

**HB**

**296**

# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB 296  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
Title An Act Relating to Mergers & Consolidations BRU Community Assist & Econ Dev. (405)  
of Municipalities \_\_\_\_\_ Component Community & Business Development  
Sponsor Representative Whitaker  
Requester House Community & Regional Affairs Component No. 2486

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0  
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
This bill has no fiscal impact on this department.

Prepared by: Pat Pcland, Director Phone 907-269-4578  
Division Community & Business Development Date/Time 2/28/02 9:53 AM  
Approved by: Deborah B. Sedwick, Commissioner Date 2/28/2002  
Agency Department of Community & Economic Development



AMENDMENT #2

OFFERED IN THE SENATE  
TO: CSHB 296(CRA)

BY SENATOR AUSTERMAN

1 Page 1, following line 8:

2 Insert a new bill section to read:

3 "\* Sec. 2. AS 29.06.100 is amended by adding a new subsection to read:

4 (c) A petition for the merger or consolidation of a borough and more than one  
5 city within that borough shall provide that, if the proposal is approved by a majority of  
6 the votes in the borough area outside of the cities proposed to be merged or  
7 consolidated but is not approved by a majority of the votes in each of the cities,

8 (1) the entire proposal is defeated; or

9 (2) the proposal is partially approved and the borough is merged or  
10 consolidated with the cities in which the proposal has been approved."

11

12 Renumber the following bill section accordingly.

13

14 Page 2, line 1:

15 Delete "If"

16 Insert "Unless the proposal includes the merger or consolidation of a borough and  
17 one or more of the cities within that borough, if"

18

19 Page 2, line 3, following "approved.":

20 Insert "Votes on a proposal that includes the merger or consolidation of a  
21 borough and one or more of the cities within that borough shall be separately tabulated  
22 as follows: (1) in the borough area outside of each city in that borough proposed to be  
23 merged or consolidated; (2) in each of the cities in the borough proposed to be merged

1 or consolidated; and (3) if one or more municipalities outside of the borough are also  
2 included within the proposal, in each of those other municipalities. The entire proposal  
3 is defeated if it is not separately approved in the borough outside of the cities in that  
4 borough that are proposed to be merged or consolidated and, if municipalities outside of  
5 the borough are included in the proposal, in those other municipalities. If the proposal  
6 is not approved in one or more of the cities within the borough that are proposed to be  
7 merged or consolidated but is otherwise approved in each of the areas separately  
8 tabulated, the proposal is either entirely defeated or partially approved as provided in  
9 the petition under AS 29.06.100(c)."

AMENDMENT #3

OFFERED IN THE SENATE  
TO: CSHB 296(CRA)

BY SENATOR TORGERSON

1 Page 2, following line 3:

2 Insert a new bill section to read:

3 "\*\* Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to  
4 read:

5 APPLICABILITY. The amendment to AS 29.06.100(a) in sec. 1 of this Act does not  
6 apply to a merger or consolidation petition filed with the Department of Community and  
7 Economic Development before the effective date of this Act. The amendment to  
8 AS 29.06.140(a) in sec. 2 of this Act does not apply to an election held as a result of a petition  
9 filed with the Department of Community and Economic Development before the effective  
10 date of this Act, and AS 29.06.140(a) as it read before the effective date of this Act applies to  
11 that election."

AMENDMENT

OFFERED IN THE SENATE  
TO: CSHB 296(CRA)

1 Page 2, line 1:

2 Delete "If"

3 Insert "Unless the proposal includes the merger or consolidation of a borough and  
4 a city within that borough, if"

5

6 Page 2, line 3, following "approved.":

7 Insert "A proposal that includes the merger or consolidation of a borough and a  
8 city within that borough must be separately approved by a majority of the votes in the  
9 borough outside of the city and by a majority of the votes in the city, as well as by a  
10 majority of the votes in each of the other municipalities if other municipalities are  
11 included within the proposal. A proposal that includes the merger or consolidation of a  
12 borough and more than one city within that borough must be approved by a majority of  
13 the votes in the borough outside of the cities proposed to be merged or consolidated and  
14 by a majority of the votes in each city proposed to be merged or consolidated, tabulated  
15 separately, as well as by a majority of the votes in each of the other municipalities if  
16 other municipalities are included within the proposal."

Tony Knowles, Governor



## State of Alaska Local Boundary Commission

550 West Seventh Avenue, Suite 1770 • Anchorage, AK 99501  
Telephone: 907-269-4560 • Fax: 907-269-4539

April 10, 2002

The Honorable John Torgerson  
Chairman  
Senate Community and Regional Affairs Committee  
State Capitol, Room 427  
Juneau, AK 99801-1182

RE: *CS FOR HOUSE BILL NO. 296(CRA)* "An Act relating to mergers and consolidations of municipalities"

Dear Senator Torgerson:

The Local Boundary Commission has been advised that Representative Whitaker proposes to amend *CS FOR HOUSE BILL NO. 296(CRA)*. The text of the proposed amendment has not yet been released for review by the Commission or, presumably, by other interested parties. However, Representative Whitaker's staff has indicated that the amendment would require a local option consolidation of a city and borough to be approved by voters in the city and also by voters of the borough outside the city.

Moreover, the Commission is aware that some parties are proposing that HB 296, with Representative Whitaker's amendment, be given an expedited effective date. The intent is to make the change applicable to the pending election for consolidation of the City of Haines and the Haines Borough.

