While Rep. Shultz's bill is a good starting point, it does not go far enough. A major problem is that the statutory and regulatory standards, probably inadequate to begin with, have been so loosened in application that they no longer mean anything. The LBC simply substitutes its own judgement for the legally-promulgated standards whenever a contested issue arises, with the result that its decisions are arbitrary and inconsistent.

The process encourages land-grabs and results in further concentration of the tax base in the more politically sophisticated, urbanized communities at the expense of villages. It also results in boundaries that are irrational from a geographic and demographic perspective. You simply cannot carve up large regions of the state on a first-come

first-served basis, requiring only minimal compliance with weak standards, and hope to have a fair and rational result.

The Kodiak Island Borough annexation. This annexation should be vetoed because it is bad public policy and because the LBC threw its standards to the winds to allow it.

The Kodiak borough was allowed to annex a large uninhabited portion of the Alaska Peninsula and adjacent waters of the Shelikoff Strait that Lake and Pen also sought to incorporate. It should be borne in mind that Lake and Pen had only to meet the standards for incorporation, while Kodiak had to meet those standards and the regulatory standards for annexation.

The LBC's rationale for giving the area to Kodiak instead of Lake and Pen seems to have been that the Shelikoff Strait is fished primarily by Kodiak-based fishermen and that taxes from that fishery should, in fairness, go to Kodiak. While that may seem reasonable, no such standard is found in the statute or the regulations. This is a prime example of the LBC substituting its own judgement of what "ought" to happen for the legally-established rules.

The Kodiak annexation was granted under the LBC's regulations governing "contiguous" annexations, under which it had to meet one of eight regulatory standards. However, a preliminary issue not even discussed in the decision was whether the annexed territory is contiguous to the original borough. By any common sense definition it is not contiguous because it is separated from the original Kodiak Island Borough by federal waters beyond the territorial limit of Alaska and will be a separate enclave.

Likewise, the eight regulatory standards were not meaningfully applied. The LBC found that three of them were met, but not one of these findings withstands scrutiny. The LBC merely accepted the bare representations of the petitioners without independent analysis or research - despite DCRA's statutory duty to "investigate" proposals.

There was no evidence of likely development in the area which Kodiak could realistically plan for or control, no evidence that municipal services were needed and no evidence that the borough would provide any additional services in the area, which after all is uninhabited. In short, the only real reason for the annexation was to provide the Kodiak borough an additional revenue source, and that alone does not meet the legal standards. It should also be noted that most of the reasons the LBC cited for approving the annexation applied only to the waters of Shelikoff Strait and not to the Alaska Peninsula.

From a public policy perspective one has to question the wisdom of giving this revenue source to a borough with a relatively vibrant economy and healthy tax base at the expense of nearby chronically depressed villages with no tax base. Kodiak has numerous fisheries and is one of the communities directly benefitting from the "Americanization" of the North Pacific bottom fishery. It has year-round harbors and processing plants. The Lake Iliamna villages in contrast are almost solely dependent on the Bristol Bay salmon fishery, for which non-residents hold most permits. There are no processing plants. The typical village has only a few salmon permits and a handful of salaried jobs in the schools and local government. Unemployment is astronomical in the winter months.

One would think it in the state's interest that such villages have access to nearby fisheries, if only through taxation. And perhaps the new borough could develop programs enabling its people to more directly benefit from the Shelikoff Strait fisheries.

The LBC's decision itself found that the revenues from this territory would be much more important to Lake and Pen than to Kodiak, although not critical to either. Kodiak's benefit would be negligible.

Lake and Peninsula incorporation. This decision should be held open by whatever legal mechanism is available to do so. For one thing, a veto of the Kodiak annexation will not alone give Lake and Pen the additional territory it sought, and deserves.

For another, the borough's northwestern boundary was approved without adequate notice to neighboring communities in the Nushagak drainage. In my view, the procedures used effectively precluded any meaningful opportunity to be heard by residents of the adjacent area and thereby violated their constitutional rights of due process and equal protection.

Substantively, the northwestern boundary clearly violates the statutory standards by following longitudinal lines rather than natural geography and socio-economic use patterns. By slashing arbitrarily across the drainages, it divides historic (and logical) planning units and puts valuable spawning grounds for the Nushagak salmon fishery in the new borough. It also places subsistence hunting and fishing areas that Nushagak village residents say are traditionally "theirs" in the Lake and Pen Borough.

Depending on Lake and Pen's evidence, of course, the boundary might be moved in either direction if the legal standards were applied. But the northwestern boundary was not even addressed in the LBC decision, and the LBC refused to grant reconsideration of the decision so that it could be.

Another reason for overturning this decision is the speed with which it was made (24 days). This did not allow sufficient investigation and evaluation of the proposal by DCRA and the LBC, much less by the public. Many residents of the region believe one borough encompassing all of Bristol Bay would be a better choice. DCRA has been asked to study this possibility but has not done so.

In conclusion, the LBC process and the statutory standards for incorporation should be modified to ensure that boundaries are made on sound planning principles. Natural geography, traditional use patterns, and existing land-planning units should be emphasized in unpopulated areas. At the very least, if decisions are going to be made on the basis of "who should get the revenues," the legislature and not the LBC should establish the policies for making that choice. I would think the state would want to spread out the tax base as much as possible.

The standards and procedures should also be modified to give the interests of communities outside proposed boundaries equal consideration and to ensure that regions are looked at as whole.

The LBC's analysis would be improved if neutral hearing officers conducted the hearings and made recommended decisions, and if DCRA's investigative and technical assistance roles were clearly separated and performed by different people. DCRA's investigative duty should be more clearly spelled out so that decisions are based on facts and expertise rather than the superficial representations of those pushing a proposal. Right now, the whole petitioning process is little more than a word game.

Sincerely,



Bruce B. Baltar

cc Sen. Zharoff
Sen. Binkley
Rep. Jacko
Rep. Hoffman
Rep. M. Davis
Rep. Schultz

REPORT ON LOCAL BOUNDARY COMMISSION WORK SESSIONS
REGARDING PROCEDURES (January 30 - 31, 1989)

The following is a summary of the work sessions held by the Local Boundary Commission on January 30 and 31, 1989 to discuss procedures and rules to be used by the Commission. The Commission plans additional work sessions concerning this matter and intends to amend its existing regulations (19 AAC 10) to implement changes to its procedures.

Commission Members present:

- C.B. Bettisworth, Chair
- Shelley Dugan, Vice-Chair
- Jo Anderson, Member
- Ben Nageak, Member
- Lamar Cotten, Member

DCRA Staff present

- Jake Lestenkof (partial attendance)
- Patrick Poland, Deputy Director, MRAD-Anchorage
- Dan Bockhorst, Local Government Specialist

Others Present (partial attendance)

- Phil Kelly, Aide to Senator Zharoff
- Martha Stuart, Aide to Senate C&RA Committee
- Louanne Christian, Aide to House C&RA Committee
- Vern Roberts, Chignik City Administrator
- Peter Froehlich, Assistant Attorney General
- Marjorie Odland, Assistant Attorney General

I. PUBLIC NOTICE OF THE FILING OF A PETITION

A. FOR REGIONAL ACTIONS HAVING POTENTIAL FOR SUBSTANTIAL PUBLIC INTEREST (defined to include incorporations, dissolutions, legislative review annexations, step annexations, legislative review detachments and local action detachments which involve boroughs or unified municipalities).

1. All of the following parties located within the territory proposed for the change, and within each regional educational attendance area (REAA) and municipality adjoining the borough or unified municipality shall receive individual public notice of the filing of a petition:

- A. All municipalities (cities, boroughs, unified municipalities);
- B. The tribal council or recognized spokesperson of every unincorporated community having 25 or more residents;
- C. All ANCSA village corporations with core townships within the region or the adjoining regions;
- D. All ANCSA regional corporations organized for profit;
- E. All ANCSA regional non-profit corporations;
- F. Regional Educational Attendance Areas;
- G. Coastal Resource Service Areas;
- H. Regional Health providers;
- I. "Major property owners" (to the extent they are readily known).

2. All of the following additional parties shall receive individual notice of the petition:
 - A. Legislators (at a minimum, all legislators serving the region and the adjoining regions should be notified; for issues of statewide importance all legislators should be notified);
 - B. Media (newspapers, radio stations and television stations serving the areas in question);
 - C. The petitioners' representative;
 - D. The Local Boundary Commission;
 - E. Appropriate State and federal agencies;
 - F. Other parties which the Department believes would be interested in this matter (e.g. financial institutions in the event of a proposed dissolution).
 3. Notice described in 1 and 2 above shall be mailed via first class mail (except for that processed through the State mail distribution system). Certified mailings will not be used. Staff will prepare an affidavit of mailing identifying the date of the mailing and the mailing address for each party.
 4. Notice shall be published as display advertisements in newspapers of circulation in the regions specified. [Note: standards for publication (e.g. number of times, minimum size) to be developed at subsequent worksessions of LBC].
- B. FOR COMMUNITY ACTIONS HAVING POTENTIAL FOR SUBSTANTIAL PUBLIC INTEREST (defined to include incorporations, dissolutions, legislative review annexations, step annexations, legislative review detachments and local action detachments which involve cities).
1. All of the following parties located within 10 miles from the perimeter boundary of the proposed change and/or existing boundary of the city, whichever is further, shall be provided with individual notice.
 - A. All municipalities (cities, boroughs, unified municipalities);
 - B. The tribal council or recognized spokesperson of every unincorporated community having 25 or more residents;
 - C. All ANCSA village corporations with core townships within the defined area;
 - D. All ANCSA regional corporations organized for profit;
 - E. All ANCSA regional non-profit corporations;
 - F. Regional Educational Attendance Areas;
 - G. Coastal Resource Service Areas;
 - H. Regional Health providers;
 - I. "Major property owners" (to the extent they are readily known).

2. All of the following additional parties shall receive individual notice of the petition:
 - A. Legislators (at a minimum, all legislators serving the territory defined should be notified; for issues of statewide importance all legislators should be notified);
 - B. Media (newspapers, radio stations and television stations serving the areas in question);
 - C. The petitioners' representative;
 - D. The Local Boundary Commission;
 - E. Appropriate State and federal agencies;
 - F. Other parties which the Department believes would be interested in this matter (e.g. financial institutions in the event of a proposed dissolution).
3. Notice in 1 and 2 above shall be mailed via first class mail (except for that processed through the State mail distribution system). Certified mailings will not be used. Staff will prepare an affidavit of mailing identifying the date of the mailing and the mailing address for each party.
4. Notice shall be published as display advertisements in newspapers of circulation in the territory specified. [Note: standards for publication (e.g. number of times, minimum size) to be developed at subsequent worksessions of LBC].

C. FOR REGIONAL AND COMMUNITY ACTIONS HAVING LIMITED POTENTIAL PUBLIC INTEREST (defined to include mergers and consolidations involving boroughs, unified municipalities and cities, as well as local action annexations to boroughs, unified municipalities and cities).

Public notice of such types of actions will be much less than that described in I A and B. [Note: to be more clearly defined at subsequent worksessions of LBC]. Since mergers and consolidations involve a restructuring of existing governments, as opposed to a change in the boundaries of any government, notice will likely be limited to interested parties within the existing governments to be merged or consolidated.

With respect to local action annexations, there are three types of annexations. These are: annexations involving strictly municipally-owned property, those which have been requested by all of the property owners and resident voters in the territory proposed for annexation and those for which the annexation will be ultimately determined by an election of the voters within the territory. The overwhelming majority of these types of annexations are small in scale and are of little or no interest to the general public. In the event a local action proposal is

filed which has the potential for substantial public interest, appropriate notice will be given.

II. ADDITIONAL INFORMATION

Discussions were held by the LBC concerning the extent to which parties potentially interested in a particular proposal should be made responsible to ask for any information beyond that provided by the notice of the filing of the petition. These additional materials would include a copy of the petition, responsive briefs and written comments in favor or opposition to the petition, replies to the responsive materials from the petitioners' representative, correspondence from DCRA, DCRA draft reports, DCRA final reports, notice of meetings, hearings, et cetera. The Commission's discussion centered around the need to keep potentially interested parties informed, yet not incur undue costs of copying and mailing substantial materials to what would typically amount to 200 or more parties. The Commission was inclined limit the such information, UNLESS INDIVIDUALS SPECIFICALLY REQUESTED ADDITIONAL MATERIALS IN WRITING.

III. ADMINISTRATIVE PROCEDURES

Peter Froehlich, Assistant Attorney General, expressed the opinion that State Statutes [AS 29.05.100(b), 29.06.040(a), 29.06.130(b) and 29.06.500(b)] subject the Commission only to limited provisions of the Administrative Procedure Act. Specifically, these consist of AS 44.62.560 - 570 concerning a judicial appeal of a decision of the Commission.

Mr. Froehlich specifically indicated his belief that the provisions of AS 44.62.540 concerning reconsideration did not apply to the Commission. Mr. Froehlich suggested that the Commission adopt a regulation setting up a procedure for reconsideration based upon the process set out in the State court rules.

Mr. Froehlich recommended that the Commission adopt a regulation clearly establishing an effective date for its decisions.

The Commission discussed the need to formally adopt parliamentary rules. Assistant Attorneys General Marjorie Odland and Peter Froehlich recommended that the Commission adopt bylaws rather than a set of pre-established parliamentary rules. Ms. Odland indicated that she would provide the Commission with sample bylaws for consideration.

IV. SCHEDULE OF PROCEEDINGS

The Commission expressed the belief that a more moderate pace in future proceedings would likely accommodate nearly all of the concerns recently expressed regarding the procedures used by DCRA and the LBC.

It was agreed that the Commission should adopt a regulation allowing the Commission (or Chairman) to set a formal schedule for each proceeding. A typical schedule concerning DCRA and LBC activities leading to a decision concerning a legislative review boundary change, incorporation or dissolution was outlined as follows:

- STEP 1. Form and content of petition reviewed for compliance with law by DCRA. If form and content is accepted, individual public notice of the filing of petition is given. Arrangements are also made for publication in appropriate newspaper at least once each week for four weeks. (see sample notice - petition for dissolution of City of Akiachak). These tasks would typically be accomplished within 2 weeks.
- STEP 2. Chairman of the LBC sets the formal schedule for the proceedings. This would occur sometime around the 2nd or 3rd week of publication of the notice of the filing of the petition.
- STEP 3. Deadline for receipt of responsive briefs and written comments in support of or in opposition to the petition. This would be determined in Step 2, but would typically be set for at least 7 weeks following the distribution and initial publication of the notice of the filing of the petition.
- STEP 4. Deadline for receipt of answering brief from the petitioners' representative in reply to responsive briefs and written comments. This would be determined in Step 2, but would typically be set for 2 weeks following the deadline for responsive briefs.
- STEP 5. Distribution of draft report and recommendation on the petition by DCRA. This would typically occur 4 weeks following the deadline for the answering brief.
- STEP 6. Deadline for comment on DCRA draft report and recommendation. Possible public meeting(s) conducted on the petition by DCRA. These activities would typically occur 4 weeks following the distribution of the draft report.

REPORT ON LOCAL BOUNDARY COMMISSION WORK SESSIONS (1/30-31/89)
PAGE SIX

- STEP 7. Distribution of final report and recommendation on the petition by DCRA. This would typically occur 2 weeks following the deadline for comment on the draft report.
- STEP 8. LBC conducts hearing(s) on petition. This would typically occur 3 weeks following the release of the final DCRA report. Note: additional public notice of the hearing would be given prior the hearing.
- STEP 9. LBC makes decision on petition. This must occur within 90 days of the hearing(s), however, the Commission may make a decision immediately following the hearing.

QUESTIONS AND COMMENTS CONCERNING THE MATTERS OUTLINED IN THIS REPORT MAY BE DIRECTED TO:

Dan Bockhorst
Department of Community and Regional Affairs
949 East 36th Avenue, Room 405
Anchorage, Alaska 99508

telephone 561-8586

DRAFT

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DRAFT

**IMPORTANT NOTICE
FILING FOR DISSOLUTION OF THE CITY OF
AKIACHAK**

Voters of the community of Akiachak (located approximately 20 miles northeast of Bethel) have petitioned the State of Alaska to dissolve their city government. A copy of the petition and supporting materials is available for review at the Akiachak Native Community Office in Akiachak and at the Department of Community and Regional Affairs (DCRA) in Bethel and Anchorage.

BOUNDARIES. The boundaries of the city proposed for dissolution encompass approximately 12 square miles in and around the community of Akiachak.

WRITTEN COMMENT PERIOD. Individuals may file briefs or written comments in support of or opposition to this petition. To ensure consideration, such materials must be submitted in accordance with the schedule set by the Chairman of the Local Boundary Commission (LBC) as outlined below.

SCHEDULE. The Chairman of the LBC will formally set the schedule for action by the LBC concerning this matter on February 27, 1989. The following is the tentative schedule of the proceedings.

- 03/13/89 - Deadline for filing briefs and/or written comments in support of or opposition to the proposed dissolution.
- 03/27/89 - Deadline for submission of answering briefs by petitioners' representative.
- 04/24/89 - DCRA releases (for public review) draft report and recommendation to the LBC concerning the proposed dissolution.
- 05/22/89 - Deadline for receipt of comments on draft report and recommendation from DCRA.
- 06/05/89 - DCRA releases final report and recommendation.
- 06/26/89 - LBC conducts hearing in Akiachak.
- 11/07/89 - State conducts election on dissolution (assuming LBC approves petition - actual election date will be set by Director of Division of Elections).

SPECIAL NOTICE TO CREDITORS AND OTHERS WITH A FINANCIAL INTEREST. Any party to whom a debt is owed by the City of Akiachak or who holds assets of the City of Akiachak is asked to notify (INSERT NAME, ADDRESS AND TELEPHONE NUMBER OF AUDITOR).

