

4/10/03

OVERVIEW:

LOCAL

BOUNDARY

COMMISSION

**REMARKS TO THE HOUSE COMMUNITY & REGIONAL
AFFAIRS COMMITTEE OF THE FIRST SESSION OF THE
23RD ALASKA LEGISLATURE
State Capitol, Room 124
April 10, 2003 – 8:00 a.m.**

House Community and Regional Affairs Committee membership

CHAIR: Representative Morgan

VICE-CHAIR: Senator Wolf

MEMBER: Representative Kott

MEMBER: Representative Anderson

MEMBER: Representative Samuels

MEMBER: Representative Cissna

MEMBER: Representative Kookesh

Good morning. I am Darroll Hargraves, Chair of the Alaska Local Boundary Commission. I am a resident of Wasilla.

There are three other members of the Commission with me this morning. They are:

- Bob Hicks from Seward;
- Georgianna Zimmerle from Ketchikan; and
- Tony Nakazawa from Fairbanks.

There is a fifth member of the Commission who could not be present today. He is Bob Harcharek from Barrow.

I also want to introduce representatives of the Department of Community and Economic Development:

- Gene Kane, Division Director, and
- Dan Bockhorst, who serves as staff to the Local Boundary Commission.

The Commission is here today at the invitation of the House Community and Regional Affairs Committee to present information about the recently completed review of the unorganized borough.

Last year, the legislature passed Senate Bill 359 by unanimous vote among all members of the Senate and House that were present. The legislation was signed into law as Chapter 53, Session Laws of Alaska, 2002.

The law directed the Local Boundary Commission to review the unorganized borough in terms of the standards for borough incorporation. It also directed the

Local Boundary Commission to report to the 2003 Legislature those unorganized areas that meet the standards for borough incorporation.

Four members of the Commission that participated in the review of the unorganized borough are no longer on the Commission. It is fitting that I recognize the hard work of those former Commissioners regarding this matter. Those former members are Kevin Waring, Allan Tesche, Ardith Lynch, and Myrna Gardner.

The Commission began its review shortly after the law took effect on September 17 of last year. The Commission endeavored to promote broad public awareness about and participation in the review.

The Commission met six times concerning the unorganized borough review

- October 22, 2002
- November 13, 2002
- December 9, 2002
- January 22, 2003
- February 8, 2003 and
- February 11, 2003.

During the February 8 meeting, the Commission held a statewide hearing on the matter and received testimony from residents of twenty-seven communities. 110 individuals and organizations submitted written comments on the matter to the Commission.

All written comments, along with a transcript of the Commission's meetings of December 9, January 22, February 8, and February 11 are part of the record reviewed by the Commission.

The Commission filed its report with the Legislature on February 19 of this year. A copy of the report was provided to each legislator. The report and a copy of the correspondence and transcripts have also been provided to the Secretary of the Senate and the Chief Clerk of the House.

Again, four of the five current members of the Commission did not participate in the review of the unorganized borough. However, the currently appointed members of the Commission have had the opportunity to fully review the February 19 report on the unorganized borough. The Commission met two days ago to address the matter at length.

Chapter 53, S.L.A 2002 imposed a duty on the Commission to make a determination as to which unorganized areas meet borough standards. The law was clear that the Commission's report to the legislature did not constitute a formal recommendation for incorporation of boroughs in any areas under Article X, Section 12 of the constitution. The Commission's duties under Chapter 53

have been fulfilled. The Commission will address any future directives by the legislature regarding the matter of boroughs in accordance with the law.

Dan Bockhorst, staff to the Commission, is prepared to provide a summary of the Commission's review of the unorganized borough. The summary that he will provide reflects the current views of the Commission.

Mr. Chairman, with your permission, Mr. Bockhorst will provide you with a summary of the study and report.



Local Boundary Commission

Presented to the
Senate Community and Regional Affairs Committee
April 9, 2003

1. LBC's duty to review the unorganized borough & study local government boundary problems;
2. Key background information about establishment of boroughs;
3. Significant conclusions reached by the LBC regarding borough establishment;
4. Unorganized areas that meet borough incorporation standards.