The Commission has strong concerns regarding this anticipated amendment and the proposal for an expedited effective date. Under other circumstances, I would state those concerns at the Senate CRA Committee hearing on the bill this afternoon. However, I am not able to do so since the Commission had previously scheduled a public hearing on other matters at the time of the Senate CRA Committee hearing.

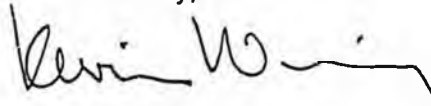
Details about the Commission's concerns over Representative Whitaker's proposed amendment and an expedited effective date are outlined in the attachment. I encourage you and other members of the Senate CRA Committee to review the attachment. The Commission's concerns are summarized below.

- For 30 years, legislative policy has long facilitated consolidation of city and borough governments. That policy is in harmony with constitutional principles encouraging maximum efficiency in local governmental structure. Representative Whitaker's proposed amendment reverses this legislative policy and is not in accord with the local government principles in Alaska's constitution.

- The proposed amendment presumes that the members of the House of Representatives did not understand the terms of *CS FOR HOUSE BILL NO. 296(CRA)*. To the contrary, the Commission believes that the House of Representatives in general, and the House Community and Regional Affairs Committee in particular, were aware of the difference between the legislation they approved and the amended legislation that may now be proposed.
- The change would disenfranchise borough voters who are also residents of the city proposed for consolidation from voting in a borough election.
- The proposed amendment repudiates the principle of "one person, one vote" and the principle of majority rule.
- The proposed amendment may contravene the provisions of the federal Voting Rights Act.
- Application of the change on an expedited basis to a pending election would be unfair.

Since the Commission and, presumably, all other interested members of the public have not had an opportunity to review the specific terms of any amendment, I respectfully request that the Senate CRA Committee postpone action on the bill to allow an opportunity for their review and comment.

Cordially,



Kevin Waring  
Chairman

Enclosure: a/s

Copy with enclosure to:

The Honorable Alan Austerman, Senate CRA Committee  
The Honorable Randy Phillips, Senate CRA Committee  
The Honorable Pete Kelly, Senate CRA Committee  
The Honorable Georgianna Lincoln, Senate CRA Committee  
The Honorable Jim Whitaker, Prime Sponsor, HB 296  
The Honorable Kevin Meyer, Co-Chair, House CRA Committee  
The Honorable Carl Morgan, Co-Chair, House CRA Committee  
The Honorable Andrew Halcro, House CRA Committee  
The Honorable Drew Scalzi, House CRA Committee  
The Honorable Lisa Murkowski, House CRA Committee  
The Honorable Gretchen Guess, House CRA Committee  
The Honorable Beth Kerttula, House CRA Committee  
The Honorable Dave Black, Mayor, City of Haines  
The Honorable Jerry Lapp, Acting-Mayor, Haines Borough

# STATE OF ALASKA LOCAL BOUNDARY COMMISSION

## STATEMENT OPPOSING AMENDMENT OF CS FOR HOUSE BILL NO. 296(CRA)

April 10, 2002

### Legislative Policy Should Complement Constitutional Principles.

Clearly, the legislature has the prerogative and duty, subject to the veto power of the governor, to set public policy regarding the manner in which local government mergers and consolidations occur.<sup>1</sup>

Ideally, that legislative policy would be in harmony with constitutional principles regarding local government.

### Alaska's Constitution Promotes City and Borough Consolidation.

Principles of Alaska's constitution encourage consolidation and other methods of combining city and borough governments. The drafters of the Local Government Article of Alaska's Constitution "viewed the long-term relationships between the borough and the city as a gradual evolution to unified government."<sup>2</sup>

Indeed, the express purpose of the Local Government Article of Alaska's constitution is to "provide for maximum local self-government *with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions.*" (Article X, Section 1 – emphasis added) The Alaska Supreme Court held with respect to combining city and borough governments through unification that:

Unification is consistent with the purpose expressed in article X, section 1 of minimizing the number of local government units.

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<sup>1</sup> Article X, Section 3 of Alaska's constitution provides, in part, "[m]ethods by which boroughs may be . . . merged, consolidated . . . shall be prescribed by law." Article X, Section 7 states, in part, that cities "may be merged, consolidated . . . in the manner provided by law." Article II, Section 15 provides that, "The governor may veto bills passed by the legislature. . . . He shall return any vetoed bill, with a statement of his objections, to the house of origin." Article II, Section 16 provides that, "[u]pon receipt of a veto message during a regular session of the legislature, the legislature shall meet immediately in joint session and reconsider passage of the vetoed bill . . ."

<sup>2</sup> *Final Report on Borough Government*, p. 17, Alaska Legislative Council and the Local Affairs Agency (1961)

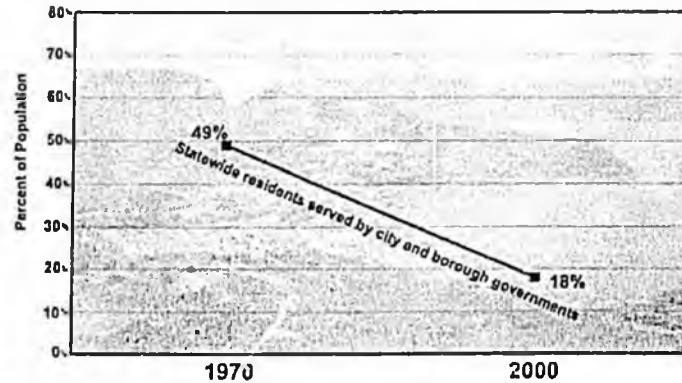
It is also noteworthy that the Task Force on Governmental Roles, established by the 1991 Legislature to examine State policies regarding local government, concluded as follows:<sup>3</sup>

Unification of borough and city administrations should be encouraged wherever possible to provide for more efficient and cost-effective service delivery.<sup>4</sup>

Alaskans have embraced the constitutional principles encouraging the combination of city and borough governments.

