

HB

133

CONCEPTUAL AMENDMENT # 1 -PASSED

OFFERED IN THE HOUSE JUDICIARY BY REPRESENTATIVE COGHILL

TO: CSSSCSSSHB 133(STA)

- 1 Page 2, line 5:
- 2 After the word "incorporation"
- 3 Delete all language through line 9, except the period.
- 4
- 5

AMENDMENT - not offered

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSSSHB 133(STA)

1 Page 3, following line 22:

2 Insert a new bill section to read:

3 **"* Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 SEVERABILITY. Under AS 01.10.030, if any provision of this Act or the application
6 of it to any person or circumstance is held invalid, the remainder of this Act and the
7 application to other persons or circumstances are not affected."

8

9 Renumber the following bill section accordingly.

TO: House Judiciary (JUD) Committee
DATE: April 13, 2005
TIME: 1:00 PM
BILL: HB 133 An act relating to incorporation of boroughs...

Written testimony by: DENNY KAY WEATHERS
Residence Address: Lot 6, Deep Bay, Hawkins Island
In Prince William Sound, District 5
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Madam Chair, Lesil McGuire;

I am faxing in my testimony just in case I am unable to testify by telephone.

I strongly support HB 133 as it is a step in the right direction in clarifying the authority of the Local Boundary Commission also known as the (LBC).

Lately it seems the Local Boundary Commission has been trying to usurp the rights of the People by trying to take away the "Public Process" and "input" of "We the People".

HB 133 will give the People of the State of Alaska some form of checks and balances needed to safeguard We the People from the Local Boundary Commission and or their "Personnel" that try to over step the Constitution of the State of Alaska. I urge you all to support the people of Alaska and the Constitution by passing this bill. Thank you for your time.

Denny Kay Weathers
[Handwritten signature]

Attn: Rep. McGuire Fax: 907-465-6592

Written testimony to the House Judiciary Committee regarding HB 133

By Glen Marunde

April 8, 2005

To the Chairman and members of the House Judiciary Committee.

Dear Chairman McGuire:

My name is Glen Marunde and I am a 43 year resident of Tok. My wife, Dorothy, and I have raised five children in Alaska. I make my living as an electrical and mechanical contractor. I also teach construction trade classes for the University of Alaska.

My testimony pertains to the story of what happened when the Local Boundary Commission forced the Lake Louise Community of just 37 residents to be annexed to the Matsu Borough without a vote of the residents of the annexed area and without the vote of a single elected person.

This is a true story of how the LBC forced 37 residents of Lake Louise into the wrong borough, without a vote, and then, after additional investigation, the LBC along with the DCRA recommended detachment but attached stipulations to the detachment that were impossible for the Lake Louise residents to meet.

This story, more than anything else I know of, supports the aims and goals of HB 133. I urge you to vote for SB HB 133.

The facts and figures used in this testimony are taken from The LBC report entitled, The Report of the Local Boundary Commission to the second session of the Nineteenth Alaska Legislature.

Once upon a time there were 37 Alaska citizens living peacefully and happily in the beautiful area around Lake Louise. Lake Louise is located just off the Glenn Highway about 34 miles West of Glennallen and about 110 miles East of downtown Anchorage.

They governed themselves with a local Community Umbrella Corporation, a quasi-government plan overseen by the DCED for areas not ready to incorporate as a second class city. They had total local control of their own lives and destinies.

The Matsu Borough leaders recognized that some day this area could become a major recreational area with a tax base and they reached their talons over a mountain range and thru the notch at the top of Gunsight Mountain and snatched up Lake Louise. The LBC readily approved the Matsu petition and forced the Lake Louise residents to be annexed to the Matsu Borough by use of the legislative review method. That's the method whereby the LBC makes a recommendation to the Legislature to annex and it becomes law, if not voted down by a majority in both houses within 45 days. The annexation can become law without a vote of the Legislature and without a vote of the Lake Louise citizens. The annexation becomes law without the vote of any elected person.

On March 7, 1996 the 37 residents of Lake Louise fought back and filed a petition to detach with the Department of Community and Regional Affairs. The LBC was forced to investigate. Their own investigation showed that Lake Louise had very much more in common with the Glennallen Area than it did with Matsu. The LBC voted to recommend detachment.

On October 3, 1996, DCRA issues its preliminary report which supported the detachment of approx 252 square miles.

But the DCRA attached stipulations to the detachment. They recommended that the Lake Louise residents pay for a proportional share of the Matsu bonded indebtedness. Next they recommended that Lake Louise pay required local contributions for education and that they assume responsibility for a 25 acre sewage management site currently operated by the Matsu Borough. The dollar amount of these stipulations came to \$160,000.00.

Let's stop and recap! The 37 residents of Lake Louise were forced into annexation with the Matsu Borough without a local vote and against their will. They fought back by filing a petition to detach. Upon review both the LBC and the DCRA changed their opinion and recommended detachment but they added stipulation that in order to detach the citizens of Lake Louise had to buy their way out to the tune of \$160,000.00---for services they never wanted or needed in the first place. Unbelievable!

But wait -- there's one more stipulation. At a December 8, 1995 meeting the LBC stipulated that the detachment will not take effect until the detached territory becomes part of another organized borough within two years of the date of tacit legislative approval. There were no other organized boroughs in the area.

Lets sum up, again.

The DCRA and the LBC imposed a borough annexation of Lake Louise against their will. Lake Louise fights back and files a petition to detach. After a thorough investigation which shows that Lake Louise has much more in common with Glennallen than with the Matsu Borough, they reverse themselves and recommend detachment.

Next the LBC and the DCRA add stipulations to the detachment that Lake Louise must pay \$160,000.00 to buy their way out, and that they must join another borough, first. There was no other borough within 100 miles and still isn't as of today's date!. Both the LBC and the DCRA are dead wrong but they win anyway --- and the 37 citizens of Lake Louise lose and, throughout the entire process, no elected person has voted on anything.!

The saga continues.

The citizens of Lake Louise could not afford to buy their way out and they did not want to join another borough. They fought back again by filing a petition to reconsider and ask to detach and form a 2nd class city as the lesser of two evils. At least with a 2nd class city they would retain local control compared to seeing control pass to the Matanuska Borough assembly 100 miles away.

The LBC approves the formation of a 2nd class city but stipulates approx the same conditions as they did for detachment and then, believe it or not, adds another stipulation

Here it is (If you love our Democracy, and believe in the rights of individuals, brace yourself.)

"It is further stipulated in the event a city government is formed, the incorporation is conditioned upon the passage of a proposition authorizing the city to levy a property tax at a rate that will generate revenues sufficient rate to pay the \$160,000.00 noted above to the Matanuska-Susitna Borough within two years of incorporation and to carry out the duties listed above and other reasonable anticipated functions of the city."

And here is the final outrageous stipulation, "that the Local Boundary Commission shall be the arbitrator of any dispute between the petitioners and the Matanuska-Susitna Borough concerning payments required by this action or the implementation of any other aspect of the detachment and the conditions stipulate above."

Talk about the fox guarding the chicken coop!" The LBC was a prime party and should not have been the arbitrator. That is\was the job for a 3rd party arbitrator.

The Lake Louise residents did not accept the stipulations and today they are still a part of the Matanuska Borough.

Please note that Darrell Hargraves, the current Chairman of the LBC was also the Chairman during the Lake Louise fiasco,

I believe that the story of how the LBC forced the Community of Lake Louise, against their will, without a vote, into the wrong borough and forced it to remain there clearly points out the need to pass SB 128.

If you wish to read the LBC report regarding the annexation of Lake Louise into the Matsu Borough, call me at 907-883-4601 or email me at Marunde@aptalaska.net and I will send it to you.

Sincerely,


Glen Marunde



State of Alaska Local Boundary Commission

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April 13, 2005

The Honorable Lesli McGuire
Chair
House Judiciary Committee
State Capitol, Room 118
Juneau, AK 99801-1182

Re: Committee Substitute for Sponsor Substitute for House Bill Number 133(STA)

Dear Representative McGuire:

Both Bob Hicks, Vice-Chair of the Local Boundary Commission, and I had intended to testify before the House Judiciary Committee this afternoon regarding CSSHB 133(STA). Although the bill is of vital interest to the Commission, I regret that neither of us will be available to testify because of other circumstances.

In lieu of our direct participation at today's hearing, I am enclosing my written testimony regarding the bill. As noted therein, I am also providing you with a copy of the written testimony provided to the House Community and Regional Affairs Committee on February 24, 2005, by Commissioner Hicks. Also enclosed is the legal brief prepared by Commissioner Hicks regarding the issue of formation of boroughs through the legislative review process.

Please accept this letter and the attachments as written testimony on the bill. The views expressed in this letter and attachments are the consensus of the entire Commission and are also consistent with the policy positions expressed by the Commission in its 2005 report to the Legislature.

Sincerely,

A handwritten signature in black ink that reads "Darroll Hargraves".

Darroll Hargraves
Chair

Enclosures

4/13 prepared comments of LBC Chair Darroll Hargraves
2/24 prepared comments of LBC Vice Chair Bob Hicks
Legal brief prepared by LBC Vice Chair Bob Hicks regarding SB 128

cc/enc: Members of the Local Boundary Commission
Edgar Blatchford, Commissioner, Department of Commerce, Community, and Economic Development

**Prepared Remarks to the
Judiciary Committee of the Alaska State House of Representatives
Regarding CS for Sponsor Substitute for House Bill No. 133(STA)
By Darroll Hargraves, Chair, Local Boundary Commission
April 13, 2005**

Thank you Madame Chair and members of the Committee. For the record, my name is Darroll Hargraves, Chair of the Alaska Local Boundary Commission.

Because of fundamental policy and legal concerns, the Local Boundary Commission has voted unanimously to oppose House Bill 133. My testimony focuses on the policy concerns.

The Commission's legal concerns are reflected in written testimony provided to the House Community and Regional Affairs Committee on February 24, 2005, by LBC Vice-Chair Bob Hicks. In sum, Commissioner Hicks characterized House Bill 133 as being "patently unconstitutional."

I wish to also bring to your attention that, at the request of the Senate Judiciary Committee, Commissioner Hicks prepared a legal brief outlining legal concerns regarding Senate Bill 128. That bill is similar in one respect to House Bill 133 because both measures propose to restrict the Commission's authority to address borough incorporation through the legislative review method.

I am providing the Committee with a copy of the materials prepared by Commissioner Hicks.

The Commission's policy concerns about HB 133 include the following:

1. HB 133 would prohibit LBC amendments and conditions regarding incorporation petitions.

Just as it is common for a bill to be amended during the legislative process, it is not unusual for the LBC to amend a petition or place conditions on it.

HB 133 would prohibit the LBC from doing so for a city and borough incorporation petition. If a petition is deficient, the petitioner will have to amend it or the LBC must deny it.

The same would be true where a petition warrants a particular condition.

If denied, a petition may not be resubmitted for two years.

2. HB 133 would effectively stymie borough incorporation.

Prepared Remarks to the Alaska State House Judiciary Committee
Darroll Hargraves, Chair, LBC
April 13, 2005

The LBC supports and, in fact, prefers voluntary borough incorporation. However, the "local option" method has been a failure since it was enacted in 1961.

John Rader, former State Representative, former State Senator, and Alaska's first State Attorney General wrote that "the moment" a local option borough proposal "was extended into unincorporated areas . . . the borough had two chances for success – slim and none."

Consequently, Mr. Rader sponsored legislation in 1963 to mandate formation of boroughs in:

- the Anchorage area;
- Mat-Su;
- Fairbanks region;
- Kenai Peninsula;
- Kodiak Island;
- Juneau area;
- Sitka area; and
- Ketchikan area.

After passage, Governor Egan, former President of Alaska's Constitutional Convention, signed the Mandatory Borough Act into law.

The failure of the local option method is reflected in the fact that after forty-six years of statehood, fewer than 25,000 Alaskans live in boroughs that were voluntarily formed. In contrast, nearly 550,000 Alaskans live in boroughs that were formed by legislative mandate.

Stated another way, about 96 percent of borough residents live in boroughs formed by legislative mandate.

In 1972, the legislature reclassified every second-class city with at least 400 residents as a first-class city. Because first-class cities in the unorganized borough have the same duties as boroughs, the effect was similar to the Mandatory Borough Act.

Reversing long-standing legislative policy will likely create a colossal dilemma for the legislature.

- How will the nearly 550,000 Alaskans who live in mandatorily formed boroughs view such a fundamental change in legislative policy?
- What will the thousands of residents who live in mandatorily reclassified cities in the unorganized borough say with regard to a new policy?

- Will local governments that were mandatorily formed or mandatorily reclassified perceive that they are somehow viewed as being illegitimate because they were not founded on the "will of the people?"

It is noteworthy that every member of the House Judiciary Committee lives in a region whose citizens rejected local option borough proposals, only to have boroughs established by legislative fiat less than four months later.

There is already significant local unrest over the State's lack of leadership regarding borough formation. For example:

- At a public gathering in Homer last week, one prominent local official stated, 'Why not get rid of the Kenai Peninsula Borough? We didn't vote for it; the legislature forced us into it; it is totally unnecessary.'
- Residents of some mandatorily reclassified cities are asking why they should continue to operate a municipal school district when other communities that are better off are not required to do so.
- Last year, all but two of the mandatorily formed boroughs adopted resolutions supporting Senate Concurrent Resolution 12, which would have required consideration of borough incorporation for unorganized areas that have the fiscal capacity to operate boroughs.

Some perceive the entire unorganized borough to lack fiscal capacity to operate boroughs. That is clearly incorrect.

There are regions of the unorganized borough with substantially greater tax bases – measured in per capita terms – compared to a many existing organized boroughs.

At a recent meeting on the topic of boroughs, one prominent Alaskan who lives in an unorganized area proclaimed that that if House Bill 133 passes "our troubles are over." I believe that if House Bill 133 passes, the State's troubles will only escalate.

3. The bill purports to nullify the aggregate voter annexation method and require approval by two classes of voters for any annexation.

According to testimony before the House State Affairs Committee, Section 3 of the bill is intended to nullify the aggregate voter method of annexation and to require approval by two classes of voters in any annexation – those who live in the annexing municipality and, separately, in the territory proposed for

Prepared Remarks to the Alaska State House Judiciary Committee
Darroll Hargraves, Chair, LBC
April 13, 2005

annexation. The testimony failed to distinguish between the legislative review method and the local option method. It also characterized the provisions in AS 29.06.040(c) as being all inclusive, which is not the way that the LBC views the law.

That concludes my prepared remarks. I appreciate your attention.

Prepared Remarks to the Alaska State House Committee on Community and Regional Affairs

**Bob Hicks, -Vice-Chair, Local Boundary Commission
February 24, 2005**

Regarding Sponsor Substitute for House Bill Number 133

Thank you Mr. Chairman and members of the Committee;

Commissioner Hargraves referred to me in the present tense as an attorney who specializes in municipal law. I like to characterize myself as "a recovering lawyer." I left that 30-year career in 2001, and now I enjoy a much more physical and exciting life as the dive officer for the Alaska SeaLife Center here in Seward. I spend my days now trying to convince lawyer colleagues that there really is life after the law.

But every once in awhile, we recovering lawyers suffer lapses, so I hope you'll please forgive me for talking law for a few minutes today.

Let me first say that SSHB 133 is certainly a radical swing from prior Legislatures.

Five of the seven of you on this Committee come from Boroughs that were mandated by an Act of the Legislature in 1963: Kenai Peninsula, Greater Anchorage, Kodiak Island, Matanuska-Susitna Valleys, Greater Ketchikan, Greater Juneau, Greater Sitka and Greater Fairbanks.

Your constituents pay local property taxes. Your constituents are required to pony-up a substantial contribution to local public education costs in your region.

I presume that, in representing your constituents, you want to spread their tax burden equitably and fairly around the state. I also presume that, in representing your constituents, you want to increase their State subsidy of public education wherever possible, both to improve their local education and to reduce their tax burden.

If that is your mindset, then you should vote against passing SSHB 133 out of Committee.

But I think there is a more noble reason to vote against SSHB 133. This Bill is a patently unlawful attempt to change the Alaska Constitution by statute. It is a figurative slap in the face for the Framers of our Constitution, who devoted many months and much hard study to the development of standards and procedures for local governments. If there are going to be any changes to that work effort, there should be much more thought and deliberation put into that process than what we see in SSHB 133.

Section 1 of SSHD 133 prohibits the Local Boundary Commission from amending or imposing conditions on a petition to incorporate a city government or a borough government.

If that were the law, then why would the LBC ever even hold a public hearing on a petition? Under the provisions of this Section, no matter what the citizens might suggest as a needed change in the new corporation, the LBC could not make that change – howsoever small it might be. The petitioner prevails – all or nothing – and every respondent with constructive changes goes unheard. There is not even a shadow of democracy in such a process.

By contrast, let's look at the scenario created by the Framers of our Constitution:

Article X, Section 12 says, very clearly and very simply, "The commission or board may consider any proposed local government boundary change."

SSHB 133 would purport to change this constitutional provision to read, instead, "The commission ... may consider only the proposed local boundary change in the petition, and nothing more or less, and nothing different."

I submit to you that such a change is totally contrary to the intent of the Delegates to the Alaska Constitutional Convention, as reflected in their Minutes: and that such a change flies in the face of the plain English meaning of Article X, Section 12 of the Constitution that we are all sworn to uphold.

Section 2 of SSHB 133 says that the Local Boundary Commission cannot submit a proposed incorporation of a borough for legislative review unless voters in the proposed area have first approved that corporation.

Why bother to submit the incorporation to the Legislature for review, if the local voters have already approved it?

SSHB 133 purports to totally gut the constitutional concept of two distinct methods for boundary changes: "legislative review" and "local action."

By contrast, Article X, Section 12 provides a very specific procedure for legislative review of a proposed change, and it conspicuously does not say that this procedure can be changed by law.

Article X, Section 12 then provides a very general statement, that the Commission can establish procedures for local action elections – which pointedly are "subject to law."

Where the Constitution describes a very specific procedure for legislative review, and pointedly does not authorize that procedure to be changed by law, and where the Constitution then authorizes a local action process that specifically is subject to legislation, SSHB 133 cannot gut the first process by superimposing upon it the second process. No legislation can change our Constitution.

If SSHB 133 was enacted as written, and if statutes could change our revered Alaska Constitution, then SSHB 133 amends Article X, Section 12 to read, in effect:

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

This Bill says to your constituents in boroughs, the Alaska Legislature is going to obstruct and delay any effort to equalize your tax burden with contributions from similarly populated areas of the Unorganized Borough.

There is a lawful process, for changing standards and procedures in our Constitution. But SSHB 133 is not the way to do it. This Bill throws to the wind months of study and contemplation by the Framers of our Constitution. This Bill attempts to change our Constitution by legislative fiat.

I submit to you, that SSHB 133 is patently unconstitutional, and I trust and believe that no self-respecting member of the Alaska Bar will tell you otherwise.

LEGAL BRIEF ANALYZING SB 128
By Bob Hicks, Vice-Chair, Local Boundary Commission

Introduction

This legal brief consists of three sections, and three Appendices.

The first section reviews and analyzes the ambiguity of SB 128.

The second section reviews and analyzes the unconstitutionality of SB 128.

