

**HB**

**121**



*4/20/05  
Coghill move from comm  
w/nd recs & fr  
no objection*

24-LS0396S  
Cook  
4/18/05

*4/20/05  
Coghill moved  
as working  
document  
no objection*

**CS FOR HOUSE BILL NO. 121( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to consolidating or abolishing certain road service areas in certain**  
2 **second class boroughs; and providing for an effective date."**

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

4 **\* Section 1. AS 29.35.450(c) is amended to read:**

5 (c) If voters reside within a service area that provides road, fire protection, or  
6 parks and recreation services, abolishment of the service area is subject to approval by  
7 the majority of the voters residing in the service area who vote on the question. A  
8 service area that provides road, fire protection, or parks and recreation services in  
9 which voters reside may not be abolished and replaced by a larger service area unless  
10 that proposal is approved, separately, by a majority of the voters who vote on the  
11 question residing in the existing service area and by a majority of the voters who vote  
12 on the question residing in the area proposed to be included within the new service  
13 area but outside of the existing service area. A service area that provides road, fire  
14 protection, or parks and recreation services in which voters reside may not be altered

1 or combined with another service area unless that proposal is approved, separately, by  
 2 a majority of the voters who vote on the question and who reside in each of the service  
 3 areas or in the area outside of service areas that is affected by the proposal. This  
 4 subsection does not apply to a proposed change to a service area that provides fire  
 5 protection services that would result in increasing the number of parcels of land in the  
 6 service area or successor service area if the increase is not [NO] more than six percent  
 7 and would add not [NO] more than 1,000 residents. This subsection does not apply  
 8 in a second class borough to abolishment of a road service area or consolidation  
 9 of two or more road service areas if

10 (1) taxes have not been levied in the service area for road  
 11 maintenance or construction during the last 12 months and there is no balance in  
 12 any account available to pay for these road services for the service area;

13 (2) during the last 12 months, the service area board has not met  
 14 with a quorum present and in accordance with law; or

15 (3) there are no road maintenance contracts in effect for the  
 16 service area or the existing road maintenance contracts fail to provide for  
 17 minimum road standards required by law that are necessary to protect the  
 18 borough from civil liability.

19 \* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

# Alaska State Legislature

## House of Representatives




State Capitol, Rm. 214  
Juneau, Ak 99801-1182  
(907) 465-3764

Official Business

### COMMITTEE ON RULES Representative Norman Rokeberg, Chairman

#### MEMORANDUM

TO: Those Interested in House Bill 121

FROM: Janet Seitz  
House Rules Committee Staff 

DATE: April 18, 2005

RE: HB 121

Following is the amended language [taken from the Fairbanks North Star Borough suggestion].

Some time today or tomorrow, I should have an actual blank CS with this language in it but wanted to get this to you for your review.

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE [REDACTED]

TO: CSHB 121( ), Draft Version "L"

1 Page 2, lines 10 - 15:

2 Delete all material and insert:

3 "(1) taxes have not been levied in the service area for road  
4 maintenance or construction during the last 12 months and there is no balance in  
5 any account available to pay for these road services for the service area;

6 (2) during the last 12 months, the service area board has not met  
7 with a quorum present and in accordance with law; or

8 (3) there are no road maintenance contracts in effect for the  
9 service area or the existing road maintenance contracts fail to provide for  
10 minimum road standards required by law that are necessary to protect the  
11 borough from civil liability."

**REPRESENTATIVE BILL THOMAS****ALASKA STATE LEGISLATURE DISTRICT 5**e-mail: [Representative.Bill.Thomas@legis.state.ak.us](mailto:Representative.Bill.Thomas@legis.state.ak.us) webpage: [www.akrebublicans.org/thomas/](http://www.akrebublicans.org/thomas/)

State Capitol

Juneau AK. 99601-1182

907-465-3732

888-461-3732

FAX 907-465-2652

**FAX COVER SHEET**

DATE: 4-11-05

TO: Janet Scitz

FROM: Kaci Schroeder

RE: HB 121

PAGES TO FOLLOW: 2

I have just been informed by Tam Cook that our CS will not be ready until tomorrow. Apparently they are backed up and since the meeting isn't until Wednesday, we are getting pushed back. Sorry, as a committee aide, I know how frustrating last minute stuff can be.