Since 1970, the percentage of Alaskans who live within both a city and borough government has declined by approximately two-thirds.

Then (1970) & Now (2000)  
Residents served by city and borough governments



#### Long-Standing Legislative Policy Harmonizes with Constitutional Principles.

Legislative policy concerning merger and consolidation of city and borough governments was set in 1972 when State statutes for city governments (AS 29) and borough governments (formerly AS 07) were first brought together in Title 29 of the Alaska Statutes. The policy provided that local option municipal merger and consolidation proposals would be determined by majority rule (i.e., by a majority of the total votes cast on the proposal).

2,241 Haines Voters



The legislature addressed concurrent majority voter

approval for unification when it amended the statutes concerning unification in 1989. When the legislature amended the statutes concerning consolidation in 1994 and again in 1999, however, it did not make similar changes in consolidation election procedures. This indicates that the present difference in statutory language regarding voting procedures for unification and consolidation is purposeful and reflects differing legislative intent.

Under current law, outcome of the pending Haines consolidation proposal will be determined by a majority of the votes cast among the 2,241 voters of the Haines Borough

The majority rule standard facilitates merger and consolidation of city and borough governments and conforms to constitutional principles to the maximum extent possible.

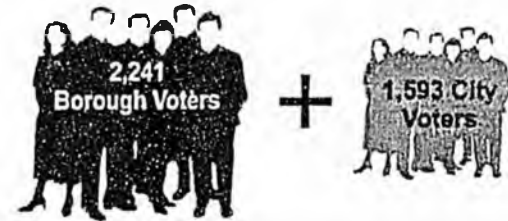
<sup>3</sup> Task Force on Governmental Roles, Final Report (July 10, 1992).

<sup>4</sup> The term unification was expressly described in the report as a term used in a colloquial sense that included consolidation.

CS for House Bill No. 296(CRA) Moderately Alters Established Policy.

CS for House Bill No. 296(CRA), which passed by the House on March 15 2002 by a wide margin (36 yeas 0 nays, 3 excused and 1 absent), would alter the thirty-year-old policy of the legislature by placing additional limitations on merger and consolidation.

Arguably, any additional limitations on merger and consolidation procedures would be counter to the principles set out in Article X, Section 1 of Alaska's constitution. However, in terms of the merger and consolidation proposals that have come before the LBC in the past, the change set out in CS for House Bill No. 296(CRA) appears limited in scope.



Under CSHB 296(CRA), outcome of the pending Haines consolidation proposal would require approval by a majority of the votes cast among the 1,593 voters of the City of Haines and a majority of the voters cast among the 2,241 voters of the Haines Borough

Moreover, there is some institutional rationale for the change already set out in CS for House Bill No. 296(CRA). It requires that merger and consolidation under the local option would be subject to approval by a majority vote in each affected municipal government.

This policy change would make requirements for merger and consolidation of municipal corporations (i.e., cities and boroughs) similar to the requirements for merger of private sector corporations, where a majority of the shareholders of each corporation must approve a merger.

Given the limited policy effect and some institutional rational for CS for House Bill No. 296(CRA), the Local Boundary Commission did not object to that measure.

Amendment Constitutes Severe Policy Change.

The sponsor of HB 296 may now seek a far-reaching amendment to the legislation approved by the House.

As of the date of this statement, the proposed amendment has not been made available for review by the Commission or other interested groups. However, according to the staff of the sponsor of HB 296, the proposed amendment would require, for consolidation of a city and borough, that voters in the city approve consolidation and also that voters in the portion of the borough outside the city must approve consolidation.



Under the proposed amendment, outcome of the pending Haines consolidation proposal would require approval by a majority of the votes cast among the 1,593 voters of the City of Haines and a majority of the voters cast among the 648 voters of the Haines Borough living outside the City. 1,593 Borough voters inside the city would be disenfranchised.

That amendment will have the effect of severely limiting the prospects for consolidations. The amendment is also patently unfair. It ignores the fact that citizens of a city within a borough are citizens of both local governments. It creates an exclusive voting right for selected borough voters – those who live outside cities.

To apply the earlier analogy of the merger of two private sector corporations, the proposed amendment to *CS for House Bill No. 296(CRA)* would be equivalent to limiting the shareholders who owned stock in both corporations to voting their stake in only one of the corporations. Clearly, the amendment would disenfranchise the borough voters who live within the city.

#### **Amendment Rejects "One Person, One Vote" and Majority Rule.**

The proposed amendment also rejects the principles of "one person, one vote" and majority rule. It is analogous to a requirement that, in order to become law, bills must be separately approved by the majority coalition in the legislature as well as all minority coalitions, regardless of how small or arbitrarily defined those minority coalitions may be.

As noted earlier, current statutes (AS 29.06) provide that incorporation of a borough through consolidation is determined by an areawide vote. That requirement is wholly consistent with the long-standing procedures for incorporation of an unorganized region as a borough under AS 29.05. For example, when the Haines Borough was formed, the law did not require voter approval in the City of Haines and, separately, in that portion of the Haines Borough outside the City of Haines.