The third section analyzes a common misinterpretation of a particular Alaska Supreme Court decision pertaining to the question of whether carving a new borough from the Unorganized Borough is a "boundary change" within the meaning of Art. X, §12 of the Alaska Constitution.

The three Appendices are legal abstracts of three relevant decisions by the Alaska Supreme Court, separating the many pages of Supreme Court opinions into component parts.

Section I. Does SB 128 attempt to restrict use of the legislative-review method in Title 44, in favor of using the local option election methods in Title 29 for creation of boroughs; or does SB 128 simply change a mandatory provision to a discretionary provision for the LBC without affecting any change in potential petitioners?

AS 44.33.812(a) states in part that the Local Boundary Commission ("LBC") shall "consider a local government boundary change requested of it by the legislature, the commissioner ... or a political subdivision of the state...." SB 128 amends that statement to provide that the words "'boundary change' may not be construed to include a borough incorporation."

In a press release dated March 3, 2005, the sponsor of SB 128 reported that the bill was designed "to clarify that new boroughs are not to be created by agency personnel of state government." The press release concludes with the opinion that proposed boroughs "should emanate from the local level up, not from the top of the government pyramid down."

On March 21, 2005, during a meeting of the Senate Community and Regional Affairs Standing Committee, the sponsor stated that SB 128 would "increase local public participation with regard to creating new boroughs" and it would "clarify that the Local Boundary Commission (LBC) ... doesn't have the authority to create an entirely new government." Mr. Stancliff then stated "that although Title 29 procedures are typically followed when a new borough is formed this [the Whittier-Cordova initiative opposed by Valdez] is a first attempt to use the legislative review process, authorized in Title 44, to influence borough formation."

In both of the above contexts, the drafters of SB 128 expressed their clear intent that, by defining borough incorporation out of the concept of a "boundary change," SB 128 would restrict the LBC from receiving petitions for incorporation of boroughs through the legislative review method, whenever those petitions originated with the legislature, the commissioner or any political subdivision in Alaska.

On April 6, during testimony before the Senate Judiciary Committee, Mr. Stancliff no longer described SB 128 as a bill to restrict use of the legislative-review method in Title 44, in favor of using the local option election methods in Title 29 for creation of boroughs. Instead, his testimony acknowledged the constitutional latitude given the LBC in Art. X, §12, and he re-characterized SB 128 as a bill eliminating the mandatory "shall" from legislation pertaining to the LBC use of the constitutional legislative-review process.

However, Mr. Stancliff did not explain why SB 128 assumes this new LBC-defender role only for borough incorporation. If the "shall" language of AS 44.33.812(a) is indeed unconstitutional, SB 128 should not simply exclude "borough incorporation" from the legal meaning of "boundary change," but should amend AS 44.33.812(a)(3) to remove it from the mandatory "shall" of subsection (a) and replace it in the discretionary "may" of subsection (b).

SB 128 is indeed poorly drafted, and susceptible of differing interpretations. Given the sponsor's earlier press release and testimony, one would conclude that SB 128 was designed to tell the LBC it "doesn't have the authority to create an entirely new government," and that borough incorporation "should emanate from the local level up, not from the top of the government pyramid down." In short, SB 128 was designed to prevent the commissioner and all political subdivisions of the state from submitting to the LBC a petition for incorporation of a borough by the constitutional legislative-review method.

An alternative interpretation has been offered by the Director of Legal Services, Division of Legal and Research Services, Legislative Affairs Agency: "The bill does not prohibit the Local Boundary Commission from considering a borough incorporation requested of it by any entity if it chooses to do so." If that is the case, why enact SB 128? If the reason to enact SB 128 is to correct an unconstitutional "shall" mandate, why make that alleged correction only for borough incorporation and not for city incorporation or for municipal dissolutions? If the reason to enact SB 128 is to correct an unconstitutional "shall," why not do that correction cleanly by moving sub-subsection (3) out of subsection (a) and into subsection (b)?

At best, SB 128 creates a legal quagmire of ambiguity in meaning. At worst, SB 128 will enter the courts with one party advocating the restrictive purpose in the news release and earlier testimony, while another party advocates the implausible interpretation that SB 128 in effect changed a "shall" to a "may," and really does not restrict the commissioner

and political subdivisions from filing petitions for legislative review of incorporations of boroughs.

It is clear that, before receiving a legal interpretation, the drafters intended that SB 128 would prohibit the LBC from using the legislative review method for incorporating boroughs whenever the petition originates with the legislature, the Commissioner or a political subdivision.

However, another interpretation of the amendment is that SB 128 does not affirmatively prohibit the LBC from considering such a request as a "boundary change."¹ SB 128 simply removes the mandate when borough incorporation would result from such a petition. Unlike everything else in AS 44.33.812(a), which carries a commanding decree, with the word "shall," SB 128 loosens, lessens and relaxes the mandate in the full context of AS 44.33.812(a).² The LBC is no longer *required* to consider a request for borough incorporation as a "boundary change" when it originates in the legislature, from the Commissioner, or from a political subdivision.

That interpretation might in fact be palatable to the judiciary for two reasons. First, it is the only legally reasonable interpretation because no law enacted by the legislature can ever change the Art. X, §12 constitutional power vested in the LBC to consider any boundary change and submit it to legislative review. The only way to change that legislative review method for boundary changes is through an amendment to our Constitution.

Secondly, courts will work hard to find statutes consistent with constitutional law rather than declare a statute unconstitutional.³ The Court will say that Art. X, §12 of the Alaska Constitution empowers the LBC to consider "*any* proposed local government boundary change" for legislative review without prior restraint from the legislature, that this constitutional legislative-review method for borough incorporation does not disenfranchise the legislature, and that the only way to make SB 128 constitutional is to presume that no prior restraint was intended by the legislature.

In summary, SB 128 is very poorly drafted. Its intent is at best ambiguous. *If it truly was intended to change a mandate to a discretionary decision within the LBC, then it should be amended to move AS 44.33.812(a)(3) into the discretionary AS 44.33.812(b).* The

¹ However, argument following the line of reasoning by the Alaska Supreme Court in *Yakutat* might lead to a contrary interpretation. Where the first two of three sentences of a statute analyzed in that case contained the mandatory "shall," and the third sentence contained the discretionary "may," the Court insisted upon reading the third "may" sentence "in context" with the first two "shall" sentences. In analogous reasoning, the "may" provisions of subsection (b), when read in context with the "shall" provisions of subsection (a), might lead to a common sense full-context interpretation of the SB 128 qualifier as a prohibition rather than a loosening, lessening or relaxation of the mandate.

² But see, *USSR&M*, where the Supreme Court recognized "that the duties imposed upon the commission in subsection (a) [of the predecessor statute] are mandatory, and those in subsection (b) discretionary." (141-42)

³ In *Keane* the Court reaffirmed

language construing the meaning of "boundary change" to exclude borough incorporation is unnecessary and only a partial solution ignoring city incorporation and all dissolutions.

The following analyses assume that SB 128 was instead intended -- as the original press release and testimony stated -- to restrict use of the legislative-review method in Title 44, in favor of using the local option election methods in Title 29 for creation of boroughs. As such, SB 128 is unconstitutional.

Section II. Where the Art. X, §12 legislative-review method is operative by its constitutional language without enabling legislation, can the Legislature (SB 128) virtually extinguish that legislative-review method for boundary changes whenever a boundary change involves incorporation of a borough?

A. The Art. X, §12 Legislative-Review Method Is Operative Automatically by Its Constitutional Language, Without Need for Enabling Legislation.

Art. X, §12 contains five sentences dealing with three distinct subject matters. (1) The first sentence establishes the LBC, "by law." (2) The next three sentences state first that the LBC "may consider any proposed local government boundary change", and then describe the legislative review method/process in detail, including timing. (3) The last sentence of §12 authorizes the local-option election method of making boundary changes, "subject to law."

Note that the creation of the LBC was "by law," and that the local-option election method of boundary changing was "subject to law," but that **the legislative-review process is not subject to modification or change by the legislature.**⁴

In Fairview, the Appellant argued that the LBC is not empowered to annex through legislative review until after legislation is enacted. The Court held that "the method for making boundary changes, contemplated by Article X, Section 12 of the constitution was operative upon the enactment of the 1959 statutes creating a Local Boundary Commission and conferring powers upon it." (545)

⁴ That "silence" by the drafters of the Constitution cannot be construed to leave any ambiguity, or leave anything to implication. Their drafting skills in other sections of Article X demonstrate that they really meant for the legislature to *not* interfere with this §12 process. For example, in §§ 3 and 7, the drafters clearly provided for methods of incorporation "by law." In § 9, the drafters went so far as to grant powers for home rule cities to the local government immediately upon statehood, and "[i]n the absence of such legislation." **They knew well how to place qualifiers on powers delegated to an entity other than the legislature, and they knew well how to state a role for the legislature when such a role was intended.**

If the drafters had intended the possibility of statutory intervention in the legislative-review method for boundary changes, the drafters would have either written the qualifier "by law," or conversely limited the autonomous power of the LBC to a timeframe "[i]n the absence of such legislation." The drafters did neither.

The Court reasoned that the “plain language” of Article X, Section 12 does not include any statement that the legislative review processes of the LBC are not to take place until certain other events (viz. legislation) had occurred. Stated another way, **no legislation is required beforehand to define or empower the LBC to make boundary changes through the legislative review method.** Unlike the local action method of boundary changes, the legislative review method is fully operational per se, as described in Article X, Section 12, and it is not subject to being defined or limited “by law.”

B. Incorporation of a Borough Is a “Boundary Change” Contemplated in Art. X, §12.

At first blush, one might conclude that, because §3 states that boroughs are established and incorporated “by law,” incorporation of a borough that results in a “boundary change” through the legislative review method in §12 are likewise subject to limitation by the legislature.⁵ However, the Alaska Supreme Court has pointedly⁶ rejected that interpretation twice.

In *Fairview*, where an annexation and dissolution occurred through legislative review (§12) and differently from a statutory method for annexation and dissolution of a public utility district, the Alaska Supreme Court said that the dissolution was a legally permissible consequence of the legislative-review method for boundary changes. In essence, the §12 legislative-review method co-exists with any other method of dissolution, as an alternative method to those other methods.

The *Fairview* court also held that when the “boundary changes” occurred, “the District was extinguished” automatically. **If the Court recognizes dissolution lawfully occurring through a legislative-review “boundary change,” then it follows logically that the Court will recognize incorporation lawfully occurring through a legislative-review “boundary change.”** The illogical tertiary reasoning of *Mobil Oil* aside, incorporating a new borough through the legislative review method changes the boundaries of the Unorganized Borough, by dissolving the Unorganized Borough in that area, just as effectively as dissolution of a borough changed the boundary of the Unorganized Borough by expanding it.

In *Oesau*, where dissolution of one city resulted from a §12 legislative review and differently from a §7 statutory method for dissolution of cities, that dissolution of a city was upheld by the Supreme Court as a legally permissible consequence of the §12 legislative-review method for boundary changes. **The Supreme Court recognized that dissolutions of local government can occur through Art. X, §12 in a manner**

⁵ “Alaska’s Constitution further provides that the terms “by law” and “by the legislature” are used interchangeably when related to law-making powers.” *Douglas v. Juneau*, 484 P. 2d. 1040, 1042, citing Alaska Const. art. XII, §11.

⁶ It is important to note that the Supreme Court “pointedly” recognized dissolution as a legitimate §12 “boundary change” in these two early cases written by Justices personally knowledgeable about the affairs of the Constitutional Convention, because a later Supreme Court in *Mobil Oil* made a contrary statement in far more oblique, tertiary-level “reasoning” that in fact was a non sequitur. See, my analyses below of each of the four reasons advanced by the *Mobil Oil* court in support of its correct holding – the third of which is illogical, incorrect and unnecessary to that decision.

(legislative review) separate and different from statutory methods for dissolution⁷ founded in §7.

In Oesau, the court held that, even where there is a §7 provision for effecting dissolution of a city "in a manner prescribed by law," and even where the legislature had provided three methods in statutes, the City of Wood River was dissolved when the LBC used the legislative review method for boundary changes, as provided at Art. X, §12. In short, the §12 method of legislative review is an independent fourth⁸ method for dissolution of a city.

The Court noted that the "boundary change" by the LBC "consisted of the abolition of the boundary of Wood River and the confirmation of the boundary of the City of Dillingham" (183). Hence, a statute (SB 128) attempting to state that petitions for borough incorporation originating from certain petitioners are not "a boundary change," cannot supersede the present Alaska Supreme Court interpretation of Art. X, §12 that a dissolution of a municipality is indeed a boundary change.

Therefore, simply because the legislature has provided certain methods for incorporation of boroughs "by law," those statutory methods do not prohibit the additional and alternative constitutionally-created method for incorporation of boroughs as a "boundary change" pursuant to Art. X, §12 legislative review. If dissolutions of municipal corporations are "boundary changes" independent of statute and pursuant to §12, then incorporations are also "boundary changes" independent of statute and pursuant to §12.

C. The Practical Effect of SB 128 Is to Extinguish the Legislative-Review Method of a Boundary Change Involving Incorporation of a Borough, Leaving All Borough Incorporations Exclusively to the Local Option Method.

One might argue that, while legislation is not "needed" to enable LBC use of the legislative-review method for boundary changes, nothing in Art. X, §12 *prohibits* the legis' ure from modifying or augmenting that legislative-review method for boundary changes.

However, SB 128 does not simply modify or augment that constitutional method. SB 128 effectively eliminates and extinguishes the legislative-review method whenever a borough incorporation is involved. If the Commissioner and all political subdivisions are

⁷ I cannot think of any legal reason or policy reason motivating the Alaska Supreme Court to treat incorporation different from dissolution, particularly where both are mentioned in §3. The Court has ruled consistently that statutory methods co-exist independent of the Art. X, §12 method for boundary changes.

⁸ Where Art. X, §7 of the Constitution provides that cities may be dissolved "in a manner prescribed by law," and where the legislature has enacted statutes authorizing dissolution either upon an election, or when populations drop below a number, or upon a court order finding that a city has ceased to function, a city nonetheless can be dissolved through the LBC pursuing the legislative review method for boundary changes as provided in Art. X, §12 of the Constitution, and that city is extinguished as a municipal corporation as soon as "the boundary change" becomes effective⁸ through the Art. X, §12 legislative review method. Oesau.

prohibited from initiating a borough incorporation by the legislative review method, then there probably⁹ is no one left in law who can initiate such a boundary change. In practical effect, SB 128 eliminates the constitutionally created legislative-review method of borough incorporation, and leaves only the alternative local option election method for borough incorporation.

The Alaska Supreme Court has repeatedly recognized the underlying policy clearly manifested in the Minutes of the Constitutional Convention, "that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level." SB 128 turns that constitutional policy on its head. SB 128 virtually eliminates the possibility of borough incorporation boundaries being established at the state level through the LBC and legislative review, and instead leaves all future borough boundaries only to local political decisions. For that reason, SB 128 is unconstitutional.

Section III. Does *Mobil* Support Legislative Intervention In the Legislative Review Method Described At Art. X, §12 of the Alaska Constitution?

The *Mobil* court dealt with seven issues. Issue No. 6 was whether Art. X, §12 of the Alaska Constitution **requires** submission of an accepted incorporation petition to the legislature for review. This is a very different question from the SB 128 issue of **whether the legislature can place prior restraints on who can petition the LBC through the legislative review method of changing boundaries.**

The *Mobil* Court held, "[S]ubmission of an accepted incorporation petition to the legislature is not required by the state constitution." (104) That is a legally correct conclusion. Again, however, that holding addresses the question of whether submission of an incorporation petition for legislative review is **required**. It does not address the question of whether the legislature can place prior restraints on the legislative review method described in Art. X, §12.

The *Mobil* court offered four reasons for that holding:

1. Where Art. X, §3 states that methods by which boroughs may be incorporated shall be prescribed by law, and where the statute does not reserve any power of review by the legislature except to adjustments made by the Commission in boundaries of organized boroughs, then "the Commission's decision need not be submitted to the legislature." (103)
2. Where the statute requires a local election on borough organization after LBC acceptance, and, further requires that upon certification of a favorable election,

⁹ Some commentators argue that Art. X, §12 empowers the LBC to initiate petitions for boundary changes involving incorporation because it refers to "any" boundary change (i.e., howsoever originating). Other commentators contend that the word "consider" contemplates a more passive, receptive role by the LBC, to only receive a petition from another source.

the Lt. Gov. "shall declare that the area ... is an organized borough," then the legislature was not interposing subsequent legislative approval of the petition. (103)

3. *Oesau* "established that" the basic purpose for creating the LBC and conferring its powers was to obviate a controversy which could not be settled at the local level, and, because diminution of the residual unorganized borough does not occur as that *Oesau* type of a boundary change requiring boundary adjustments between two conflicting, functioning local governments, it follows that creation of a borough out of or from the Unorganized Borough is not a "boundary change" within the meaning of Art. X, §12 of the Alaska Constitution. (103-04)

4. The Constitutional Convention did not address the question of whether submission of incorporation petitions for legislative review is required by Art. X, §12. (104)

I will show below that the first two reasons are sound. The third reason however is founded in a misread of the *Oesau* policy, and applies faulty reasoning (a non sequitur) to conclude that a borough carved from the Unorganized Borough is not a "boundary change" contemplated by Art. X, §12. The fourth reason is a simple failure of research.¹⁰

Reasons Nos. 1 and 2 above are clean reads and supportable logic. Art. X, §12 recognizes two methods for adoption of approved petitions: legislative review and local option. The latter method is established "by law" in §12, and again in §3. The facts in *Mobil* involved a local option election, and subsequent submission to legislative review clearly is not "required" under such circumstances.

However, the legislative review method, by its very conspicuous and contrasting language, is not subject to being "established by law." In *Fairview*, where the precise issue was whether Article X of the Alaska Constitution empowered the Local Boundary Commission to annex through legislative review the Fairview Public Utility District into the City of Anchorage prior to boroughs being established and legislation enacted for integration of existing special service districts with borough government (543), the Alaska Supreme Court held just as pointedly that "the method for making boundary changes, contemplated by Article X, Section 12 of the constitution, was operative upon the enactment of the 1959 statutes creating a Local Boundary Commission and conferring powers upon it." (545) Nothing in the middle three sentences of Art. X, §12 suggests that this legislative review method is implemented "by law" or by legislation.

¹⁰ Contrary to the observation of Justice Erwin, the Constitutional Convention did address this question. The best secondary source for this research is Morehouse and Fischer, Borough Government In Alaska at pp. 38, 50, 51-53 and 61, citing the primary sources of the Minutes and the Proceedings of the Constitutional Convention, particularly *Minutes*: 18th Meeting; General Discussion, pp. 6-7; *Minutes*: 19th Meeting; General Discussion, p. 6; *Proceedings*, p. 2750; *Minutes*: 8th Meeting; *Proceedings*, pp. 2673-74; and *Proceedings*, pp. 264-76.

Reason No. 3 in *Mobil* is a misreading of *Oesau*, is illogical as written, and has not been followed in subsequent Supreme Court opinions.