FURTHER INFORMATION. Questions and requests for a copy of the petition for dissolution, DCRA's reports, briefs, correspondence and/or other materials concerning this matter should be directed to Dan Bockhorst, Department of Community and Regional Affairs, 949 East 36th Avenue, Suite 405, Anchorage, AK 99508 (telephone: 561-8586).

STANDARDS ESTABLISHED BY THE LOCAL BOUNDARY COMMISSION CONCERNING THE ETHICAL CONDUCT OF COMMISSION MEMBERS PROHIBIT INDIVIDUAL MEMBERS OF THE COMMISSION FROM DISCUSSING ANY ASPECT OF THIS MATTER, OTHER THAN PROCEDURES TO BE USED.

(5) "rural" means

(A) a community with a population of 4,500 or less in the first or second judicial district of the state;

(B) a community with a population of 4,500 or less in the third judicial district of the state that is more than 100 nautical miles from the conforming boundary of jurisdiction of the Municipality of Anchorage; or

(C) a community with a population of 4,500 or less in the fourth judicial district of the state that is more than 35 nautical miles from the conforming boundary of jurisdiction of the City of Fairbanks;

(6) "rural housing" means housing, whether or not it is nonconforming housing, that is located in a rural area of the state. (§ 73 ch 106 SLA 1980; am § 50 ch 113 SLA 1982; am § 7 ch 128 SLA 1984)

Effect of amendments. — The 1982 amendment added paragraphs (5) and (6). The 1984 amendment rewrote paragraph (5).

Article 9. Local Boundary Commission.

Section	Section
565. Local boundary commission;	575. Quorum
567. Powers and duties	577. Boundary change
569. Meetings and hearings	579. Expenses
571. Minutes and records	581. Hearings on boundary changes
573. Notice of public hearings	583. When boundary change takes effect

Sec. 44.47.565. Local boundary commission. There is in the department a local boundary commission. The local boundary commission consists of five members appointed by the governor for overlapping five-year terms. One member shall be appointed from each of the four judicial districts described in AS 22.10.010 and one member shall be appointed from the state at large. The member appointed from the state at large is the chairman of the commission. (§ 7 ch 64 SLA 1959; am § 5 ch 200 SLA 1972; am § 100 ch 59 SLA 1982)

Revisor's notes. — Formerly AS 44.19.250. Renumbered in 1980.

Cross references. — For further provisions relating to the local boundary commission and to annexation by local action, see AS 29.68.010. As to appointment, qualifications, and terms of office of members of departmental boards, councils, or

commissions, see AS 39.05.060.

Effect of amendments. — The 1982 amendment substituted "judicial districts described in AS 22.10.010" for "major senatorial election districts" and inserted "member shall be appointed" in the third sentence.

NOTES TO DECISIONS

When constitutional provision effective. — The method for making boundary changes, contemplated by art. X, § 12, of the Alaska Constitution, was operative upon the enactment of AS 44.19.260 [now AS 44.47.567] and this section. *Fairview Pub. Util. Dist. No. 1 v. Anchorage, Sup.*

Ct. Op. No. 61 (File Nos. 69, 71), 368 P.2d 540, appeal dismissed and cert. denied, 371 U.S. 5, 83 S. Ct. 39, 9 L. Ed. 2d 49 (1962).

Cited in Mobil Oil Corp. v. Local Boundary Comm'n, Sup. Ct. Op. No. 989 (File No. 1947), 518 P.2d 92 (1974).

Sec. 44.47.567. Powers and duties. (a) The local boundary commission shall

- (1) make studies of local government boundary problems;
- (2) develop proposed standards and procedures for changing local boundary lines;
- (3) consider a local government boundary change requested of it by the legislature, the commissioner of community and regional affairs, or a political subdivision of the state; and
- (4) develop standards and procedures for the extension of services and ordinances of incorporated cities into contiguous areas for limited purposes upon majority approval of the voters of the contiguous area to be annexed and prepare transition schedules and prorated tax mill levies as well as standards for participation by voters of these contiguous areas in the affairs of the incorporated cities furnishing services.

(b) The local boundary commission may

- (1) conduct meetings and hearings to consider local government boundary changes and other matters related to local government boundary changes, including extensions of services by incorporated cities into contiguous areas and matters related to extension of services; and
- (2) present to the legislature during the first 10 days of a regular session proposed local government boundary changes, including gradual extension of services of incorporated cities into contiguous areas upon a majority approval of the voters of the contiguous area to be annexed and transition schedules providing for total assimilation of the contiguous area and its full participation in the affairs of the incorporated city within a period not to exceed five years. (§ 7 ch 64 SLA 1959; § 2 ch 45 SLA 1960; am §§ 1, 2 ch 55 SLA 1964; am §§ 1, 2 ch 161 SLA 1966; am § 6 ch 200 SLA 1972)

Revisor's notes. — Formerly AS 44.19.260. Renumbered in 1980.

Cross references. — For further statement of powers of local boundary commission, see Alaska Constitution, art. X, § 12.

Opinions of attorney general. — When grouped together, the powers and duties of the local boundary commission

are as follows: (1) To consider any local government boundary change (§ 12, art. X, Alaska Constitution); (2) to present proposed changes to the legislature (§ 12, art. X, Alaska Constitution; § 7, ch. 64, SLA 1959); (3) (subject to law) to establish procedures whereby boundaries may be adjusted by local action (§ 12, art. X, Alaska Constitution); (4) to make studies

extending city services. *Port Valdez Co. v. City of Valdez*, Sup. Ct. Op. No. 1044 (File No. 1996), 522 P.2d 1147 (1974).

The post-annexation creation of differently served and treated areas does not impugn the reasonableness of the annexation. *Port Valdez Co. v. City of Valdez*, Sup. Ct. Op. No. 1044 (File No. 1996), 522 P.2d 1147 (1974).

Standing to contest annexation. — An aggrieved property owner in an area to be annexed has standing to contest the annexation. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n.*, Sup. Ct. Op. No. 727 (File No. 1461), 489 P.2d 140 (1971).

Annexations effected through local boundary commission procedures receive a full administrative hearing, followed by legislative review, before they are subjected to judicial scrutiny. *Port Valdez Co. v. City of Valdez*, Sup. Ct. Op. No. 1044 (File No. 1996), 522 P.2d 1147 (1974).

Common challenge is to attack procedures. — The more common challenge to local boundary commission action attacks the procedures by which the substantive decisions were made. *Port Valdez Co. v. City of Valdez*, Sup. Ct. Op. No. 1044 (File No. 1996), 522 P.2d 1147 (1974).

The selection of annexation method made by the commission and approved by the legislature is controlling. *Port Valdez Co. v. City of Valdez*, Sup. Ct. Op. No. 1044 (File No. 1996), 522 P.2d 1147 (1974).

Judicial review. — There are questions of public policy to be determined in annexation proceedings which are beyond

the province of the court. Examples are the desirability of annexation, as expressed in established standards. Judicial techniques are not well adapted to resolving these questions. In that sense, these may be described as "political questions," beyond the compass of judicial review. But other annexation issues, such as whether statutory notice requirements were followed, are readily decided by traditional judicial techniques. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n.*, Sup. Ct. Op. No. 727 (File No. 1461), 489 P.2d 140 (1971).

The policy decision as to the mode of annexation is an exercise of lawfully vested administrative discretion which the supreme court will review only to determine if administrative, legislative or constitutional mandates were disobeyed or if the action constituted an abuse of discretion. *Port Valdez Co. v. City of Valdez*, Sup. Ct. Op. No. 1044 (File No. 1996), 522 P.2d 1147 (1974).

Wood River made part of city of Dillingham. — When the legislature failed to disapprove of the commission's proposal, the commission's local boundary change, which consisted of the abolition of the boundary of Wood River and the confirmation of the boundary of the city of Dillingham, had the effect of making Wood River a part of the city of Dillingham. When the boundary commission's proposal for boundary change became effective, the city of Wood River was dissolved, even though the statutory procedures for dissolution of cities were not followed. *Oesau v. City of Dillingham*, Sup. Ct. Op. No. 467 (File No. 856), 439 P.2d 180 (1968).

Sec. 44.47.569. Meetings and hearings. The chairman of the commission or the commissioner of community and regional affairs with the consent of the chairman may call a meeting or hearing of the local boundary commission. All meetings and hearings shall be public. (§ 3 ch 45 SLA 1960; am § 7 ch 200 SLA 1972)

Revisor's notes. — Formerly AS 44 19 270 Renumbered in 1960.

Sec. 44.47.571. Minutes and records. The local boundary commission shall keep minutes of all meetings and hearings. If the proceedings are transcribed, minutes shall be made from the transcription. The minutes are a public record. All votes taken by the commission shall be entered in the minutes. (§ 3 ch 45 SLA 1960)

Revisor's notes. — Formerly AS
44.19.280. Renumbered in 1980.

Sec. 44.47.573. Notice of public hearings. Public notice of a hearing of the local boundary commission shall be given in the area in which the hearing is to be held at least 15 days before the date of the hearing. The notice of the hearing shall include the time, date, place, and subject of the hearing. The director of local affairs shall give notice of the hearing at least three times in the press, through other news media, or by posting in a public place, whichever is most feasible. (§ 3 ch 45 SLA 1960)

Revisor's notes. — Formerly AS
44.19.290. Renumbered in 1980.

Sec. 44.47.575. Quorum. Three members of the commission constitute a quorum for the conduct of business at a meeting. Two members constitute a quorum for the conduct of business at a hearing. (§ 3 ch 45 SLA 1960)

Revisor's notes. — Formerly AS
44.19.300. Renumbered in 1980.

Sec. 44.47.577. Boundary change. A majority of the membership of the local boundary commission must vote in favor of a proposed boundary change before it may be presented to the legislature. (§ 3 ch 45 SLA 1960)

Revisor's notes. — Formerly AS
44.19.310. Renumbered in 1980.

Sec. 44.47.579. Expenses. Members of the local boundary commission receive no pay but are entitled to the travel expenses and per diem authorized for members of boards and commissions. (§ 4 ch 45 SLA 1960)

Revisor's notes. — Formerly AS
44.19.320. Renumbered in 1980.

Sec. 44.47.581. Hearings on boundary changes. A local government boundary change may not be proposed to the legislature unless a hearing on the change has been held in or in the near vicinity of the area affected by the change. (§ 2 ch 45 SLA 1960)

Revisor's notes. — Formerly AS
44.19.330. Renumbered in 1980.

Sec. 44.47.583. local government during the first effective 45 day whichever is earlier by a majority of

Revisor's notes
44.19.340. Renumbered
Cross references

By this section as provided that the make studies of boundary problem standards and procedures, boundaries, and changes requested of vision. The commission hearings on boundary proposed changes to change becomes effective legislature disapproves permits the change Smelting, Ref. & Mining Boundary Commission. (File No. 1461), 489

Alaska Const. empowers the legislature actions. Un Ref. & Mining Commission, Sup Ct O 1461), 489 P.2d 140

But such section compel the legislature compliance with its United States Smelting v. Local Boundary Commission. No. 727 (File No. 1 (1971).

This section and A § 12, do not make whether the commission with the law excluded United States Smelting v. Local Boundary Commission. No. 727 (File No. 1 (1971).

Article 10. §

Section
610. Declaration of public
620. Senior citizens benefits

Sec. 44.47.583. When boundary change takes effect. When a local government boundary change is proposed to the legislature during the first 10 days of any regular session, the change becomes effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. (§ 2 ch 45 SLA 1960)

Revisor's notes. — Formerly AS 44.19.340. Renumbered in 1980.
Cross references. — For other provisions relating to procedures of the local boundary commission, see AS 29.68.010.

NOTES TO DECISIONS

By this section and AS 44.47.587 it is provided that the commission must make studies of local government boundary problems, develop proposed standards and procedures for changing boundaries, and consider boundary changes requested of it by political subdivisions. The commission may conduct hearings on boundary changes and present proposed changes to the legislature. The change becomes effective unless the legislature disapproves; legislative silence permits the change. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, Sup. Ct. Op. No. 727 (File No. 1461), 489 P.2d 140 (1971).*

Alaska Const., art. X, § 12, empowers the legislature to veto commission actions. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, Sup. Ct. Op. No. 727 (File No. 1461), 489 P.2d 140 (1971).*

But such section does nothing to compel the legislature to review for compliance with its own requirements. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, Sup. Ct. Op. No. 727 (File No. 1461), 489 P.2d 140 (1971).*

This section and Alaska Const., art. X, § 12, do not make the decision as to whether the commission has complied with the law exclusively legislative. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, Sup. Ct. Op. No. 727 (File No. 1461), 489 P.2d 140 (1971).*

Legislature handicapped in absence of known standard governing change of boundary lines. — Under Alaska's Constitution the supreme court has the duty of insuring that administrative action complies with the laws of Alaska. Absent known standards governing the changing of local boundary lines, the legislature's ability to make rational decisions as to whether to approve or disapprove proposed local boundary changes of the commission is seriously handicapped. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, Sup. Ct. Op. No. 727 (File No. 1461), 489 P.2d 140 (1971).*

Existing cities with local bound commission created bounda remain unaffected by the holding, as the de facto municipality doctrine. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, Sup. Ct. Op. No. 727 (File No. 1461), 489 P.2d 140 (1971).*

Standing to contest annexatio: An aggrieved property owner in an a be annexed has standing to contes annexation. *United States Smelting & Mining Co. v. Local Boundary Co Sup. Ct. Op. No. 727 (File No. 1461 P.2d 140 (1971).*

Stated in *State, Dep't of Nat'l Resources v. City of Haines, Sup. Ct. Op. No. 2342 (File No. 5067), 627 P.2d 1047 (1981).*

Article 10. Senior Citizens Housing Development Fund.

- Section
610. Declaration of purpose
620. Senior citizens housing development

Public notice of a be given in the area in before the date of the the time, date, place, affairs shall give notice through other news r is most feasible. (§ 3

he commission consti- eeting. Two members at a hearing. (§ 3 ch

v of the membership favor of a proposed legislature. (§ 3 ch

l boundary commis- sences and per diem ns. (§ 4 ch 45 SLA

es. A local govern- legislature unless near vicinity of the

TITLE 19. COMMUNITY AND REGIONAL AFFAIRS

Part

- 1. Local Boundary Commission (19 AAC 10)
- 2. Municipal and Regional Assistance Division (19 AAC 30 — 19 AAC 60)
- 3. Division of Community Development (19 AAC 65 — 19 AAC 69)
- 4. Division of Housing Assistance (19 AAC 80 — 19 AAC 88)
- 5. Division of Community Planning (19 AAC 90)

Publisher's note. — Emergency regulations, if any, are placed in an appendix following the permanent regulations in each pamphlet of the Alaska Administrative Code.

PART 1. LOCAL BOUNDARY COMMISSION

Chapter

- 05. Standards for Boundary Changes (consolidated into 19 AAC 10)
- 10. Municipal Incorporations and Boundary Changes (19 AAC 10.010 — 19 AAC 10.840)
- 15. Boundary Changes by Local Action (consolidated into 19 AAC 10)
- 20. Miscellaneous Provisions (consolidated into 19 AAC 10)

CHAPTER 05. STANDARDS FOR BOUNDARY CHANGES

Editor's notes. — As of 2/21/82, 19 AAC 05, 19 AAC 10, 19 AAC 15 and 19 AAC 20 have been reorganized under 19 AAC 10. The history notes for sections within the old chapters have not been carried forward in the reorganization.

CHAPTER 10. MUNICIPAL CORPORATIONS AND BOUNDARY CHANGES

Article

- 1. Standards for Incorporation of Cities (19 AAC 10.010 — 19 AAC 10.030)
- 2. Standards for Incorporation of Development Cities (19 AAC 10.040 — 19 AAC 10.060) (Reserved)
- 3. Standards for Annexation to Cities (19 AAC 10.065 — 19 AAC 10.090)
- 4. Standards for Detachment from Cities and Unified Municipalities (19 AAC 10.095 — 19 AAC 10.120)
- 5. Standards for Dissolution of Cities (19 AAC 10.130 — 19 AAC 10.150)
- 6. Standards for Incorporation of Organized Boroughs (19 AAC 10.160 — 19 AAC 10.180)
- 7. Standards for Annexation to Organized Boroughs (19 AAC 10.185 — 19 AAC 10.220)
- 8. Standards for Detachment from Organized Boroughs (19 AAC 10.225 — 19 AAC 10.250)
- 9. Standards for Dissolution of Organized Boroughs (19 AAC 10.260 — 19 AAC 10.280)

Article

- 10. Standards for Merger of Municipalities (19 AAC 10.290 — 19 AAC 10.300)
- 11. Standards for Consolidation of Municipalities (19 AAC 10.310 — 19 AAC 10.320)
- 12. Procedures for Incorporation of Municipalities (19 AAC 10.325 — 19 AAC 10.440)
- 13. Procedures for Boundary Changes Requiring Legislative Review (19 AAC 10.450 — 19 AAC 10.620)
- 14. Procedures for Boundary Changes by Local Action (19 AAC 10.630 — 19 AAC 10.730)
- 15. Procedures for Step Annexation (19 AAC 10.735 — 19 AAC 10.790)
- 16. Procedures for Merger or Consolidation of Municipalities (19 AAC 10.800 — 19 AAC 10.810)
- 17. Miscellaneous Provisions (19 AAC 10.820 — 19 AAC 10.840)

Authority: AS 29.1
AS 44.4

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Article 1. Standards for Incorporation of Cities

<p>Section 10. Considerations relating to incorporation standards 20. Application of standards</p>	<p>Section 30. Incorporation of territory located within a municipality</p>
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Authority: Art. X.
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19 AAC 10.010. CONSIDERATIONS RELATING TO INCORPORATION STANDARDS. (a) In determining whether the boundaries include all areas necessary to provide municipal services on an efficient scale for the purposes of AS 29.18.011(a)(2), the commission will, in its discretion and without limitation, consider land ownership patterns, land use patterns, population densities, the location of existing and anticipated transportation facilities, existing and anticipated roads and trails, existing or potential watersheds, and other areas necessary for the provision of municipal services.