Part I

Duty of the LBC to Review the
Unorganized Borough & Study Local
Government Boundary Problems

CHAPTER 53
SESSION LAWS OF ALASKA, 2002


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

AS 44.33.012

"The Local Boundary Commission shall make studies of local government boundary problems ..."

State of Alaska
Local Boundary Commission
The Need to Revisit State Laws
Concerning Borough Incorporation and
Annexation

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




"The Commission considers the lack of a strong State policy promoting the extension of borough government to be the most pressing 'local government boundary problem' facing Alaska."


Part II

Key Background Information About Establishment of Boroughs


Constitutional Background




STATE OF ALASKA CONSTITUTIONAL CONVENTION
UNIVERSITY OF ALASKA
NOV. 8, 1955 FEB. 8, 1956



The Committee on Local Government met 44 times before presenting the Local Government Article to the Convention.



Delegates formally considered the Local Government Article on January 19, 20, and 30, 1956.



John Rosswog, Chair, Committee on Local Government

"... we allow for the boroughs remaining unorganized until they are able to take on their local government functions."

Alaska Constitution Convention Proceedings, Alaska Legislative Council, page 2612



Delegate Barrie White

Alaska Constitution Convention Proceedings, Alaska Legislative Council, page 2650

"Haven't we here inducement to an area to remain an unorganized borough and to get the state to provide all the necessary functions?"



Victor Rivers, Committee on Local Government member

Alaska Constitution Convention Proceedings, page 2650

"... it was our thought there would be enough inducement for them to organize and exercise home rule so that as time went on they would gradually all become incorporated boroughs."

Maynard Londborg, Local Government Committee member, added that boroughs could be organized on a voluntary or mandatory basis, but the Committee desired the former.

Delegate James Hurley

"Is my idea correct that no organized borough will become effectuated without the voice of the people in the area?"

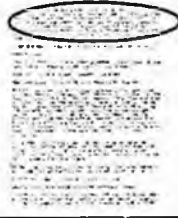
Alaska Constitution Convention Proceedings, Alaska Legislative Council, page 2673



Vic Fischer, Secretary, Local Government Committee

Alaska Constitution Convention Proceedings, Alaska Legislative Council, page 2673

"The answer, I think, would be 'no'. ...when a certain area reaches a position where it can support certain services and act in its own behalf, it should take on the burden of its own government."




Vic Fischer, continued

"... we don't actually visualize that the state will force boroughs to organize, since we feel that they should be set up on such a basis that there will be enough inducement for each one to organize."


Alaska Constitution Convention Proceedings, Alaska Legislative Council, page 2674



Article X was adopted by the Convention on January 30, 1956.




The Constitution was ratified by voters on April 24, 1956 and took effect January 3, 1959.



**ALASKA
CONSTITUTION
ARTICLE X**

Section 3. Boroughs. The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.


The legislature has a duty under the constitution to set State policy regarding establishment of boroughs.



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Boroughs – organized or unorganized – must be established throughout Alaska.



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All boroughs – organized and unorganized – must be established according to standards and procedures enacted by the legislature.



The 1961 Legislature set the initial State policy regarding establishment of boroughs.

- Procedures for incorporation of organized boroughs by local option were enacted.

- Standards for incorporation of organized boroughs were enacted.

- Independent school districts formed under Territorial law – but not sanctioned under Alaska's constitution – were given two years to be integrated into boroughs.

- A single unorganized borough was established encompassing all of Alaska not within organized boroughs.



State policy makers anticipated that the Borough Act of 1961 would be generally ineffective in promoting borough formation.



Jay Hammond, State Representative at the time of the Borough Act of 1961.

"Attractive enough on paper, in practice, the organized borough concept had little appeal to most communities. After all, why should they tax themselves to pay for services received from the state, gratis?"

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Roger W. Pegues, Director, Local Affairs Agency, 1960 -1962

"It was generally believed [by the drafters and supporters of the original Borough Act of 1961] that the 1963 legislature would adopt a mandatory incorporation law."