Anyway, here is a legal opinion that was drafted up for SB 114 (the companion bill to HB 121) addressing the special legislation issue. The committee may find this useful.

#1

4/13/15 Loghuit  
Conceptual Amendment  
Kertula, Hanis

FNSB Borough Attorney: Rene Broker  
Proposed Amendments (bold type) to 2<sup>nd</sup> Rules CS Draft to HB121 - Road  
Service Areas

*only?*  
This subsection does not apply in a second class borough to abolishment of a road service area or consolidation of two or more road service areas if

(1) **[THE] taxes have not been levied in the service area for [THE] road maintenance or construction services during the last 12 months and there is no balance in any account for the service area available to pay for these road services;**

(2) **the service area board has not legally met for the last 12 months; or**

(3) **there are no road maintenance contracts in effect for the service area or existing road maintenance contracts do not meet legally required minimum road standards necessary to protect the borough from civil liability.**

#### FNSB Background/comments:

(1) The linkage to no fund balance is fine as some service areas (not ours) may be blessed enough to survive on their future fund balances but a delayed trigger for three years is problematic. Last year all of our service areas without levies used the last of their fund balance. Are we trying to say that the Borough taxpayers should pick up their liability/costs of a service area for the next three years? If that is the case then they need to revise state law to allow this future three year funding.

(2) Unfortunately service areas continue to meet even though they do not legally have a quorum (they are citizen volunteers who are just trying to do their best). For example most of the service areas with only one commissioner have continued to have meetings even though legally they need at least two to have a quorum. Thus, just saying they had a meeting makes that issue unnecessarily murky. Also, the borough has been forced to temporarily appoint borough employees in order to enable service areas to lawfully conduct their business. This is an expensive stop gap use of resources that we had hoped this legislation would eliminate.

(3) Service areas could have a contract for once a year snow removal and meet this last criteria. In the meantime their roads could be unsafe, impassable at certain times of the year, and continue to be a significant problem for the Borough. At a minimum the Borough ought to be able to say to our service areas that you at least have to maintain your roads to minimum standards if you want to be a service area. Otherwise, your quasi-efforts are creating a public menace/threat. It is more dangerous to give people some illusion that their roads are being maintained than not to do it at all. In other words, the existence of one small maintenance contract does not eliminate the liability concerns and instead might very well make them worse.

24-LS0396L

Cook

4/11/05

*4/13/05  
Goyette W. Krumm  
dances  
no objection*

**CS FOR HOUSE BILL NO. 121( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY**

**Offered:**

**Referred:**

**Sponsor(s): HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE**

**A BILL**

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11 services during the last 12 months and there is no balance in any account for the  
12 service area;

13 (2) the service area board has not met for the last 12 months; or

14 (3) there are no road maintenance contracts in effect for the  
15 service area.

16 \* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

## Janet Seitz

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**From:** Sally Saddler [sally\_saddler@commerce.state.ak.us]  
**Sent:** Tuesday, April 12, 2005 5:33 PM  
**To:** Kaci Schroeder  
**Cc:** Darwin R Peterson; Athena J Logan; Dan R Bockhorst; Marjorie L Vandor; Janet Seitz  
**Subject:** HB121 2nd Class Boroughs in House Rules

Hi Kaci--thanks for sending over the proposed amendments to SCHB121(RLS). We have reviewed the language and the proposed amendments do nothing to relieve our concern about giving a general law (second class) borough greater flexibility than a home rule borough. The proposed amendments would diminish -- but according to Margie Vandor's prior opinion, not eliminate -- concerns over local and special legislation. We don't plan on being at the hearing unless you request our presence.

---

Sally Saddler  
Department of Commerce, Community & Economic Development PO Box 110800 Juneau, AK  
99811.0800  
Phone: 907.465.2503  
Fax: 907.465.5442  
Email: sally\_saddler@commerce.state.ak.us

# 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

March 31, 2005

**SUBJECT:** Rules Committee action on bills

**TO:** Representative Norman Rokeberg, Chair, House Rules Committee  
Attn: Janet Seitz

**FROM:** Tamara Brandt Cook  
Director *TBC*

On March 17 the Rules Committee reported out a Rules Committee Substitute for HB 121. The bill was returned to the Rules Committee for calendaring on that same day. The Rules Committee is now interested in considering a 2nd CS to replace the original CS it adopted. I originally recommended that the Rules Chair request referral of the bill to it as a standing committee rather than for calendaring because the terms of the referral back to the Rules Committee seem limited to the calendaring role of that committee. I understand that Suzi Lowell, Chief Clerk, has advised that all referrals to the Rules Committee are made "for calendaring," but that it is the practice of the House to accept reports from the Rules Committee even when the referral is apparently for the limited purpose of calendaring.