(b) In determining whether the economy of a community has the human and financial resources necessary to provide local services for the purposes of AS 29.18.011(a)(3), the commission will, in its discretion and without limitation, consider existing and anticipated industrial, commercial, or resource development and education levels of the residents of the community, in addition to the factors listed in AS 29.18.011(a)(3).

(c) In determining whether the population of a community is stable enough to support local government for the purposes of AS 29.18.011(a)(4), the commission will, in its discretion and without limitation, consider community growth patterns, age distribution patterns, seasonal population changes, and other factors which indicate the stability of the population of the community.

(d) In determining whether there is a demonstrated need for local government in a community for the purposes of AS 29.18.011(a)(5), the commission will, in its discretion and without limitation, consider existing and anticipated social and economic problems, whether major economic development is anticipated, adequacy of existing services, and other factors which reflect the need for local government. (Eff. 2/21/82, Register 81)

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19 AAC 10.020 COMMUNITY AND REGIONAL AFFAIRS 19 AAC 10.030

Authority: AS 29.18.011
AS 44.47.980

19 AAC 10.020. APPLICATION OF STANDARDS. (a) The commission will not allow the incorporation of a community located within an organized borough unless the petitioners demonstrate to the satisfaction of the commission that the services to be exercised by the proposed city cannot be reasonably or practicably exercised by the borough on an areawide or non-areawide basis. The commission will consider the requirement of this subsection satisfied if

(1) the commission determines that the municipal services proposed to be exercised by the new city could more economically and efficiently be provided by the city form of government than by the exercise of areawide or non-areawide borough powers; or

(2) the commission determines that the proposed city is remote from the borough seat and is not connected to the borough seat by the state highway system.

(b) The commission will not consider a petition for incorporation of a community located or partially located within an existing city until the petitioners have submitted, and the commission has approved, a petition for detachment from the existing city of the area proposed for incorporation in accordance with this chapter.

(c) The commission will not consider a petition for incorporation of a community located partially within and partially outside an organized borough until the petitioners have submitted, and the commission has approved

(1) a petition for annexation to the borough of the area located outside the borough in accordance with this chapter; or

(2) a petition for detachment of the area proposed for incorporation from the borough in accordance with this chapter.

(d) The commission will deny a petition for incorporation of a community as a city of the first class unless the petitioners demonstrate to the satisfaction of the commission that the community has the ability to generate sufficient local revenues to pay for the local share of the costs of mandatory first-class city services, which include, but are not limited to, the cost of the local contribution for education, the cost of an annual audit of the city accounts, and, for cities in the unorganized borough, the cost of exercising planning, platting, and zoning powers as authorized by AS 29. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

19 AAC 10.030. INCORPORATION OF TERRITORY LOCATED WITHIN A MUNICIPALITY. (a) For the incorporation of a community located within a municipality which is providing services to the community which the proposed city will provide upon incorpora-

tion, the commission will determine the method by which assets and liabilities are to be distributed between the newly incorporated city and the municipality formerly providing services. In determining the method of transfer of service responsibility and the distribution of assets and liabilities, the commission will, in its discretion, approve an equitable agreement between the municipalities affected but will independently review the proposed agreement.

(b) If, within two years of the date of incorporation, the municipalities involved have failed to reach an agreement under (a) of this section as to the distribution of assets and liabilities, then the commission shall determine the method of transfer of service responsibility and the distribution or transfer of assets and liabilities which shall be binding on the municipalities.

(c) If, in exercising its responsibilities under (b) of this section, the commission determines it necessary, the commission will, in its discretion, employ the services of professional accountants or consultants, and charge the municipalities for the costs incurred. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

Article 2. Standards for Incorporation of Development Cities

Section
40 — 60. (Reserved)

19 AAC 10.040 — 19 AAC 10.060. Reserved.

Article 3. Standards for Annexation to Cities

Section
65. Applicability
70. Annexable territory

Section
80. Application of standards
90. Annexation of incorporated territory

19 AAC 10.065. APPLICABILITY. The provisions of 19 AAC 10.070 — 19 AAC 10.090 apply to a proposal for annexation by local action (19 AAC 10.630 — 19 AAC 10.730), by legislative review (19 AAC 10.450 — 19 AAC 10.620) or by the step process (19 AAC 10.735 — 19 AAC 10.790). (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.557

19 AAC 10.070. ANNEXABLE TERRITORY. (a) Territory which is contiguous to a city may be annexed to that city if one or more of the following standards are met:

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(1) the contiguous territory is totally surrounded by the city's boundaries;

(2) the land in the territory is wholly owned by the city;

(3) the territory is urban in character;

(4) the territory is in need of municipal services which the city can provide more efficiently than another municipality;

(5) there is a reasonable likelihood that future growth and development will occur within the territory and that annexation of the territory will enable the city to plan for and control that development;

(6) the health, welfare, or safety of city residents is endangered by conditions existing or developing in the territory and annexation will enable the city to remove or relieve those conditions;

(7) the extension into the territory of city services or facilities is necessary to enable the city to provide adequate service to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the city's boundaries;

(8) residents or property owners within the territory receive or may be reasonably expected to receive, directly or indirectly, the benefit of city government without commensurate property tax contributions, whether city services are rendered or received inside or outside the territory;

(9) the annexation is otherwise necessary to accomplish a valid public purpose.

(b) Territory which is not contiguous to a city may be annexed to the city if

(1) the land in the territory is wholly owned or leased by the city or used primarily for the performance of city functions; and

(2) annexation is necessary to enable the city to achieve adequate control, protection, or management of the property.

(c) Territory which does not meet the standards of (a) of this section may be annexed to a city if the territory lies between the city boundary and other noncontiguous territory which meets the requirements of (a) of this section.

(d) In determining whether territory is urban in character for the purposes of (a)(3) of this section, the commission will, in its discretion and without limitation, consider whether the property is platted or held for sale for residential or commercial purposes, whether the population density of the territory approximates that of the annexing city, whether the population of the territory stems primarily from actual growth of the city beyond its legal boundaries, and whether the property is valuable primarily by reason of its suitability for prospective urban purposes.

(e) In determining whether the standard established in (a)(8) of this section is met, the commission will consider alternative methods

available to the city for offsetting the cost of providing services to individuals or property beyond its property taxation powers. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.667

Editor's notes. — 19 AAC 10.070 is based on a former version of 19 AAC 05.010.

19 AAC 10.080. APPLICATION OF STANDARDS. (a) The commission will not approve an annexation unless the annexing city demonstrates to the satisfaction of the commission that it is capable of extending, and is willing to extend, services to the annexed area as follows:

(1) full municipal services shall be extended to the annexed area immediately unless

(A) the annexation is pursuant to 19 AAC 10.735 — 19 AAC 10.790; or

(B) the immediate extension of full municipal services to the annexed area is impossible because of a lack of necessary facilities, in which case the annexing city shall satisfy the commission that it will provide the services within a reasonable time;

(2) if the annexation is under 19 AAC 10.735 — 19 AAC 10.790, the commission must be satisfied that the city's plan for gradual extension of services reasonably compares with a plan for gradual extension of taxation and provides for extension of full municipal services to the annexed area within the time period established under 19 AAC 10.740.

(b) The commission will, in its discretion, conduct public hearings or investigations after a detachment to determine if the service requirements of residents are being met. If the commission determines that the service requirements of the residents of the territory are not being met, it will, in its discretion, begin annexation proceedings under this chapter.

(c) Notwithstanding the provisions of (a) of this section, the commission will, in its discretion, approve an annexation by a city which has authority to establish and operate differential taxation zones if the commission is satisfied that the city is willing and able to use that authority to

(1) provide the territory with such services as may be desired by residents of the territory; and

(2) insure that the annexed area is not subjected to unfair taxation for services not available in the annexed area. (Eff. 2/21/82, Register 81)

Authority: Art. X,
AS 44.4

Editor's notes. —
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Authority: Art. X, S
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19 AAC 10.090 COMMUNITY AND REGIONAL AFFAIRS 19 AAC 10.100

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.080 is
based on a former version of 19 AAC
05.020.

19 AAC 10.090. ANNEXATION OF INCORPORATED TERRITORY. (a) For the annexation by a city of territory of another municipality, the commission will determine the method by which assets and liabilities are to be distributed between the city and the municipality formerly providing services. In determining the distribution of liabilities and assets, the commission will, in its discretion, approve an equitable agreement between the municipalities affected but will independently review the proposed agreement.

(b) Territory which is part of a city may not be annexed to another city unless the commission determines the annexation to be in the best interests of the annexing city, the city from which the annexed territory is taken, and the annexed area.

(c) Separate or additional proceedings are not required for detachment from a city or borough of territory which becomes annexed to another city; the detachment is effected by and at the same time as the annexation. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.090 is
based on former versions of 19 AAC
05.030 and 19 AAC 15.040.

Article 4. Standards for Detachment from Cities and Unified Municipalities

Section
95. Applicability
100. Detachable territory

Section
110. Application of standards
120. Distribution of assets and liabilities

19 AAC 10.095. APPLICABILITY. The provisions of 19 AAC 10.100 — 19 AAC 10.120 apply to a proposal for detachment by local action (19 AAC 10.630 — 19 AAC 10.730) or by legislative review (19 AAC 10.450 — 19 AAC 10.620). (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

19 AAC 10.100. DETACHABLE TERRITORY. (a) Territory which is part of a city or unified municipality may be detached from that city or unified municipality if, in the view of the commission, the detachment would be in the best interests of the state, the area to be

detached and the municipality affected by the detachment. In determining whether to approve detachment, the commission will consider, but is not limited to, the following factors:

(1) whether the territory is so situated as to render it impractical or unfeasible to extend to the territory municipal sewer, street, water, or other facilities or municipal police, fire, health, or other services;

(2) whether within the territory conditions exist, or there is reasonable prospect for future conditions to exist, which, if not subject to municipal control, would endanger the health or safety of residents;

(3) whether it is likely that future growth and development of the city or unified municipality will occur within the territory; and

(4) whether the territory is needed by the city or unified municipality for a legitimate public purpose.

(b) Territory may be detached from a city or unified municipality if the commission determines that the city or unified municipality has substantially failed or refused to provide needed services to the territory, and there is a substantial likelihood that it will continue to fail or refuse to provide the services, when such services are provided to other areas within the municipality and are supported by taxes levied in the area considered for detachment.

(c) The commission will, in its discretion, conduct public hearings or investigations after the effective date of an annexation to determine whether the extension of services or taxation or use of differential taxation zones is proceeding in a reasonable manner. If the commission determines that the extension of services or taxation or use of differential taxation zones is not progressing in a manner consistent with that set forth in the annexation petition, it will, in its discretion, begin detachment proceedings. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.100 is based on a former version of 19 AAC 05.050.

19 AAC 10.110. APPLICATION OF STANDARDS. (a) The commission will not approve a detachment unless the petitioners demonstrate to the satisfaction of the commission that the requirements of the territory for services will be met following the detachment.

(b) If, in fulfillment of the requirement of (a) of this section, petitioners have proposed incorporation of a new municipality, the commission may condition the approval of the detachment upon voter approval of the incorporation proposal. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 5,
AS 44.47

19 AAC 10.120 TIES. (a) If territory organized borough which the assets between the city and borough. In making discretion, approval city and the organization proposed agreement

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Authority: Art. X,
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Editor's notes. — based on former version 05.060 and 19 AAC 10.120

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Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

19 AAC 10.120. DISTRIBUTION OF ASSETS AND LIABILITIES. (a) If territory sought to be detached is part of a city within an organized borough, the commission will determine the manner in which the assets and liabilities of the territory shall be distributed between the city from which it is being detached and the organized borough. In making this determination, the commission will, in its discretion, approve an equitable agreement between the detaching city and the organized borough but will independently review the proposed agreement.

(b) If the territory sought to be detached is part of a city within the unorganized borough, the commission will determine the manner in which the assets and liabilities of the territory being detached shall be distributed between the city from which the territory is being detached and the state. The commission, after an independent review, will, in its discretion, approve an equitable agreement between the city and the state.

(c) If petitioners have proposed that, following detachment, a new municipality be formed, the provisions of (a) of this section apply to the newly formed municipality and the municipality from which the territory was detached.

(d) If, within two years of the effective date of the detachment, an agreement specifying the manner by which assets and liabilities will be distributed has not been agreed to by the affected parties, the commission will enter an order providing for transfer of service responsibility and distribution of assets and liabilities which shall be binding on the parties affected.

(e) If in exercising its responsibilities under (d) of this section, the commission determines it necessary, the commission will, in its discretion, employ the services of professional accountants or consultants and charge the parties affected for the costs incurred. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.120 is based on former versions of 19 AAC 05.060 and 19 AAC 15.200.

Article 5. Standards for Dissolution of Cities

Section 130. Dissolution 140. Application of standards	Section 150. Dissolution effected by annexation
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19 AAC 10.130. DISSOLUTION. (a) A city may be dissolved if the city has no indebtedness, bonded or otherwise, or has proposed a method of repayment which will protect the interests of its creditors, and if the following standards are met:

(1) the city has ceased, for two or more consecutive years, to exercise any of the municipal powers set forth in AS 29.48.030 — 29.48.035;

(2) the city has failed to conduct two or more consecutive regular elections in the manner provided by law; and

(3) the city no longer meets the standards for incorporation as provided by law and regulation.

(b) The commission will, in its discretion conduct a public hearing or an investigation after the effective date of an incorporation of a city to determine whether municipal services are being provided in a manner consistent with the timetable included in the petition for incorporation. If the commission determines that services are not being provided according to the timetable, the commission will, in its discretion, bring dissolution proceedings under 19 AAC 10.130 — 19 AAC 10.150. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

Editor's notes. — 19 AAC 10.130 is based on a former version of 19 AAC 05.090.

19 AAC 10.140. APPLICATION OF STANDARDS. (a) If the commission determines that it will recommend to the legislature that a city be dissolved, the city may not make an expenditure without first receiving the written approval of the commissioner.

(b) In the dissolution of a city within an organized borough, the assets of the city being dissolved become the assets of the borough in which it is located if the borough possesses and exercises the powers to which the assets of the city relate. If the borough does not possess and exercise the relevant powers, the assets of the city being dissolved become the assets of the state.

(c) In the dissolution of a city within the unorganized borough, the assets of the city being dissolved become the assets of the state.

(d) If the liabilities of a city being dissolved exceed the assets of the city, the taxable property within the city remains subject to taxation until the liabilities are paid. (Eff. 2/21/82, Register 81)

Authority: Art. X, S
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Authority: Art. X, S
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19 AAC 10.150 COMMUNITY AND REGIONAL AFFAIRS 19 AAC 10.170

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

19 AAC 10.150. DISSOLUTION EFFECTED BY ANNEXATION. Separate or additional proceedings are not required for dissolution of a city in an area which has been annexed to another city; the dissolution is effected by and at the same time as the annexation. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

Editor's notes. — 19 AAC 10.150 is based on a former version of 19 AAC 05.100.

Article 6. Standards for Incorporation of Organized Boroughs

Section
160. Incorporation
170. Application of standards

Section
180. Distribution of assets and liabilities

19 AAC 10.160. INCORPORATION. An area may incorporate as an organized borough if it meets the statutory standards set forth in AS 29.18.030 and meets the following specific requirements:

- (1) the area includes at least two separate communities;
- (2) transportation services are available at least once a week between communities located within the area on a regularly scheduled or charter basis, or communities located within the area which do not have regularly scheduled transportation services are connected by a highway system;

(3) there are sufficient anticipated revenues to maintain and operate, at a minimum, the mandatory powers of the proposed borough government;

(4) there are at least 1,000 people located within the area; and

(5) the area includes, at a minimum, one entire regional education attendance area unless the commission determines that a smaller area can otherwise meet borough government standards for incorporation. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

19 AAC 10.170. APPLICATION OF STANDARDS. (a) The commission will not approve an incorporation unless the petitioners demonstrate to the satisfaction of the commission that the proposed borough is capable of providing and willing to provide the mandatory powers of an organized borough within three months of incorporation.

(b) The commission will not consider a petition for incorporation as a borough of an area whose boundaries include only a portion of a city.

(c) The commission will not consider a petition for incorporation of an area located partially or wholly within an organized borough or unified municipality until the petitioners have submitted, and the commission has approved, a petition for detachment of the area from the borough or unified municipality pursuant to 19 AAC 10.100 — 19 AAC 10.120 or 19 AAC 10.230 — 19 AAC 10.250. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

19 AAC 10.180. DISTRIBUTION OF ASSETS AND LIABILITIES.

(a) For the incorporation of an area located within an existing organized borough or city which provides services to the area, the commission will determine the method by which assets and liabilities are to be distributed between the newly incorporated borough, the former borough, and each city formerly providing services.

(b) Notwithstanding the provisions of (a) of this section, for the incorporation of an area which includes an organized city which provides mandatory borough powers, the newly incorporated borough succeeds to the assets and liabilities of the organized city as they relate to the mandatory powers being assumed by the borough.

(c) In determining the method of transfer of service responsibility and the distribution or transfer of assets and liabilities, the commission will, in its discretion, approve an equitable agreement between the municipalities affected but will independently review the proposed agreement.