The Metropolitan Experiment in Alaska - A Study of Borough Government, page 92



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"... like the constitution writers, the authors of the 1961 act were wrong" (Alaskans were not generally induced to voluntary borough incorporation).

Alaska's Urban and Rural Governments, page 43

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John Rader, first State A.G., State Rep. (1959, 1963-1966), State Senator (1969 - 1978)


"... the moment [a proposed borough] began to have an immediate tax equalization feature, the borough had two chances for success - slim and none."

The Metropolitan Experiment in Alaska - A Study of Borough Government, page 91


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Arguments against boroughs in the early 1960s were similar to those voiced today.




Alaska's Urban and Rural Governments, page 43



"School district officials wanted to avoid loss of autonomy, city residents saw no need for a new layer of government and taxation, and Alaskans outside cities and school districts wanted to preserve their tax-free status."

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As anticipated, the Borough Act of 1961 proved to be generally ineffective in promoting borough formation.



- In the two years allowed, none of the nine regions containing independent school districts had formed boroughs.
- The deadline for integration of independent school districts into boroughs was just months away when the 1963 Legislature convened.



John Rader

The Metropolitan Experiment in Alaska, page 93

"... the greatest unresolved political problem of the State was the matter of boroughs. ... A great opportunity to create something of value could be lost."



In 1963, Representative Rader sponsored HB 90 mandating that the nine election districts encompassing independent school districts must incorporate boroughs by January 1, 1964.



Following amendment to exclude one of the nine areas, HB 90 was enacted.



Ch. 52, SLA, 1963 mandated boroughs in:


- Ketchikan
- Sitka
- Juneau
- Kodiak Island
- Kenai Peninsula
- Anchorage
- Mat-Su
- Fairbanks




Chapter 52, Session Laws of Alaska, 1963

Section 1. Declaration of Intent.

"It is the intention of the legislature to provide for maximum local self-government with a minimum number of local government units and tax-levying jurisdictions."







*Chapter 52,
Session Laws of
Alaska, 1963*

Section 1. Declaration of Intent continued

"... No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation."





In 1964, the Alaska Supreme Court characterized the 1963 Mandatory Borough Act as (emphasis added):



"An additional means for accomplishing the constitutional objective of establishing borough government was provided by chapter 52 SLA 1963. Here the legislature did not leave the question of the formation of boroughs to local option, as it did in the 1961 statute."

Waters v. Coase, 304 P.2d 670 (Alaska 1964)







The Metropolitan Experiment in Alaska, page 81


"It was only after a series of repeated failures that in 1963 the State legislature finally exercised the authority which had previously been delegated to others."

John Rader





Despite its general ineffectiveness, the State returned to the policy of delegating borough establishment to local residents after 1963.

- 
- In 44 years of statehood, boroughs have formed under the local option process in areas encompassing just 4% of Alaskans.
 - In contrast, the eight boroughs formed under the 1963 Mandatory Borough Act encompass 83% of Alaskans.





- Incentives to incorporate boroughs were generally inadequate in the early 1960s.
- Since then, borough incentives have diminished *substantially*.





 Excerpts from:
Municipal Government in Alaska - WHITE PAPER
 < <http://www.akml.org/>


- "The state has failed to continue the evolution of local government directed by the Constitution. Article X of the Constitution states, "The entire state shall be divided into boroughs, organized and unorganized."





 Excerpts from:
Municipal Government in Alaska - WHITE PAPER
 < <http://www.akml.org/>


- "Alaska is the only state with no local government for a large geographical part of the state."





 Excerpts from:
Municipal Government in Alaska - WHITE PAPER
 < <http://www.akml.org/>

- "Article X of the Constitution also states, 'The purpose of this article is to provide for maximum local self government with a minimum of local government units.' In the Unorganized Borough the opposite is true. There is currently a minimum of local self-government with a maximum of local government units."





 Excerpts from:
Municipal Government in Alaska WHITE PAPER
 < <http://www.akml.org/>


- "Adding borough government would not be a new, expensive layer of government. Local services are currently provided by the state and a patchwork of over 400 separate [entities]. Current service delivery is neither inexpensive or efficient, due to the lack of coordinated service delivery."