#### **All Voters Should be Treated Equally.**

The Commission maintains, as a general rule, all voters should be treated equally. Without that principle, there are numberless different parochial classifications into which local voters might be subdivided to thwart "one person, one vote" and majority rule. In fact, the principles in Article X of Alaska's Constitution discourage narrowing voter classifications for municipal consolidation elections. Those principles were addressed by the Alaska Supreme Court with respect to unification in City of Douglas v. City and Borough of Juneau, 484 P.2d 1040, (Alaska 1971).

#### **Proposal to Expedite the Effective Date Would Radically Alter the Rules for an Ongoing Matter.**

Although the sponsor of HB 296 or his staff have not indicated to the Commission an intent to seek an expedited effective date of the legislation, there was a recent report of such in the April 4 edition of the *Chilkat Valley News*. The report stated as follows:

Whitaker said that since the bill passed the House, he's received numerous e-mails, telephone calls, and personal visits from Haines residents, most of whom want the bill amended to cover Haines' consolidation vote.

"The people who have contacted me very much want it to apply to Haines," Whitaker said.

Leaving Haines off the measure that passed the House was an oversight, he said. "It was unfortunate that it went out that way. We know what our intent was, and the person who wrote the bill made a mistake. We are going to go back and correct it. We're going to try to change it."

Whether or not Representative Whitaker intends to provide for an expedited effective date pursuant to Article II, Section 18 of the Constitution of the State of Alaska, others parties are certainly advocating such. The pending petition for consolidation of the two local governments in Haines was filed under laws that have been in place for thirty years. It would seem unfair to the petitioner to significantly alter long established procedures at the last step in the process of public consideration of the proposal.

Moreover, the Local Boundary Commission questions any implication that members of the House of Representatives failed to understand *CS for House Bill No. 296(CRA)*. The Commission is aware that the House CRA Committee certainly considered the bill carefully and believes that Committee members are fully aware of the effects of the bill. Moreover, the Commission questions whether the House would have adopted the measure now proposed by the sponsor.

#### Amendment May Violate Federal Voting Rights Act.

Lastly, the Commission notes that changes in voting procedures in Alaska are subject to review under the Federal Voting Rights Act. It appears as though the provisions of HB 296 would be subject to review under that Act.

Under the terms of Section 5 of the Act, voting changes are not legally enforceable in Alaska until approved either by a three-judge court in the District of Columbia or by the Attorney General of the United States.

The Commission notes that the proposed amendment of *CS for House Bill No. 296(CRA)* would dilute minority voting strength in Haines and perhaps in other areas that may be proposed for consolidation.

The City of Haines is more racially diverse than the area of the Borough outside the City of Haines. Alaska Natives make up only 4.1% of the Haines Borough population outside the City of Haines, but comprise 11.5% of the areawide population. A requirement that the area outside the City of Haines must approve consolidation has the effect of diminishing the voting strength of Alaska Natives in the Haines Borough. As such, it is conceivable that the proposed amendment might not gain requisite approval under the Federal Voting Rights Act.

April 9, 2002

Honorable Senator Torgerson, Chairman  
Community and Regional Affairs Committee

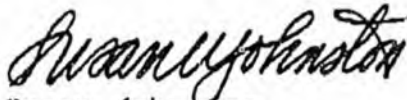
FAX #907-465-4779

Dear Senator Torgerson:

I was dismayed to hear that there might be the possibility of amendment language attached to HB 296 which would require a separate vote of residents both inside and outside a city to affect a consolidation. This would, in effect, put the fate of an entire community in the hands of a very small percentage of its population. This is not democracy as I understand it.

Please do what you can to see that no such amendment language is considered. It would be outrageous if this was pushed through by a handful of people with a personal agenda who could care less about the good of our community.

Thank you. A constituent.



Susan Johnston  
P.O. Box 871  
Haines, AK 99827

*Rec'd 4/15/02*

April 15, 2002

The Honorable John Torgerson - Chairman  
Senate Community and Regional Affairs Committee  
State Capitol, Room 427  
Juneau, AK 99801-1182

RE: Amending HOUSE BILL NO. 296(CRA) "An Act relating to mergers and consolidations of municipalities"

Dear Senator Torgerson,

I respectfully request that HB296 be amended to require that all separate bodies to a consolidation must approve it separately, similar to the requirements of the Unification process. I also request that you expedite the effective date of this legislation to be enacted immediately upon signing by the Governor in order to apply to the proposed Haines City/Borough consolidation.

As a twenty five year resident of the Haines Borough and active public participant in the Haines consolidation efforts, I find that the current consolidation regulations fail to meet a basic principle of American democracy; to follow the will of the majority while protecting the rights of the minority. If amended, the consolidation process could meet this goal.

In response to the April 10th letter from Local Boundary Commission (LBC) Chairman Waring opposing amending HB296 and opposing the inclusion of Haines, I offer the following:

1) LBC claims that "For 30 years, legislative policy has long facilitated consolidation of city and borough governments".

Has consolidation ever succeeded in its 30 year history? How sacred is unsuccessful legislation? How much State money has been spent trying to implement this flawed process? Recent efforts to consolidate in Ketchikan and Fairbanks failed.

2) LBC notes that "the proposed amendment presumes that the members of the House of Representatives did not understand the terms".