(d) If, within two years of the date of incorporation, the newly incorporated borough and another municipality affected by the incorporation have failed to reach an agreement as to the method of transfer of service responsibility or the distribution or transfer of assets and liabilities, the commission will enter an order providing for the transfer of service responsibility and the distribution or transfer of assets and liabilities which shall be binding on the municipalities affected.

(e) If, in exercising its responsibilities under (c) of this section, the commission determines it necessary, the commission will, in its discretion, employ the services of professional accountants or consultants and charge the municipalities affected for the costs incurred. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

Article 7. Stan.

Section
185. Applicability
190. Annexable territory
200. Application of

19 AAC 10.18
10.190 — 19 AAC
action (19 AAC 1
AAC 10.450 —

Authority: Art. X,
AS 44.4

19 AAC 10.19
which is contiguous
borough if one of

- (1) the contiguous borough
- (2) the land borough;

- (3) the territory or the state

- (4) there is a development will or territory will enable development;

- (5) the health borough is enclosed territory and to move or relieve

- (6) the exteriorities is necessary adequate service to be possible or impractical or service through boundary

- (7) residents may be reasonably benefit of organization or territory tax contributed inside

- (8) the annexation public purpose

for incorporation as a portion of a city, for incorporation of organized borough or submitted, and the part of the area from 19 AAC 10.100 — 19 AAC 10.180. Eff. 2/21/82, Register 81.

ASSETS AND LIABILITIES

within an existing city, the assets and liabilities of the organized borough, the municipal services. This section, for the organized city which proposes to incorporate a borough, shall be reviewed by the organized city as they are reviewed by the borough. The service responsibility, the commission, the agreement between the organized city and the borough shall be reviewed the proposed

on, the newly incorporated by the incorporation method of transfer of assets and liabilities for the transfer of assets and liabilities affected. This section, the organized city will, in its discretion, employ consultants or consultants incurred. (Eff.

Article 7. Standards for Annexation to Organized Boroughs

Section	Section
185. Applicability	210. Annexation of incorporated territory
190. Annexable territory	220. Statutory standards
200. Application of standards	

19 AAC 10.185. APPLICABILITY. The provisions of 19 AAC 10.190 — 19 AAC 10.220 apply to a proposal for annexation by local action (19 AAC 10.630 — 19 AAC 10.730) or by legislative review (19 AAC 10.450 — 19 AAC 10.620). (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const. AS 44.47.567

19 AAC 10.190. ANNEXABLE TERRITORY. (a) Territory which is contiguous to an organized borough may be annexed to that borough if one or more of the following standards are met:

- (1) the contiguous territory is totally surrounded by the organized borough's boundaries;
- (2) the land in the territory is wholly owned by the organized borough;
- (3) the territory is in need of municipal services which the organized borough can provide more efficiently than another municipality or the state;
- (4) there is a reasonable likelihood that future growth and development will occur within the territory and annexation of the territory will enable the organized borough to plan for and control that development;
- (5) the health, welfare, or safety of the residents of the organized borough is endangered by conditions existing or developing in the territory and annexation will enable the organized borough to remove or relieve those conditions;
- (6) the extension into the territory of borough services or facilities is necessary to enable the organized borough to provide adequate service to residents of the organized borough, and it is impossible or impractical for the organized borough to extend the facilities or services unless the territory is within the organized borough's boundaries;
- (7) residents or property owners within the territory receive or may be reasonably expected to receive, directly or indirectly, the benefit of organized borough services without commensurate property tax contributions, whether such services are rendered or received inside or outside the territory; or
- (8) the annexation is otherwise necessary to accomplish a valid public purpose.

(b) Territory which is not contiguous to the borough may be annexed to the borough if

(1) the land in the territory is wholly owned or leased by the borough or used primarily for the performance of borough functions; and

(2) annexation is necessary to enable the borough to achieve adequate control, protection or management of the property.

(c) Contiguous territory which does not meet the requirements of (a) of this section may nevertheless be annexed to a borough if the territory lies between the borough boundary and noncontiguous territory which does meet the requirements of (a) of this section.

(d) In determining whether the standard established in (a)(7) of this section is met, the commission will consider alternate methods available to the borough for offsetting the cost of providing services to individuals or property beyond its property taxation powers.

(e) The commission will, in its discretion, conduct public hearings or investigations after a detachment to determine if the service requirements of the territory are being met. If the commission determines that the service requirements of the territory are not being met, it will, in its discretion, begin annexation proceedings under this chapter. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.190 is based on a former version of 19 AAC 05.110.

19 AAC 10.200. APPLICATION OF STANDARDS. The commission will not approve an annexation unless the annexing organized borough demonstrates to the satisfaction of the commission that it is capable of extending and willing to extend services to the annexed area in accordance with this subsection. If possible, areawide and non-areawide borough services shall be extended to the annexed area immediately. If the immediate extension of services is not possible, the commission must be satisfied that the services not immediately extended will be extended as soon as possible and that reasonable plans have been formulated for the capital expansion necessary for the extension of services. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.200 is based on a former version of 19 AAC 05.120.

19 AAC 10.210 TERRITORY. (a) If the territory is wholly owned by another organized borough, the commission will determine whether the territory will be distributed between the boroughs, or whether the territory will be distributed to the borough in its discretion, upon the terms and conditions, and the liabilities affected by the distribution.

(b) In determining whether the territory will be distributed to the borough in its discretion, upon the terms and conditions, and the liabilities affected by the distribution, the commission will, in its discretion, conduct public hearings or investigations after a detachment to determine if the service requirements of the territory are being met. If the commission determines that the service requirements of the territory are not being met, it will, in its discretion, begin annexation proceedings under this chapter. (Eff. 2/21/82, Register 81)

(c) Territory which is wholly owned by another organized borough may be annexed to another organized borough from which it was detached at the same time as, the territory.

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — based on former version of 05.130 and 19 AAC 05.110.

19 AAC 10.220. The commission will not approve an annexation unless the annexing organized borough demonstrates to the satisfaction of the commission that it is capable of extending and willing to extend services to the annexed area in accordance with this subsection. If possible, areawide and non-areawide borough services shall be extended to the annexed area immediately. If the immediate extension of services is not possible, the commission must be satisfied that the services not immediately extended will be extended as soon as possible and that reasonable plans have been formulated for the capital expansion necessary for the extension of services. (Eff. 2/21/82, Register 81)

(b) In approving an annexation, with the terms and conditions, and the liabilities proposed as a result of the annexation, the commission will, in its discretion, conduct public hearings or investigations after a detachment to determine if the service requirements of the territory are being met. If the commission determines that the service requirements of the territory are not being met, it will, in its discretion, begin annexation proceedings under this chapter. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — based on a former version of 05.140.

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19 AAC 10.210. ANNEXATION OF INCORPORATED TERRITORY. (a) If the territory sought to be annexed includes part of another organized borough which is providing services to the territory that the annexing borough will provide upon annexation, the commission will determine the method by which assets and liabilities are to be distributed between the annexing borough and the borough formerly providing the services.

(b) In determining the method of transfer of service responsibility and the distribution of assets and liabilities, the commission will, in its discretion, approve an equitable agreement between the municipalities affected but will independently review the proposed agreement.

(c) Territory which is part of an organized borough may not be annexed to another borough unless the commission determines the annexation to be in the best interests of the annexing borough, the borough from which the annexed territory is taken, and the annexed territory.

(d) Separate or additional proceedings are not required for detachment of territory from an incorporated city or borough which becomes annexed to another borough. The detachment is affected by, and at the same time as, the annexation itself. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.210 is
based on former versions of 19 AAC
05.130 and 19 AAC 15.040.

19 AAC 10.220. STATUTORY STANDARDS. (a) In addition to the requirements of 19 AAC 10.190 — 19 AAC 10.220, the commission will approve and recommend to the legislature the annexation of territory to an organized borough only if it finds that the resulting boundaries of the expanded borough conform substantially to the standards set forth in AS 29.18.030.

(b) In approving organized borough boundary changes, the commission, with the assistance of the department, will, if necessary, determine proposed assembly reapportionment plans applicable to the organized boroughs whose boundaries are to be affected by the change. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.220 is
based on a former version of 19 AAC
05.140.

Article 8. Standards for Detachment from Organized Boroughs

Section	Section
225. Applicability	240. Application of standards
230. Detachable territory	250. Distribution of assets and liabilities

19 AAC 10.225. APPLICABILITY. The provisions of 19 AAC 10.230 — 19 AAC 10.250 apply to a proposal for detachment by local action (19 AAC 10.630 — 19 AAC 10.730) or by legislative review (19 AAC 10.455 — 19 AAC 10.620). (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

19 AAC 10.230. DETACHABLE TERRITORY. (a) Territory which is a part of a borough may be detached from that borough if, in the determination of the commission, the detachment would be in the best interests of the state, the territory to be detached, and the borough affected by the detachment. In determining whether to approve a detachment, the commission will consider, but is not limited to, the following factors:

(1) whether the social, cultural and economic characteristics of the population of the territory are substantially different or in conflict with those of the remainder of the population located in the borough;

(2) whether the geographic location or configuration of the territory precludes the provision of borough services provided other areas of the borough or make the provision of borough services impractical;

(3) whether the lack of transportation facilities precludes the communication and exchange necessary for responsive and integrated local government.

(b) The commission will, in its discretion, conduct public hearings or investigations after the effective date of an annexation to determine whether the extension of services is progressing in a reasonable manner. If the commission determines that the extension of services is not progressing in a reasonable manner, it will, in its discretion, begin detachment proceedings. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

19 AAC 10.240. APPLICATION OF STANDARDS. (a) The commission will not approve a detachment unless the petitioners demonstrate to the satisfaction of the commission that the service requirements of the territory will be met following the detachment.

(b) If, in fulfillment, the petitioners have proven to the satisfaction of the commission that the service requirements will be met following the detachment upon voter approval (19 AAC 10.250, Register 81)

Authority: Art. X,
AS 44.4

19 AAC 10.250. TIES. (a) If territory having authority by the borough shall determine the borough shall be (b) If territory not within a city services currently sought, the commission shall determine assets and liabilities sought shall be (Register 81)

Authority: Art. X,
AS 44.4

Article 9. Standards for Dissolution

Section
260. Dissolution
270. Application of

19 AAC 10.260. has no indebtedness or repayment which shall be (following standards)

(1) the borough shall have the powers of a borough

(2) the borough shall have regular elections

(3) the borough shall have as provided by law

(b) The commission shall determine whether the petitioners have demonstrated to the satisfaction of the commission that the service requirements of the territory will be met following the detachment.

19 AAC 10.240

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19 AAC 10.250 COMMUNITY AND REGIONAL AFFAIRS 19 AAC 10.260

(b) If, in fulfilling the requirement of (a) of this section, the petitioners have proposed the incorporation of a new municipality, the commission will, in its discretion, condition approval of the detachment upon voter approval of the incorporation proposal. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

19 AAC 10.250. DISTRIBUTION OF ASSETS AND LIABILITIES. (a) If territory sought to be detached consists entirely of a city having authority and responsibility for the powers formerly provided by the borough from which detachment is sought, the commission shall determine the manner in which the assets and liabilities of the borough shall be distributed between it and the detaching city.

(b) If territory sought to be detached consists entirely of territory not within a city or consists of a city not having authority to provide services currently provided by the borough from which detachment is sought, the commission shall determine the manner in which the assets and liabilities of the municipality from which detachment is sought shall be distributed between it and the state. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Article 9. Standards for Dissolution of Organized Boroughs

Section
260. Dissolution
270. Application of standards

Section
280. Dissolution effected by annexation

19 AAC 10.260. DISSOLUTION. (a) A borough may dissolve if it has no indebtedness, bonded or otherwise, or has proposed a method of repayment which will protect the interest of its creditors and if the following standards are met:

- (1) the borough has ceased to exercise all of the mandatory powers of a borough;
- (2) the borough has failed to conduct two or more consecutive regular elections in the manner provided by law; and
- (3) the borough no longer meets the standards for incorporation as provided by law and regulation.

(b) The commission will, in its discretion, conduct public hearings or investigations after the effective date of an incorporation to determine whether the provision of the municipal services is proceeding in a manner consistent with that outlined in the petition for incorporation. If the commission determines that the provision of services is not proceeding in a manner consistent with that outlined in the petition,

the commission will, in its discretion, begin dissolution proceedings. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

19 AAC 10.270. APPLICATION OF STANDARDS. (a) If the commission determines that it will recommend to the legislature that a borough be dissolved, the borough may not make an expenditure without first receiving the written approval of the commissioner.

(b) The assets of the borough being dissolved become the assets of the state.

(c) If the liabilities of a borough being dissolved exceed the assets of the borough, the taxable property within the borough remains subject to taxation until the liabilities are paid. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

19 AAC 10.280. DISSOLUTION EFFECTED BY ANNEXATION. Separate or additional proceedings are not required for dissolution of a borough which has been annexed in its entirety by another borough. The dissolution is effected by and at the same time as the annexation itself. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Article 10. Standards for Merger of Municipalities

Section
290. Merger
300. Dissolution effected by merger

19 AAC 10.290. MERGER. Two or more municipalities may merge if, upon completion of the merger, the remaining municipality meets the applicable standards for incorporation set forth by law and regulation. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

19 AAC 10.300. DISSOLUTION EFFECTED BY MERGER. Separate or additional proceedings are not required for dissolution of a municipality which merges with another municipality. The dissolution is effected by and at the same time as the merger itself. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Article 11. Sta

Section
310. Consolidation
320. Dissolution effect

19 AAC 10.310
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2/21/82, Register

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

19 AAC 10.320. DISSOLUTION. Separate or additional proceedings are not required for dissolution of a municipality which is effected by and at the same time as the annexation itself. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Article 12. Pr

Section
325. Applicability
330. Petition
340. Form and content
350. Exhibits
360. Briefs
370. Service
380. Notice of petition

19 AAC 10.320. 10.330 — 19 AAC 10.330 — 19 AAC 10.330 or a borough. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

19 AAC 10.330. The dissolution of a municipality is initiated by the commissioner. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

19 AAC 10.300

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19 AAC 10.310 COMMUNITY AND REGIONAL AFFAIRS 19 AAC 10.330

Article 11. Standards for Consolidation of Municipalities

Section

310. Consolidation

320. Dissolution effected by consolidation

19 AAC 10.310. CONSOLIDATION. Two or more municipalities may consolidate if the newly created municipality meets the applicable standards for incorporation set forth by law and regulation. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

19 AAC 10.320. DISSOLUTION EFFECTED BY CONSOLIDATION. Separate or additional proceedings are not required for dissolution of municipalities which consolidate, but the dissolution is effected by and at the same time as the consolidation itself. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Article 12. Procedures for Incorporation of Municipalities

Section

325. Applicability

330. Petition

340. Form and contents

350. Exhibits

360. Briefs

370. Service

380. Notice of petition

Section

390. Answering brief

400. Call for hearing

410. Reply brief

420. Hearing

430. Decisional meeting

440. Public meetings

19 AAC 10.325. APPLICABILITY. The provisions of 19 AAC 10.330 — 19 AAC 10.450 apply to a proposal for incorporation of a city or a borough. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

19 AAC 10.330. PETITION. A request for incorporation of territory is initiated by filing a petition and supporting brief with the commissioner. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

19 AAC 10.350

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19 AAC 10.360 COMMUNITY AND REGIONAL AFFAIRS 19 AAC 10.380

(3) the affidavit of the petitioner or his representative that ser-
vice of the petition has been made in compliance with 19 AAC
10.370.

(c) Maps submitted as exhibits to copies of the petition shall con-
form in color and other distinguishing markings to the original ex-
hibit.

(d) If an official census has been made of the territory by the fed-
eral, state, or municipal government within three years of the date of
the petition, a copy of that census may be attached to the petition in
lieu of the census affidavit required by (a)(2) of this section. (Eff.
2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

19 AAC 10.360. BRIEFS. The petition must be accompanied by a
written brief. The brief shall fully set forth the reasons supporting the
proposed incorporation and shall demonstrate that the area meets the
standards for incorporation set forth in AS 29.18 and 19 AAC 10.010
— 19 AAC 10.030, or in the case of a development city 19 AAC 10.040
— 19 AAC 10.060. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

19 AAC 10.370. SERVICE. (a) The petitioner shall, by certified
mail, serve a copy of the petition and brief, together with accompany-
ing exhibits, to every municipality in or adjoining the territory. The
service shall be made at the same time that the petition is filed with
the commissioner.

(b) The petitioner shall arrange for the petition, exhibits, and brief
to be available for inspection by the general public at a designated
place in or near the territory. The affidavit required under 19 AAC
10.350 shall specify the exact location where and when the petition is
available for inspection. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

19 AAC 10.380. NOTICE OF PETITION. (a) Upon receipt of no-
tice from the department that the petition and brief have been ac-
cepted, the petitioner shall cause notice of the filing of the petition to
be published in a newspaper of general circulation in the territory, or
if a newspaper of general circulation is not available, post notice in at
least three public and prominent locations. The notice shall be in the
form specified by the commissioner; shall include a brief explanation
of the proposed incorporation, the name and class of the proposed

municipality, and a general description of its boundaries; and shall indicate the place where the petition and brief may be inspected by the public as provided by 19 AAC 10.370. In addition, the notice shall advise persons that they may file an answering brief pursuant to 19 AAC 10.390 and that they may submit written comments on the proposal to the department.

(b) The petitioner shall furnish the commissioner with proof of compliance with (a) of this section. Upon receipt of the proof, the commissioner shall submit the petition and brief to the commission.