Part III




Significant Conclusions Reached by the Commission Regarding Establishment of Borough in Alaska




**CERTAIN FUNDAMENTAL
REQUIREMENTS OF
ARTICLE X, SECTION 3
REMAIN UNFULFILLED**




Standards for establishment of unorganized boroughs have never been enacted.




Procedures for establishment of unorganized boroughs have yet to be enacted.



The single "residual" unorganized borough encompasses an area and population with highly diverse interests, not common interests as required by the constitution.




**BOROUGHES PROMOTE
EQUITY AMONG ALASKANS**



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

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

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



"... No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation."


The requirement for local contributions for schools is, in effect, a \$160 million annual State tax levied only on organized boroughs and home rule & first class cities in the unorganized borough.

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



**BOROUGHS PROMOTE
MAXIMUM LOCAL
SELF-GOVERNMENT**

Recall the comments of John Rader:



"... A great opportunity to create something of value could be lost."

As noted earlier, the 1963 Legislature mandated eight boroughs, in part, to provide for maximum local self-government.



"It is the intention of the legislature to provide for maximum local self-government ..."

In 1974, the Alaska Supreme Court construed the section of the constitution promoting maximum local self-government to favor upholding borough formation. Specifically, the court stated:

"Our review of the record has been undertaken in light of the statement of purpose accompanying article X, the local government article of the Alaska Constitution. Section 1 declares in part:

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions . . .

We read this to favor upholding organization of boroughs ..." *Mobil Oil Corp. v. LBC, 518 P.2d 92, 99 (Alaska 1974)*

"Our constitution encourages their creation. Alaska const. Art. X, § 1."

Mobil Oil Corp. v. LBC, 518 P.2d 92, 101 (Alaska 1974)

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

- providing capacity to supplement State funding for fundamental regional services like education (REAs are dependent upon the State);

- establishing an entity with ability to issue bonds to construct or rebuild regional facilities such as schools (REAs lack authority to issue bonds);
- creating a government to levy taxes to provide services not otherwise available (boroughs are the only regional governmental unit in Alaska with taxing power);

- establishing a municipal platting authority (the State has the burden of serving as the platting authority in the unorganized borough outside the relatively few cities that exercise such power);
- offering a mechanism to provide alcohol control on a regional basis (currently available only on a community basis in the unorganized borough);

- providing the capacity to participate in the National Flood Insurance Program (currently limited in the unorganized borough to areas within city government boundaries).

Part IV



Unorganized Areas that Meet Borough Standards

Unorganized Areas of Alaska that Meet Borough Incorporation Standards

1. Aleutians West;
2. Upper Tanana Basin;
3. Copper River Basin;
4. Prince William Sound;
5. Glacier Bay;
6. Chatham;
7. Wrangell-Petersburg.



1. Population size and stability;
2. Regional commonalities;
3. Economic capacity;
4. Broad public interest.

- The 7 regions had populations in 2000 ranging from 1,354 to 6,964.
- Each region exceeded the presumptive minimum population standard of 1,000.
- 1980 – 2000 population trends were reasonably stable in all regions except Aleutians West.
- When adjusted for base closures, Aleutians West population was reasonably stable.

Each area conforms to model boundaries which were defined on the basis of regional common interests including:

- natural geography;
- social, cultural & economic characteristics;
- transportation facilities;

4. communications and exchange;
5. consideration of REAA boundaries; and
6. presence of multiple communities.

LBC considered the following factors in judging the economic capacity of the regions:

- mandatory powers of boroughs;
- anticipated borough expenses;
- projected borough revenues;

4. ability to generate income;
5. economic base, land use, & development;
6. property valuations;
7. personal income; and
8. prior borough feasibility studies.

Broad public interest is served by:

- maximum local self-government;
- promoting a minimum of local government units; and
- relieving the State of responsibility for local services.



Local Boundary Commission

UNION OF NORFOLK ISLANDS
LOCAL BOUNDARY COMMISSION