Given that history and past practice, the Rules Committee may act as a standing committee with respect to HB 121 and report out a different Committee Substitute without further floor action, despite the fact that the Committee has possession of the bill "for calendaring." Of course, the Rules Committee will have to abide by the notice requirements of Uniform Rule 23(a) - (d) when it takes HB 121 up if it is going to consider proposed substantive changes to the bill.

TBC:jad  
05-175.jad

# Alaska State Legislature

## House of Representatives



State Capitol, Rm. 214  
Juneau, Ak 99801-1182  
(907) 465-3764

Official Business

### COMMITTEE ON RULES Representative Norman Rokeberg, Chairman

#### MEMORANDUM

TO: Tam Cook  
Legislative Legal  
FAX: 2029

FROM: Janet Seitz *Janet*  
House Rules

DATE: March 30, 2005

RE: HB 121

After we talked, I talked with Suzi Lowell, our Chief Clerk. She pointed out that all bills referred to House Rules Committee carry the tag "for placement on the calendar."

Due to that, will you please provide a written memorandum covering HB 121 and describe what needs to be done so that the House Rules Committee can consider the bill again in a committee meeting. Your verbal advice to me was that since the House Rules Committee had already heard the bill once, reported the bill back with a Committee Substitute, that Rep. Rokeberg needed to make a motion to have the Speaker re refer the bill back to Rules for further committee action.

The concern is that given that every bill carries the language that it is being referred to the Rules Committee "for placement on the calendar" would be this necessary in all instances where the committee wants to hear the legislation or is it just necessary because the committee has already heard and reported the bill back to the full body?

Your written advice would be appreciated. We will be sharing it with the Clerk's Office.

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 121(RLS)

1 Page 1, line 1, following "abolishing certain":

2 Insert "road"

3

4 Page 2, line 8, following "of a":

5 Insert "road"

6

7 Page 2, line 9, following "more":

8 Insert "road"

9

10 Page 2, lines 10 - 13:

11 Delete "(1) borough's population in 2005 was less than 65,000 or more than  
12 75,000; and

13 (2)"

14

15 Page 2, line 17:

16 Delete ":"

17 Insert "; and

18 (1) taxes have not been levied in the service area for the road  
19 services during the last three years and there is no balance in any account for the  
20 service area:

21 (2) the service area board has not met for at least two years; or

22 (3) there are no road maintenance contracts in effect for the  
23 service area."

# 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: March 17, 2005  
To: Tam Cook, Legal Counsel  
From: Rynnieva Moss, Legislative Aide *R. Moss*  
Re: HB 121

---

I have been trying to figure out a way to make HB 121 a clean bill with no constitutional challenges. One way would be to apply the dissolving language to all boroughs, even though First Class Boroughs can currently deal with service areas by ordinance. The other element would be that the borough could dissolve a service area that has not levy a mill rate for road maintenance for a time period of two years. That would allow the borough to give notice of a clear performance requirement and give the borough a clear cause for dissolving the service area.

I think Representative Stoltze could support the bill. If this sounds logical, could you draft a blank amendment?

Thanks.