(c) A petition filed with the commissioner may not be considered to be pending before the commission until the petition and brief have been submitted to the commissioner pursuant to this section. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

19 AAC 10.390. ANSWERING BRIEF. (a) A person or entity residing or owning property in the territory proposed for incorporation or the governing body of a municipality may file a brief in opposition to the proposed incorporation. The original of the brief shall be filed with the commissioner together with proof that one copy was served upon the petitioner or his designated representative.

(b) A person, entity, or municipality filing an answering brief shall be designated a respondent.

(c) The answering brief shall indicate any factual information thought to be incorrectly or incompletely presented in the petition or petitioner's brief and shall demonstrate the manner in which the proposed municipality fails to satisfy the standards required by this chapter. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

19 AAC 10.400. CALL FOR HEARING. The commission will establish a time and place for a hearing regarding the proposed incorporation which shall be held in or near the territory proposed for incorporation. The commission will publish notice of the hearing at least 15 days before the date of the hearing, at least three times in a newspaper of general circulation in the territory, through other news media, or by posting in a public place, whichever is most feasible. At least 15 days before the date of the hearing, the commission shall cause notice of the hearing to be served by certified mail upon:

- (1) the municipalities specified in 19 AAC 10.370;
- (2) the petitioner or his representative; and
- (3) any person, entity, or municipality who has filed an answering brief pursuant to 19 AAC 10.390. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

19 AAC 10.410C. 19 AAC 10.400 is new matter raised

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

19 AAC 10.42
AAC 10.400, the through exhibits issues raised by substantially the following:

- (1) the preselected representative
- (2) the preselected reason for and
- (3) at the commission shall submit a report of the petition
- (4) the petition manner indicating the commission may a presentation.

(b) Upon completion of the hearing, the respondent shall proceed in the same manner as the petitioner. The respondent's comments which the petitioner's presentation.

(c) The petition completion of the hearing of interested persons shall be invited to stand on the floor, a person whose name, address, and telephone number shall be posted to speak on behalf of the respondent. The chair shall allot time to each respondent to make statements.

(d) Members of the commission shall be invited to comment on matters presented to the department, with comment on matters presented to the commission.

(e) The chair shall set forth in this section the manner in which the hearing shall be conducted.

E 19 AAC 10.400

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82, Register 81)

19 AAC 10.410 COMMUNITY AND REGIONAL AFFAIRS 19 AAC 10.420

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

19 AAC 10.410. REPLY BRIEF. Before the hearing described in 19 AAC 10.400 is held, the petitioner may file a brief in reply to any new matter raised in an answering brief. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

19 AAC 10.420. HEARING. (a) At a hearing held pursuant to 19 AAC 10.400, the petitioner shall first proceed to support the petition through exhibits, testimony, and other means which bear upon the issues raised by the petition. The presentation shall proceed in substantially the following manner:

(1) the presentation shall be conducted by the petitioner or his designated representative;

(2) the presentation shall be opened with a brief discussion of the reason for and the nature of the proposed incorporation;

(3) at the conclusion of the opening statement, the petitioner shall submit a list of the persons who will give statements in support of the petition; and

(4) the petitioner shall proceed to conduct his presentation in the manner indicated in his outline; however, the chairman of the commission may allow the petitioner to deviate from his outlined presentation.

(b) Upon completion of the petitioner's presentation, each respondent shall proceed, in the manner established by the chairman and in the same manner as prescribed for the petitioner, to present his views. The respondent's presentation shall include the information and arguments which the respondent wishes to advance in rebuttal of the petitioner's presentation.

(c) The petitioner may rebut the respondent's presentation. Upon completion of the petitioner's rebuttal, the commission will hear views of interested persons who are not petitioners or respondents. To obtain the floor, a person must be recognized by the chairman and must state his name, address, and the nature of his interest. A person purporting to speak on behalf of a municipality shall demonstrate his authority to do so. The chairman may impose a reasonable limitation of the time allotted to each speaker and may curtail repetitive and irrelevant statements.

(d) Members of the commission may at any time pose questions or comment on matters raised during the hearing. Representatives of the department, with consent of the chairman, may pose questions or comment on matters raised during the hearing.

(e) The chairman may temporarily suspend the order of proceedings set forth in this section to allow rebuttal, counterrebuttal, or general

public comment on a particular issue or issues. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

19 AAC 10.430. DECISIONAL MEETING. (a) Within 90 days after a public hearing held pursuant to 19 AAC 10.400, the commission shall convene a decisional meeting to examine all aspects of the written and oral testimony before it, to consider other relevant and reliable information available to it, and to enter a decision. A majority of the total membership of the commission voting in favor of accepting a proposed incorporation is needed to decide the issue. The votes for and against the proposed incorporation shall be recorded. A petition is rejected if not accepted. If unable to meet as one body, the commission will, in its discretion, provide for a conference telephone or radio phone decisional meeting open to the public at a time and place to be determined by the commission.

(b) The commission will keep written minutes summarizing its decisional meetings. The minutes approved by the commission are a public record. The votes taken by the commission shall be entered into the minutes.

(c) Within 30 days after the date of reaching its decision, the commission will prepare a written statement of its decision, including an explanation of the major considerations upon which it relied in reaching its decision.

(d) The commission will immediately mail its written decision to the petitioner and to other interested parties who give written notice that they desire a copy of the decision. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

19 AAC 10.440. PUBLIC MEETINGS. The commission will, in its discretion and before consideration of a petition requesting incorporation of a municipality, require a petitioner to conduct informational meetings or hearings in the area proposed for incorporation to acquaint the residents of the area with the purposes sought to be accomplished and the benefits which are expected to be derived by the residents should the incorporation be made and to solicit public opinions on the proposed incorporation. The commission will, in its discretion, require that transcripts or minutes be taken of the meetings or hearings for the commission's use and require that the petitioner's representative certify to the commission that the meetings or hearings were conducted as directed by the commission. (Eff. 2/21/82, Register 81)

Authority: Art. X,
AS 44.

Article

Section

- 450. Applicability
- 460. Petition
- 470. Petitioner
- 480. Form and content
- 490. Exhibits
- 500. Briefs
- 510. Service
- 520. Review of petition
- 530. Notice of petition

19 AAC 10.460 — 19 AAC 10.460 — 19 AAC 10.460 — 19 AAC 10.460
ceeding initiated
(Eff. 2/21/82, Register 81)

Authority: Art. X,
AS 44.

19 AAC 10.470. BOUNDARY CHANGES.
boundary changes
by filing an original
with the commission

Authority: Art. X,
AS 44.

Editor's notes. -
based on a former
10.010.

19 AAC 10.480. GOVERNMENTAL BOUNDARY CHANGES.
(1) the governmental boundary is changed,
(2) the governmental boundary is located in a different territory,
(3) at least one territory to be incorporated is dissolved, or in a different territory,
(4) the commission determines that the incorporation is in the public interest.
(b) The person filing the petition.

Authority: Art. X,
AS 44.

19 AAC 10.440

Eff. 2/21/82, Register

(a) Within 90 days of 19 AAC 10.400, the commission shall consider all aspects of the petition and other relevant and material information and make a decision. A majority of the commission in favor of accepting the petition shall be recorded. A petition is accepted if, by the commission, the commission shall telephone or radio the petitioner and place to be

summarizing its decision. The minutes of the commission are a public record and shall be entered into the public record.

On appeal from a decision, the commission shall, including an appeal, shall be based on the facts as they are presented in the petition and the decision it relied in reaching its decision.

The commission shall give written notice of its decision. (Eff. 2/21/82, Register 81)

The commission will, in a petition requesting incorporation, shall conduct informal hearings or incorporation to determine the issues sought to be resolved. The commission shall be derived by the commission and shall solicit public opinion. The commission will, in its discretion, shall hold public meetings or at the petitioner's request shall hold public meetings or hearings. (Eff. 2/21/82, Reg-

19 AAC 10.450 COMMUNITY AND REGIONAL AFFAIRS 19 AAC 10.470

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.980

Article 13. Procedures for Boundary Changes Requiring Legislative Review

Section

450. Applicability
460. Petition
470. Petitioner
480. Form and contents
490. Exhibits
500. Briefs
510. Service
520. Review of petition
530. Notice of petition

Section

540. Call for hearing
550. Answering brief
560. Reply brief
570. Department report
580. Hearing and decisional meeting
590. Noncompliance
600. Determination of procedure
610. Certification of boundary changes
620. Public meetings

19 AAC 10.450. APPLICABILITY. The provisions of 19 AAC 10.460 — 19 AAC 10.620 apply to an annexation or detachment proceeding initiated pursuant to AS 44.47.567(b)(2) and AS 29.68.010(a). (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

19 AAC 10.460. PETITION. A request for a local government boundary change under 19 AAC 10.450 — 19 AAC 10.620 is initiated by filing an original and six copies of a petition and supporting brief with the commissioner. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.460 is based on a former version of 19 AAC 10.010.

19 AAC 10.470. PETITIONER. (a) A petition may be initiated by

(1) the governing body of a municipality whose boundaries are to be changed;

(2) the governing body of an organized borough in which the territory is located;

(3) at least 10 percent of the registered voters residing in the territory to be annexed or detached, in the municipality to be dissolved, or in each municipality to be merged or consolidated;

(4) the commissioner.

(b) The person or entity initiating the petition shall be designated the petitioner. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.470 is based on a former version of 19 AAC 10.020.

19 AAC 10.480. FORM AND CONTENTS. (a) The petition shall be addressed to the commission and shall bear a caption which clearly identifies the nature of the boundary change and the municipality or municipalities whose boundaries are to be changed.

(b) The petition shall contain the following information about the territory:

(1) the name and residence address or mailing address of each petitioner;

(2) the name, telephone number, and mailing address of the representative designated by the petitioner to receive service, notice, and other correspondence relating to the proceedings on behalf of the petitioner;

(3) a legal boundary description;

(4) a legal description of the boundaries of the municipality should the boundary change be effected;

(5) the assessed or estimated value of taxable property, giving separate totals for real and personal property;

(6) the number of residents in the territory;

(7) the rate or rates at which real and personal property are taxed;

(8) the rate or rates of sales and use taxes levied and collected;

(9) the amount and a full explanation of the outstanding bonded indebtedness for which the territory is wholly or partially responsible;

(10) the population and area of the municipality affected by the proposed boundary change. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.480 is based on a former version of 19 AAC 10.030.

19 AAC 10.490. EXHIBITS. (a) The petitioner shall append to the petition the following exhibits:

(1) a map or maps showing

(A) the present boundaries of the municipality whose boundaries are to be changed and the boundaries of the municipality if the proposed boundary change becomes effective; and

(B) sufficient detail to define the streets and roadways of the municipality;

(2) an affidavit of the petitioner, or his representative who prepared the petition, indicating the source from which the information

contained in the other reliable evidence under his direct or enumeration taken accurately

(3) a copy of municipality re distribution of

(4) a certified municipality to

(5) the affidavit of the petitioner 10.510.

(b) Maps submitted in color and exhibit.

(c) If an official, state, or municipal, the petition, a copy in lieu of the census 2/21/82, Register

Authority: Art. X, Sec. 12, AS 44.47

Editor's notes. — based on a former version of 10.040.

19 AAC 10.500 written brief. The boundary change meets the application or detachment additional information of the petition

Authority: Art. X, Sec. 12, AS 44.47

Editor's notes. — based on a former version of 10.050.

19 AAC 10.510. mail, serve a copy of existing exhibits, upon

contained in the petition was acquired and stating that a census or other reliable enumeration of the territory was conducted by him or under his direct supervision, specifying the dates when the census or enumeration was begun and completed and verifying that it was taken accurately;

(3) a copy of the agreements, if any, entered into with another municipality regarding the transitional provision of services and distribution of assets and liabilities;

(4) a certified copy of the resolution or ordinance authorizing the municipality to file the petition if the petitioner is a municipality;

(5) the affidavit of the petitioner or his representative that service of the petition has been made in compliance with 19 AAC 10.510.

(b) Maps submitted as exhibits to copies of the petition shall conform in color and other distinguishing markings to the original exhibit.

(c) If an official census has been made of the territory by the federal, state, or municipal government within three years of the date of the petition, a copy of that census may be appended to the petition in lieu of the census affidavit required under (a)(2) of this section. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.490 is based on a former version of 19 AAC 10.040.

19 AAC 10.500. BRIEFS. The petition must be accompanied by a written brief. The brief shall fully set forth the reasons supporting the boundary change and shall demonstrate that the boundary change meets the applicable standards established in this chapter for annexation or detachment. The commission will, in its discretion, require additional information which it determines will be useful for evaluation of the petition. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.500 is based on a former version of 19 AAC 10.050.

19 AAC 10.510. SERVICE. (a) The petitioner shall, by certified mail, serve a copy of the petition and brief, together with accompanying exhibits, upon every municipality in or adjoining the territory.

The service shall be made at the same time that the petition is filed with the commissioner.

(b) The petitioner shall arrange that the petition, exhibits, and brief will be available for inspection by the general public at a designated place in or near the territory. The affidavit required under 19 AAC 10.490 shall specify the exact location where and when the petition is available for inspection. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.510 is based on a former version of 19 AAC 10.060.

19 AAC 10.520. REVIEW OF PETITION. (a) The department will review the petition and brief and determine whether they

- (1) are in substantially the proper form; and
- (2) contain the factual information required by this chapter.

(b) If the department determines that the petition or brief is deficient as to form or content, it will return the defective petition or brief for correction or completion. If the department determines that the petition and brief are in substantial compliance with these regulations, it will notify the petitioner that the petition and brief have been accepted. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.520 is based on a former version of 19 AAC 10.070.

19 AAC 10.530. NOTICE OF PETITION. (a) Upon receipt of notice from the department that the petition and brief have been accepted, the petitioner shall cause notice of the filing of the petition to be published in a newspaper of general circulation in the territory. The notice shall be in the form specified by the commissioner; shall include a brief explanation of the proposed boundary change, the name of the petitioner, and the name of each municipality whose boundaries are to be changed; and shall indicate the place where the petition and brief may be inspected by the public as provided in 19 AAC 10.510. Additionally, the notice shall advise persons that they may file an answering brief pursuant to 19 AAC 10.550 in response to the proposal or that they may submit written comments to the department.

(b) The petitioner's compliance with (a) of this section shall submit to

(c) A petition filed while a boundary change is pending before the commissioner shall be pending before the commissioner from the date it has been submitted to the commissioner. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.540 is based on a former version of 19 AAC 10.080.

19 AAC 10.540. NOTICE OF HEARING. (a) The commissioner shall establish a time and place for the hearing and shall publish notice of the hearing at least 10 days before the hearing in the territory, through a newspaper of general circulation in the territory, whichever is nearest to the place, whichever is nearest to the hearing, the commissioner shall cause notice of the hearing to be published in

- (1) the municipality affected by the change;
- (2) the petitioner;
- (3) any person or organization who has filed a petition pursuant to 19 AAC 10.520.

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.540 is based on a former version of 19 AAC 10.090.

19 AAC 10.550. ANSWERING BRIEF. (a) A person, entity, or organization siding or owning property in a municipality affected by a proposed boundary change in opposition to the proposed boundary change shall file a written brief with the commissioner. A copy of the brief shall be filed with the commissioner and a copy shall be served upon the petitioner.

(b) A person, entity, or organization shall be designated a respondent if the commissioner determines that the person, entity, or organization is thought to be interested in the proposed boundary change. The commissioner shall file a copy of the petitioner's brief with the respondent and shall file a copy of the respondent's brief with the commissioner.

that the petition is filed

petition, exhibits, and general public at a designated public hearing required under 19 AAC 10.530 here and when the petition is filed. (Eff. 2/21/82, Register 81)

N. (a) The department shall determine whether they are satisfied with the petition or brief is defective. If the department determines that the petition or brief does not comply with these regulations and a hearing has been held, the petition and brief have been

(a) Upon receipt of notification that a petition and brief have been accepted for filing in the territory, the commissioner shall, in the case of a proposed boundary change, the municipality whose territory is affected by the change, advise the place where the hearing shall be held as provided in 19 AAC 10.550 in response to the petition and brief. (Eff. 2/21/82, Register 81)

(b) The petitioner shall furnish the commissioner with proof of compliance with (a) of this section. Upon receipt of the proof, the commissioner shall submit the petition and brief to the commission.

(c) A petition filed with the commissioner may not be considered to be pending before the commission until the petition and brief have been submitted to the commissioner pursuant to this section. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.367

Editor's notes. — 19 AAC 10.530 is based on a former version of 19 AAC 10.080.

19 AAC 10.540. CALL FOR HEARING. The commission will establish a time and place for a hearing concerning a proposed boundary change which shall be held in or near the territory. The commission will publish notice of the hearing at least 15 days before the date of the hearing at least three times in a newspaper of general circulation in the territory, through other news media, or by posting in a public place, whichever is most feasible. At least 15 days before the date of the hearing, the commission will give public notice of the hearing and cause notice of the hearing to be served by certified mail upon

- (1) the municipalities specified in 19 AAC 10.510;
- (2) the petitioner or his representative; and
- (3) any person or municipality who has filed an answering brief pursuant to 19 AAC 10.550. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.367

Editor's notes. — 19 AAC 10.540 is based on a former version of 19 AAC 10.090.

19 AAC 10.550. ANSWERING BRIEF. (a) A person or entity residing or owning property in the territory, or the governing body of a municipality affected by a proposed boundary change may file a brief in opposition to the proposed boundary change. The original of the brief shall be filed with the commissioner together with proof that one copy was served upon the petitioner or his designated representative.

(b) A person, entity, or municipality filing an answering brief shall be designated a respondent.

(c) The answering brief shall indicate the factual information thought to be incorrectly or incompletely presented in the petition or the petitioner's brief and shall demonstrate the manner in which the proposed boundary change fails to satisfy the appropriate standards.

prescribed in this chapter. The brief shall include a discussion of the considerations set forth in 19 AAC 10.500. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.550 is based on a former version of 19 AAC 10.100.