This presumed misunderstanding is likely the case, as witnessed by bill sponsor Whittaker's statement that without this amendment, HB296 does not meet its intent.

3) LBC claims that the amendment would "disenfranchise borough voters who are also residents of the city".

This amendment allows every resident of the borough to vote, those inside the city borough residents and those outside the city borough residents. Everyone votes, both must approve the charter. How does this disenfranchise city voters?

4) LBC claims that the amendment "repudiates the principle of "one person, one vote" and the principle of majority rule".

The amendment addresses the need for the consolidation process to meet a higher standard than a simple majority. The intent of consolidation is to merger or unify two areas. The process needs to encourage consensus and cooperation between the parties involved. Alaska's Unification process recognizes this need and consequently requires a separate inside/outside vote. Without a separate inside/outside requirement, consolidation allows for a more populated municipality to disregard the concerns of the less populated outside areas and simply bully their way through consolidation. It promotes contention and resentment, instead of a desired cooperation.

The City of Haines has never proposed a meeting with Borough residents from outside the city in order to discuss concerns and build consensus. The City has consistently ignored requests from outside residents for district representation in the charter so outside residents could have at least one voice in the new government.

The City of Haines, which includes 75% of the population of the Haines Borough, proposes in their petition to retain most of their services, yet charge their \$350,000 of yearly administrative costs to areawide residents. The City further proposes to keep \$300,000 in revenue from a 1% tourism sales tax in their townsite service area coffers, yet charge areawide residents for the \$289,000 expense of running a tourism department. The City's petition internalizes the profits and externalizes the expenses. Isn't this what Enron did?

5) LBC claims the amendment "may contravene the federal Voting Rights Act".

If an inside/outside vote for consolidation would somehow violate federal law, then why isn't LBC challenging this same requirement for the Unification process? State law requires that newly affected voters must ratify any proposed new sales tax, so why is it unreasonable to require ratification by affected voters for a proposed consolidated government?

6) LBC claims that "an expedited basis for the pending Haines election would be unfair".

HB296 and the amendment seek to correct and improve state regulations. If the current regulations are unfair or inadequate, then why wouldn't LBC want the corrected regulations to apply to Haines?

HB296 should be expedited specifically for Haines. It would not stop the present consolidation effort by the City of Haines; it would simply require that the city finally sit down with residents outside the city and amend the petition so it meets the needs of all people of the Haines Borough and create one government.

Thank you for your kind consideration of this important matter. I am available to answer any questions or to testify.

Sincerely,

Tim June

Box 672, Haines, AK 99827  
(907) 766-2028

cc: Alaska State Representatives and Senators  
Governor Tony Knowles



**HAINES BOROUGH** Box 1209, Haines, Alaska 99827 (907) 766-2711 FAX 766-2716

April 9, 2002

Members of the Senate Committee on Community and Regional Affairs  
The Honorable John Torgerson, Chairman  
The Honorable Randy Phillips, Senator  
The Honorable Alan Austerman, Senator  
The Honorable Pete Kelly, Senator  
The Honorable Georgianna Lincoln, Senator

Dear Members of the Senate C&RA Committee:

By Resolution dated, March 19, 2002 The Haines Borough Assembly officially supports the petition by the City of Haines to consolidate our two governments into a single Home Rule Borough.

The City's petition was filed in December 2000 as a consolidation petition. For two years and three months the people in Haines followed the procedures set in statute and the regulations of the Local Boundary Commission. It has been a very deliberate and lengthy process, as it should be. The Local Boundary Commission made its final determination to approve the petition on March 9, 2002. We've all played by the rules.

However, we are now informed that an amendment to HB 296 is being proposed that would nullify the rules we followed during the past two years and three months. We've not been allowed to see the amendment but we're told it would change the "consolidation" voting procedure to make it the same as the "unification" voting procedure. While I can argue the merits of why the consolidation process is better for Haines than is the unification process, there is a more important threshold issue. Simply, we believe it is wrong for the legislature, or any unit of government, to interfere in midstream with a legally defined procedure that has been ongoing for more than two years. The people of Haines, the City of Haines and the Local Boundary Commission have been following the law. If a legislator wants to change the law then it should be proposed for future effect but not retroactive effect.

Haines' City Mayor, Dave Black, will attend your committee meeting on April 10, 2002 to respond to specific questions if the amendment is proposed. The City and the Borough are united on this issue. ~~Also I would like to request that you give us time to review any proposed amendments with our attorney before you take action.~~ We will also be interested in hearing testimony from the Local Boundary Commission.

Thank you for your consideration.

Yours truly,

Jerry L. Lapp, Acting Mayor



# Alaska State Legislature

Representative Jim Whitaker  
House of Representatives  
District 31



**Session**  
Capitol Building, Room 411  
Juneau, Alaska 99801  
Phone: (907) 465-3004  
Fax: (907) 465-2070

**Interim**  
119 N. Custerman St. Suite 213  
Fairbanks, AK 99701  
Phone: (907) 452-1088  
Fax: (907) 452-1146

## Sponsor Statement

### HB 296 – Municipal Consolidation

Within Alaska statutes, Title 29 allows municipalities to merge by consolidation or unification. Through the years, many communities have attempted to merge through this process, some successfully, some not so successfully. It is through those efforts that deficiencies in fair voting practices surrounding municipal mergers has come to light.