The central policy theme in *Oesau* was no more and no less than the same central policy theme of *Fairview* – both being written by justices very close in time to the Alaska Constitutional Convention:

“As we pointed out in the *Fairview* case, the concept that was in mind when the local boundary commission section of the Constitution was being considered by the constitutional convention was that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. [Footnote omitted.] The purpose of the boundary change effected in this case by the boundary commission and the legislature was to establish boundaries at a state level, and resolve a conflict that could not be properly solved at the local level, by doing away with two separate governments in a single community”

The *Oesau* Court’s dictum that “**local political decisions do not usually create proper boundaries,**” confirming the *Fairview* court’s dictum,¹¹ is quite a different statement in both instances from Justice Erwin’s later misread in *Mobil*, claiming that *Oesau* “established that” the basic purpose for creating the LBC and conferring its powers was **to obviate a controversy which could not be settled at the local level.**

Relying upon that unfortunate misread of *Oesau* and *Fairview*, Justice Erwin then concluded illogically that, because diminution of the residual Unorganized Borough does not entail conflicts accompanying boundary adjustments between two functioning local governments, it follows that creation of a borough from the Unorganized Borough is not a boundary change within the meaning of Art. X, §12 of the Alaska Constitution. (103-04). That sequence of statements is a bald-faced non sequitur! Art. X, §12 neither makes a distinction nor implies any distinction among different types of boundary changes.

Carving a borough from the Unorganized Borough frequently does, in fact, entail conflicts between two functioning local governments. Witness the disputes today between Valdez on the one hand, and Whittier/Cordova on the other hand – the local government dispute that motivated the introduction of SB 128.

Fairview and *Oesau* were concerned with the fact that local political decisions do not usually create proper boundaries, not with the fact that there must be a dispute between two local communities before the “boundary change” can qualify for legislative review under Art. X, §12. In *Lake and Pen*, a post-*Mobil* case, the Alaska Supreme Court returned again to the correct and accurate policy stated in *Fairview* and in *Oesau*, (not the J. Erwin/*Mobil* distortion) that “local political decisions do not usually create proper boundaries and that boundaries should be established at the state level.” (1066) This

¹¹ “An examination of the relevant minutes of those [Committee on Local Government] meetings 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.” (543)

Court then went on to note that the Art. X, §12 legislative review method was the proper method to deal with a boundary change on remand, not the election process. (1066)

A future court, following the *Fairview, Oesau, Lake and Pen* policy, not the *Mobil* misstatement, will conclude that SB 128 leaves borough boundaries to only local option elections, and local political decisions do not create proper boundaries. Hence, SB 128 unconstitutionally restricts the alternative constitutional method (legislative review) designed to avoid incorporation boundaries made by improper local political decisions.

In the *Yakutat* case, the Alaska Supreme Court stated, "The Alaska Constitution established the LBC to address municipal boundary issues, **including borough formation**, annexation and boundary studies. Alaska Const. art. X, §12." (*Yakutat* at n. 1.) In *Yakutat*, there was no local controversy which could not be settled at the local level. That borough was carved from the unorganized borough, and the Court recognized the power of the LBC to alter the boundaries as first proposed.

In summary, *Mobil* dealt with the question of whether legislative review was "required," not whether legislative review can be curtailed through prior restraints by the legislature. The *Mobil* holding is sound. The first two reasons for that *Mobil* holding are also sound. The third reason however is founded in an unfortunate misread of the *Oesau* policy, which is then applied to faulty reasoning to reach the odd and incongruous conclusion that a borough carved from the Unorganized Borough is not an Art. X, §12 "boundary change." No subsequent Supreme Court decision has adopted that erroneous reasoning in *Mobil*.

SB 128 is unconstitutional because the legislative review method for boundary changes was clearly intended to avoid local political decisions creating improper boundaries, and because the legislative review method described in Art. X, §12 of the Alaska Constitution is conspicuously different from §3, §7 and even the local option method in §12. All of the latter constitutional provisions are implemented "by law," and "by the legislature." The former constitutional provision is a complete statement of method and timing in itself, in the Constitution, and does not authorize the legislature to tamper with that process. (The legislature is not disenfranchised by that process, but rather gets its input in that process **after** the LBC decides a "boundary change.")

APPENDIX 1

Legal Abstract of
Fairview Public Util. Dist. No. 1 v. City of Anchorage,
368 P. 2d 540 (Ak. 1962)

FACTS: In 1960, the LBC presented for legislative review its recommendation for annexation of the Fairview Public Utility District (surrounded by the City of Anchorage) to Anchorage. The House concurrent resolution disapproved the proposed boundary change, but the Senate refused to concur.

PROCEEDINGS BELOW: The City filed for declaratory judgment that the District is dissolved; that the City was legal successor; that a date should be set for closing District affairs; and that the District be restrained from incurring obligations without the City's consent.

The Superior Court entered summary judgment that the District had been validly annexed and dissolved as a matter of law when the legislature failed to disapprove the LBC recommendation; that the City was the lawful successor to assets, liabilities and responsibilities; that a master shall be appointed to determine assets and liabilities of the District; and that the District's board shall then pay obligations and transfer remaining assets to the City.

In a companion case, residents of the District sought a mandatory injunction to compel a board of directors' election because the terms of the seated board had expired. The Court dismissed the action on grounds that the judgment in the preceding action was controlling.

ISSUE(S) ON APPEAL:

1. Did Article 10 of the Alaska Constitution empower the Local Boundary Commission to annex through legislative review the Fairview Public Utility District into the City of Anchorage prior to boroughs being established and necessary legislation enacted for integration of existing special service districts with borough government? (543)
2. Where a pre-statehood statute provides for dissolution of a public utility district only by local election after petition-annexation, can annexation by legislative review result in dissolution of the district without an election?
3. Does annexation without an election violate the due process clause of the Fourteenth Amendment or the Fifteenth Amendment?
4. Where the terms of directors have expired, should an election of a District board of directors be held after annexation by legislative review has occurred?

HOLDING OF THE COURT¹:

1. "[T]he method for making boundary changes, contemplated by Article X, Section 12 of the constitution, was operative upon the enactment of the 1959 statutes creating a Local Boundary Commission and conferring powers upon it." (545)
2. "When annexation was effected the District was extinguished, and its property, powers and duties were then vested in the city." (545)
3. Annexation without election does not infringe or deprive any rights protected by the Fourteenth Amendment, or the Fifteenth Amendment.
4. No election of a board of directors for the annexed District should occur following annexation by legislative review.

REASONING:

1a. The "plain language" of Section 12 of Article X does not include any statement that the legislative review processes of the LBC are not to take place until certain other events had occurred.

1.b. The convention proceedings show that the expressed need for state adjustment of local boundaries was a matter of "immediate concern," and not a power that would arise only after a borough government was formed.² With post-WW II rapid growth in Anchorage, inherent inadequacies to the pre-statehood local-action annexation process became apparent during 1954-55 when numerous obstacles by electors in single urban areas outside the city were able to frustrate needed annexation. Presumably, the delegates to the constitutional convention in November and December 1955 were aware of this recent history.

2. The pre-statehood statute providing for a dissolution election applies only to the pre-statehood petition-election procedure for annexation, and has no application where annexation takes place under the different method established by Article X, Sec. 12 (legislative review).

¹ Later, in Oesau, the Court restated its Fairview holding as follows: "In Fairview ... we held that the authority vested in the local boundary commission by the Constitution was sufficient to effect, by means of a local government boundary change proposed by the commission, the annexation to the City of Anchorage of the Fairview Public Utility District No. 1, an area entirely surrounded by the city." (183)

In Douglas, the Court said, "Fairview held that residents of a community have no constitutionally protected interest in its existence as a separate governmental unit, so the legislature may provide for its annexation without their consent." (1043)

² Note that the Court does not find expressions of "immediate concern" in the convention proceedings, but rather *implies* that urgency by *presuming* that the Committee on Local Government (a) knew of the Anchorage frustrations attempting annexation, and (b) felt some urgency to stop that process ASAP. Indeed, even the presumptions by the Court enter the reasoning as blurred negative statements: "We cannot assume that ... they were unaware of these obstacles...." and "We cannot assume that they were insensitive to the inadequacies" This is not sound logic.

“[T]he chief purpose of annexation ... was to do away with two separate governments in a single community, and thus avoid multiplication of facilities and services, duplication of tax burdens, and inevitable jurisdictional conflict and chaos.” (545) Requiring a subsequent election in the public utility district would defeat this chief purpose of annexation.

3.a. The expansion of municipal boundaries involves as aspect of the broad political power of the state which has always been considered a most usual and ordinary subject of legislation. [Citation omitted.] “Those who reside or own property in the area to be annexed have no vested right to insist that annexation take place only with their consent. The subject of expansion of municipal boundaries is legitimately the concern of the state as a whole, and not just that of the local community.” [Citation omitted.]

3.b. The Fifteenth Amendment and its case law are irrelevant. They deal with the right to vote as it pertains to race or color.

4. Annexation has extinguished the District. There would be no sense in requiring the election of a board of directors for a public utility district that no longer was in existence.

INTERESTING OBITER DICTA:

“An examination of the relevant minutes of those [Committee on Local Government] meetings 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.” (543)³

³ The issue before the Court was whether the powers of the LBC are triggered before or after creation of a borough. This is a temporal question. The observation that boundaries should be created at a state level and not at a local level is irrelevant to the temporal question of when those state powers become effective. Hence, this statement was dicta.

APPENDIX 2

Legal Abstract of
Oesau et al. v. City of Dillingham,
439 P. 2d 180 (Ak. 1968)

FACTS: In 1963, roughly simultaneous local option elections created the cities of Wood River and Dillingham, with Dillingham's boundaries including all of Wood River.

PROCEEDINGS BELOW: The Local Affairs Agency reported the boundary conflict (petitioned?) to the LBC. Following public hearings, and a postponement to allow time for a settlement or formation of a borough, the LBC recommended to the legislature that Wood River be dissolved and that the boundaries of Dillingham include the area of Wood River. The legislature allowed the 45 days to pass without action, then affirmatively enacted a statute recognizing the dissolution of Wood River and confirming the Dillingham boundaries.

Dillingham sued in Superior Court to declare Wood River dissolved and a nullity, and to enjoin persons from acting as Wood River officials. The Court issued summary judgment that pursuant to statutes¹ Wood River ceased to exist on April 9, 1965,² and that the residents of Wood River owed Dillingham all the obligations of citizens.

ISSUE ON APPEAL:

1. Where Art. X, §7 of the Constitution provides that cities may be dissolved "in a manner prescribed by law," and where the legislature has enacted statutes authorizing dissolution either upon an election, or when populations drop below a number, or upon a court order finding that a city has ceased to function, can Wood River be dissolved through the LBC by the legislative review method for boundary changes as provided in Art. X, §12 of the Constitution?

HOLDING OF THE COURT³:

¹ Note that the lower court did not cite Art. X, §12 in its Order, but rather the statutes reiterating the legislative review method.

² Query: Why did the lower court conclude that Wood River did not cease to exist until 66 days after the LBC presented its recommendation for legislative review? Was the lower court counting to the affirmative statute enacted re Dillingham and Wood River, rather than the 45-day deadline for inaction?

³ Later, in *Douglas*, the Court characterized this holding as "upholding the Local Boundary Commission's dissolution of a fourth class city without a vote of its residents." In Footnote 20, the *Douglas* Court noted that *Fairview* reaffirmed the constitution moving the locus of decision-making on boundaries from the local to the state level and avoid needless multiplicity of local government, and *Oesau* upheld dissolution of Wood River by the §12 legislative review method "even though art. X, §12 provided that it should make 'changes' in boundaries [and] art. X, §7 provided that cities may be 'dissolved in a manner provided by law' and the legislature had not explicitly given the Local Boundary Commission power to dissolve cities." (1043 at n. 20)

1. When "the boundary change"⁴ through the Art. X, §12 legislative review method became effective, the city of Wood River was extinguished as a municipal corporation and its property, powers and duties were then vested in the City of Dillingham.

REASONING:

1a. The effect of confirming Dillingham boundaries and dissolving Wood River boundaries is similar to Wood River being annexed to Dillingham, and hence this situation is "not dissimilar" to the law of Fairview.⁵

1.b. "[E]ven though the statutory procedures for dissolution of cities were not followed [t]he basic purpose for creating the boundary commission and conferring upon it the powers that it possesses was to obviate the type of situation that existed here where there was a controversy over municipal boundaries which apparently could not be settled at the local level." (183)

INTERESTING OBITER DICTUM: "As we pointed out in the *Fairview* case, the concept that was in mind when the local boundary commission section of the Constitution was being considered by the constitutional convention was that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. [Footnote omitted.] The purpose of the boundary change effected in this case by the boundary commission and the legislature was to establish boundaries at a state level, and resolve a conflict that could not be properly solved at the local level, by doing away with two separate governments in a single community"

⁴ The Court notes that the "boundary change" by the LBC "consisted of the abolition of the boundary of Wood River and the confirmation of the boundary of the City of Dillingham" p. 183)

⁵ "In *Fairview* ... we held that the authority vested in the local boundary commission by the Constitution was sufficient to effect, by means of a local government boundary change proposed by the commission, the annexation to the City of Anchorage of the Fairview Public Utility District No. 1, an area entirely surrounded by the city."

APPENDIX 3

Legal Abstract of
Mobil Oil Corporation et al. v. Local Boundary Commission,
518 P. 2d 92 (Ak. 1974)

FACTS: Through the Local Affairs Agency, the Arctic Slope Native Association submitted a petition for incorporation of a first class borough for consideration by the LBC. The area residents engaged in a subsistence life style. Travel among the borough communities was available only by charter aircraft, dog teams and snowmachines. The petition was signed by 41% of the registered voters. The Agency and the LBC conducted investigations and held hearings. The LBC then accepted the petition and forwarded it to the Lt. Governor.

PROCEEDINGS BELOW: Leaseholders and owners of oil and gas interests and properties filed a petition for judicial review in the superior court. The five villages, the Arctic Slope Native Association and the new North Slope Borough intervened. The superior court denied cross-motions for summary judgment, then upheld acceptance of the petition.

ISSUE(S) ON APPEAL:

1. Does administrative law require the LBC to make findings of fact?
2. Should the superior court have engaged in an independent interpretation of the standards for incorporation?
3. Is the Naval Petroleum Reserve in the exclusive legal jurisdiction of the federal government, such that the borough is powerless to regulate its use and the NPR therefore fails to come within the statutory geographic standard provided for borough boundaries?
4. Are the existing and proposed means of transportation reasonably inexpensive, readily available, reasonably safe, and sufficient both to make areas accessible to other parts of the borough, and to facilitate the communication and exchange necessary for development of integrated local government and a community of interests?
5. Was inclusion of property at Prudhoe Bay a denial of substantive due process?
6. Does Art. X, §12 of the Alaska Constitution require submission of an accepted incorporation petition to the legislature for review?
7. Attorney fees. (Analysis to be completed.)

HOLDING OF THE COURT:

1. The LBC is not required by law to make findings of fact.
2. Where the administrative action involves formulation of fundamental policy, such as the incorporation of a borough, the appropriate standard for judicial review is whether the agency action has a reasonable basis for its decision.
3. The statutory geographic standard has been reasonably satisfied.
4. The LBC could reasonably have found travel facilities adequate to support borough government.
5. The inclusion of Prudhoe Bay in the borough was not a violation of substantive due process.
6. "[S]ubmission of an accepted incorporation petition to the legislature is not required by the state constitution." (104)
7. Attorney fees. (Analysis to be completed.)

REASONING:

1a. The LBC is not one of the agencies listed in the Administrative Procedures Act as those required to make findings of fact, and the statutes defining the LBC processes do not require findings of fact, therefore we find no statutory command for findings of fact.¹

1.b. The LBC has a "special function ... to undertake a broad inquiry into the desirability of creating a political subdivision... [making] us reluctant to impose an independent ... requirement that findings be prepared."

1.c. From our review of the entire record, we have been able to determine the basis for the LBC decision.

2. The statutory standards for incorporation "were intended to be flexibly applied to a wide range of regional conditions,' and the LBC "has been given a broad power to decide the unique circumstances presented by each petition..." Therefore we should affirm "if we perceive in the record a reasonable basis of support for the [LBC] reading ... and ... evaluation" of standards. (98-99)

3.a. The State has been granted concurrent jurisdiction over the NPR until Congress enacts legislation to the contrary, and the State may partially delegate its concurrent authority to a political subdivision.

¹ Curiously, the Court said at n. 11, "We recognize that in the usual case findings of fact would be required even in the absence of a statutory duty in order to facilitate judicial review, insure careful administrative deliberation, assist the parties in preparing for review, and restrain agencies within the bounds of their jurisdiction." [Citations omitted.] What is "the usual case"?

3.b. Reviewing the record in favor of upholding creation of a borough whenever the requirements for incorporation have been minimally met, as required by Art. X, §1 of the Alaska Constitution, the need for protection of a subsistence life style reasonably satisfies the statutory geographic standard

4. Reviewing the record in favor of upholding creation of a borough whenever the requirements for incorporation have been minimally met, as required by Art. X, §1 of the Alaska Constitution, the present and future capacities for travel facilities, considered in the context of transportation in Alaska generally, and considered in comparison to the present cost and availability of travel to centers of government for North Slope residents, there exists a reasonably adequate basis to satisfy the statutory transportation standard.

5.a. The cases from the various states, cited in support, are not founded in a test of due process but rather are founded in "restrictions in pertinent statutes and constitutions on the reach of municipal annexations and incorporations."

5.b. *Myles Salt Co.* (U.S. Sup. Ct. 1916) turned upon a singular allegation in the complaint, and that court could not ultimately evaluate whether the legislation furthered some other legitimate governmental purpose than drainage. Also, the drainage district under attack was not a unit of government. Hence, these "particular facts" carry no more relevance in the instant case than the broad and familiar principle "that the legislature may not act arbitrarily."

5.c. "[T]he need for the state to oversee the course of private development ... [by way of] a local government body which promulgates and enforces planning and zoning regulations" would be a legitimate public purpose for organizing a borough on the North Slope.

6.a. Where Art. X, §3 provides that methods by which boroughs may be incorporated shall be prescribed by law, and where the statute does not reserve any power of review by the legislature except to adjustments made by the Commission in boundaries of organized boroughs, "the Commission's decision need not be submitted to the legislature." (103)

6.b. Where the statute requires a local election on borough organization after LBC acceptance, and that upon certification of a favorable election, the Lt. Gov. "shall declare that the area ... is an organized borough," the legislature was not interposing subsequent legislative approval of the petition.² (103)

6.c. *Oesau* "established³ that" the basic purpose for creating the LBC and conferring its powers was to obviate a controversy which could not be settled at the local level, and because diminution of the residual unorganized borough does not occur as a boundary change with the conflicts accompanying boundary adjustments between two functioning

² This is describing the local option election sentence in Art. X, §12, as well as Art. X, §3. Both provide for legislation of the method. Conversely, the middle three sentences of Art. X, §12 describe a different method for incorporation not relevant to the facts in the *Mobil* case, namely, the legislative review method.

local governments, creation of a borough from the unorganized borough is not a boundary change within the meaning of Art. X, §12 of the Alaska Constitution. (103-04)

6.d. The Constitutional Convention did not address the question of whether submission of incorporation petitions for legislative review is required by Art. X, §12. (104)

7. Attorney fees. (Analysis to be completed.)

INTERESTING OBITER DICTA:

“Section 3 vests in the legislature power to prescribe procedures for borough incorporation without restriction.” (103)

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MEMORANDUM

April 9, 2005

SUBJECT: Incorporation of boroughs and LBC regulations (SSHB 133)

TO: Representative John Coghill
Majority Leader
Attn: Rynnieva Moss

FROM: Tamara Brandt Cook
Director TBC

You have supplied me with a copy of a document captioned "Legal Brief Analyzing SB 128" by Bob Hicks, Vice-Chair, Local Boundary Commission. In view of the reasoning of that document you ask me to address the constitutionality of each section of SSHB 133. SB 128 differs significantly from SSHB 133.