19 AAC 10.560. REPLY BRIEF. Before a hearing is held pursuant to 19 AAC 10.540, the petitioner may file a brief in reply to any new matter raised in an answering brief. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.560 is based on a former version of 19 AAC 10.110.

19 AAC 10.570. DEPARTMENT REPORT. The department will prepare a report on the proposed boundary change. The report will summarize the issues raised in the petition and briefs and may comment upon those issues or any other issue which the department considers relevant to the proposal. The report will contain recommendations to the commission. The report will be filed with the commission before the date of the hearing established under 19 AAC 10.540. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.570 is based on a former version of 19 AAC 10.120.

19 AAC 10.580. HEARING AND DECISIONAL MEETING. The commission's public hearing and decisional meeting concerning a proposed boundary change will be conducted in the manner set forth in 19 AAC 10.420 — 19 AAC 10.430. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.580 is based on former versions of 19 AAC 10.130 and 19 AAC 10.140.

19 AAC 10.590. Its discretion, waive substantial rights or waiver. A deviation waived by the commission. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec.
AS 44.47.567

Editor's notes. — 19 AAC 10.590 is based on a former version of 10.150.

19 AAC 10.600. There are alternative commissions will select under the circuit.

Authority: Art. X, Sec.
AS 44.47.567

Editor's notes. — 19 AAC 10.600 is based on a former version of 10.160.

19 AAC 10.610. CHANGES. Without exception, the department will prepare a report on the municipality to be changed. The department will prepare the recording district. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec.
AS 44.47.567

Editor's notes. — 19 AAC 10.610 is based on a former version of 10.170.

19 AAC 10.620. Its discretion, and boundary change, require municipalities with the purpose which are expected change be made any change. The commission will prepare a report on the municipality to be changed. The department will prepare the recording district. (Eff. 2/21/82, Register 81)

19 AAC 10.580

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19 AAC 10.590 COMMUNITY AND REGIONAL AFFAIRS 19 AAC 10.620

19 AAC 10.580. NONCOMPLIANCE. The commission will, in its discretion, waive compliance with the regulations of this chapter if substantial rights of interested parties are not prejudiced by the waiver. A deviation from the procedures set forth in this chapter is waived by the commission unless the commission or a party objects. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44 47 567

Editor's notes. — 19 AAC 10.590 is
based on a former version of 19 AAC
10.150.

19 AAC 10.600. DETERMINATION OF PROCEDURE. If there are alternative procedures for effecting a boundary change, the commission will select the procedure which it considers most appropriate under the circumstances. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44 47 567

Editor's notes. — 19 AAC 10.600 is
based on a former version of 19 AAC
10.160.

19 AAC 10.610. CERTIFICATION OF BOUNDARY CHANGES. Within 30 days after a boundary change becomes effective, the department will prepare a certificate of the new boundaries. The department will transmit duplicate originals of the certificate to the municipality or municipalities whose boundaries have been changed. The department will also record a copy of the certificate in the recording district in which the boundary change has taken place. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44 47 567

Editor's notes. — 19 AAC 10.610 is
based on a former version of 19 AAC
10.170.

19 AAC 10.620. PUBLIC MEETINGS. The commission will, in its discretion, and before considering a petition requesting a boundary change, require municipalities whose boundaries are proposed to be changed to conduct meetings or hearings in the area to acquaint residents with the purposes sought to be accomplished and the benefits which are expected to be derived by residents should the boundary change be made and to solicit public opinions on the proposed boundary change. The commission will, in its discretion, require that tran-

scripts or minutes be taken of the meetings or hearings for the commission's use and require that the municipality certify to the commission that such meetings or hearings were conducted as directed by the commission. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.667

Editor's notes. — 19 AAC 10.620 is based on a former version of 19 AAC 10.180.

Article 14. Procedures for Boundary Changes by Local Action

Section	Section
630. Application of provisions	670. Notice of election
640. Filing of petition	680. Conduct of election
642. Department review of petition	690. Form of ballot
645. Review by local boundary commission	700. Canvassing of election
650. Annexation without election	710. Effective date of boundary change
660. Annexation or detachment by election	720. Annexation of municipally owned property
	730. Timeliness

19 AAC 10.630. APPLICATION OF PROVISIONS. The provisions of 19 AAC 10.460 — 19 AAC 10.530 apply to boundary changes under 19 AAC 10.630 — 19 AAC 10.730. However, at least 25 percent of the registered voters of the territory must petition for a boundary change under 19 AAC 10.630 — 19 AAC 10.730, rather than the 10-percent requirement provided by 19 AAC 10.470(3). The provisions of 19 AAC 10.630 — 19 AAC 10.730 apply to local boundary changes authorized under AS 29.68.040(b). (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.630 is based on former versions of 19 AAC 15.010, 19 AAC 15.020, 19 AAC 15.030, 19 AAC 15.170, 19 AAC 15.180 and 19 AAC 15.190.

19 AAC 10.640. FILING OF PETITION. A petition initiated by 25 percent or more of the registered voters of the territory shall be filed with the clerk of the municipality affected by the proposed boundary change. Within 14 calendar days of the receipt of the petition, the governing body of the municipality shall conduct a public review of the petition. Within 14 calendar days following the public review, the municipality shall forward the petition, exhibits, and related materials, together with a report of its findings and recommendations concerning the petition, to the department. A petition initiated by the governing body of a municipality shall be forwarded, along

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2/21/82, Register

Authority: Art. X, S
AS 44.47

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19 AAC 10.642
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19 AAC 10.642 COMMUNITY AND REGIONAL AFFAIRS 19 AAC 10.645

with other required materials, directly to the department. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.640 is
based on former versions of 19 AAC
15.060 and 19 AAC 15.210.

19 AAC 10.642. DEPARTMENT REVIEW OF PETITION. (a) The department shall review the petition and brief and determine whether they are in substantially the proper form and contain the factual information required by 19 AAC 10.630 — 19 AAC 10.730. If the department determines that the petition is deficient as to form or content, it will return the defective petition for correction or completion. If the department determines that the petition is deficient as to form or content, it will return the defective petition for correction or completion. If the department determines that the petition is in substantial compliance with these regulations, it will so notify the petitioner.

(b) The action required by the department in (a) of this section will be accomplished in no more than 30 working days from the date the department receives the petition. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.642 is
based on former versions of 19 AAC
15.060 and 19 AAC 15.220.

19 AAC 10.645. REVIEW BY LOCAL BOUNDARY COMMISSION. (a) A decision of the commission on a petition submitted under 19 AAC 10.630 — 19 AAC 10.730 will be rendered within 30 days of receipt of the petition from the department. The commission will, in its discretion, act by telephone or mail. However, noncompliance with the time limit established in this subsection for commission action will not affect the validity of a resulting boundary change.

(b) Notwithstanding other provisions of this chapter, if the commission determines that a proposed boundary change is of compelling public importance or if the interests of an individual or organization may not be properly protected the commission will, in its discretion and without limitation, require that the petition be acted upon pursuant to 19 AAC 10.450 — 19 AAC 10.620. If the determination is made, the commission will schedule public hearings within 45 days, and will notify the petitioner of its determination. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

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period of three successive weeks before the election, and by posting notice in three public and prominent places within the territory proposed to be annexed or detached during the same period. If no newspaper of general circulation is available, public posting of the notice will suffice. Posting of the notices and initial publication of the notice in the newspaper shall be at least four weeks before the date of the election. The notice shall state

- (1) the proposition to be submitted;
- (2) the boundaries of the territory to be annexed or detached; and
- (3) any provision or agreement governing distribution of liabilities or assets. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.670 is based on a former version of 19 AAC 15.090.

19 AAC 10.680. CONDUCT OF ELECTION. Except as otherwise provided in this chapter, the assembly or council of the municipality affected by the proposed boundary change shall conduct the election in the manner prescribed by its election code. The municipality whose boundaries would be affected shall pay the election costs. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.680 is based on former versions of 19 AAC 15.100 and 19 AAC 15.260.

19 AAC 10.690. FORM OF BALLOT. The assembly or council shall place upon the ballot the following proposition: "Shall the following described territory be annexed (detached) to (from) the (name of municipality)? Yes or No." (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.690 is based on former versions of 19 AAC 15.110 and 19 AAC 15.270.

19 AAC 10.700. CANVASSING OF ELECTION. The assembly or council shall meet within 10 days of the election and canvass the votes cast. The assembly or council shall issue a certificate showing the number of votes cast in favor of the proposal and the number of

votes cast against. The certificate, together with the ballots cast, shall immediately be filed with the clerk of the municipality and a copy forwarded to the department. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.700 is based on former versions of 19 AAC 15.120 and 19 AAC 15.280.

19 AAC 10.710. EFFECTIVE DATE OF BOUNDARY CHANGE. A boundary change is effective upon the approval by a majority of the voters voting on the question residing within the territory and upon the subsequent filing of the certificate required by 19 AAC 10.700. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.710 is based on former versions of 19 AAC 15.130 and 19 AAC 15.290.

19 AAC 10.720. ANNEXATION OF MUNICIPALLY OWNED PROPERTY. (a) Notwithstanding other provisions of this chapter, municipally owned property adjoining the municipality may be annexed by ordinance without voter approval.

(b) Within five days of adoption of an ordinance annexing territory pursuant to (a) of this section, one certified copy of the ordinance, giving the date of adoption, shall be filed with the department. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.720 is based on a former version of 19 AAC 15.150.

19 AAC 10.730. TIMELINESS. A proposal under this chapter which is defeated in an election may not be included in a like proposal covered by a subsequent petition under this chapter filed within one year after the first petition. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes.
based on former
15.160 and 19 AAC

Article

Section
735. Applicability
740. Petition
750. Local election
760. Taxes

19 AAC 10.740 — 19 AAC
pursuant to 19 AAC

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

19 AAC 10.740. SPECIAL SERVICE. The commissioner shall determine the full fiscal year's percentage of increase from the previous year for city services at a rate other than the rate at which the city pursuant to this section at a different percentage if the difference is a special service. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes.
based on a former version of
10.190.

19 AAC 10.740. SPECIAL SERVICE. The commissioner shall require the government to submit the proposal within one year after the first petition. (Eff. 2/21/82, Register 81)

19 AAC 10.730

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19 AAC 10.735 COMMUNITY AND REGIONAL AFFAIRS 19 AAC 10.750

Editor's notes. — 19 AAC 10.730 is
based on former versions of 19 AAC
15.160 and 19 AAC 15.300.

Article 15. Procedures for Step Annexation

Section	Section
735. Applicability	770. Voting
740. Petition	780. Ordinances
750. Local election	790. Borough services
760. Taxes	

19 AAC 10.735. APPLICABILITY. The provisions of 19 AAC 10.740 — 19 AAC 10.790 apply to annexation proceedings initiated pursuant to AS 44.47.567(a)(4). (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

19 AAC 10.740. PETITION. An annexation petition submitted to the commission may request that during each of not more than five full fiscal years after the annexation takes effect, the rate of taxation for city services on the annexed properties shall be at a specified percentage of the full city tax rate. The proposal shall provide an increase from fiscal year to fiscal year until the percentage equals 100 percent of the full city tax rate. The city may not tax annexed property at a rate other than the percentage authorized for that year; however, the city pursuant to AS 29.53.405 may levy taxes on the annexed area at a different percentage from that authorized for the year in question, if the difference is attributed to the cost of provision in the territory of a special service not supported by the general city levy. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.740 is
based on a former version of 19 AAC
10.190.

19 AAC 10.750. LOCAL ELECTION. The commission will require the governing body of the city to which annexation is sought to submit the proposal to the voters in the area to be annexed. The city shall bear the expenses of the election and shall submit to the department or commission the information and reports that either may require before, during, or after the election. The election is not valid unless the notices pertaining to the election, the way in which the proposal is phrased on the ballot, and the timing of the election have been approved by the commissioner. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.760 is based on a former version of 19 AAC 10.200.

19 AAC 10.760. TAXES. The percentage of city taxes on newly annexed properties is determined as follows:

(1) city services to be provided during each year are scheduled by the petitioners or the commission in consultation with city officials;

(2) the cost of each service as a percentage of the gross general fund expenditure for the fiscal year immediately preceding the annexation is computed;

(3) newly annexed residents pay a percentage of the full city property tax rate equal to the total percentage cost of all services provided. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.760 is based on a former version of 19 AAC 10.210.

19 AAC 10.770. VOTING. Residents in the newly annexed territory have the same voting privileges as other city residents. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.770 is based on a former version of 19 AAC 10.220.

19 AAC 10.780. ORDINANCES. City sales-tax ordinances and all other city ordinances except those applicable to city services not yet provided in the territory are immediately effective in the annexed territory. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.780 is based on a former version of 19 AAC 10.230.

19 AAC 10.790
immediate response
provided in the

Authority: Art. X,
AS 44.47

Editor's notes. —
based on a former
10.240.

Article 16.1

Section
800. Procedure for
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19 AAC 10.800
DATION. (a) In
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19 AAC 10.700
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(2) votes cast

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Authority: Art. X,
AS 44.47

19 AAC 10.810
SOLIDATION. If
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or consolidation is
election results v

Authority: Art. X,
AS 44.47

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Section
820. Severability of p
830. General provisio

DE 19 AAC 10.780

19 AAC 10.790 COMMUNITY AND REGIONAL AFFAIRS 19 AAC 10.810

19 AAC 10.790. BOROUGH SERVICES. The city must accept immediate responsibility for non-areawide borough services currently provided in the annexed territory. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.790 is based on a former version of 19 AAC 10.240.

Article 16. Procedures for Merger or Consolidation of Municipalities

<p>Section 800. Procedure for merger or consolidation</p>	<p>Section 810. Effective date of merger or consolidation</p>
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19 AAC 10.800. PROCEDURE FOR MERGER OR CONSOLIDATION. (a) In considering a merger or consolidation petition, the commission will use the same process as set out in 19 AAC 10.630 — 19 AAC 10.700 for considering local action annexations except that the election on the question of merger or consolidation shall be counted in the following two categories:

- (1) votes cast within cities; and
- (2) votes cast outside cities.

(b) To pass, the merger or consolidation proposal must be approved in both categories set out in (1) and (2) of this section. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

19 AAC 10.810. EFFECTIVE DATE OF MERGER OR CONSOLIDATION. If the proposal to consolidate or merge two or more municipalities is approved as required by 19 AAC 10.800, the merger or consolidation is effective 90 days from the filing of the certificate of election results with the commissioner. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Article 17. Miscellaneous Provisions

<p>Section 820. Severability of parts of regulations 830. General provisions</p>	<p>Section 840. Definitions</p>
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19 AAC 10.820. SEVERABILITY OF PARTS OF REGULATIONS. The provisions of this chapter are severable, and if any provision of this chapter is declared invalid by a court of competent jurisdiction, the invalidity does not affect the remaining provisions of this chapter. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.820 is based on a former version of 19 AAC 20.010.

19 AAC 10.830. GENERAL PROVISIONS. (a) Nothing in this chapter may be construed to require the commission to approve a boundary change which the commission determines not to be in the best interest of sound local government.

(b) The enumeration in this chapter of standards or factors for consideration may not be construed as exclusive of other factors which, in the view of the commission, are relevant to the decision in question.

(c) Before incorporation of a borough located wholly or partially within an existing borough or of a city located wholly or partially within an existing city may become effective, the commission will submit the proposed incorporation to the legislature in the manner provided for boundary changes. In addition, the commission will, in its discretion, condition the incorporation on approval by a majority of the voters of the existing borough or city. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.830 is based on a former version of 19 AAC 20.020.

19 AAC 10.835. COMPETING PETITIONS. (a) The commission will, in its discretion, act concurrently upon separate petitions filed under this chapter which embrace some or all of the same territory.

(b) Notwithstanding other provisions of this chapter, the commission will, in its discretion, postpone proceedings on a petition filed under this chapter in order to allow concurrent action on another existing or anticipated petition that will embrace some or all of the same territory. Except as provided in (c) of this section, in order to be considered concurrently, a competing petition must be received by the department within 90 days after the date of receipt of an earlier petition that embraces some or all of the same territory.

(c) In addition to the 90-day filing period specified in (b) of this section, the commission will, in its discretion, allow a 60-day or less

extension for receipt recently with an earlier will not be granted by under art. X, sec. 12 if the earlier petition ter.

(d) In considering sion will give preced commission, serves t best interest of the limited to, the follow

(1) an existing serve the territory

(2) the extent to financial viability have filed competi

(3) the extent to dards required un competing petition

(e) The provisions ing to the doctrine of submitted under thi

Authority: Art. X, Sec.
AS 29.06.040

19 AAC 10.840. I teration of municipa

(2) "commission"

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to or which is separ do not disrupt or i services;

(5) "date of an means the day on effective pursuant tion;

(6) "department" gional Affairs;

(7) "detachment" which deletes terr

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able, and if any provi-
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extension for receipt of a competing petition to be considered concu-
rently with an earlier petition. An extension under this subsection
will not be granted by the commission if it will delay legislative action
under art. X, sec. 12 of the Alaska Constitution on the earlier petition
if the earlier petition is approved by the commission under this chap-
ter.

(d) In considering competing petitions concurrently, the commis-
sion will give precedence to the petition that, in the judgment of the
commission, serves the best interest of the state. In determining the
best interest of the state, the commission will consider, but is not
limited to, the following factors:

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(1) an existing or prospective municipality's ability to better
serve the territory embraced by the competing petitions;

(2) the extent to which approval of a petition would affect the
financial viability of the existing or prospective municipalities that
have filed competing petitions; and

(3) the extent to which each competing petition satisfies the stan-
dards required under this chapter for the action proposed by the
competing petitions.