*Adopted 4-2*

24-LS03961Y.5  
Cook  
3/14/05

AMENDMENT #1 *Kohring moved*

OFFERED IN THE HOUSE  
TO: CSHB 121(CRA)

*EB W  
BK W*

*UK - Y  
JH - Y  
JC - Y  
NR - Y*

1 Page 2, line 9:

2 Delete all material.

3 Insert "or more service areas if the

4 (1) borough's population in 2005 was less than 65,000 or more  
5 than 75,000; and

6 (2) ~~assembly first determines~~ that the abolishment or"

*Am #2 Berkowitz  
Delete:  
Insert: the borough by ordinance ~~determines~~  
no objection  
adopted*

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSHB 121(CRA)  
 (H) Publish Date: 2/24/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title: Service Areas in RDU: Comm Assist & Ec Dev (405)  
Second Class Boroughs Component: Community Advocacy  
 Sponsor: Community & Regional Affairs  
 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          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                             |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|
| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|

|                               |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|
| <b>CHANGE IN REVENUES ( )</b> |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|

**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (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 excludes second class boroughs from the provisions of AS 29.35.450 (c) if the borough assembly determines that the abolishment or consolidation of the services area(s) is necessary because of one of several conditions. This legislation has no fiscal impact on the operations of the division.

Prepared by: Athena Logan, Local Government Specialist  
 Division: Community Advocacy  
 Approved by: Edgar Blatchford, Commissioner  
 Agency: Commerce, Community & Economic Development

Phone 907.269.4540  
 Date/Time 2/14/05 4:48 PM  
 Date 2/14/2005

# Alaska State Legislature

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



State Capitol, Room 124  
Juneau, AK 99801-1182  
Co-Chairs  
Rep Kurt Olson  
(907) 465-2693 FAX 465-3835  
Rep. Bill Thomas  
(907) 465-3732 FAX 465-2652

## COMMUNITY & REGIONAL AFFAIRS COMMITTEE

Date: 3-07-05

To: Representative Rokeberg, Chair House Rules Committee

From: Representative Thomas, Co-Chair House Community and Regional Affairs  
Representative Olson, Co-Chair House Community and Regional Affairs

Re: Sponsor statement for HB 121 an Act relating to consolidating or abolishing certain service areas in second class boroughs.

---

When the legislature established the state revenue sharing program residents of many subdivisions outside of the city limits that had no maintenance income for their area roads were able to rely solely on revenue sharing money. People formed local service area road commissions and collected revenue sharing money based on the mileage of their service area.

With the termination of the revenue sharing program, many service areas do not have funding for road maintenance and the road commissions are now nonfunctional. As time goes on, the roads that were built under the revenue sharing program are deteriorating. The boroughs are concerned about their liability for the roads even though they have no road powers. There are no funds to maintain the roads, therefore the roads receive no service resulting in safety hazards for all who use them. In addition, the boroughs cannot dissolve the service areas without a vote of the residents.

HB 121 is designed to enable the borough to consolidate or dissolve the service areas that are nonfunctional or are functioning below minimum standards. Consolidation or dissolution will come about by decision of the governing body of the borough after adhering to well defined procedures and a hearing process. Further, HB 121 protects those service areas that are taxing themselves adequately enough to maintain the safety of their own roads. I strongly urge your support of this important piece of legislation.

# LEGAL SERVICES

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

Rynnevaldross

HB 121

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Mail Stop 3101

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

## MEMORANDUM

April 6, 2005

**SUBJECT:** Service areas in second class boroughs (SB 114)

**TO:** Senator Gary Stevens, Chair  
Senate Community and Regional Affairs Committee  
Attn: Melanie Lesh

**FROM:** Tamara Brandt Cook  
Director

TOC

You have shared with me a memorandum dated March 9, 2005 from Marjorie Vandor, Assistant Attorney General, expressing concerns over the constitutionality of SB 112 and asked for my opinion. Although the bill could be attacked based on the two points made in the memorandum, it has a reasonably good chance of being upheld.

(1) Exempting only second class boroughs from the majority vote requirement of AS 29.35.450(c) and not home rule boroughs is contrary to the state constitution framers intent to grant home rule municipalities liberal powers. Ms. Vandor cites in support of this position Lien v. City of Ketchikan, 383 P.2d 721 (Alaska 1963). The court in that case simply held that a statute involving lease procedure that preexisted statehood and was adopted before home rule municipalities were established did not apply to home rule municipalities. The court in a later case, Jefferson v. State, 527 P.2d 37 (Alaska 1974), carefully considered the relationship between statute and home rule powers in the context of Art. X, sec. 11 of the state constitution. The court concluded that the constitution explicitly rejects the test of statewide versus local concern in determining the scope of municipal power. Instead the question is to be resolved based upon whether a particular power or procedure has been prohibited to municipalities by statute. The statutory prohibition must be "either by express terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law. (Id, at page 43; see also Simpson v. Municipality of Anchorage, 635 P.2d 1197 (Alaska Ct App. 1981) Obviously, SB 114 contains an express limitation on home rule municipalities.