Sec. 1. This section amends part of the procedures established for incorporation of municipalities, both cities and boroughs, initiated by local petition signed by a number of the voters of the area proposed for incorporation. (AS 29.05.060(7), (11) and (12)) Existing law permits the Local Boundary Commission to amend an incorporation petition or impose conditions on incorporation. Section 1 of SSHB 133 deletes the power of the LBC to make changes to petitions or impose conditions on incorporation. The LBC is required to reject a petition that does not meet the standards for incorporation or is not in the best interests of the state under existing law, and this is not changed in SSHB 133. If this amendment is enacted the LBC will not have the authority to change a petition in order to meet the standards of incorporation or best interests of the state or for any other reason, including constitutional factors, as the LBC has done in the past. (Petitioners for Incorporation of the City of Yakutat v. Local Boundary Commission, 900 P.2d 721 (Alaska 1995)) The LBC, confronted with a petition that it finds inadequate, will have the option of rejecting the petition and informing the petitioners of the reasons. The petitioners will be able to appeal the LBC decision or initiate a new incorporation petition, as is the case now.

Under Article X, sec. 3 boroughs are established "in a manner and according to standards provided by law." The same section directs: "Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law." Article X, sec. 7 provides: "Cities shall be incorporated in a manner prescribed by law...." The amendment proposed in SSHB 133, sec. 1 is a valid exercise of the power granted to the legislature to address by law methods for incorporation of municipalities.

Sec. 2. This is a proposed new section of law that requires a public hearing and voter approval before the Local Boundary Commission may submit a proposal for borough incorporation to the legislature as a proposed boundary change under art. X, sec. 12 of the state constitution. The new section, itself, may not be construed as granting authority to the LBC to propose a borough incorporation under art. X, sec. 12.

As I noted in my memorandum to you of February 12, 2005, there is a possibility that the court will conclude that the LBC has independent constitutional authority to present a proposed borough incorporation to the legislature under Art. X, sec. 12. That section permits the LBC to "consider any proposed local government boundary change" and to present proposed changes to the legislature. If the court does conclude that a borough incorporation is a type of local government boundary change that the LBC may present to the legislature under Art. X, sec. 12, it is also possible that the court will find that the legislature cannot condition that authority on voter approval of that incorporation. The court has noted that the power granted to the LBC under the state constitution is precisely to ensure state level decisions are made with respect to local boundaries rather than local decisions. (Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974); City of Douglas v. City and Borough of Juneau, 484 P.2d 1040 (Alaska 1971) Additionally, the legislature has a remedy if it disagrees with a LBC proposal. Under Art. X, sec. 12 it may reject the proposal, and this rejection is not subject to veto or appeal.

The court has not directly ruled on the issue of whether the LBC may present a proposed borough incorporation to the legislature under Art. X, sec. 12, completely aside from other methods of incorporation that may be provided for by statute. There is language in cases that deal with other boundary changes that seems to lend support for the conclusion that the LBC may present a borough incorporation as a boundary change and there is language in other cases that does not support that position. On balance, I believe it is more likely than not that a court would agree that the LBC has the independent constitutional power to present a proposed borough incorporation to the legislature under Art. X, sec. 12. If that is true, sec. 2 of SSHB 133 may be invalidated.

Sec. 3. This makes the standards and procedures adopted by regulation of the LBC for various municipal changes subject to standards and procedures for those changes that have been adopted by law. This provision appears to be consistent with Art. X, sec. 12 to the extent it applies to local action changes, and, therefore, would not likely be invalidated if challenged. The last sentence of that constitutional section states (emphasis added): "The commission or board [LBC], *subject to law*, may establish procedures whereby boundaries may be adjusted by local action." The limitation in bill sec. 3 on the power of the LBC to establish procedures appears consistent with this language.

It is unlikely that this provision of statute, as amended by sec. 3, would apply to restrict procedures for proposed boundary changes the LBC submits to the legislature under the authority of Art. X, sec. 12. Note, however, that if the LBC may present a proposed borough incorporation for consideration by the legislature under the sole authority of Art.

Representative John Coghill
April 9, 2005
Page 3

X, sec. 12, the proposed borough must still satisfy standards "provided by law" as well as those specifically enumerated in Art. X, sec. 3.

Sec. 4. The applicability section contains the same issues raised in the other sections of the bill.

TBC:lmb
05-111.lmb

ALASKA STATE HOUSE OF REPRESENTATIVES

**Contact:**

Interim Address:

3340 Badger Road
North Pole, AK 99705
(907)-488-5725
Fax# (907)-488-4271

Session

(907)-465-3719
FAX# (907)-465-3258
**State Capitol
Room 204**

REPRESENTATIVE JOHN COGHILL

MEMORANDUM

Date: April 4, 2005

To: Representative Lesil McGuire

From: Representative John Coghill, Sponsor 

Re: SSSH 133

SSHB 133 was heard in CR & A and State Affairs. Representative Gruenberg requested that this piece of legislation be heard in Judiciary because of the disagreement by parties on the constitutional authority of the Local Boundary Commission, the intent of Constitutional Convention regarding authority of the commission and of local control in organizing boroughs and annexation.

I think this is a very important piece of legislation that should be discussed in Judiciary to establish the historical record that needs to exist on this issue.

I am requesting the CSSH 133(STA) be heard at the earliest possible time. Thank you for your consideration.

ALASKA STATE HOUSE OF REPRESENTATIVES

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3340 Badger Road
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State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

CSSSHB 133 (CRA) Local Boundary Commission SPONSOR STATEMENT

Committee Substitute for Sponsor Substitute for House Bill 133 makes four changes in the way the Local Boundary Commission deals with municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution.

This legislation protects the voters' right to incorporate, outline the boundaries, and select the levels of service. The Local Boundary Commission will no longer be able to amend the petition or impose conditions on the incorporation.

Also we will add a provision that requires at least two public meetings and voter approval by a majority of the votes cast in an election before the Local Boundary Commission can take a proposal directly to the legislature.

AS 29.06.04^(c)(1) requires a proposed annexation to be approved by a "majority of the votes on the question cast by voters residing in the area proposed to be annexed". The Local Boundary Commission has a regulation that expands that requirement to "an aggregate vote of the people in the borough and the people in the area to be annexed." This is a requirement above and beyond what the legislature had in mind and dilutes the voting rights of those voters in the area to be annexed.

HB 133 requires a majority approval of the voters residing in the area to be annexed and a majority approval of voters residing in the existing municipality.

This legislation is about fairness, preserving a representative form of government, and making sure that laws implemented by non-elected servants of government through regulation do not extend beyond the laws implemented by elected legislators.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSSHB 133(CRA)
 (H) Publish Date: 3/4/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Local Boundary Commission RDU Comm Assist & Ec Dev (405)
Regs & Powers Component Community Advocacy
 Sponsor Coghill, Harris, Salmon
 Requester House Community & Regional Affairs Component No. 2703

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation amends certain powers of the Local Boundary Commission established in Title 29 and Title 44. This legislation has no fiscal impact on the operations of the division.

Prepared by: Athena Logan, Local Government Specialist Phone 269-4540
 Division: Community Advocacy Date/Time 2/23/05 2:37 PM
 Approved by: Edgar Blatchford, Commissioner Date 2/23/2005
 Agency: Commerce, Community, and Economic Development

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 12, 2005

SUBJECT: Incorporation of boroughs (SSHB 133)

TO: Representative John Coghill
Majority Leader
Attn: Rynnieva Moss

FROM: Tamara Brandt Cook
Director

TBC

Here is a draft Sponsor Substitute that includes changes to statutes dealing with the incorporation of boroughs and the role of the Local Boundary Commission (LBC) in that process. A provision included in draft bill sec. 2 prevents the LBC from presenting proposals for borough incorporation to the legislature for review under Art. X, sec. 12, unless the proposal has been approved by the voters in the area proposed for incorporation. While Art. X, sec. 12 is worded broadly and permits the LBC to consider "any proposed local government boundary change," the authority of the LBC to present a borough incorporation to the legislature under this section has not been tested in court. There is at least a chance that the court might conclude that the LBC does not have that authority. Therefore, bill draft sec. 2 includes a subsection stating that the statute, itself, does not grant that authority to the LBC.

However, if the court ultimately concludes that the LBC does have independent constitutional authority to present a proposed borough incorporation to the legislature under Art. X, sec. 12, it is also possible that the court will find that the legislature cannot condition that authority on voter approval of that incorporation. The court has noted that the power granted to the LBC under the state constitution is precisely to ensure state level decisions are made with respect to local boundaries rather than local decisions. (Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974); City of Douglas v. City and Borough of Juneau, 484 P.2d 1040 (Alaska 1971)) Additionally, the legislature has a remedy if it disagrees with a LBC proposal. Under Art. X, sec. 12 it may reject the proposal, and this rejection is not subject to veto or appeal.

TBC:lmb
05-053.lmb

Enclosure

Rynniva Moss

From: Dan Bockhorst [dan_bockhorst@commerce.state.ak.us]
Sent: Friday, January 21, 2005 4:31 PM
To: Rynniva Moss
Subject: Re: 3 AAC 110.210 (4) Local Action

Ms. Moss: Your reading of 3 AAC 110.210(4) is correct. The method set out in 3 AAC 110.210(4) allows annexation upon approval by (1) the Local Boundary Commission and (2) a majority vote of the combined voters both in the borough and in the area proposed for annexation.

You questioned whether such provisions are inconsistent with AS 29.06.040(c)(1). I do not believe that they are.

First, AS 44.33.812(a)(2) provides that, "The Local Boundary Commission shall adopt regulations providing standards and procedures for . . . annexation . . ."

Moreover, AS 29.06.040(c) requires that the LBC "establish procedures for annexation . . . by local action" that are "in addition to the regulations adopted under AS 44.33.812."

In full, AS 29.06.040(c) states:

In addition to the regulations governing annexation by local action adopted under AS 44.33.812, the Local Boundary Commission shall establish procedures for annexation and detachment of territory by municipalities by local action. The procedures established under this subsection must include [but are not limited to*] a provision that

- (1) a proposed annexation and detachment must be approved by a majority of votes on the question cast by voters residing in the area proposed to be annexed or detached;
- (2) municipally owned property adjoining the municipality may be annexed by ordinance without voter approval; and
- (3) an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters in the area petition the governing body.

X Additionally, Article X, Section 12 of the Alaska Constitution provides, in part, that "The [Local Boundary Commission], subject to law, may establish procedures whereby boundaries may be adjusted by local action."

Thus, the LBC has constitutional authority and a statutory duty to establish procedures for local action annexation in addition to those procedures set out in AS 29.06.040(c). To fulfill that duty, the LBC adopted 3 AAC 110.210(4) and other measures.

In the sense that a borough annexation involves the perfecting of boundaries of an existing borough, a proposed annexation under 3 AAC 110.210(4) is analogous to the local action process for incorporation of a new borough. Incorporation of a borough by local action is subject to

- (1) approval by the Local Boundary Commission and (2) a majority vote of all voters within the boundaries of the proposed borough. A borough incorporation proposal is not subject to a majority vote in each of several different portions of the proposed borough. Similarly, a borough annexation under 3 AAC 110.210(4) is subject to a majority vote within the boundaries of the proposed expanded borough. It is not subject to a majority vote in the area proposed for annexation.

If you wish to discuss this matter or if you have further question, please contact me.

Cordially,

Dan Bockhorst
269-4559

*AS 01.10.040(b) states that, "When the words 'includes' or 'including' are used in a law, they shall be construed as though followed by the phrase 'but not

limited to.' " AS 01.10.050(b) provides that "Words in the singular number include the plural, and words in the plural number include the singular."

Rynniewa Moss wrote:

- > Am I reading 3 AAC 110.210.Local action subsection (4) wrong. It says
- > a territory can be annexed upon "approval by a majority of the
- > aggregate voters who vote on the question within the area proposed for
- > annexation and the annexing borough."
- > That seems to read a majority vote of the combined voters both in the
- > borough and in the territory proposed for annexation.
- > Such a vote would be inconsistent with AS 29.06.040(c)(1) which states
- > " a proposed annexation and detachment must be approved by a majority
- > of votes on the question cast by voters residing in the area proposed
- > to be annexed or detached."
- > It would certainly diminish the vote of an area with 700 or 800 voters
- > when the existing borough would have tens of thousands of voters.
- > Please clarify.

Willow Seay

From: larrykulzer [kulzer@acsalaska.net]
Sent: Friday, February 25, 2005 8:56 AM
To: Willow Seay
Subject: Re: Representative Coghill's District 11 Newsletter

This email is a reply to the bill that mr coghill has purposed house bill # 133. Is a very good idea. It is my opinion that the borough mayor and some of borough assembly do not care about the peoples opinion. Just spend money on things not needed. We do not need to put more money into the schools. As a borough tax payer I am so tired of Mr. Whitaker he is the worst mayor we have had. The only way to stop some of his stupid ideas is to put it to the vote of the people. Thank you, Bonnie Kulzer

----- Original Message -----

From: Willow Seay
To: lhscwas+newsletter4@legis.state.ak.us
Sent: Tuesday, February 22, 2005 11:42 AM
Subject: Representative Coghill's District 11 Newsletter

<<Newsletter 2.pdf>>

Dear Constituents,

Attached you will find Representative Coghill's second newsletter. If you no longer wish to receive this newsletter please reply with UNSUBSCRIBE in the subject line. We will promptly remove your address from our distribution list.

For Interior residents interested in sharing comments with their representatives - The Chair of the Interior Delegation, Representative Mike Kelly, has reinstited the monthly constituent meetings.

The next meeting is scheduled for **TONIGHT** and will start promptly at **6:00 PM**. The meeting is teleconferenced through the Fairbanks Legislative Information Office located on the 1st floor of the Denali State Bank Building. The Denali State Bank Building is located at 119 S. Cushman St. across from the Fairbanks Daily News Miner. Please feel free to attend the meeting and have your voice heard.

Willow Seay
Legislative Aide
Rep. John Coghill

To Whom It May Concern:

We are in support of House Bill 133 which gives the people of the State of Alaska the right to determine the level and degree of local government.

The right to vote is fundamental. It is the very foundation of Democracy. Is it not the reason we have troops in Iraq? We believe both the rural areas and urban areas should determine the level of government they wish.

We urge you to support this bill in its entirety.

Thank You,

Jeff Yarman
Beth Cender
1624 Jones Rd.
Fairbanks, Alaska, 99709

SKAGWAY CITY SCHOOL

MAR 29 2005

P.O. Box 497 • Skagway, Alaska 99840 • (907) 983-2960

March 24, 2005

The Honorable Representative John Coghill
HOUSE OF REPRESENTATIVES
State Capitol, Juneau, Alaska 99801-1182

Re: Local Boundary Commission
Powers and Regulations
House Bill 133

My dear Representative John Coghill,

I provided testimony in support of SB128 to the Community & Regional Affairs Committee of the Alaska State Senate on Monday, March 21, 2005 while I was in Juneau attending the Legislative Fly-In for the Alaska Association of School Administrators. I am the Superintendent of the Skagway City School District. I strongly support the concept of local autonomy for the cities and towns in Alaska who are not incorporated into boroughs. I am very grateful that you have authored House Bill 133 in an effort to override Local Boundary Commission regulations concerning annexations that require an aggregate vote rather than positive votes in each area effected by the proposed annexation.

I really appreciate your efforts on behalf of small cities and towns throughout Alaska. It is imperative that local autonomy and the principles of self-rule be protected in state statute. I applaud your attempts to preserve this important aspect of rural life. Many people who choose to live in our small communities are advocates of keeping government at a local level as much as possible. Your bill will further secure those needs of letting people be in charge of their own lives and destinies. The provisions specified in your bill help to place constraints on the powers of the Local Boundary Commission regarding the process of incorporation. By mandating that local communities have, at least, two public meetings with a majority of voters in a subsequent election agreeing to having their community annexed into a larger borough you further solidify the power of the people for local control of their city.

I have shared through a letter to the City of Skagway City Council the broad benefits your bill will guarantee for the citizens of our cities. I actively seek to promulgate our

mutual agenda whenever the opportunity becomes available. I want you to know that if there is anything that I could do to help you get your bill to become a law please contact me at the aforementioned telephone number or through my e-mail address of mdickens@skagwayschool.org.

Besides protecting our communities through your bill I know that the City of Skagway has petitioned the Local Boundary Commission and the Alaska State Legislature to be made a borough. Our city wants to take an even more active role in carrying the financial burden for the citizens in Alaska.

I wholeheartedly believe that our Skagway City Council objective of making Skagway a borough is imperative in obtaining financial independence and local autonomy for the future needs of Skagway's citizens especially her children. We can either become a borough in the State of Alaska or, as an alternative plan we can find ways to enact through legislation law that would make it impossible for other boroughs or communities from incorporating us into their borough without our voter's approval. Your bill would provide our residents with this later alternative and mandated guarantee.

I personally believe that only this type of a legal deterrent, which impedes or actually stops an unwilling city participant from being forced into an existing borough, will ultimately protect the fiscal integrity, quality of life, and the future interests of our wonderful communities in Alaska. Congratulations on having your bill sent to the Senate State Affairs Committee for their review!

Thank you so much for taking your time to read this letter. Please know that if there is any opportunity in which I could be of help in your pursuit of getting HB133 in state statute you need only to ask. I know that working together we will be helping to sustain and foster a safe, secure, and financially sound future for the citizens of our communities in our great state of Alaska!

Warmest Regards,



Dr. Michael Dickens
Superintendent

Cc: President Chris Ellis and the Skagway City School District School Board
Mayor Tim Bourcy and the Skagway City Council members

March 19, 2005

Box 192
Tok, Alaska 99780

My fax: 907-883-4601

Senator Al Kookesh
State Capitol, Juneau, Ak 99801-1182

To: Fax 907-465-2827
Senate C R & A Committee

Dear Senator Kookesh

My name is Glen Marunde and I am a 45 year resident of the Tok Area. My wife, Dorothy and I have raised 5 children here in Alaska. I make my living as an electrical and mechanical contractor. I also teach construction classes for the U of A. My work has taken me all over Alaska from Juneau, to Barrow, to Border and to Adak..

I am writing you in support of SB128. "An Act relating to consideration by the Local Boundary Commission of a requested borough incorporation." I have studied our State Constitution and I believe that the framers never intended for the LBC, the Legislature, and/or the courts to initiate the establishment of a new borough or an annexation to an existing borough. I believe I am a reasonable man making a reasonable interpretation of the Constitution. I believe the Borough Act of 1961, as amended, is the current law of the land and is today's only valid authority for establishing or annexing boroughs.

The Mandatory Borough Act of 1963 was a one- time-only act and does not establish any precedence for mandating boroughs.