HB 296 seeks to establish a more fair and timely process in the petition and election of municipal mergers by limiting the time allowed for gathering signatures as well as setting clear requirements for how the outcome of the election is to be determined.

**CSHB 296 (CRA)**  
**Municipal Mergers & Consolidations**

**Section 1** – Amends AS 29.06.100 (a) to limit the time period in which a petitioner may gather signatures for a petition to consolidate. The new time period will be 365 days prior to filing the petition with the LBC.

*This removes the potential for signatures to be gathered over the course of several years, with the possibility that many of the signatures may be of persons who no longer reside within the jurisdiction.*

**Section 2** – Amends AS 29.06.140(a) to require a majority of the votes in each of the municipalities proposed to be merged or consolidated in order for the question to pass.

*This assures that a merger or consolidation will be decided by the majority of the voting residents of each of the communities included in the proposal.*

By: Bonnie Williams  
Introduced: 02/14/02  
Adopted: 02/14/02

RESOLUTION NO. 2002 - 13

A RESOLUTION SUPPORTING HB 296 AN ACT MAKING CONSOLIDATION  
STATUTES FAIR TO ALL PARTIES BY UPHOLDING GOVERNMENT BY THE  
CONSENT OF THE GOVERNED

WHEREAS, in the year 2001 the citizens of the Fairbanks North Star Borough and especially the City of Fairbanks went through a long, bitter and difficult struggle over the issue of consolidation; and

WHEREAS, the outcome of that struggle could have resulted in the elimination of the City of Fairbanks against the majority view of the residents of that city under current state law; and

WHEREAS, such an outcome would be an outrageous abuse of governing with the consent of the governed; and

WHEREAS, the city of North Pole could then subsequently have been similarly deprived of its right of self-rule.

NOW, THEREFORE, BE IT RESOLVED, that the Fairbanks North Star Borough Assembly supports Representative Jim Whitaker's HB 296, which corrects this gross inequity.

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded to all members of the Alaska State House and State Senate, and to the Governor of the State of Alaska.

PASSED AND APPROVED THIS 14 DAY OF FEBRUARY, 2002.

*Hank Bartos*

Hank Bartos  
Presiding Officer

ATTEST:

*Mona Lisa Drexler, CMC*

Mona Lisa Drexler, CMC  
Municipal Borough Clerk

Ayes: Williams, Solie, Cummings, Foote, Holm, Henry, Webb, Hutchison, Sattley, Bartos

Noes: Beck

Introduced by: Mayor Thompson  
Date: February 25, 2002

**RESOLUTION NO. 3978**

**A RESOLUTION OF THE CITY OF FAIRBANKS IN SUPPORT OF HOUSE BILL 296, RELATING TO STATE LAWS REGARDING MUNICIPAL MERGER AND CONSOLIDATION, AND SETTING AN EFFECTIVE DATE**

**WHEREAS**, the voters of the City Of Fairbanks and the Fairbanks North Star Borough overwhelmingly rejected the most recent proposal to consolidate the two governments with nearly 80% of votes cast against the proposal; and

**WHEREAS**, House Bill 296, introduced by Representative Whittaker, will be heard by the House Community & Regional Affairs Committee this Thursday. HB 296 would correct three significant deficiencies which came to light during the recent Fairbanks consolidation process; and

**WHEREAS**, under current state law, persons proposing a merger or consolidation of local governments have an unlimited time to obtain needed signatures; HB 296 would limit the "infinite" period to 365 days; and

**WHEREAS**, under current state law, voting on a merger or consolidation proposal is conducted as a single pool of the voters of the two (or more municipalities); HB 296 would require the approval by the voters of each of the affected municipalities; and

**WHEREAS**, HB 296 would also clarify state law to provide that a question involving a borough service area required to be submitted to the voters may not be part of the merger or consolidation petition.

NOW, THEREFORE, BE IT RESOLVED that the City Council supports House Bill 296, and urges its adoption by the legislature of the State of Alaska.

Passed and Approved this 25<sup>th</sup> day of Feb, 2002.

*Steve M. Thompson*  
STEVE M. THOMPSON, MAYOR

AYES:  
NAYS:  
ABSTAIN:  
ABSENT:  
ADOPTED: *February 25, 2002*

ATTEST:

APPROVED AS TO FORM

*Carol L. Colp*  
Carol L. Colp, City Clerk

*H. P. Kuss*  
Herbert P. Kuss, City Attorney

By: Bonnie Williams  
Introduced: 02/14/02  
Adopted: 02/14/02

RESOLUTION NO. 2002 - 13

A RESOLUTION SUPPORTING HB 296 AN ACT MAKING CONSOLIDATION  
STATUTES FAIR TO ALL PARTIES BY UPHOLDING GOVERNMENT BY THE  
CONSENT OF THE GOVERNED

WHEREAS, in the year 2001 the citizens of the Fairbanks North Star Borough and especially the City of Fairbanks went through a long, bitter and difficult struggle over the issue of consolidation; and

WHEREAS, the outcome of that struggle could have resulted in the elimination of the City of Fairbanks against the majority view of the residents of that city under current state law; and

WHEREAS, such an outcome would be an outrageous abuse of governing with the consent of the governed; and

WHEREAS, the city of North Pole could then subsequently have been similarly deprived of its right of self-rule.

NOW, THEREFORE, BE IT RESOLVED, that the Fairbanks North Star Borough Assembly supports Representative Jim Whitaker's HB 296, which corrects this gross inequity.