(e) The provisions of this section supersede the common law relat-
ing to the doctrine of prior jurisdiction to control competing petitions
submitted under this chapter. (Eff. 8/19/88, Reg. 107)

Authority: Art. X, Sec. 12, Ak. Const.
AS 29.06.040

19 AAC 10.840. DEFINITIONS. (1) "annexation" means an al-
teration of municipal boundaries which adds territory;

(2) "commission" means the Local Boundary Commission;

(3) "commissioner" means the Commissioner of the Department
of Community and Regional Affairs;

(4) "contiguous" means territory which is immediately adjacent
to or which is separated only by natural or artificial barriers which
do not disrupt or impede the supplying or receiving of municipal
services;

(5) "date of annexation, detachment, merger or dissolution"
means the day on which the proposed boundary change becomes
effective pursuant to Article X, Section 12, of the Alaska Constitu-
tion;

(6) "department" means the Department of Community and Re-
gional Affairs;

(7) "detachment" means an alteration of municipal boundaries
which deletes territory;

(8) "differential taxation zone" means an area within the bound-
aries of a city which receives a different level of service than that

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provided generally within the city and in which property is taxed at a rate proportionate to the level of service provided;

(9) "full municipal services" means all of the services that a municipality is providing to its residents with revenues raised from the municipality's general mill levy or sales or use taxes;

(10) "general mill levy" means the highest rate at which property in the municipality is taxed but does not include special assessments;

(11) "legislature" means a regular session of the Alaska State Legislature;

(12) "mandatory powers" means those powers required to be exercised by a municipality under AS 29;

(13) "municipality" means an organized borough, including a unified local government, or an incorporated city of any class;

(14) "non-area-wide power" means a power exercised by an organized borough in all areas within the borough outside cities, but does not mean a power exercised on a service-area basis if the service area does not include the entire borough area outside cities;

(15) "party" means a petitioner or a respondent who files an answering brief;

(16) "territory" means the area or areas affected by the proposed boundary change. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567
AS 44.47.980

Editor's notes. — 19 AAC 10.840 is based on a former version of 19 AAC 20.030.

CHAPTER 15. BOUNDARY CHANGES BY LOCAL ACTION

Editor's notes. — As of 2/21/82, 19 AAC 05, 19 AAC 10, 19 AAC 15 and 19 AAC 20 have been reorganized under 19 AAC 10. The history notes for sections within the old chapters have not been carried forward in the reorganization.

CHAPTER 20. MISCELLANEOUS PROVISIONS

Editor's notes. — As of 2/21/82, 19 AAC 05, 19 AAC 10, 19 AAC 15, and 19 AAC 20 have been reorganized under 19 AAC 10. The history notes for sections within the old chapters have not been carried forward in the reorganization.

PART 2.

A

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33. Offshore Fisheries	19 AAC 33.070
35. Senior Citizen and Disabled Citizen	19 AAC 35.120
36. Senior Citizen and Disabled Citizen	36.010 — 19 AAC 36.010
37. Senior Citizen and Disabled Citizen	19 AAC 37.040
38. Farm and Agricultural Land	
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40. Legal Assistance	
42. Coastal Energy	
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10. (Repealed)	
11. Application for	
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21. Financial report	
30. (Repealed)	
31. (Repealed)	
40. (Repealed)	
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60. (Repealed)	
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Alaska State Legislature

House of Representatives
Community & Regional Affairs

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- ITEM 7: Proposed Regulations - Local Boundary Commission



1

Alaska State Legislature

House of Representatives Community & Regional Affairs

MEMORANDUM

TO: ALL MEMBERS
HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

FROM: REPRESENTATIVE EILEEN P. MACLEAN, CHAIRMAN
HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

DATE: March 14, 1989

RE: Sectional Analysis of CS HB 131 C&RA

- Sec. 1. Extends the requirement for two public hearings held 30 days apart to include incorporations. One of the two hearings could be teleconferenced.
- Sec. 2. Adds a new section which would require that annexations of areas which do not include year round residents would be prohibited unless the commission determines that:
- (1) the area to be annexed requires one or more services at a level not provided by the state that the municipality would be able to provide; or
 - (2) the health, welfare, or safety of residents of the organized borough is endangered by conditions existing or developing in the territory and annexation will enable the organized borough to remove or relieve those conditions.

This would take effect on the effective date of a constitutional amendment proposed in CS HJR 26 C&RA. Constitutional authority is now given to the commission to review and recommend any proposed boundary change. Committee Substitute for HJR 26 C&RA would propose a constitutional amendment to the legislature to allow the legislature to establish standards to guide the commission in its review of boundary changes. (See Memo dated 3/3/89 from Richard Bradley, Legal Counsel)

Sec. 3 Requires that: The commission shall adopt regulations for the conduct of the meeting of the commission under AS 44.62.

Sec. 4 Requires that notice of each hearing of the commission be given in the area in which the hearing is to be held at least 30 days before the date of the hearing and that notice of each hearing be given at least three times.

Requires that notice of each hearing shall be given by public service announcements on radio and television stations in the area and through print media and by posting in a public place.

Sec. 5 Requires that a majority of the full membership of the commission vote in favor of a proposed boundary change.

Sec. 6 Requires at least two hearings to be held in the communities in the affected area. If no community exists in the area proposed for annexation the hearings would be held in a community proximately located to the area.

The second hearing would be noticed separately and must be at least 30 days after the first hearing.

One of the hearings could be conducted by teleconference.

Sec. 7 Ties the effective date of Sec. 2 to passage of the constitutional amendment proposed in CS HB 26 C&RA.

STATE OF ALASKA
THE LEGISLATURE

POUCH OF STATE CAPITAL
BUREAU ALASKA 99500
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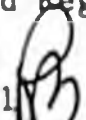
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 3, 1989

SUBJECT: Prohibited recommendations from the
Local Boundary Commission
(CSHB 131(C&RA) and CSHJR 26(C&RA))

TO: Representative Eileen P. MacLean, Chair
House Community and Regional Affairs Committee

FROM: Richard A. Bradley 
Legislative Counsel

Louann Christian has requested a new version of CSHB 131(C&RA). We have provided the committee with that request.

Louann asked that we delete from the request a new section that would prohibit the commission from recommending annexations in unpopulated areas except on certain determinations; the request would prohibit the Local Boundary Commission from considering annexations of the type represented by the recent Fairbanks recommendation.

I suggest the following amendment to CSHB 131(C&RA) to achieve this request:

"Sec. 2. AS 44.47 is amended by adding a new section to read:

Sec. 44.47.568. PROHIBITED CHANGES. The commission may not propose to the legislature the annexation to an existing municipality of an unpopulated area unless the commission determines that

(1) the unpopulated area requires services not provided by the state that the municipality would be able to provide; or

(2) the health, welfare, or safety of the residents of the municipality is endangered by conditions existing or developing in the area being considered for annexation and the annexation will enable the municipality to relieve the conditions."

Representative Eileen P. MacLean
Page 2
March 3, 1989

As a matter of style, I modified the language within the section and deleted the concept of a prohibited "consideration" and rather prohibited "proposed . . . changes", tracking the language of the Alaska Constitution. See art. X, sec. 12.

Louann also asked whether I believed that the change was constitutional. In my opinion, it may not be.

The language of the constitution is quite clear. It provides:

SECTION 12. BOUNDARIES. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

The language permits the commission to consider "any" change. The legislature may reject the change by a majority vote.

I do not believe that this amendment is a legislative implementation of the constitution; rather, it is inconsistent with the constitution.

And this being the case, I do not believe it is possible to redraft the language within the scope of the request to make the request constitutional.

Note that the United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n case, 489 P.2d 140 (1971) agreed that the legislature could require the commission (under AS 44.47.567(a)(2)) to establish "standards" for boundary changes and, on the failure of the commission to establish the standards, the annexation was void. But see Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (1974) where the court employed the "de facto municipal incorporation" doctrine to

Representative Eileen P. MacLean
Page 3
March 3, 1989

approve an annexation where the commission had still not developed "standards" three years later.

In our view, the commission has adopted standards for its review of petitions for annexation to, for example, boroughs. See 19 A.C. 10.190 - 10.220.

Finally, while we believe the court has implicitly approved (in the USSR&M case) the legislative requirement that the commission establish standards to guide its review of boundary changes, we do not believe that the legislature may itself establish the standards that would prevent the commission from making specified recommendations to the legislature on boundary changes. As we suggested above, this result occurs because of the language of art. X, sec. 12 that the commission may consider "any . . . boundary change."

At Louann's request, I have revised CSHJR 26(C&RA) to permit the legislature to establish standards for boundary changes. I believe this will resolve the empowerment question.

If I may be of further assistance, please advise.

RAB:gc
WKG7/085

#4

STATE OF ALASKA
THE LEGISLATURE

PO BOX 11000
NORTH SPOKANE
99207-1100

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 15, 1989

SUBJECT: Annexation of the "entire" area
(CSHB 131 (C&RA))

TO: Representative Eileen P. MacLean, Chair
House Community and Regional Affairs Committee

FROM: Richard A. Bradley
Legislative Counsel

Louann Christian has asked that I comment on the question whether the amendments to Sec. 2 of the draft committee substitute should, in some way, state that the "area" that is the subject of the section is "the entire area."

My advice to her has been that when the bill establishes responsibilities for the Local Boundary Commission regarding the "annexation to an existing municipality of an area", the law requires that the determinations established in sec. 2 apply to the area as an entirety-- as a unit-- without it being necessary to state that. There is no basis for compartmentalizing the "area" into parts that have residents and parts that do not-- or any other fractionizing.

If I may be of further assistance, please advise.

RAB:gc
WKG8/022

5

R-2/23/89

SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99818 (907) 486-5255
DURING SESSION
P.O. BOX V, JUNEAU, ALASKA 99811 (907) 485-2473 • 486-2474

DISTRICT N
ALASKA PENINSULA • ALUTKIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • KUSKOOKUM BAY • LAKE ILIAMNA • PEBILOF ISLANDS • SHELIAN ISLAND

Jenny
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Coyne

Rec'd
3/8/89
Dan Beckwith

FEB - 7 1989

LEGISLATIVE
AUDIT

Memo

To: Senator Jalmar Korttula
Joint House/Senate Budget & Audit Committee

From: Senator Fred Zharoff *[Signature]*

Subject: Special Audit Request, Local Boundary Commission

It has come to my attention that there may be problems with the procedures of the Local Boundary Commission. Areas of concern regarding the Commission primarily center around basic policy and procedures of the Commission. There has been questions regarding the Commission's method of approach to:

1. Timely notification of hearings.
2. Communication methods used to provide notification of hearings.
3. Response time, if any, from the Commission to the entities providing written or oral testimony.
4. Establishing a consistent method of approach in carrying out the duties of the Commission.

Recent actions of the LBC regarding the proposed annexation of portions of the Alaska Peninsula by the Kodiak Island Borough and the proposed incorporation of the Lake and Peninsula Borough have raised the above referenced issues.

(OVER)



Southwest Alaska Municipal Conference

Putting Resources to Work For People

1007 West 3rd Avenue, Suite 201 • Anchorage, Alaska 99501 • (907) 274-7555

#6

RESOLUTION NO. 89-16

A RESOLUTION OF THE SOUTHWEST ALASKA MUNICIPAL CONFERENCE REQUESTING THE STATE LEGISLATURE AND THE LOCAL BOUNDARY COMMISSION TO REVIEW THE PROCESS OF BOROUGH ANNEXATION AND INCORPORATION.

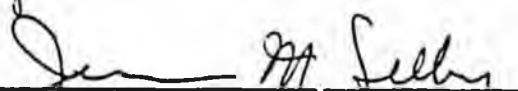
WHEREAS, a variety of economic and political factors have increased statewide pressure for borough formation and the expansion of existing boroughs, and the Southwest Region alone has seen two new borough proposals and one major borough annexation since 1986; and

WHEREAS, the Local Boundary Commission's regulations governing borough proposals were promulgated before the recent surge of borough activity; and

WHEREAS, the regulations should assure adequate notice and opportunity for public hearings which lead to rational decision-making at a time when all of the unorganized borough is under pressure to incorporate.

NOW, THEREFORE, BE IT RESOLVED by the Southwest Alaska Municipal Conference that the Legislature and the Local Boundary Commission review the 1982 regulations to assure local input to the annexation process.

PASSED THIS 22nd DAY OF January, 1989.



President



Attest

Representing Bristol Bay, The Pribilofs, Kodiak and the Aleutians.

MEMORANDUM

State of Alaska

*7

Community & Regional Affairs

TO: Local Boundary Commission

DATE: March 9, 1989

FILE NO.

TELEPHONE NO.


561-8586

THRU

SUBJECT

LBC procedures, etc.

FROM


Dan Bockhorst
Supervisor
LBC Staff Component

As requested, I have drafted proposed regulations and bylaws addressing procedures of the Commission. A copy of these materials is enclosed.

As you review the proposed bylaws, I ask you to particularly consider Section 2(b) of Article IX concerning ethics. The draft language of Section 2, Article IX, is virtually identical to the ethics resolution adopted by the Commission on May 24, 1988. However, the provisions of Section 2(b) have recently been called into question by a number of individuals, including some members of the Commission. The concern is that it may be desirable to modify the standard to allow the Chairman and/or a majority of the Commission members to compel the participation of another member regardless of a declared conflict of interest, so long as such will not result in the violation of Article 2 of the Executive Branch Ethics Act ("EBEA" - AS 39.52.110 - 39.52.190).

I have enclosed a copy of Article 2 of the EBEA for your review. I have also enclosed a copy of the State law relating to conflict of interest for municipal officials. AS 29.20.010(a) requires that every municipal government in the state adopt laws which deal with conflict of interest. These laws must include provisions which allow the presiding officer or a majority of the governing body to compel the participation of a member who has declared a "substantial financial interest".

On another matter, one member of the Commission has recently expressed the desire to reexamine the requirement that a municipality proposed for dissolution have an audit prepared by a certified public accountant. The suggestion to reexamine the audit requirement was not a call to abandon any careful review of the financial affairs of a municipality proposed for dissolution, but rather a desire to look at more practical alternatives of doing so. The Commission member's concern over

Local Boundary Commission
March 9, 1989
Page Two

this matter was apparently raised by the recent article which appeared in the Anchorage Times regarding Akiachak (a copy of which was provided to you previously). Further, Representative Hoffman's office has recently expressed dismay over the audit requirements. Consequently, I have taken the liberty of drafting three options which the Commission may wish to consider as alternatives to the present language.

The three options for modifying the language concerning the audit requirement are self-explanatory, so I will avoid any detailed discussion here. I wish to note, however, that I believe none of these options would represent an irresponsible position on the part of the Commission with respect to the exercise of its duties. When you read the material, keep in mind that proposed deletions of current language in the regulations are shown in capital letters enclosed by brackets; proposed new language is underlined.

I have also enclosed the following for your information:

- 1) A copy of the memorandum of March 3 from Richard Bradley concerning CSHB 131 (C&RA) and CSHJR 26 (C&RA);
- 2) A copy of the latest work draft of CSHB 131 (C&RA); and
- 3) A copy of the latest work draft of CSHJR 26 (C&RA).
- 4) A copy of Senator Zharoff's request that "a special audit be performed on the LBC" by the Division of Legislative Budget and Audit.

I will be in contact with you in the immediate future concerning the scheduling of a meeting to discuss these matters. If you have any questions, please contact me.

cc: Marjorie Odland, Assistant Attorney General
Pat Poland, Deputy Director, MRAD - Anchorage
Jim Plasman, Deputy Director, MRAD - Juneau
Gene Kane, Local Government Specialist
Carol Akerelrea, Local Government Specialist

COMMUNITY AND REGIONAL AFFAIRS

19 AAC 10 is amended by adding new sections to read:

19 AAC 10.850. SCHEDULING OF PROCEEDINGS. The chairman of the local boundary commission will, in his or her discretion, issue an order setting or amending a formal schedule for each petition anticipated to be brought or pending before the commission. The order will, in the discretion of the chairman, set deadlines for the filing of petitions, answering briefs, reply briefs, reports by the department and other elements of each proceeding. (Eff. / / , Register)

Authority: Art. X, Sec. 12,
Alaska Const.
AS 44.47.567

19 AAC 10.860. EFFECTIVE DATE OF DECISION. A decision of the commission becomes effective upon the adoption of a motion by three or more commission members, unless otherwise specified by the commission. The need or intention to issue a written statement of decision following the adoption of a motion by the commission does not delay the effective date of that decision. (Eff. / / , Register)

Authority: Art. X, Sec. 12,
Alaska Const.
AS 44.47.567

19 AAC 10.870. RECONSIDERATION. (a) Within fifteen days after an order of the commission is served, any individual may file a request for reconsideration of that order setting out specifically the grounds upon which the order is believed to be unreasonable, erroneous, unlawful or otherwise defective. At the same time that the request for reconsideration is filed with the commission, the individual seeking reconsideration must provide a copy of the request to the representative of the petitioner(s) for the matter to which the order relates. The request for reconsideration shall be accompanied by an affidavit stating that a copy of the request for reconsideration was served to the representative of the petitioner(s).

(b) Any individual opposing the request for reconsideration has ten days after the date on which the request is filed to respond.