In November of 2000, the DCED published a booklet entitled "Background on Boroughs in Alaska". The booklet was written by Mr. Dan Bockhorst, a DCED local government specialist who acts as a facilitator for the LBC. On page 14, under the heading of Borough

Incorporation Procedures, Mr. Bockhorst clearly states, "Current law expressly provides that borough incorporation proposals may only be initiated by voters." The process states that incorporation proposals are initiated by at least 15% of those who voted in the last State General Election. Mr. Bockhorst then goes on to present a rather lengthy process of hearings, including the presentation of briefs and comment periods, and finally the last step, "Submission of a proposition of the vote of the proposed borough which requires approval from a majority of the area wide vote."

The Borough Act of 1961, as amended, and passed by the 2nd Legislature is the current law of Alaska regarding the formation of borough government. This law dictates that borough proposals may only be initiated by 15% of the those who voted in the last State General election, and that submission of a proposition of the vote of the proposed borough which requires approval from a majority of the area wide vote.

Please vote to pass SB 128 out of your committee. It is needed to clarify the intent of the current law pertaining to borough formation.

Sincerely,

Glen Marunde

PS I am attaching 3 articles I have written which have appeared in the Tok and Delta newspapers.

A VOICE FOR THE BUSH

By Glen Marunde, Tok kResident

"It's Government for rabbits"

Testimony for HB 133

Two of Alaska's most respected elder statesmen, both of whom played important roles in the framing of Alaska's State Constitution, are on record as opposing the formation of large boroughs in the Unorganized Borough.

Elder statesman, Judge Thomas Stewart, now living in Juneau, was the chief organizer of the original constitutional convention. Judge Stewart served as the secretary of the convention.

On February 13 and 14, 1996 The Local Boundary Commission hosted a seminar entitled "A Review of the Local Government Article of Alaska's Constitution Forty Years after it was Written" The seminar took place in Juneau. Judge Stewart was invited to participate as an expert on the Local Government Article X of the Alaska Constitution.

Here are Judge Stewart's comments quoted from a transcription of the meeting. Near the end of the meeting, Judge Stewart said, "My strong thought is that the Legislature, the Governor, and the Department and the Commission have failed to give weight to that word (local). And too many of the boroughs that have been formed are regional in nature, and in my judgement never should have been. If there are taxable properties out there like Prudhoe Bay, they should have been in an unorganized borough administered by the State. Barrow has no business managing Prudhoe Bay ---that they never used. It's regional in my judgement. And you should confine the boundaries down to the land surface that the local people have traditionally used that have those characteristics of population, geography, economy, transportation that are local. The word "local" has not been adequately recognized."

Bob Hicks "You say the word "local" for boroughs should be very, very small equivalent of a small county, shouldn't be that expansive?"

Judge Stewart, "Absolutely!"

Alaskan elder statesman, Lt. Gov Jack Coghill, in a recent interview with

"A Voice for the Bush" commented on SCR-12, the bill that could force a layer of unwanted and unneeded borough government on citizens of the Unorganized Borough, without the vote of any person answerable to an electorate.

Lt. Gov Coghill, who was a framer for our constitution said, " We wanted to be sure that the power to form government was in the people, not the Legislature. It is unconstitutional for the Legislature or the Local Boundary Commission to impose a government on anyone. Just read Article 1, Section 2 of our State Constitution. It's all right there!"

Here's what Article 1, section 2 says, "All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole."

Coghill stressed that framers intended no timetable what-so-ever for the establishment of local governments. He said that the framers thought there would be areas of unorganized borough forever. That is why the framers gave the Legislature the power to act as an assembly for the Unorganized Borough. They did not want an unnecessary layer of regional governments on top of local governments.

Coghill also explained that when the framers gave authority to the Local Boundary Commission to study boundary changes and make recommendations to the Legislature that could become law without a vote of the Legislature they intended this third party authority to be used only to resolve boundary disputes involving annexations, detachments, and other disputes between existing local governments. The framers never intended for the Local Boundary Commission to use this authority to establish or force new local governments on the residents of the unorganized borough.

Like Judge Thomas Stewart, Coghill thinks some of the existing boroughs are far too large and are really regional, not local, in nature.

Lt. Gov Coghill summed up his feeling about large, unnecessary boroughs in just four words when he said, "It's government for rabbits."

Glen Marvande
Box 192 Tok, Alaska 99750
March 2-2005

Rynniva Moss

From: Dan Bockhorst [dan_bockhorst@commerce.state.ak.us]
Sent: Friday, January 21, 2005 4:31 PM
To: Rynniva Moss
Subject: Re: 3 AAC 110.210 (4) Local Action

Ms. Moss: Your reading of 3 AAC 110.210(4) is correct. The method set out in 3 AAC 110.210(4) allows annexation upon approval by (1) the Local Boundary Commission and (2) a majority vote of the combined voters both in the borough and in the area proposed for annexation.

You questioned whether such provisions are inconsistent with AS 29.06.040(c)(1). I do not believe that they are.

First, AS 44.33.812(a)(2) provides that, "The Local Boundary Commission shall adopt regulations providing standards and procedures for . . . annexation . . ."

Moreover, AS 29.06.040(c) requires that the LBC "establish procedures for annexation . . . by local action" that are "in addition to the regulations adopted under AS 44.33.812."

In full, AS 29.06.040(c) states:

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- (1) a proposed annexation and detachment must be approved by a majority of votes on the question cast by voters residing in the area proposed to be annexed or detached;
- (2) municipally owned property adjoining the municipality may be annexed by ordinance without voter approval; and
- (3) an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters in the area petition the governing body.

X Additionally, Article X, Section 12 of the Alaska Constitution provides, in part, that
/ "The [Local Boundary Commission], subject to law, may establish procedures whereby boundaries may be adjusted by local action."

Thus, the LBC has constitutional authority and a statutory duty to establish procedures for local action annexation in addition to those procedures set out in AS 29.06.040(c). To fulfill that duty, the LBC adopted 3 AAC 110.210(4) and other measures.

In the sense that a borough annexation involves the perfecting of boundaries of an existing borough, a proposed annexation under 3 AAC 110.210(4) is analogous to the local action process for incorporation of a new borough. Incorporation of a borough by local action is subject to

- (1) approval by the Local Boundary Commission and (2) a majority vote of all voters within the boundaries of the proposed borough. A borough incorporation proposal is not subject to a majority vote in each of several different portions of the proposed borough. Similarly, a borough annexation under 3 AAC 110.210(4) is subject to a majority vote within the boundaries of the proposed expanded borough. It is not subject to a majority vote in the area proposed for annexation.

If you wish to discuss this matter or if you have further question, please contact me.

Cordially,

Dan Bockhorst
269-4559

*AS 01.10.040(b) states that, "When the words 'includes' or 'including' are used in a law, they shall be construed as though followed by the phrase 'but not

limited to.' AS 01.10.050(b) provides that "Words in the singular number include the plural, and words in the plural number include the singular."

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- > of votes on the question cast by voters residing in the area proposed
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- > It would certainly diminish the vote of an area with 700 or 800 voters
- > when the existing borough would have tens of thousands of voters.
- > Please clarify.

Alaska State Legislature

Rep. Gabrielle LeDoux
Rep. Pete Kott
Rep. Mark Neuman
Rep. Sharon Cissna
Rep. Woodie Salmon



State Capitol, Room 124
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Rep Kurt Olson
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Rep. Bill Thomas
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COMMUNITY & REGIONAL AFFAIRS COMMITTEE

February 8, 2005

Local Boundary Commission
Attn: Dan Bockhorst
550 W. 7th Ave, Suite 1770
Anchorage, AK 99501

Dear Mr. Bockhorst,

When you were here in Juneau on January 24th we expressed our concerns to you regarding the amount of land that had yet to be conveyed to the organized boroughs. We stated that the figures you presented us with were largely a disincentive to those who have yet to form boroughs. The Local Boundary Commission is pushing for the organization of boroughs but not giving the boroughs the resources and the land to be able to function. It was at this time that you indicated that we contact the Department of Natural Resources to get at the real reason that the land certified to the boroughs had not been conveyed.

It is for this reason that we requested the Department of Natural Resources give the House Community and Regional Affairs Committee an overview of Municipal entitlements. It was to our great surprise that the figures the Department of Natural Resources presented us with were grossly dissimilar to the figures the Local Boundary Commission put forth in its annual report. We realize that some of these inconsistencies may be due to the fact that the chart that the Local Boundary Commission provided on page 129 of its annual report is dated 2003. However, some of these inconsistencies, such as in the case of the City and Borough of Yakutat which shows a disparity of more than 20,000 acres, are not so easily explained.

We would like an explanation of the inconsistencies between the departments. We feel as though we have been misled. Before distributing information to the Legislature all efforts should be made to ensure that the information is accurate and up to date. We

suggest that the Local Boundary Commission and the Department of Natural Resources work more closely together in the future to avoid distributing this kind of misleading information.

We look forward to your prompt reply and resolution of this matter.

Sincerely,

Handwritten signatures of Bill Thomas and Kurt Olson. The signature on the left is for Bill Thomas and the signature on the right is for Kurt Olson. Both signatures are in cursive and are written in black ink.

Representative Bill Thomas, Co-Chair House Community and Regional Affairs
Representative Kurt Olson, Co-Chair House Community and Regional Affairs

Cc: Edgar Blatchford, Commissioner, Department of Commerce, Community, and Economic Development

MUNICIPAL LAND ENTITLEMENTS - AS 29.65

MUNICIPALITY	CERTIFIED ENTITLEMENT	APPROVED PATENTED ACREAGE	ESTIMATED REMAINING ENTITLEMENT
Aleutians East Borough	7,633	2,013	5,620
Municipality of Anchorage	44,893	44,893	0
City of Anderson	1,182	1,213	0
City of Bethel	40	87	0
Bristol Bay Borough	2,898	2,549	349
City of Coffman Cove	222	222	0
City of Cordova	235	188	47
City of Delta Junction	482	482	0
Denali Borough	49,789	20,490	29,299
City of Dillingham	1	1	0
City of Fairbanks	7	15	0
Fairbanks North Star Borough	112,000	113,023	0
Haines Borough	2,800	2,765	35
City of Homer	12	287	0
City of Hoonah	15	105	0
City of Houston	405	406	0
City and Borough of Juneau	19,584	19,584	100
City of Kenai	307	307	0
Kenai Peninsula Borough	155,780	136,280	19,500
City of Ketchikan	4	4	0
Ketchikan Gateway Borough	11,593	11,593	0
City of Kodiak	10	298	0
Kodiak Island Borough	58,500	58,500	0
City of Kupreanof	180	180	0
Lake and Peninsula Borough	125,000	31,628	93,374
Matanuska-Susitna Borough	355,210	352,210	3,000
City of North Pole	1	20	0
North Slope Borough	89,850	384	89,466
Northwest Arctic Borough	285,433	4	285,434
City of Pelican	9	9	0
City of Petersburg	481	481	0
City of Port Alexander	53	53	0
City of Seward	565	545	20
City of Skagway	7,977	7,977	55
City and Borough of Sitka	10,500	10,500	0
City of Soldotna	14	14	0
City of Tenakee Springs	2,958	2,958	0
City of Thome Bay	675	675	0
City of Valdez	7,593	7,208	387
City of Whittier	800	600	0
City of Wrangell	551	551	0
City and Borough of Yakutat	21,500	22,681	0

Prepared by DNR, DMLW, as of 02/05

The above figures do not include lands conveyed under AS 38.05.825 (tidelands) or former AS 38.05.320 (tidelands), and only includes land conveyed under AS 38.05.810 (public uses) if it was charged against AS 29.65 entitlement.

Further in this regard, the LBC notes that land entitlements for boroughs have not always been transferred as quickly as borough officials would prefer. See, Table 3-12 for details regarding this issue as of February 2003. The LBC understands that additional funds have been appropriated for the State agency dealing with municipal land transfers and anticipates that the remaining entitlements will be conveyed expeditiously and that any future municipal entitlement transfers will be a priority of the State.

Borough Land Entitlements – AS 29.65

Municipality	Original Entitlement	Acreage Remaining to Convey
Aleutians East Borough	7,633	5,713
Municipality of Anchorage	44,893	272
Bristol Bay Borough	2,898	349
Denali Borough	49,789	29,303
Fairbanks North Star Borough	112,000	177
Haines Borough	2,800	25
City and Borough of Juneau	19,584	160
Kenai Peninsula Borough	155,780	20,892
Ketchikan Gateway Borough	11,593	0
Kodiak Island Borough	56,500	0
Lake and Peninsula Borough	125,000	92,885
Matanuska-Susitna Borough	355,210	8,489
North Slope Borough	89,850	89,486
Northwest Arctic Borough	285,438	285,434
City and Borough of Sitka	10,500	0
City and Borough of Yakutat	21,500	20,088

Source: Table attached to February 28, 2003, Letter from Dick Mylius, Chief, DNR Resource Assessment and Development Section, Division of Mining, Land, and Water, Department of Natural Resources, to Senator Thomas Wagoner, Chair, Senate Community and Regional Affairs Committee, Alaska Senate.

6. Restrict National Forest Receipts and Restrict Shared Fisheries Fees and Taxes to Boroughs and Cities Within Boroughs.

As noted above, the 1991 Task Force on Governmental Roles concluded that "... recent actions by the legislature to share National Forest receipts and Fisheries Business Tax receipts with communities in the unorganized borough have removed nearly all of the

few remaining incentives to organize boroughs." Those issues are addressed below.

(a) National Forest Receipts.

In 1964, following the formation of organized boroughs encompassing portions of Alaska's national forests, the State of Alaska allocated National Forest receipts on the basis of national forest acreage within each organized borough and the unorganized borough. Payments were made to organized boroughs, while the State retained the share for the unorganized borough. Because the federal law required that National Forest receipts be spent on schools and roads in the area where

Article I

candidates, and in having the candidates be familiar with the needs of the constituency (*Castner v. City of Homer*, 598 P.2d 953, 1979). In *Pelozo v. Freas*, 871 P.2d 687, 1994, the court rejected as too long a three-year residency requirement for local city council. See the discussion of residency requirements for legislative office under Article II, Section 2.

In 1989 the legislature increased the minimum residency requirement for receiving a permanent fund dividend check from six months to two years. A superior court judge ruled in June 1990 that the two-year requirement was unconstitutional, but that a one-year requirement was legally acceptable. The state did not appeal the case to the Alaska Supreme Court for fear it would find the one-year limit excessive.

The constitutionality of laws that require employers to give preference to Alaska residents seeking jobs—so-called Alaska hire or local hire laws—have been challenged on the grounds that they violate the equal protection clauses of the state and federal constitutions. In 1988 an amendment was approved by the legislature and ratified by the voters (Article I, Section 23) specifically designed to remove the equal protection clause of the state constitution as an obstacle to Alaska hire laws. This amendment and its background are discussed under Section 23 below.

The final phrase of Section 1 (“all persons have corresponding obligations to the people and to the State”) is similar to language suggested in the 1948 edition of the *Model State Constitution*: “These rights carry with them certain corresponding duties to the state.” (It is interesting to note that this suggested language was dropped from the declaration of rights in the 1968 edition of the *Model State Constitution*, which presents a “sparse” version intended to emphasize guarantees that are fully enforceable.) The phrase in the Alaska Constitution has been cited by the state supreme court to buttress the legality of taxation (*Cogan v. State*, 657 P.2d 396, 1983).

Section 2. Source of Government

All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole.

These are preamble-like passages that state the theory of democratic government upon which American political institutions are based. The first sentence is found in more than 30 state constitutions, and a variation of it in several more. The second sentence is similar to language in the Georgia and North Carolina constitutions (“All government, of right, originates with the people, is founded on their will only, and is instituted solely for the good of the whole”).

This section has been interpreted to buttress the people’s right to vote with minimal interference from the state. In throwing out the result of a referendum election that may have been tainted by biased

prefatory wording on the ballot, the Alaska Supreme Court cited this section as evidence of the basic principle that "the people be afforded the opportunity of expressing their will on the multitudinous issues which confront them" (*Boucher v. Bomhoff*, 495 P.2d 77, 1972). An opinion of the Alaska attorney general states that this section would prevent the government from interfering with write-in voting (1963 Opinion Attorney General No. 30). In 1998 the Alaska Supreme Court rejected a challenge to a statutory change in the manner in which candidates' names were placed on the ballot. The new law replaced the practice of rotating the order of names with a random and fixed determination of the order. The plaintiff alleged that it violated the requirement of this section that elections reflect the will of the people because it gave an unacceptable advantage to candidates whose names appeared first on the ballot (*Sonneman v. State*, 969 P.2d 632, 1998).

Section 3. Civil Rights

No person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex, or national origin. The legislature shall implement this section.

This section makes explicit the prohibitions against discrimination that are implied in the "equal protection" provision of Section 1 and the "due process" provision of Section 7. Few other state constitutions specifically mention civil or political rights, and the *Model State Constitution* was silent on civil and political rights. This provision in Alaska's constitution originated in contemporary versions of congressional statehood bills for Alaska (e.g. H.R. 2535 and H.R. 6178), which required that the constitution of the new state of Alaska make no distinction in civil and political rights on account of "race or color." The committee revised this language and expanded it to include "creed" and "national origin," perhaps drawing on the New Jersey Constitution, one of few with a comparable provision ("No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or in the public schools, because of religious principles, race, color, ancestry or national origin").

The word "sex" was adopted by amendment in 1972. Whether to include the word in the original language was hotly debated at the constitutional convention, but the delegates decided to omit it. Delegate Mildred Hermann argued that the word "person" (in contrast to the traditional usage "man" and "men") was intentionally used throughout the constitution to refer to both sexes, and that the record of the Alaska legislature on female rights had always been progressive. To further avoid the possibility of any sex bias in the interpretation of the constitution, the delegates specified in Article XII, Section 10 that personal pronouns be construed as including either sex.

About one-third of the state constitutions explicitly prohibit sex-based discrimination (so-called "equal rights" clauses). For the most part, the relevant language was added by amendment or adopted

Article X

Section 2. Local Government Powers

All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

By authorizing only two units of local government, the city and borough, this section implements the constitutional objective in Section 1 of maximizing local self-government "with a minimum of local governmental units." By delegating the power to tax to only cities and boroughs, this section implements the constitutional objective in Section 1 of preventing the "duplication of tax-levying jurisdictions." Commentary on these provisions written by the local government committee notes that they are designed to prevent "numerous types of local units which can become not only complicated but unworkable," and "overlapping taxing authorities" that "often do not realize needs other than their own." (Thus, for example, school districts in Alaska do not have independent taxing power, unlike the situation in many other parts of the United States.) Subsequent sections of this article provide for the creation of boroughs and cities.

The Alaska Supreme Court declared unconstitutional a state law that authorized private aquaculture associations to collect mandatory assessments on the sale of salmon by commercial fishermen, saying the scheme amounted to a delegation of taxing powers to an entity other than a city or borough (*State v. Alex*, 646 P.2d 203, 1982). The legislature then imposed a state "salmon enhancement" tax on salmon permit holders paid to the general fund (see AS 43.76.010; see commentary on Article IX, Section 7). On the basis of the *Alex* decision, the attorney general advised the Commercial Fisheries Entry Commission that the state buy-back program for excess permits violated this section of the constitution, as the buy-back fund was to be derived from assessments on permit holders in each fishery (1985 Informal Opinion Attorney General, May 23).