(2) Limiting the exemption to second class boroughs raises concerns as to local and special legislation. Article II, sec. 19 provides in part: "The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination."

The test employed by the Alaska Supreme Court under Article II, section 19 is substantially the same as that applied to equal protection analysis. Upon examining the legislative goals and the means used to advance them, the court determines whether the legislation bears a fair and substantial relationship to a legitimate state purpose. State v. Lewis, 559 P.2d 630, 643 (Alaska 1977), cert. denied, 432 US 901 (1977). To satisfy the fair and substantial relationship standard, the classification established by the legislation must be tailored to the purpose of the legislation. The classification must be neither overinclusive nor underinclusive. Isakson v. Rickey, 550 P.2d 350, 362 (Alaska 1976). If the "fair and substantial relationship" standard is met, the bill will not be invalidated because of incidental local or private advantages. Lewis, 559 P.2d at 643. In Lewis, the court agreed that an Act of statewide significance need not have an effect in all parts of the state; legislation does not become "local" merely because it operates only on a limited number of geographical areas rather than on a statewide geographical basis. The Lewis case involved the Cook Inlet land exchange and the court accepted the premise that the application, while only affecting land in Southcentral Alaska, required legislation to be accomplished and was of statewide significance. The court relied heavily on the record developed by the legislature in support of the need for the land exchange and the decision to resolve serious issues surrounding Native land selections under the Alaska Native Claim Settlement Act through legislation authorizing the Cook Inlet land exchange.

In a case where a violation of sec. 19 was found, the court said that legislation establishing the Eagle River Borough was special and peculiar to the locality where the borough was established. Since there was nothing in the nature of the Eagle River-Chugiak area that justified a departure from the general law scheme for the establishment of boroughs, the Act violated sec. 19. Abrams v. State, 534 P.2d 91 (Alaska 1975).

SB 112 does not apply in a purely local or special manner to only one borough or place in the state. Rather, it is of general applicability to all second class boroughs that now exist and, potentially, to second class boroughs that are formed in the future. Many statutes that deal with municipal powers make distinctions between boroughs based on classification. (See for example AS 29.35.160 - 29.35.350) Indeed, Art. X, sec. 3 specifically states: "The legislature shall classify boroughs and prescribe their powers and functions."

TBC:lmb

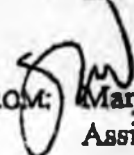
05-110.lmb

**MEMORANDUM****State of Alaska**

Department of Law

**TO:** Sally Saddler  
Legislative Liaison  
Department of Commerce, Community  
and Economic Development

**DATE:** March 9, 2005**OUR FILE:****TELEPHONE NO:** 465-3600

**FROM:**  Marjorie Vandor  
Assistant Attorney General  
Labor & State Affairs Section - Juneau  
Department of Law

**SUBJECT:** Senate Bill 114

On behalf of Commissioner Blatchford, you have asked for our legal opinion as to certain constitutional concerns that have been raised by your department with respect to Senate Bill 114,<sup>1</sup> a bill relating to consolidating or abolishing certain service areas in second class boroughs. The bill amends AS 29.35.450(c), by inserting language that exempts second class boroughs from the requirement that a service area may be abolished or consolidated only if approved by majority vote. The exemption will apply if a second class borough assembly determines that abolishment or consolidation is necessary to protect the finances of the borough, to resolve financial or legal problems of a service area, or to ensure that adequate service is provided to the residents of a service area.

In brief, the concerns that have been raised by the department in earlier legislative committee hearings on a similar bill (HB 121) are:

1. by exempting only second class boroughs from the majority vote requirement of AS 29.35.450(c), and not extending it to home rule boroughs (in particular), is incongruous with article X, section 11 of the Alaska Constitution and contrary to the framers intent to grant home rule municipalities liberal powers; and
2. by limiting the exemption to second class boroughs in AS 29.35.450(c) as proposed in this bill raises concerns as to local and special legislation.