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded to all members of the Alaska State House and State Senate, and to the Governor of the State of Alaska.

PASSED AND APPROVED THIS 14 DAY OF FEBRUARY, 2002.

*Hank Bartos*

Hank Bartos  
Presiding Officer

ATTEST:

*Mona Lisa Drexler, CMC*

Mona Lisa Drexler, CMC  
Municipal Borough Clerk

Ayes: Williams, Solie, Cummings, Foote, Holm, Henry, Webb, Hutchison, Sattley, Bartos

Noes: Beck

Introduced by: Mayor Thompson  
Date: February 25, 2002

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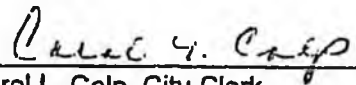
Passed and Approved this 25<sup>th</sup> day of Feb, 2002.

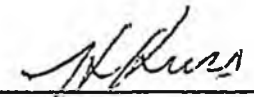
  
STEVE M. THOMPSON, MAYOR

AYES:  
NAYS:  
ABSTAIN:  
ABSENT:  
ADOPTED: February 25, 2002

ATTEST:

APPROVED AS TO FORM

  
Carol L. Colp, City Clerk

  
Herbert P. Kuss, City Attorney

AMENDMENT #2

OFFERED IN THE SENATE  
TO: CSHB 296(CRA)

BY SENATOR AUSTERMAN

1 Page 1, following line 8:

2 Insert a new bill section to read:

3 "\* Sec. 2. AS 29.06.100 is amended by adding a new subsection to read:

4 (c) A petition for the merger or consolidation of a borough and more than one  
5 city within that borough shall provide that, if the proposal is approved by a majority of  
6 the votes in the borough area outside of the cities proposed to be merged or  
7 consolidated but is not approved by a majority of the votes in each of the cities,

8 (1) the entire proposal is defeated; or

9 (2) the proposal is partially approved and the borough is merged or  
10 consolidated with the cities in which the proposal has been approved."  
11

12 Renumber the following bill section accordingly.  
13

14 Page 2, line 1:

15 Delete "If"

16 Insert "Unless the proposal includes the merger or consolidation of a borough and  
17 one or more of the cities within that borough, if"  
18

19 Page 2, line 3, following "approved.":

20 Insert "Votes on a proposal that includes the merger or consolidation of a  
21 borough and one or more of the cities within that borough shall be separately tabulated  
22 as follows: (1) in the borough area outside of each city in that borough proposed to be  
23 merged or consolidated; (2) in each of the cities in the borough proposed to be merged"

1 or consolidated; and (3) if one or more municipalities outside of the borough are also  
2 included within the proposal, in each of those other municipalities. The entire proposal  
3 is defeated if it is not separately approved in the borough outside of the cities in that  
4 borough that are proposed to be merged or consolidated and, if municipalities outside of  
5 the borough are included in the proposal, in those other municipalities. If the proposal  
6 is not approved in one or more of the cities within the borough that are proposed to be  
7 merged or consolidated but is otherwise approved in each of the areas separately  
8 tabulated, the proposal is either entirely defeated or partially approved as provided in  
9 the petition under AS 29.06.100(c)."

AMENDMENT #3

OFFERED IN THE SENATE  
TO: CSHB 296(CRA)

BY SENATOR TORGERSON

1 Page 2, following line 3:

2 Insert a new bill section to read:

3 \*\* Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to  
4 read:

5 APPLICABILITY. The amendment to AS 29.06.100(a) in sec. 1 of this Act does not  
6 apply to a merger or consolidation petition filed with the Department of Community and  
7 Economic Development before the effective date of this Act. The amendment to  
8 AS 29.06.140(a) in sec. 2 of this Act does not apply to an election held as a result of a petition  
9 filed with the Department of Community and Economic Development before the effective  
10 date of this Act, and AS 29.06.140(a) as it read before the effective date of this Act applies to  
11 that election."

April 9, 2002

Honorable Senator Torgerson, Chairman  
Community and Regional Affairs Committee

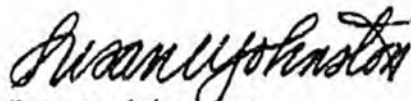
FAX #907-465-4779

Dear Senator Torgerson:

I was dismayed to hear that there might be the possibility of amendment language attached to HB 296 which would require a separate vote of residents both inside and outside a city to affect a consolidation. This would, in effect, put the fate of an entire community in the hands of a very small percentage of its population. This is not democracy as I understand it.

Please do what you can to see that no such amendment language is considered. It would be outrageous if this was pushed through by a handful of people with a personal agenda who could care less about the good of our community.

Thank you. A constituent.



Susan Johnston  
P.O. Box 871  
Haines, AK 99827



**HAINES BOROUGH** Box 1209, Haines, Alaska 99827 (907) 766-2711 FAX 766-2716

April 9, 2002

Members of the Senate Committee on Community and Regional Affairs  
The Honorable John Torgerson, Chairman  
The Honorable Randy Phillips, Senator  
The Honorable Alan Austerman, Senator  
The Honorable Pete Kelly, Senator  
The Honorable Georgianna Lincoln, Senator

Dear Members of the Senate C&RA Committee:

By Resolution dated, March 19, 2002 The Haines Borough Assembly officially supports the petition by the City of Haines to consolidate our two governments into a single Home Rule Borough.