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.

This section mandates the creation of boroughs—the larger of the two units of local government authorized by the constitution. Use of the term "borough" was debated at length by the delegates. It

was adopted largely to avoid legal and political connotations of the traditional county. Alaska's boroughs were intended to be more versatile and powerful than counties.

The legislature is given wide latitude to shape this new creature; the constitution provides only that standards for creating boroughs must include population, geography, economy, and transportation, with the area and population of boroughs sharing common interests. More specific guidelines were avoided by the delegates (some constitutions establish the boundaries of every county) because they recognized that the borough concept would have to be adapted to a wide variety of local circumstances. The directive to "classify" boroughs reflects the expectation that the basic concept would need some customizing to suit diverse socioeconomic and geographic conditions across the vast state. The local government committee envisioned three classes of boroughs. Reference to these classes was dropped from the final document, but the thinking of the committee is revealing. In the commentary accompanying the draft, the committee said:

Areas in Alaska vary widely as to economy, population size and density, means of transportation, financial ability to support local government and other factors. Therefore, three classes of boroughs were created to allow for variations. A borough of the first class would offer the largest amount of authority and self-government to its citizens through adoption of home-rule charters. The third class borough would have the most limited scope, with the state performing most of the local functions The second class borough is granted powers falling in the range between the other two classes.

Also, the expectation was that areas with insufficient population, wealth, and other prerequisites for local self-government would nonetheless be designated as boroughs but remain "unorganized." These might be boroughs of the third class, with the legislature acting as their assembly. However, multiple unorganized boroughs have not been created. The entire area of the state outside of organized boroughs is treated as one large unorganized borough.

Statutory standards for borough incorporation are similar to the constitutional standards. They are set forth in AS 29.05.031. Application of the standards was challenged, unsuccessfully, in the formation of the North Slope Borough (*Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d 92, 1974). Initially the legislature provided for three classes of boroughs, but only first-class and second-class boroughs may be formed now [AS 29.05.031(b)].

Section 4. Assembly

The governing body of the organized borough shall be the assembly, and its composition shall be established by law or charter.

Article X

state law (see also *Simpson v. Municipality of Anchorage*, 635 P.2d 1197, Alaska Ct. App., 1981; and *City of Valdez v. State*, 793 P.2d 532, 1990).

Conflict or inconsistency of an ordinance with a state law is not necessarily fatal, provided the ordinance deals with a matter of purely local concern rather than statewide concern. Thus, for example, the court upheld the leasing ordinance of a home-rule city against its alleged inconsistency with state law (*Lien v. City of Ketchikan*, 383 P.2d 721, 1963; contrast *Foreman v. Anchorage Equal Rights Commission*, 779 P.2d 1199, 1989; see also *Acevedo v. City of North Pole*, 672 P.2d 130, 1983.)

Article II, Section 19, which prohibits "local and special legislation," protects home-rule and other municipalities from selective intervention in their affairs by the legislature and serves the constitutional objective of providing "maximum self-government."

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.

Through the local boundary commission created in this section, the convention delegates sought a mechanism to bring flexibility and adaptability to local government structures in Alaska. In their view, a major failing of municipal government in the older states was the rigidity of boundaries: city, county, and other jurisdictional lines could not, as a practical matter, be modified to respond to changing governmental needs and opportunities. They wanted to remove boundary decisions from the parochial perspective of local politics. In the words of the local government committee, this scheme allows boundary decisions to be made "at a level where areawide 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."

The local boundary commission is a five-member body appointed by the governor. It is part of the Department of Community and Economic Development (see AS 44.33.810). The department serves as staff to the commission. The local boundary commission may propose boundary changes, subject to a legislative veto. (See AS 44.33.810-812.)

The term "boundary change" in this section refers to changes in established boundaries such as through annexation and detachment, not to the creation of new cities and boroughs through incorporation. Although the local boundary commission plays a key role in new incorporations, it does so through authority conferred on it by the legislature under Sections 3 and 7 of this article (which say that cities and boroughs may be incorporated, merged, consolidated, classified, or dissolved in the manner provided by law). The supreme court ruled that the local boundary commission's approval of the incorporation petition of the North Slope Borough was not subject to legislative approval because the statutes governing incorporation did not require it (*Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d 92, 1974).

Boundary changes that result from annexation may involve the dissolution of an existing unit of government. In such cases, approval of the annexation by the local boundary commission, if it survives legislative scrutiny as provided here, is decisive, even if existing statutory procedures regarding dissolution required ratification by the voters of the dissolved governmental unit. (See *Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P.2d 540, 1962, which involved the dissolution through annexation of a public utility district without ratification, and *Oesau v. City of Dillingham*, 439 P.2d 180, 1968, which involved the dissolution through annexation of a fourth-class city without ratification by voters of the fourth-class city.)

The local boundary commission considers proposals for local government boundary changes requested of it by the legislature, the commissioner of the Department of Community and Economic Development, or a political subdivision of the state. Thus, for example, the local boundary commission considered and approved a request by the commissioner of the department for detachment from the North Slope Borough of the mineralized zone around the Red Dog mining property. This detachment was critical to the success of the proposed Northwest Arctic Borough, incorporation of which the commission also approved. The local boundary commission also considers boundary changes submitted by a petition of local residents.

The legislative veto over decisions of the local boundary commission is one of two explicit authorizations of the legislative veto in the Alaska Constitution (see Article III, Section 23; also see Article IV, Section 15). Here the veto requires a majority of both houses acting separately rather than a majority voting in joint session. Decisions by the local boundary commission have occasionally been rejected by the legislature. For example, in 1989 the legislature rejected the proposed annexation by the Fairbanks North Star Borough of Pump Station 7 on the trans-Alaska pipeline (Legislative Resolve No. 6).

Statutory provisions governing incorporation and alternation of municipalities are AS 29.05 and AS 29.06.

Article XII

Section 11. Law-Making Power

As used in this constitution, the terms "by law" and "by the legislature," or variations of these terms, are used interchangeably when related to law-making powers. Unless clearly inapplicable, the law-making powers assigned to the legislature may be exercised by the people through the initiative, subject to the limitations of Article XI.

The aim of this section is to avoid confusion that might be created by different expressions for the concept of law, such as confusion that might arise over the scope of the initiative in Article XI stemming from the various terms "law," and "by the legislature." However, it creates some confusion about the scope of the initiative in the second sentence with the phrase "Unless clearly inapplicable." What, in addition to the explicit limitations in Article XI, Section 7 is beyond the reach of the initiative? This question was posed in a lawsuit seeking to keep an initiative off the ballot that prohibited the use of snares in trapping wolves. The plaintiffs argued that wildlife management was the exclusive domain of the legislature by virtue of it being the trustee of the state's natural resources, and therefore the regulation of wolf trapping was "clearly inapplicable" to the initiative process. The court rejected this argument. It said: "The convention debates suggest the framers added 'clearly inapplicable' to Article XII so that the initiative would not replace the legislature where the legislature's power serves as a check on other branches of government, such as legislative power to define courts' jurisdiction or override judicial rules." No separation of powers issues are raised by wildlife management, and it is therefore a legitimate subject for the initiative (*Brooks v. Wright*, 971 P.2d 1025, 1999).

Section 12. Disclaimer and Agreement

The State of Alaska and its people forever disclaim all right and title in or to any property belonging to the United States or subject to its disposition, and not granted or confirmed to the State or its political subdivisions, by or under the act admitting Alaska to the Union. The State and its people further disclaim all right or title in or to any property, including fishing rights, the right or title to which may be held by or for any Indian, Eskimo, or Aleut, or community thereof, as that right or title is defined in the act of admission. The State and its people agree that, unless otherwise provided by Congress, the property, as described in this section, shall remain subject to the absolute disposition of the United States. They further agree that no taxes will be imposed upon any such property, until otherwise provided by the Congress. This tax exemption shall not apply to property held by individuals in fee without restrictions on alienation.

Rynniva Moss

From: Rynniva Moss
Sent: Thursday, January 20, 2005 2:26 PM
To: 'dan_bockhorst@commerce.state.ak.us'
Subject: 3 AAC 110.210 (4) Local Action

Am I reading 3 AAC 110.210.Local action subsection (4) wrong. It says a territory can be annexed upon "approval by a majority of the aggregate voters who vote on the question within the area proposed for annexation and the annexing borough."

That seems to read a majority vote of the combined voters both in the borough and in the territory proposed for annexation.

Such a vote would be inconsistent with AS 29.06.040(c)(1) which states " a proposed annezation and detachment must be approved by a majority of votes on the question cast by voters residing in the area proposed to be annexed or detached."

It would certainly diminish the vote of an area with 700 or 800 voters when the existing borough would have tens of thousands of voters.

Please clarify.



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Alaska Statutes.

Title 29. Municipal Government

Chapter 6. Alteration of Municipalities

Section 40. Local Boundary Commission.

previous: Section 10. Change of Municipal Name.

next: Section 50. Annexation of Military Reservations.

AS 29.06.040. Local Boundary Commission.

(a) The Local Boundary Commission may consider any proposed municipal boundary change. The commission may amend the proposed change and may impose conditions on the proposed change. If the commission determines that the proposed change, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change. Otherwise it shall reject the proposed change. A Local Boundary Commission decision under this subsection may be appealed under AS 44.62 (Administrative Procedure Act).

(b) The Local Boundary Commission may present a proposed municipal boundary change to the legislature during the first 10 days of a 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.

(c) In addition to the regulations governing annexation by local action adopted under AS 44.33.812, the Local Boundary Commission shall establish procedures for annexation and detachment of territory by municipalities by local action. The procedures established under this subsection must include a provision that

(1) a proposed annexation and detachment must be approved by a majority of votes on the question cast by voters residing in the area proposed to be annexed or detached;

(2) municipally owned property adjoining the municipality may be annexed by ordinance without

voter approval; and

(3) an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters in the area petition the governing body.

(d) A boundary change effected under (a) and (b) of this section prevails over a boundary change initiated by local action, without regard to priority in time.

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If it is critical that the precise terms of the Alaska Statutes be known, it is recommended that more formal sources be consulted. For statutes adopted after the effective date of these statutes, see, [Alaska State Legislature](#). If any errors are found, please e-mail Touch N' Go systems at [E-mail](#). We hope you find this information useful.

Last modified 3/12/2004

Article 4 Standards for Annexation to Boroughs

Section

- 160. Community of interests.
- 170. Population.
- 180. Resources.
- 190. Boundaries.
- 195. Best interests of state.
- 200. Legislative review.
- 210. Local action.

*Community
Interests
(Common
Issues)*

3 AAC 110.160. Community of interests

(a) The social, cultural, and economic characteristics and activities of the people in the territory must be interrelated and integrated with the characteristics and activities of the people in the existing borough. In this regard, the commission may consider relevant factors including the

- (1) compatibility of urban and rural areas within the proposed borough boundaries;
- (2) compatibility of economic lifestyles and industrial or commercial activities within the proposed borough boundaries;
- (3) existence of customary and simple transportation and communication patterns throughout the proposed borough boundaries; and
- (4) extent and accommodation of spoken language differences throughout the proposed borough boundaries.

(b) The communications media and the land, water, and air transportation facilities throughout the proposed borough boundaries must allow for the level of communications and exchange necessary to develop an integrated borough government. In this regard, the commission may consider relevant factors, including

- (1) transportation schedules and costs;
- (2) geographical and climatic impediments;
- (3) telephonic and teleconferencing facilities; and
- (4) electronic media for use by the public.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art X. sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812

3 AAC 110.170. Population

The population of the proposed borough after annexation must be sufficiently large and stable to support the resulting borough. In this regard, the commission may consider relevant factors, including

- (1) total census enumerations;
- (2) durations of residency;
- (3) historical population patterns;
- (4) seasonal population changes; and
- (5) age distributions.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812

3 AAC 110.180. Resources

The economy within the proposed borough boundaries must include the human and financial resources necessary to provide essential borough services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including the

- (1) reasonably anticipated functions of the borough in the territory being annexed;
- (2) reasonably anticipated new expenses of the borough that would result from annexation;
- (3) actual income and the reasonably anticipated ability of the borough to generate and collect local revenue and income from the new territory;
- (4) feasibility and plausibility of those aspects of the borough's anticipated operating and capital budgets that would be affected by annexation through the third year of operation after annexation;
- (5) economic base of the borough after annexation;
- (6) property valuations in the territory proposed for annexation;
- (7) land use in the territory proposed for annexation;

(8) existing and reasonably anticipated industrial, commercial, and resource development;

(9) personal income of residents in the territory to be annexed and in the borough;
and

(10) the need for and availability of employable skilled and unskilled persons to serve the borough as a result of annexation.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812

3 AAC 110.190. Boundaries

(a) The proposed boundaries of the borough must conform generally to natural geography, and must include all land and water necessary to provide the full development of essential borough services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including

- (1) land use and ownership patterns;
- (2) ethnicity and cultures;
- (3) population density patterns;
- (4) existing and reasonably anticipated transportation patterns and facilities;
- (5) natural geographical features and environmental factors; and
- (6) extraterritorial powers of boroughs.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that territory that is not contiguous to the annexing borough, or that would create enclaves in the annexing borough, does not include all land and water necessary to allow for the full development of essential borough services on an efficient, cost-effective level.

(c) Absent a specific and persuasive showing to the contrary, the commission will not approve annexation of territory to a borough extending beyond the model borough boundaries developed for that borough.

(d) The commission will consult with the Department of Education and Early Development in the process of balancing all standards for annexation to a borough.

(e) If a petition for annexation to a borough describes boundaries overlapping the boundaries of an existing organized borough, the petition for annexation must also address and comply with the standards and procedures for detachment of the overlapping region from the existing organized borough.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812

3 AAC 110.195. Best interests of state

In determining whether annexation to a borough is in the best interests of the state under AS 29.06.040 (a), the commission may consider relevant factors, including whether annexation

- (1) promotes maximum local self-government;
- (2) promotes a minimum number of local government units; and
- (3) will relieve the state government of the responsibility of providing local services.

History: Eff. 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812

3 AAC 110.200. Legislative review

Territory that meets the annexation standards specified in 3 AAC 110.160 - 3 AAC 110.195 may be annexed to a borough by the legislative review process if the commission also determines that any one of the following circumstances exists:

- (1) the territory manifests a reasonable need for borough government that can be met most efficiently and effectively by the annexing borough;
- (2) the territory is an enclave surrounded by the annexing borough;
- (3) the health, safety, or general welfare of borough residents is or will be endangered by conditions existing or potentially developing in the territory, and annexation will enable the borough to regulate or control the detrimental effect of those conditions;
- (4) the extension of borough services or facilities into the territory is necessary to enable the borough to provide adequate services to borough residents, and it is impossible or impractical for the borough to extend the facilities or services unless the territory is within the boundaries of the borough;
- (5) residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of borough government without

commensurate tax contributions, whether these benefits are rendered or received inside or outside the territory, and no practical or equitable alternative method is available to offset the cost of providing these benefits;

(6) annexation of the territory will enable the borough to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the borough;

(7) repealed 5/19/2002;

(8) annexation of the territory will promote local self-government with a minimum number of government units;

(9) annexation of the territory will enhance the extent to which the existing borough meets the standards for incorporation of boroughs, as set out in the Constitution of the State of Alaska, AS 29.05, and 3 AAC 110.045 - 3 AAC 110.065;

(10) the commission determines that specific policies set out in the Constitution of the State of Alaska or AS 29.04, 29.05, or 29.06 are best served through annexation of the territory by the legislative review process.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812

3 AAC 110.210. Local action

Territory that meets the annexation standards specified in 3 AAC 110.160 - 3 AAC 110.195 and has been approved for local action annexation by the commission, may be annexed to a borough by any one of the following actions:

(1) borough ordinance if the territory is wholly owned by the annexing borough; *AS 29.06.040(c)(2)*

(2) borough ordinance and a petition signed by all of the voters and property *AS 29.06.040(c)(3)* owners of the territory;

(3) approval by a majority of voters residing in the territory voting on the question at an election; *AS 29.06.040(c)(1)*

(4) approval by a majority of the aggregate voters who vote on the question within the area proposed for annexation and the annexing borough;

(5) approval by a majority of the voters who vote on the question within the annexing borough if the territory is uninhabited.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812

PRESIDENT EGAN: If there is no objection.

HURLEY: One of general intent. Is my idea correct that no organized borough will become effectuated without the voice of the people within the area?

PRESIDENT EGAN: Would you care to comment on that, Mr. Fischer?

V. FISCHER: The answer, I think, would be "no". The borough, as visualized here, is even more than just a unit of local government. It is also a unit for carrying out what otherwise are carried out as state functions; and 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. As was explained earlier today, 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. However, just as you have in school districts, the legislature has granted power to, I think, the board of education to incorporate school districts when they reach a certain minimum population so that they would assume their own load. ✓

PRESIDENT EGAN: Does that answer your question, Mr. Hurley.

HURLEY: Yes.

PRESIDENT EGAN: Are there other questions at this time, or are there other amendments to Section 15? Mr. Hinckel.

HINCKEL: I'd like to ask a question, if I may.

PRESIDENT EGAN: If there is no objection, Mr. Hinckel.

HINCKEL: In line with Mr. Hurley's question, I am again now confused, because I thought that I understood, but now I'm afraid that I do not, after Mr. Fischer's answer. If he had said that the answer was that the people would have the right to decide, why then I would have felt that I knew what was going on. My interpretation was that, up until such time as the borough adopted a charter, that they would operate under rules that would be set up by the legislature, and at the time that they decided to organize, why they would then adopt a charter, and that the people would, at that time, accept the charter by some sort of a referendum or something like that. Am I completely confused now, or --

V. FISCHER: No. I might not have made my answer completely clear*. The legislature would have the authority to establish an organized borough. When it comes to adopting a charter, that is something that is up to the people. A borough does not have to adopt a home rule charter.

HINCKEL: Up until the time they do, though, they will operate under some sort of regulations that are set up by the state?

V. FISCHER: Under the general law of the state.

HINCKEL: But you would call that an organized borough?

V. FISCHER: Yes, and I might say that the legislature may very well see fit to provide that before a borough could be organized, that the people do approve it by referendum. The question

I was answering was whether we were definitely setting it up on a voluntary basis. But we're not. We're * leaving it to the legislature whether a referendum will or will not be required.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: I yield to Mr. Johnson.

JOHNSON: I just wanted to follow that out a little bit, and ask Mr. Fischer why it was that the referendum idea was used only in the charter portion of the act -- the proposed charter and borough?

V. FISCHER: Well, as I tried to explain, there is some question as to whether or not the state would want to force the organization of a borough. There are reasons that the state may have for organizing a borough. However, when it comes to adoption of a charter, the people, in other words, set up their own form of local government at that time. I mean, they prescribe the rules, etc. That is something that is not of direct state concern, whereas, the organization of the borough in the first place, would be, and so that is left up completely to the people, by referendum.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, this was on a point of clarification. Mr. Fischer said that until a charter was granted, that they would operate under the laws or regulations promulgated by the legislature. That was the general intent, I believe, and I'd like to ask you, Mr. Fischer, if the legislature may not deal with an organized borough, and delegate taxing powers, and other powers, to an organized borough or city which has not applied for a charter?