(c) The Commission's power to order reconsideration expires thirty days after the date on which the request for reconsideration is filed with the commission. If the commission takes no action on a request for reconsideration within the time allowed, the request is automatically denied. (Eff. / / , Register)

Authority: Art. X, Sec. 12,
Alaska Const.
AS 44.47.567

19 AAC 10.880. PURPOSE OF RULES. These regulations are designed to facilitate the business of the commission, and shall be construed to secure the reasonable, speedy and inexpensive determination of every action and proceeding. They may be relaxed or dispensed with by the commission in any case where it shall be manifest to the commission that a strict adherence to them will work injustice or result in a substantially uninformed decision. (Eff. / / , Register)

Authority: Art. X, Sec. 12,
Alaska Const.
AS 44.47.567

BYLAWS

ALASKA LOCAL BOUNDARY COMMISSION

ARTICLE I - NAME

The name of this body is the Alaska Local Boundary Commission. Common usage and abbreviation may be "Commission" or "LBC." (Eff. / /89)

ARTICLE II - MISSION AND OBJECTIVES

Section 1. The Constitution of the State of Alaska recognizes that the establishment and revision of boundaries of cities and boroughs are primarily the responsibilities of the State. Article X, Section 12 of the Constitution provides the constitutional authority under which the Commission carries out these responsibilities. Shortly after statehood, the Alaska Supreme Court articulated the considerations which led to the creation of the Commission. (Fairview Public Utility District No. 1 v. City of Anchorage 368 P.2d 540).

An examination of the relevant minutes of [a series of 31 meetings held by the Committee on Local Government at the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the court -- "lies in placing the process at a level where area-wide or statewide needs can be taken into account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively." (Eff. / /89)

Section 2. The courts have consistently recognized that the Commission enjoys considerable discretion and broad authority in the exercise of its powers and duties. The Commission hereby acknowledges that such powers and duties carry with them the responsibility to act in a judicious fashion. (Eff. / /89)

Section 3. The powers and duties of the Commission include:

(a) considering proposals for the incorporation of cities and boroughs;

(b) considering proposals for the annexation of territory to cities, boroughs and unified municipalities;

Section 2. By statute, the member appointed from the state at large is the Chairman. The Vice Chairman is elected by a majority of the Commission members. (Eff. / /89)

Section 3. The duties of the officers shall be as follows:

(a) Chairman

(i) Call all meetings (except that three members of the Commission may also call a meeting). Preside at all meetings.

(ii) Appoint special committees and chairpersons of special committees.

(iii) Serve as ex-officio member of all committees.

(iv) Serve as the Commission's official representative.

(v) Operate and conduct the business and affairs of the Commission according to the orders and resolutions of the Commission.

(vi) Perform other duties described in these bylaws or assigned by resolution of the Commission.

(b) Vice Chairman

(i) Assist the Chairman in the discharge of his/her duties.

(ii) Assume the duties of the Chairman in the absence of the Chairman.

(iii) Act as the parliamentarian for the Commission.

(iv) Perform other duties in accordance with the orders and resolutions of the Commission. (Eff. / /89)

ARTICLE VI - MEETINGS

Section 1. Meetings of the Commission may be held at such time and place as the Chairman or a majority of the Commission members may order. (Eff. / /89)

ARTICLE IX - ETHICS

Section 1. Commission members are required to comply with AS 39.52.010 - 39.52.960, the Alaska Executive Branch Ethics Act. As provided by AS 39.52.960(8), the Chairman or Acting-Chairman shall act as the designated supervisor for the Commission members.

Section 2. In addition to the ethics standards established by the Executive Branch Ethics Act, the following apply to members of the Commission:

(a) A member of the Commission is prohibited from having ex parte contacts (i.e., any contact outside a formal proceeding of the Commission with another party) concerning a matter for which a petition has formally been submitted to the Department of Community and Regional Affairs. The prohibition shall take effect once the Commission member has been advised by the Department that a petition has been received. The prohibition shall remain in effect until the Commission's power to order reconsideration of its decision expires.

(b) A member of the Commission shall not participate in matters before the Commission in which the Commission member has been employed by a petitioner or respondent during the 180 days preceding the submission of the petition or response brief. The 180 days will be measured from the date that the Commission member has been advised by the Department of Community and Regional Affairs that a petition or response brief has been received.

(c) If a member of the Commission acted upon a proposal before the Commission, that member shall not accept employment with a petitioner or respondent in any action brought before the Commission for a period of at least 180 days following Commission action on the matter.

(d) Except as provided below, a member of the Commission shall not participate in the consideration of a proposal before the Commission where that proposal would affect the territory in which the residence of the Commission member is located. Such territory may consist of: a) an area proposed for annexation to or incorporation of a municipality; or b) a municipality subject to a proposal for annexation, detachment, merger, consolidation or dissolution. Exceptions may be granted if a majority of the other Commission members present conclude that the public will generally perceive the Commission member whose residence is at issue as being able to be fair and objective in the proceedings and that there is no

Chapter 52. Alaska Executive Branch Ethics Act.

Article

- 1. Declarations (§ 39.52.010)
- 2. Code of Ethics (§§ 39.52.110 — 39.52.190)
- 3. Disclosure and Action to Prevent Violations (§§ 39.52.210 — 39.52.260)
- 4. Complaints; Hearing Procedures (§§ 39.52.310 — 39.52.390)
- 5. Enforcement; Remedies (§§ 39.52.410 — 39.52.460)
- 6. General Provisions (§§ 39.52.910 — 39.52.960)

Article 1. Declarations.

Section

- 10. Declaration of policy

Sec. 39.52.010. Declaration of policy. (a) It is declared (1) that high moral and ethical standards among public officers in the executive branch are essential to the conduct of free government; and (2) that the legislature believes that a code of ethics for the guidance of public officers will discourage those officers from acting upon personal or financial interests in the performance of their public responsibilities, will improve standards of public service, and will promote and strengthen the faith and confidence of the people of this state in their public officers. It is further declared that holding public office or employment is a public trust and that as one safeguard of that trust, the people require public officers to adhere to a code of ethics.

(b) The legislature declares that it is the policy of the state, when a public employee is appointed to serve on a state board or commission, that the holding of such offices does not constitute the holding of incompatible offices unless expressly prohibited by the Alaska Constitution, this chapter and any opinions or decisions rendered under it, or another statute. (§ 1 ch 87 SLA 1986)

Article 2. Code of Ethics.

Section

- 110. Scope of code
- 120. Misuse of official position
- 130. Improper gifts
- 140. Improper use or disclosure of information
- 150. Improper influence in state grants, contracts, leases, or loans

Section

- 160. Improper representation
- 170. Outside employment restricted
- 180. Restrictions on employment after leaving state service
- 190. Aiding a violation prohibited

Sec. 39.52.110. Scope of code. (a) The legislature reaffirms that each public officer holds office as a public trust, and any effort to benefit a personal or financial interest through official action is a violation of that trust. In addition, the legislature finds that, so long as it does not interfere with the full and faithful discharge of an officer's duties and responsibilities, this chapter does not pre-

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family member, in a state grant, contract, lease, or loan that is awarded, executed, or administered by the agency the officer serves. (§ 1 ch 87 SLA 1986)

Sec. 39.52.160. Improper representation. (a) A public officer may not represent, advise, or assist a person in any matter pending before the administrative unit that the officer serves, if the representation, advice, or assistance is

(1) for compensation, unless the representation, advice, assistance, and compensation are required by statute, regulation, or court rule, or is otherwise customary; or

(2) without compensation, but rendered to benefit a personal or financial interest of the public officer.

(b) This section does not prohibit activities related to collective bargaining.

(c) This section does not preclude a nonsalaried member of a board or commission from representing, advising, or assisting in any matter in which the member has a personal or financial interest regulated by the board or commission on which the member serves, except that the member must act in accordance with AS 39.52.220. (§ 1 ch 87 SLA 1986)

Sec. 39.52.170. Outside employment restricted. (a) A public employee may not render services to benefit a personal or financial interest or engage in or accept employment outside the agency which the employee serves, if the outside employment or service is incompatible or in conflict with the proper discharge of official duties.

(b) A public employee rendering services for compensation, or engaging in employment outside the employee's agency, shall report by July 1 of each year the outside services or employment to the employee's designated supervisor. During the year, any change in an employee's outside service or employment activity must be reported to the designated supervisor as it occurs. (§ 1 ch 87 SLA 1986)

Sec. 39.52.180. Restrictions on employment after leaving state service. (a) A public officer who leaves state service may not, for two years after leaving state service, represent, advise, or assist a person for compensation regarding a matter that was under consideration by the administrative unit served by that public officer, and in which the officer participated personally and substantially through the exercise of official action. For the purposes of this subsection, "matter" includes a case, proceeding, application, contract, or determination, but does not include the proposal or consideration of legislative bills, resolutions and constitutional amendments, or other legislative measures; or the proposal, consideration, or adoption of administrative regulations.

(b) This section does not prohibit an agency from contracting with a former public officer to act on a matter on behalf of the state.

(c) The head of an agency may waive application of (a) of this section after determining that representation by a former public officer is not adverse to the public interest. The waiver must be in writing and a copy of the waiver must be provided to the attorney general for approval or disapproval. (§ 1 ch 87 SLA 1986)

Sec. 39.52.190. Aiding a violation prohibited. It is a violation of this chapter for a public officer to knowingly aid another public officer in a violation of this chapter. (§ 1 ch 87 SLA 1986)

Article 3. Disclosure and Action to Prevent Violations.

Section	Section
210. Declaration of potential violations by public employees	230. Reporting of potential violations
220. Declaration of potential violations by members of boards or commissions	240. Advisory opinions
	250. Advice to former public officers
	260. Designated supervisor's report and attorney general review

Sec. 39.52.210. Declaration of potential violations by public employees. (a) A public employee who is involved in a matter that may result in a violation of AS 39.52.110 — 39.52.190 shall

(1) refrain from taking any official action relating to the matter until a determination is made under this section; and

(2) immediately disclose the matter in writing to the designated supervisor.

(b) A public employee's designated supervisor shall make a written determination whether an employee's involvement violates AS 39.52.110 — 39.52.190. If the supervisor determines that a violation could exist or will occur, the supervisor shall,

(1) reassign duties to cure the employee's potential violation, if feasible; or

(2) direct the divestiture or removal by the employee of the personal or financial interests that give rise to the potential violation.

(c) A designated supervisor may request guidance from the attorney general, in accordance with AS 39.52.240, when determining whether a public employee is involved in a matter that may result in a violation of AS 39.52.110 — 39.52.190 (§ 1 ch 87 SLA 1986)

Sec. 39.52.220. Declaration of potential violations by members of boards or commissions. (a) A member of a board or commission who is involved in a matter that may result in a violation of AS 39.52.110 — 39.52.190 shall disclose the matter on the public record and in writing to the designated supervisor. The supervisor shall determine whether the member's involvement violates AS

39.52.110 — 39.52.190 shall, after consulting with the attorney general, request guidance from the attorney general, in accordance with AS 39.52.240, when determining whether a public officer is involved in a violation of this chapter.

(b) The designated supervisor shall request guidance from the attorney general, in accordance with AS 39.52.240, when determining whether a public officer is involved in a violation of this chapter.

Sec. 39.52.230. A designated supervisor shall report to a public officer, in writing, a potential violation of this chapter. The public officer shall determine whether the violation is in accordance with AS 39.52.190. (§ 1 ch 87 SLA 1986)

Sec. 39.52.240. A designated supervisor shall request guidance from the attorney general, in accordance with AS 39.52.240, when determining whether a public officer is involved in a violation of this chapter.

(b) The attorney general shall determine whether the violation is in accordance with AS 39.52.190.

(c) The designated supervisor shall request guidance from the attorney general, in accordance with AS 39.52.240, when determining whether a public officer is involved in a violation of this chapter.

(d) A public officer shall determine whether the violation is in accordance with AS 39.52.190.

(e) A public officer shall determine whether the violation is in accordance with AS 39.52.190.

Article 1. Conflict of Interest and Public Meetings.

Section

10. Conflict of Interest
20. Meetings public

Sec. 29.20.010. Conflict of interest. (a) Each municipality shall adopt a conflict of interest ordinance that provides that

(1) a member of the governing body shall declare a substantial financial interest the member has in an official action and ask to be excused from a vote on the matter;

(2) the presiding officer shall rule on a request by a member of the governing body to be excused from a vote;

(3) the decision of the presiding officer on a request by a member of the governing body to be excused from a vote may be overridden by the majority vote of the governing body; and

(4) a municipal employee or official, other than a member of the governing body, may not participate in an official action in which the employee or official has a substantial financial interest.

(b) If a municipality fails to adopt a conflict of interest ordinance by June 30, 1986, the provisions of this section are automatically applicable to and binding upon that municipality.

(c) This section applies to home rule and general law municipalities. (§ 7 ch 74 SLA 1985)

NOTES TO DECISIONS

This section does not prohibit enactment of ordinances which go beyond its requirements. *Acevedo v. City of North Pole*, Sup. Ct. Op. No. 2748 (File Nos. 7120, 7251), 672 P.2d 130 (1983), decided under former, similar law.

Limitation on eligibility of city officeholder for salaried position not preempted by section. — Home rule charter section which prohibited a person who holds or has held an elective city office from being eligible for appointment to an office or for employment for which a

salary is paid by the city until one year has elapsed following the term for which he was elected or appointed, unless an exception is made with the approval of four or more members of the city council, was not preempted by this section since the charter also contained a section prohibiting members of the city council from voting on matters in which they have a pecuniary interest. *Acevedo v. City of North Pole*, Sup. Ct. Op. No. 2748 (File Nos. 7120, 7251), 672 P.2d 130 (1983), decided under former, similar law.

Collateral references. — Validity, construction, and application of regulation regarding outside employment of gov-

ernmental employees or officers. 94 ALR3d 1230.

19 AAC 10.130(a)* is amended to read:

19 AAC 10.130 DISSOLUTION. (a) The commission will, in its discretion, approve a petition for dissolution of a city under AS 29.06.450(a) if the commission determines that

(1) dissolution is in the best interests of the state based on (e) of this section;

OPTION I

(2) the city is free of debt or has satisfied its creditors with a method of repayment, [AS EVIDENCED, TO THE EXTENT POSSIBLE, BY AN AUDIT PREPARED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT WHICH IDENTIFIES THE ASSETS AND LIABILITIES OF THE CITY]; and

OPTION II

(2) the city is free of debt or has satisfied its creditors with a method of repayment, as evidenced, to the extent possible, by [AN AUDIT] a written report prepared by an independent certified public accountant which identifies the assets and liabilities of the city; and

OPTION III

(2) the city is free of debt or has satisfied its creditors with a method of repayment, as evidenced, to the extent possible, by [AN AUDIT PREPARED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT] a written report prepared by or on behalf of the department which identifies the assets and liabilities of the city; and

(3) at least one of the following standards is met:

(A) the city no longer meets the standards established by law for the incorporation of a city;

(B) the city has ceased for at least 730 consecutive days to exercise each of its mandatory powers; or

(C) the petition for dissolution was signed by a number of voters of the city greater than 50 percent of the number of votes cast in the last general election of that city.

(Eff. 2/21/82, Register 81; am 4/1/89, Register XX; am / / /, Register)

Authority: Art. X, Sec. 12,
Alaska Const.
AS 44.47.567

* Changes to 19 AAC 10.130(a) concerning audit requirements should also be made to 19 AAC 10.130(b) and 19 AAC 10.260(a) and (b).

DRAFT

DRAFT

IMPORTANT NOTICE FILING FOR DISSOLUTION OF THE CITY OF AKIACHAK

Voters of the community of Akiachak (located approximately 20 miles northeast of Bethel) have petitioned the State of Alaska to dissolve their city government. A copy of the petition and supporting materials is available for review at the Akiachak Native Community Office in Akiachak and at the Department of Community and Regional Affairs (DCRA) in Bethel and Anchorage.

BOUNDARIES. The boundaries of the city proposed for dissolution encompass approximately 12 square miles in and around the community of Akiachak.

WRITTEN COMMENT PERIOD. Individuals may file briefs or written comments in support of or opposition to this petition. To ensure consideration, such materials must be submitted in accordance with the schedule set by the Chairman of the Local Boundary Commission (LBC) as outlined below.

SCHEDULE. The Chairman of the LBC will formally set the schedule for action by the LBC concerning this matter on February 27, 1989. The following is the tentative schedule of the proceedings.

- 03/13/89 - Deadline for filing briefs and/or written comments in support of or opposition to the proposed dissolution.
- 03/27/89 - Deadline for submission of answering briefs by petitioners' representative.
- 04/24/89 - DCRA releases (for public review) draft report and recommendation to the LBC concerning the proposed dissolution.
- 05/22/89 - Deadline for receipt of comments on draft report and recommendation from DCRA.
- 06/05/89 - DCRA releases final report and recommendation.
- 06/26/89 - LBC conducts hearing in Akiachak.
- 11/07/89 - State conducts election on dissolution (assuming LBC approves petition - actual election date will be set by Director of Division of Elections).

SPECIAL NOTICE TO CREDITORS AND OTHERS WITH A FINANCIAL INTEREST. Any party to whom a debt is owed by the City of Akiachak or who holds assets of the City of Akiachak is asked to notify (INSERT NAME, ADDRESS AND TELEPHONE NUMBER OF AUDITOR).

FURTHER INFORMATION. Questions and requests for a copy of the petition for dissolution, DCRA's reports, briefs, correspondence and/or other materials concerning this matter should be directed to Dan Bockhorst, Department of Community and Regional Affairs, 949 East 36th Avenue, Suite 405, Anchorage, AK 99508 (telephone: 561-8586).

STANDARDS ESTABLISHED BY THE LOCAL BOUNDARY COMMISSION CONCERNING THE ETHICAL CONDUCT OF COMMISSION MEMBERS PROHIBIT INDIVIDUAL MEMBERS OF THE COMMISSION FROM DISCUSSING ANY ASPECT OF THIS MATTER, OTHER THAN PROCEDURES TO BE USED.