The City's petition was filed in December 2000 as a consolidation petition. For two years and three months the people in Haines followed the procedures set in statute and the regulations of the Local Boundary Commission. It has been a very deliberate and lengthy process, as it should be. The Local Boundary Commission made its final determination to approve the petition on March 9, 2002. We've all played by the rules.

However, we are now informed that an amendment to HB 296 is being proposed that would nullify the rules we followed during the past two years and three months. We've not been allowed to see the amendment but we're told it would change the "consolidation" voting procedure to make it the same as the "unification" voting procedure. While I can argue the merits of why the consolidation process is better for Haines than is the unification process, there is a more important threshold issue. Simply, we believe it is wrong for the legislature, or any unit of government, to interfere in midstream with a legally defined procedure that has been ongoing for more than two years. The people of Haines, the City of Haines and the Local Boundary Commission have been following the law. If a legislator wants to change the law then it should be proposed for future effect but not retroactive effect.

Haines' City Mayor, Dave Black, will attend your committee meeting on April 10, 2002 to respond to specific questions if the amendment is proposed. The City and the Borough are united on this issue. ~~Also I would like to request that you give us time to review any proposed amendments with our attorney before you take action.~~ We will also be interested in hearing testimony from the Local Boundary Commission.

Thank you for your consideration.

Yours truly,

Jerry L. Lapp, Acting Mayor



*Rec'd 4/15/02*

April 15, 2002

The Honorable John Torgerson - Chairman  
Senate Community and Regional Affairs Committee  
State Capitol, Room 427  
Juneau, AK 99801-1182

RE: Amending HOUSE BILL NO. 296(CRA) "An Act relating to mergers and consolidations of municipalities"

Dear Senator Torgerson,

I respectfully request that HB296 be amended to require that all separate bodies to a consolidation must approve it separately, similar to the requirements of the Unification process. I also request that you expedite the effective date of this legislation to be enacted immediately upon signing by the Governor in order to apply to the proposed Haines City/Borough consolidation.

As a twenty five year resident of the Haines Borough and active public participant in the Haines consolidation efforts, I find that the current consolidation regulations fail to meet a basic principle of American democracy; to follow the will of the majority while protecting the rights of the minority. If amended, the consolidation process could meet this goal.

In response to the April 10th letter from Local Boundary Commission (LBC) Chairman Waring opposing amending HB296 and opposing the inclusion of Haines, I offer the following:

1) LBC claims that "For 30 years, legislative policy has long facilitated consolidation of city and borough governments".

Has consolidation ever succeeded in its 30 year history? How sacred is unsuccessful legislation? How much State money has been spent trying to implement this flawed process? Recent efforts to consolidate in Ketchikan and Fairbanks failed.

2) LBC notes that "the proposed amendment presumes that the members of the House of Representatives did not understand the terms".

This presumed misunderstanding is likely the case, as witnessed by bill sponsor Whittaker's statement that without this amendment, HB296 does not meet its intent.

3) LBC claims the amendment would "disenfranchise borough voters who are also residents of the city".

This amendment allows every resident of the borough to vote, those inside the city borough residents and those outside the city borough residents. Everyone votes, both must approve the charter. How does this disenfranchise city voters?

4) LBC claims that the amendment "repudiates the principle of "one person, one vote" and the principle of majority rule".

The amendment addresses the need for the consolidation process to meet a higher standard than a simple majority. The intent of consolidation is to merger or unify two areas. The process needs to encourage consensus and cooperation between the parties involved. Alaska's Unification process recognizes this need and consequently requires a separate inside/outside vote. Without a separate inside/outside requirement, consolidation allows for a more populated municipality to disregard the concerns of the less populated outside areas and simply bully their way through consolidation. It promotes contention and resentment, instead of a desired cooperation.

The City of Haines has never proposed a meeting with Borough residents from outside the city in order to discuss concerns and build consensus. The City has consistently ignored requests from outside residents for district representation in the charter so outside residents could have at least one voice in the new government.

The City of Haines, which includes 75% of the population of the Haines Borough, proposes in their petition to retain most of their services, yet charge their \$350,000 of yearly administrative costs to areawide residents. The City further proposes to keep \$300,000 in revenue from a 1% tourism sales tax in their townsite service area coffers, yet charge areawide residents for the \$289,000 expense of running a tourism department. The City's petition internalizes the profits and externalizes the expenses. Isn't this what Enron did?

5) LBC claims the amendment "may contravene the federal Voting Rights Act".

If an inside/outside vote for consolidation would somehow violate federal law, then why isn't LBC challenging this same requirement for the Unification process? State law requires that newly affected voters must ratify any proposed new sales tax, so why is it unreasonable to require ratification by affected voters for a proposed consolidated government?

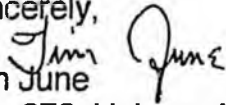
6) LBC claims that "an expedited basis for the pending Haines election would be unfair".

HB296 and the amendment seek to correct and improve state regulations. If the current regulations are unfair or inadequate, then why wouldn't LBC want the corrected regulations to apply to Haines?

HB296 should be expedited specifically for Haines. It would not stop the present consolidation effort by the City of Haines; it would simply require that the city finally sit down with residents outside the city and amend the petition so it meets the needs of all people of the Haines Borough and create one government.

Thank you for your kind consideration of this important matter. I am available to answer any questions or to testify.

Sincerely,

  
Tim June

Box 672, Haines, AK 99827  
(907) 766-2028

cc: Alaska State Representatives and Senators  
Governor Tony Knowles