V. FISCHER: Yes. Certainly.

R. RIVERS: Well, that's the point I wanted to make clear.

PRESIDENT EGAN: Mr. Hurley.

HURLEY: If someone else wants to speak, I've talked too much.

PRESIDENT EGAN: Mr. Metcalf.

METCALF: I'd like to ask a question. Did I understand Mr. Fischer, that the proposition of whether an area should organize itself into a borough is put before the people. Is that right? Or whether they vote "yes" or "no"?

V. FISCHER: It may or may not be, as the legislature sees fit.

METCALF: In case it should be -- legislature should see fit to let it out on referendum basis, I wonder if they would know how many representatives the rural areas will have on the assembly, and how many representatives the cities will have on the assembly?

V. FISCHER: Well, I'm sure that the organization of boroughs would be prescribed by general law before they start organizing the boroughs. They would have to have the system prescribed previously, so the people would know what the borough would be.

METCALF: Well, I'm wondering, again, supposing a borough should get into a tight fix, or should buy

something it wouldn't like? Is there a way to appeal to get out of the fix?

V. FISCHER: That again is left up to the legislature.

PRESIDENT EGAN: Mr. Kilcher has been attempting to get the floor. Mr. Kilcher.

KILCHER: Mr. Fischer, if I may ask you a question, this charter which the people of an unorganized borough may ask to have applied to them, will they set up the charter themselves, with due assistance, legal or common assistance?

V. FISCHER: Yes.

KILCHER: Are there any standards set for that charter? Could you envisage these charters to change greatly from borough to borough, and yet be acceptable to the legislature?

V. FISCHER: The home rule charter could be quite different from borough to borough. I think that, for instance, the form of their administration may differ. Some may want a borough manager -- like a city manager form of government. Others may want to have the equivalent of a mayor as the chief executive. So, there could be various differences.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: Mr. Fischer, when I think of local self-government, I do not think of it mainly in terms of the executive, I think of it largely in terms of legislative and policing powers, too. In other words, two local self-governments. Now, do you assume that the state executive government and the legislature will be willing or reluctant to delegate their powers to boroughs, or do the boroughs have certain demands that they can make?

Constitutional demands? I would like to see something in the constitution that they may ask -- not be given. In other words, the Section 15 creates in my mind, and some others, that this borough -- this unorganized borough is also a well-domesticated borough. You said a while ago that you should be willing to take the burden. I begin to see now why the word "borough" may be a very good one. Now, you talked about inducements a while ago, inducements dangled in front of the borough. I'm not worried about what inducements -- how I might be induced of doing a thing. I would like to know what rights the borough might have.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: I can see why you're putting your question in the way you do, since you're a coauthor of an amendment to change the name of this unit; but to answer your question, no right that the people within the borough would have would be beyond the reach of the legislature by general law. The legislature could deny the exercise of any right just as they can deny today within cities or any place else. However, unless the legislature denies a specific right, it will belong to the people within the borough.

KILCHER: Could you admit us more self-government, not in the administrative sense, but in terms of participation, in form of referendum, etc? To give you an example, Mr. Fischer, I'm living in a PUD, and dissatisfaction has been generally expressed with the Territorial PUD Act in my area; and some of the people down there, during the Christmas recess, had voiced the fear that the borough may be some sort of a super PUD with ramifications, more or less, but inasmuch as they are dissatisfied with the lack of

CHIEF CLERK: "Section 6, page 3, line 9, delete the comma, insert a period and strike the balance of the section."

PRESIDENT EGAN: What is your pleasure Mr. Hurley?

HURLEY: I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Hurley moves the adoption of the amendment. Is there a second to the motion?

MCNEALY: I will second the motion.

PRESIDENT EGAN: Mr. McNealy seconds the motion. Mr. Hurley.

HURLEY: Mr. President, I realize that this section is, to a large extent, of a recommending nature rather than a directive nature, but yet I feel it could be construed as a directive, and a limitation on the functions of the borough assembly. I also recognize that we have a problem presently in the Territory in the matter of making it desirable for cities to incorporate and to take in suburban areas into their incorporated area, but I think what seems to be a relatively unimportant amendment goes to the basis of this whole concept that is being brought forward here on the matter of local government. The very fact that we previously had an amendment concerning the school districts indicates to me that the question is one of deciding where the relative powers of this borough are going to be. I think the whole article is fairly inconsistent in its acceptance of cities themselves. In other words, they have agreed that it is undesirable to have school districts separately organized; it is undesirable to have public utilities separately organized as taxing units; it is undesirable to have various other districts; yet they say it is desirable to have cities. They go further and provide in this section that in the event an area needs a particular public service that it shall not have it if it can meet the qualifications of incorporating as a city. I think it tends to destroy the desirable, in my mind, function of the borough to govern the area in the most desirable manner. I think it sets up a stumbling block. Now I can recognize that those people that have had problems of city incorporation are going to be very suspicious of this amendment, but I submit by leaving these words in we are, in effect, putting a stumbling block in front of the effective operation of our borough government. I also submit that there is nothing in my mind that a service area within the borough cannot do that a city can do, so, in fact in my mind a city is no more than an organized service area, and I think if we make it possible to, over the years, lose our old-fashioned concept of the city, we will eventually be better off. Now, the adoption of this small amendment is not going to accomplish all that, but in my opinion it is going to remove a possible stumbling block to more efficient administration of borough affairs and I hope that you will see fit to adopt the amendment.

PRESIDENT EGAN: Is there further discussion of the proposed amendment? Mr. McNealy.

MCNEALY: Mr. President, I had the same amendment written out, and being a little slow, I appreciated the fact that Mr. Hurley has submitted this amendment, and I feel obliged to speak on this particular subject, taking it in conjunction with Section 1 of the article to which this particular section refers to. Now, contrary to statements that have been made on the floor about all of the elected representatives to the legislature being from within the city of Fairbanks, I reside outside of the city of Fairbanks and I also, I believe, on two occasions, however, voted in the area in which I live to become annexed to the city, and in both cases it was voted down, so when I speak I don't speak from a personal standpoint, but my thought in regard to this is I have seen this happen before. Bills have been offered in the legislature in an attempt to force annexation. There has been a continuous movement in the Territory over the years. I remember years ago being on the school board down at Seldovia and we were told if we did not

incorporate the town they were going to take the high school away. Incidentally, we incorporated the town and in that instance it did not do any harm, according to the latest reports that I have. I see in this, written in here, a way of at least a backdoor attempt of forcing cities, small areas, to either incorporate or forcing areas to become annexed to the city, because under the borough system of government here, the county system or what you will, we state in the first paragraph that the liberal construction shall be given to the power of local government; and reading that in conjunction with this particular section here, it is going to give the assembly, certainly, the right to construe this paragraph here that they have, say that an area outside the city, for example, if it is necessary to have the health district to protect not only the health outside the city but inside the city, and they want to reach out and encompass this area outside the city and they can use that as a whip to hold over the people in this outlying area, and say if you don't become annexed and come into part of the city the assembly is not going to give you this service here. You may be paying taxes out here but you are not going to get anything because this is a simple way to do it and bring you within the city. Or they can go to a small community, say within 10 miles of the city, if that is within this prescribed area, and the assembly can say we are giving you nothing out here because the better way for you to be is to set up a small corporation out here. I think we all know a lot of these small incorporations don't work out because there isn't the money there for the taxation in that particular area to support a small town. I feel on this. I could talk on it possibly for an hour. I remember speaking on it in the legislature. I am not going to take up the time. I am glad Mr. Hurley advanced this here because of the fact that we should consider that the areas outside the city should not be controlled and dominated by a larger group of people within the city. I believe the American way of life gives us the right to incorporate if we want to; to become annexed to a city if we want to; or if we don't want to, to maintain the status quo where the only ones that are actually affected by it to a great extent are those outside the city itself.

PRESIDENT EGAN: Mr. Marston.

MARSTON: Mr. President, I have experience along that same line that has just been presented here, and the area where I live we tried twice to get into the city and some people opposed it and we did not get in and now there is a group that have felt they have been forced, coerced by the bigger body and they have backed up on it. You can't coerce people or groups to come in. It is wrong to try to hold it over the outlying districts, a threat, because they will not come in by a threat. When it is advantageous to come in they will come in, and if this is a threat over them, I'm going to be for the amendment.

PRESIDENT EGAN: Mr. Rosswog.

ROSSWOG: Mr. Chairman, I might speak for the Committee on this section; it is just as the Committee feels, and they may vote as they choose. Our main intention was to try not to have a lot of separate little districts set up, you know, handling only one problem and try to combine them.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. Chairman, on this section, the thinking of the Committee, as I interpret it, was that you will notice in this section there is no limitation on taxes in the amounts of assessed evaluation or the amounts of rates, and we had visualized a situation where a city had grown up with certain services, where there was a fringe area that needed certain services, but not all of the services, so the fringe area could annex the city on a differential taxation basis for such services it may desire, such as a fire protection for one. It was also visualized that out in an area where a service area had enough functions, where it stood by itself, where it got big enough to incorporate as a city under this section, it could then do so. There was no intent or thought in the Committee's mind that there was any possibility of putting pressure on to get them to do certain things. The thought was it would still be their own choice and selection as to whether or not they would be better served by entering a fringe area as a suburban area

KILCHER: Objection.

PRESIDENT EGAN: Objection is heard. Is there a second to the motion?

R. RIVERS: I second the motion.

PRESIDENT EGAN: Mr. Ralph Rivers seconds the motion. The motion is open for discussion. Mr. Kilcher.

KILCHER: I would like to have the Committee explain its change in its stand.

PRESIDENT EGAN: Mr. Rosswog, would you care to explain?

ROSSWOG: I think it was in the discussion yesterday, Mr. Chairman, and it was felt that by asking for a boundary commission which we thought was very necessary in establishing your local government boundaries that it should be under some branch of the government and it should necessarily be under the executive branch.

PRESIDENT EGAN: Is there still objection?

KILCHER: No.

TAYLOR: May I ask a question? Mr. Rosswog, is that local boundaries commission, is that a commission organized in each borough?

ROSSWOG: No.

TAYLOR: A state commission?

ROSSWOG: It would be statewide because you could not leave it just to the local unit to set up its own boundaries. There should be some supervision or someone setting them up.

TAYLOR: Then one other question, in line 22, the article says, "The commission may consider any proposed boundary." That would necessarily imply that that is a proposed borough boundary, is that right?

ROSSWOG: There is an amendment in local government.

PRESIDENT EGAN: Mr. Cooper.

COOPER: I would like to ask the Committee a question. Does this commission in the executive branch that they have pointed out now, was there consideration given to the fact that that could be an additional duty of the apportionment board?

ROSSWOG: Yes.

COOPER: And that is what you have in mind?

ROSSWOG: Yes, we have in mind that it could be combined with some other --

COOPER: Yes. Then, would the words, "The legislature shall establish" -- would that have anything to do with it because the apportionment board now would be established by the governor?

ROSSWOG: My belief is that they could designate the same board if they wished or one might be appointed by the governor.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, I would like to ask a question of Mr. Rosswog.

PRESIDENT EGAN: If there is no objection, you may ask your question.

R. RIVERS: The way this would read that "The legislature shall establish a local boundary commission in the executive branch and regulate its activities." It sounds as though the commission is going to regulate the activities of the executive branch. What you should say is, "The legislature shall establish within the executive branch a local boundary commission." So, I would ask you if there is any objection to changing your language over to the front of line 20 instead of where it is now and saying "within the executive branch".

HELLENTHAL: What is wrong with having the executive control the executive?

COOPER: May we have a one-minute recess?

PRESIDENT EGAN: If there is no objection, the Convention will have a one-minute recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Cooper.

COOPER: Mr. President, I would like to ask for the floor on a point of personal privilege.

PRESIDENT EGAN: If there is no objection, Mr. Cooper, you may have the floor on a point of personal privilege.

(Mr. Cooper spoke on a matter of personal privilege.)

PRESIDENT EGAN: Are there amendments for Section 9 or 10? Sections 11 or 12? Do you have an amendment for Section 12?

CHIEF CLERK: It has not been acted on yet.

PRESIDENT EGAN: Mr. Rosswog.

ROSSWOG: Mr. Chairman, I think I can safely say that the question brought up by Mr. Rivers can be handled by Style and Drafting.

R. RIVERS: I so consent.

PRESIDENT EGAN: Mr. White.

WHITE: I want to ask a question of the Committee. In answer to a previous question, I believe you stated that the Committee took into account that this could become a part of the apportionment board set up in another article. I was wondering if the use of the word "commission" here would preclude that. In the apportionment article it says, "There shall be a nonpartisan board of reapportionment."

PRESIDENT EGAN: Mr. Rosswog.

ROSSWOG: Mr. Chairman, I believe that it would not stop them from being the same commission, but I did not think at this time that we should tie them up together, forcing them to be the same board. It should be left to a decision at the time because this local boundary question will be a very controversial question and will need a lot of study to set it up, and even with these words they could be grouped together if it was found necessary.

WHITE: Mr. President, in the resources article we had quite a discussion on the difference between a commission and other types of regulatory boards, and it occurred to me that using the word "commission" here means something entirely different than using the word "board". I didn't mean to suggest that they be forced to be one and the same.

PRESIDENT EGAN: Is there further discussion on the proposed amendment?

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: Would the Chief Clerk please read the amendment.

CHIEF CLERK: "Page 4, lines 20 and 21, Section 12, insert the words 'in the executive branch' after the word 'commission'."

PRESIDENT EGAN: The question is, "Shall the proposed committee amendment be adopted by the Convention?" All those in favor of adopting the proposed amendment will signify by saying "aye", all opposed by saying "no". The "ayes" have it and the proposed amendment is ordered adopted. The Convention will come to order. Mr. White.

WHITE: Mr. President, I haven't had time to write this out but I have an amendment to Section 12, line 20, after the word "commission" insert "or board".

HELLENTHAL: Do you ask unanimous consent?

WHITE: I ask unanimous consent.

PRESIDENT EGAN: Unanimous consent is asked for the adoption of the amendment. Would the Chief Clerk please read the proposed amendment?

CHIEF CLERK: "Line 20, page 4, after the word 'commission' insert the words 'or board'."

PRESIDENT EGAN: Is there objection? Mr. Nerland.

NERLAND: Mr. White, would you also include that same wording on line 21?

WHITE: Yes, I certainly would.

PRESIDENT EGAN: If there is no objection that will become a part of the amendment. Is there objection to the unanimous consent request for the adoption of the proposed amendment?

TAYLOR: I object.

PRESIDENT EGAN: Objection is heard. Do you so move.

WHITE: I so move.

PRESIDENT EGAN: Mr. White so moves

COOPER: I second the motion.

PRESIDENT EGAN: Mr. Cooper seconds the motion. The motion is open for discussion. Mr. Coghill.

COGHILL: Mr. Chairman, I believe the motion should also be extended to the word "commission" on the following page, page 5, line 3.

PRESIDENT EGAN: Is that acceptable to the maker of the proposed amendment?

WHITE: It is acceptable.

PRESIDENT EGAN: Is there objection? Hearing none that will become a part of the proposed amendment. Mr. Kilcher.

KILCHER: May I ask a question? Would you think a commission or board could also be called an agency?

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: I think the word "agency" would cover all types of boards, commissions, boroughs and other things.

KILCHER: I would like to ask Mr. White, in that case, if you might not substitute both for "commission" and board [the word] "agency", because in Section 14 we have also provision for an agency in the executive, which may well end by being the same agency.

PRESIDENT EGAN: Mr. White.

WHITE: Mr. President, in answer to your question, this is as far as I intended to go, Mr. Kilcher, merely because the Committee said at they took into consideration that this organization might be combined with the apportionment board, and the word used in the apportionment article is "board".

PRESIDENT EGAN: Would the Chief Clerk please read the proposed amendment as it is before us at the present time.

CHIEF CLERK: "Section 12, page 4, lines 20 and 21, page 5, line 3, insert the words 'or board' after the word 'commission'."

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. White be

adopted by the Convention? All those in favor of adopting the proposed amendment will signify by saying "aye", all opposed by saying "no". The "ayes" have it and the proposed amendment is ordered adopted. Mr. Hinckel.

HINCKEL: May I ask another question?

PRESIDENT EGAN: You may ask your question if there is no objection, Mr. Hinckel.

HINCKEL: Did I overlook a discussion on how this legislature was going to regulate this executive branch board or has that been answered?

PRESIDENT EGAN: Could the Committee answer that question?

HINCKEL: I thought there were two separate branches.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: The way it reads the legislature would establish it; it would be contained within the executive; and the legislature would regulate it; but the intent was, and I speak for the whole board, the intent was that the legislature would establish such a board or commission by law and it would function and lie within the executive department to more or less direct and regulate its activities. That was the intent. I can see here, as I saw it before you mentioned it, the dual possible interpretation, and I hope that this will be noted for the benefit of Style and Drafting Committee.

PRESIDENT EGAN: Are there other amendments to Section 12.

HURLEY: I have one.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment by Mr. Hurley.

CHIEF CLERK: "Section 12, line 25, page 4, strike the words 'at the end of' and line 1, page 5, strike 'the session unless disapproved,' and insert therefor the words 'when approved'."

HURLEY: I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Hurley moves the adoption of the proposed amendment. Is there a second to the motion?

RILEY: I second the motion.

PRESIDENT EGAN: Mr. Riley seconds the motion. Is there discussion of the proposed amendment? Mr. Hurley.

HURLEY: Mr. President, I detect a sleepy feeling on some of the parts of the delegates on this matter, but I think this is a crucial one and one of which I recognize there are good arguments on both sides, but I feel that I should bring the amendment before the group to determine what the feeling of the group is. There is a very distinct difference between the wording as it was before and the wording as it is now. At least, I intend that there be a distinct difference. The wording as it was before was a self-executing proposition where the board made a recommendation and if the legislature didn't by resolution accept it, it became law. Now, I am reactionary enough, I guess, to think that is kind of a bad thing. I can

NATIONAL MUNICIPAL LEAGUE

State Constitutional Convention Studies

Number Nine

**ALASKA'S CONSTITUTIONAL
CONVENTION**

VICTOR FISCHER

Institute of Social, Economic and Government Research
University of Alaska

Published by

University of Alaska Press 1975

that laid the basis for a strong and independent judiciary.⁸⁵ While they concurred with the basic objectives, the consultants stated that:

These sections in particular, however, go a long way toward withdrawing the judicial branch from the control of the people of this state and placing it under that of the organized bar. No state constitution has ever gone this far in placing one of the three coordinate branches of the government beyond the reach of democratic controls. We feel that in its desire to preserve the integrity of the courts, the convention has gone farther than is necessary or safe in putting them in the hands of a private professional group, however, public-spirited its members may be.

The consultants then suggested a number of revisions that would, in their view, democratize the proposed system by providing for legislative confirmation of attorney members of the judicial council, adding a superior court judge and another lay member to the membership of the council, and other changes. However, the suggestions were not accepted by the meeting of committee chairmen and never reached the convention floor.

Local Government⁸⁶

In providing for the legislative, executive, and judicial branches of government, delegates dealt with subject matter with which they were familiar and on which they had definite opinions. On the other hand, local government was a subject for which there was little Alaska experience to provide a useful point of departure and which provided few useful models. The local government committee, therefore, determined early that innovation was the key to structuring a local government system for Alaska.

Under territorial status, local institutions had undergone only limited development; there was little self-determination at the territorial and even less at the local level. Federal law prescribed the powers of the territorial legislature, severely limiting the scope and types of local government and restricting the powers that could be exercised by cities. For example, counties could not be established, bonding criteria were strictly delimited, and home rule could not be extended to cities.

A New Local Government System

Study of the PAS staff paper⁸⁷ and a review of local govern-

⁸⁵See Chapter 3, pg. 42.

⁸⁶For more information on this topic, see the author's chapter "The Constitution Framework" in Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, pp. 33-65.

⁸⁷Public Administration Service, *Constitutional Studies*, Chapter VIII.

ment experiences throughout the United States, Canada, Scandinavia, Latin America, and other parts of the world convinced committee members that they could look outside Alaska primarily for the purpose of evaluating basic principles and determining what *not* to do. They quickly saw that modern times and Alaska's unique geographic characteristics demanded a totally new and different system from any existing elsewhere. Delegates did not want to saddle Alaska with the conventional jumble of local government jurisdictions, particularly the proliferating special districts and archaic counties. Only an infinitesimal part of Alaska's 586,400 square miles was organized (about thirty cities and fifteen special districts); the bulk of the territory had no local government whatsoever. Thus, delegates faced a situation which invited, almost demanded, innovation. Accordingly, the convention's local government committee, aided by several consultants, proceeded to design a local government system adapted to Alaska and the times.⁸⁸

Since there were no direct precedents, the committee decided that the local government article should consist of general statements and policy, rather than detailed prescriptions and criteria. The first draft article presented to the convention stated the general purpose was to provide a maximum of self-government to people in all parts of Alaska. To meet this goal, two basic local government units were established—boroughs and cities. This framework was designed to accommodate today's needs and tomorrow's growth and development.⁸⁹ The committee then set forth the principles underlying the proposed local government system:

1. Self-Government. The proposed article bridges the gap now existing in many parts of Alaska. It opens the way to democratic self-government for people now ruled directly from the capital of the territory or even Washington, D.C. The proposed article allows some degree of self-determination in local affairs whether in urban or sparsely populated areas. The highest form of self-government is exercised under home rule charters which cities and first class boroughs could secure.

⁸⁸Principal consultants were Weldon Cooper and John Bebout. Primary references included the PAS staff study and George W. Rogers' *A Handbook on Alaska Regionalism*, Office of the Governor, Juneau, Alaska, November 21, 1955 (mimeo). The seven members brought to the committee a variety of backgrounds and experiences: large-city and small-town mayors, city councilmen, municipal utility board membership, secretary of League of Alaska Cities; they included businessmen, a civil engineer, a professional city planner, a commercial fisherman, a bush pilot, and a minister. Significantly, there were no attorneys and no member represented the special interests of education.

⁸⁹*Proceedings*, Appendix V, p. 47.

2. One basic local government system. The proposed article vests all local government authority in boroughs and cities. It prevents creation of numerous types of local units which can become not only complicated but unworkable.
3. Prevention of overlapping taxing authorities. The proposed article grants local taxing power exclusively to boroughs and cities. This will allow consideration of all local needs in the levying of taxes and the allocation of funds. It will lead to balanced taxation. Single interest agencies with taxing authority often do not realize needs other than their own.
4. Flexibility. The proposed article provides a local government framework adaptable to different areas of the state as well as changes that occur with the passage of time. It allows classification of units on the basis of ability to provide and finance local services. It allows optional administrative forms, adoption of home rule charters, boundary changes, etc.
5. State interest. The proposed article recognizes that the state has a very definite interest in and concern with local affairs. For example, the credit of the state is indirectly involved in local financial matters, and local units are the agencies through which many state functions are performed. The proposal therefore gives the state power to establish and classify boroughs, to alter boundaries of local units, to prescribe powers of noncharter governments, to withhold authority from home rule boroughs and cities, and to exercise advisory and review functions.⁹⁰

The Borough Concept

As the committee was evolving these principles, its members agreed that some type of unit larger than the city and smaller than the state was required to provide both for a measure of local self-government and for performance of state functions on a regionalized basis. They also agreed "that any form of local government for Alaska that would be similar to counties would need a broader scope, should have authority to perform all services and should provide a maximum amount of local self-government."⁹¹ The result was the borough concept—an areawide unit that while different from the traditional form of the county, was in effect a modernized county

⁹⁰*Ibid.*, pp. 47-48.

⁹¹*Ibid.*

adapted to Alaska's needs.⁹² As seen by delegates, the inadequacies of conventional counties were limited functional jurisdiction, frozen boundaries, an overabundance of constitutionally established elective offices, inadequacy of fiscal powers, and lack of specifically local (as against state) governmental authority. They noted also that numerous special districts were being created to fill service gaps left by counties and municipalities, resulting in a multiplicity of overlapping tax jurisdictions.

To overcome such deficiencies, the initial principles set forth by the committee for consideration in the formation of the new areawide government units included these guidelines:

- 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.
- Units should be large enough to prevent too many subdivisions in Alaska; they should be so designed as to allow the provision of all local services within the boundaries of a single unit, thus avoiding multiplicity of taxing jurisdiction and overlapping, independent districts.
- The state should have power to create, consolidate, subdivide, abolish, and otherwise change local units.
- Creation of units should be compulsory, with provision for local initiative.
- Boundaries should be established at the state level to reflect statewide considerations as well as regional criteria and local interests, and must remain flexible in order to permit future adjustment to growth and changing requirements for the performance of regional functions.
- Units should cover large geographic areas with common economic, social, and political interests.

⁹²Almost unending controversy surrounded the selection of the name "borough." While there were strong proponents for the word "county" (as well as canton, division, province, and others), the majority believed that the term had such a definite and negative connotation that its use had to be avoided to preclude rigid thinking and restrictive legal interpretation. It was believed that a different name would be more readily interpreted in the context of the Alaska Constitution. Black's Law Dictionary defines "borough" as "a place organized for local government purposes." See *Minutes*, 18th, 29th Meetings; Report of Local Government Committee, January 18, 1956 "Commentary on Local Government Article," *Proceedings*, Appendix V, pp. 58-59; *Proceedings*, pp. 2618-19, 2777-87, 3599-3608, 3621-25, 3627.

- Local units should have the maximum amount of self-government and have authority to draft and adopt charters; organized units should have the authority to perform any function, to adopt any administrative organization, and to generally undertake any action that is not specifically denied by the legislature.⁹³

When the local government article came before the convention, the delegates did not question the need for an areawide unit. Similarly, they accepted without argument most of the basic concepts evolved by the committee, even though many ideas were quite tentative and subject to further evolution upon statehood.

Most of the floor discussion on local government involved questions and explanations; there were few proposals for substantive amendments. Thus, the convention gave consideration to whether boroughs should be established on a voluntary or compulsory basis. The committee had previously decided that, although voluntary incorporation was preferable, organized boroughs should be created without approval in the area if considered necessary by the state, because the borough would, as appropriate, carry out state functions. Also, 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."⁹⁴ Committee members anticipated, however, that the legislature might choose to provide the local people with the opportunity to vote upon the issue—a referendum,⁹⁵ and that the state would offer adequate inducement to local people to accept organized borough status and to initiate incorporation.⁹⁶

Unlike the organized borough, legally a municipal corporation, unorganized boroughs were to be instrumentalities of the state. The legislature was to have the same authority within these boroughs as the governing bodies (assemblies) of organized boroughs. By permitting the legislature to act as the borough assembly, the general prohibition against local legislation was overcome, and laws could be enacted for differential performance of functions in accordance with the needs of different regions.

Service areas were authorized to be established by organized boroughs (and by the legislature in unorganized boroughs) as another

⁹³All Minutes, Proceedings, Appendix V, pp. 48-50.

⁹⁴Proceedings, pp. 2673-74.

⁹⁵*Ibid.*, pp. 2674-76.

⁹⁶*Ibid.*, pp. 2650-51.

method of meeting requirements for different services. Initially, service areas were conceived as a means of providing services within a limited part of the borough in which taxes, assessments, and charges could be levied to cover the cost of such services. The approach was subsequently expanded to include areawide services that might be administered by special instrumentalities such as health or school districts. In all cases, however, service areas were to be creatures of boroughs and function under borough fiscal control.

In evolving the borough concept, delegates were quite aware that they were only delineating the general structure of local government. While they reviewed various ways in which their ideas might be applied, they realized it was not possible, nor was it desirable, to delineate a detailed system. Instead, they attempted to anticipate future needs and provide the broad principles and processes for dealing with them. In particular, the convention was concerned with borough-city interaction, with organization for schools, and with the exercise of continuing state responsibility. The latter was deemed particularly important to assure the appropriate growth of local government from the base provided in the constitution.

Borough-City Relations

The relationship between boroughs and cities, whether existing or in the future, was of special concern to the convention. Initially, the Local Government Committee, in an attempt to avoid any overlapping or duplicative structures of government, had considered doing away with cities altogether. But in exploring this and other similar options, the delegates realized that the city was the only existing unit of general local government in Alaska and that its outright abolition could create administrative and political problems. They therefore abandoned any ideas of major restructuring and decided instead that the status of cities should continue to exist and not be changed directly by the constitution.

The delegates stipulated, however, that the city should be an integral part of the borough in which it was located, and other provisions were made with the intent of encouraging cooperation between cities and boroughs. These included joint service of city councilmen on the legislative bodies of both the city and the borough, joint performance of functions, and voluntary transfer of functions from city to borough. The objective throughout was to assure that wherever functions overlap they should be integrated. It was the committee's belief that maximum cooperation would result from coordination between the city council and the borough assembly.

Although joint council-assembly service was seen by the committee as a means of fostering understanding and cooperation, some delegates repeatedly expressed concern about the extent to which cities might dominate the borough through direct representation on the assembly. Some also believed that this approach, instead of minimizing conflict, would lead directly to it. However, delegates generally accepted the basic objectives of borough-city coordination and nonduplication of functions, and lacking more acceptable alternatives, the convention supported the committee's approach.

Borough-School Relations

Education and local government relationships were also given extensive discussion. As at the state level, the Local Government Committee saw education as a function of general government and made no special provision for school districts in the local organizational structure. In the major urban areas, education was the responsibility of independent school districts. These districts were subject to budgetary control by cities within their boundaries, and the Local Government Committee proposal was predicated on passing future fiscal control to the areawide borough. As in the case of the executive article, however, an intense effort was made before the committee and on the floor to endow education with administrative and fiscal autonomy.

An amendment was proposed by Maurice Johnson of Fairbanks to grant school districts, and not just cities and boroughs, independent authority to exercise the powers of local government and of taxation. The arguments for the proposed change were, essentially, (1) that educational needs and the taxes necessary to meet these needs can be determined best by those responsible for education, and that (2) education was so much more important than other local functions that fiscal allocations for this purpose should not be subject to borough approval. The amendment was rejected by a forty-three to nine vote. The majority feared independent access by school boards to the local tax base; they believed that separate status for education would, in delegate George Sundborg's words, tend to make:

... the school districts within our cities and boroughs ... independent of the people of Alaska as they consider the other responsibilities and functions of government.⁹⁷

While the convention did not approve fiscal independence for

⁹⁷*Ibid.*, pp. 2696-2708.

schools, it did recognize that there could be separate administration of the education function through service areas coterminous with or located within organized or unorganized boroughs. Moreover, school boards and district organizations could exist within the overall borough structure. Convention discussion made it clear, however, that no matter how the school functions were organized, only the borough assembly could authorize the levying of local taxes for education purposes.⁹⁸

The convention similarly went along with the Local Government Committee in denying school boards representation on the borough governing body. The rationale was again—no special treatment for the school function:

... If a specific service like education is to be represented, then health should be represented, if we have a health service area; if we have a fire protection district, they should be represented, and what we [the committee] wanted to avoid in this was the specific seating of people with just one interest on the borough assembly.⁹⁹

While convention deliberations show that the delegates generally viewed education as a borough function, they also considered it a concurrent state responsibility as set out in Article VII, of the constitution which stipulates that the state must provide for a system of public education throughout the state.

State-Local Relations

In general, the constitutional convention saw the role of the state as critical in making the local governmental system work. Several factors strongly argued for a continuing state responsibility for local affairs, such as:

- The lack of any general government beyond the city.
- A tradition of territorial government responsibility for services beyond incorporated communities.
- The varying levels of local government capability and of the requirements for local services throughout Alaska.
- The realization that further detailed study and planning was necessary to establish a new governmental system.

Therefore, in addition to dealing with local government organi-

⁹⁸*Ibid.*, pp. 2620, 2630, 2633, and 2707.

⁹⁹*Ibid.*, p. 2623.

zation, Article X includes the following provisions for state authority and responsibility:

- Responsibility is vested in the legislature for establishing procedures and standards under which boroughs will be created and classified.
- The legislature is established as the governing body for unorganized boroughs and has responsibility for provision of services in such boroughs.
- A state-level local boundary commission is given responsibility for changes in local government boundaries subject to disapproval by the legislature.
- An executive agency is established in state government to deal with local affairs.
- Authorization is granted for joint exercise of powers by local governments and the state.

While there was general convention agreement about the importance of the state role in local affairs, there was considerable floor debate about the proposal to create a "local government agency"—the only administrative body specifically provided for in the executive branch. Delegates questioned this not because it was considered undesirable, but because they had generally subscribed to the principle that, unless a grave need existed, no agency, department, commission, or other body should be specified in the constitution. As Delegate John Hellenthal stated:

Unless there is some very, very compelling reason given for including such an agency as proposed in Section 14 in the constitution (the local government agency), I think we're violating the principles and policies we've already adopted here.¹⁰⁰

However, in view of the general belief that success of the local government plan depended upon existence of an effective agency at the state level, the delegates provided for a mandatory agency in the constitution.

Home Rule

Convention delegates did not believe a strong state role to be inconsistent with a commitment to maximum local self-government. They envisioned a self-government concept which would apply not

¹⁰⁰*Ibid.*, p. 2670.

only to home-rule cities and boroughs with their own charters, but would also extend to local units operating under the general local government laws of the state. The concept was also applied to unorganized boroughs, where it could take the form of local participation in state policy making and in providing state services. Thus, home rule was held to be the vehicle for strengthening both state and local governments by permitting the people to deal with local government adaptation in a state with great variations in geographic, economic, social, and political conditions.

Believing that local governments should have freedom to perform what functions they desired and to design their own administrative organization, the committee rejected the home rule approaches of other states that enumerated specific powers or which made a vague grant of local government powers. It, therefore, also rejected suggestions of the National Municipal League's Model State Constitution, which included a general grant of home rule authority, a list of major powers, and a statement to the effect that the enumeration of powers should not be deemed to restrict the general grant.¹⁰¹ Instead, it chose to devise its own home rule clause: "A home rule borough or city may exercise all legislative powers not prohibited by law or by charter."¹⁰² The intent of this provision was expressed by the Local Government Committee:

The grant of powers is to be based upon "legislative powers" rather than a specific enumeration. Enumerations have frequently been restrictively interpreted by the courts. Nor was it felt desirable that the grant be on the basis of powers covering "local affairs" or "local government." Such terms have also given rise to continuous judicial interpretation, causing great uncertainty in what the actual powers of local government are. The grant of "legislative" power would be subject to restrictions contained in the constitution, to powers specifically withheld by the legislature, and to powers withheld by the people in the adoption of their local charters.¹⁰³

"Legislative powers," as used here, meant that a home rule government might exercise the same powers available to the state

¹⁰¹National Municipal League, *Model State Constitution*, 1955, Section 804.

¹⁰²Constitution, Article X Section 11. This approach is similar to the type of home rule that evolved in Texas after many years of judicial interpretation and abandonment of the doctrine that the Texas home rule amendment granted only "local government powers." See John P. Keith, *City and County Home Rule in Texas*, Institute of Public Affairs, University of Texas, 1951. Keith's study was used by the committee in developing the Alaska approach. For a recent review of home rule in Alaska, including its constitutional background and intent, see Gerald R. Sharp, "Home Rule in Alaska: A Clash Between the Constitution and the Court," *UCLA-Alaska Law Review*, Vol. 3, No. 1, Fall 1973.

¹⁰³*Minutes*, 24th Meeting

legislature.¹⁰⁴ However, the committee recognized that home rule could not be absolute. Delegates believed that the legislature should have the authority to deny local exercise of specific powers when necessary in behalf of an overriding state interest or to resolve conflicts of authority between home rule cities and home rule boroughs.

Convention action was directed in large part toward further liberalization of home rule coverage; no delegate objected to the proposed home rule approach. By floor action, delegates permitted the legislature to extend home rule powers to other than first class cities and boroughs.¹⁰⁵ The only restrictive amendment would have eliminated the self-executing charter drafting provision and would instead have made home rule implementation subject to future legislative action. This, however, was turned down by the delegates.¹⁰⁶

To assure that home rule and other innovative approaches would not be undermined, the Local Government Committee made a special point of specifying in a preamble to the proposed article that "A liberal construction shall be given to the powers of local government units."¹⁰⁷ Fearing that traditional legislative and judicial doctrines might be applied to Alaska's new local system, the committee considered the preamble necessary to give both the legislature and the courts some policy guidance in implementing the article. The committee hoped that the liberal construction clause would help assure that the new system did not become encumbered by restrictive judicial interpretation; it was seen as a step toward achieving the general purposes and intent of the article.¹⁰⁸

When the local government article came before the convention, an amendment was introduced to strike the liberal construction clause.¹⁰⁹ A number of delegates who were also lawyers supported elimination of the provision with the argument that:

1. The article itself was plain and concise and would not present difficult interpretation, either by the legislature or by the courts.
2. Under *McCulloch vs. Maryland*, the U.S. Supreme Court had said that an delegation of power must be construed in the manner most beneficial to the people, and that this construction would be

¹⁰⁴Thus, the Local Government Committee deemed it possible that resources development could be a function of Alaska local governments, even though such a power could not come under the traditional concept of what is "local" or be included in the usual enumeration of local powers.

¹⁰⁵*Proceedings*, pp. 2736-2744

¹⁰⁶*Ibid.*, pp. 2733-36.

¹⁰⁷*Constitution*, Article X, Section 1.

¹⁰⁸*Minutes*, 23rd and 26th Meetings.

¹⁰⁹*Proceedings*, pp. 2690-96.

obligatory upon the court in interpreting the article.

3. In any case, articles of the constitution should be construed strictly in accordance with the constitution rather than given liberal interpretation.

The committee's reasons for including the liberal construction clause were:

1. Under the so-called "Dillon' Rule," powers of local government were to be strictly interpreted, and explicit provision was required to ensure sufficient scope and flexibility under the article and to provide the legislature and local governments with sufficient powers to carry out the intent of the article.
2. Even though home rule boroughs and cities might be generally secure in the exercise of their powers under the constitution, nonhome rule units would require the protection of this clause.
3. The vagueness of the local government article on how the new system was to be implemented made it essential that the legislature and the courts construe the article liberally in order to obtain strong home rule government.

In the end, convention delegates were almost evenly split on this issue, with the liberal construction provision being retained by only one vote, twenty-six to twenty-five. The basic principle of maximum local self-government was not challenged at any time.