With respect to the first issue, the limitations as to how a borough can abolish or consolidate its service areas per AS 29.35.450(c), limitations imposed on home rule boroughs as well as general law boroughs through AS 29.35.450(d), is arguably contrary

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<sup>1</sup> There is an identical bill that was introduced in the House, HB 121.

Sally Saddler

March 9, 2005

Page 2

to the constitutional grant of authority to home rule municipalities to have liberal control over matters purely of local concern. How service areas are established, governed, altered, abolished, and combined are local matters historically dealt with in home rule charters as part of the organic law of a particular home rule municipality. As stated by the Alaska Supreme Court in *Lien v. City of Katohikan*, 383 P.2d 271 (Alaska 1963) where a home rule municipality is concerned with a matter of purely local concern, the charter and not a legislative act is looked to in order to determine whether a particular power has been conferred upon the municipality. It would be incongruous to recognize the constitutional provision stating that a home rule [city] municipality "may exercise all legislative powers not prohibited by law or by charter" (Alaska Const. art. X, sec. 11), and then to say that the power of a home rule city is measured by a legislative act. *Id.* at 723.<sup>2</sup>

And, with respect to the amendment proposed in this bill, which further impinges on the constitutional authority of home rule boroughs by not providing them with at least as much discretion in altering or consolidating its services areas as being allowed to second class boroughs, could also be deemed by a court to be incongruous with article X, section 5 and the framers' intent to grant home rule boroughs liberal powers.

As to the issue of local and special legislation (i.e., exempting only second class boroughs from the majority vote requirements in certain situations), this limitation may violate the constitutional prohibition against special and local legislation under the Alaska Constitution. Such a specific classification of borough raises issues of whether this provision in the bill violates the prohibition in article II, section 19 of the Alaska Constitution against local and special acts. Article II, section 19 states, in pertinent part:

The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination.

There are 16 boroughs in the state. Borough make-up in the state is as follows: three (3) Unified Home Rule boroughs<sup>3</sup>, six (6) Home Rule boroughs<sup>4</sup>, and seven (7)

<sup>2</sup> In *Lien*, the issue concerned the leasing of city property. The charter provision allowing the lease of city property was ruled to be controlling over a statute that prohibited the lease because the court found the lease of city property was an issue of local, not statewide, concern. *Id.*

<sup>3</sup> Municipality of Anchorage, City and Borough of Juneau, and City and Borough of Sitka.

Sally Saddler

March 9, 2005

Page 3

Second Class boroughs<sup>5</sup>. The ultimate question to be asked is whether the legislature's special treatment of one class of borough is "reasonably related to a matter of common interest to the whole state." *Abrams v. State*, 534 P.2d 91, 94 (Alaska 1975) citing *Boucher v. Engstrom*, 528 P.2d 456, 463 (Alaska 1974).<sup>6</sup>

In *State v. Lewis*, 559 P.2d 630 (Alaska 1977), *cert. denied*, 432 U.S. 901 (1977), the court found the statute authorizing a trade of land between the federal government, the state and a Native regional corporation did not violate article II, section 19 of the Alaska Constitution. The court found that the land trade was unique, was of statewide concern, and that the legislation was "as broad as the conditions to which it respond[ed]" could allow. *Lewis*, 559 P.2d at 644. Applying the *Lewis* standards to this bill, it is questionable that there is a rational basis to exempt one class of general law borough from the requirements of a majority vote, while continuing to impose it on other boroughs that may need the exemption for the identical reasons as allowed in this bill (i.e., finances of the borough, etc.). Thus, it is questionable whether providing the exemption to only one class of borough (i.e. second class) is "as broad as the conditions to which it [this bill] responded" could allow.

Finally, under *Lewis*, the legislature must show a rational basis, a good reason, to justify the special treatment.<sup>7</sup> And, in the end, it will be the province of a court to determine if this proposed statute violates the prohibition against special and local legislation Alaska Const. art. II, sec. 19.

In summary, this bill raises complex policy and legal concerns.

MV/ba

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<sup>4</sup> Denali Borough, Haines Borough, Lake and Peninsula Borough, North Slope Borough, Northwest Arctic Borough, and City and Borough of Yakutat.

<sup>5</sup> Aleutians East, Bristol Bay, Fairbanks North Star, Kenai Peninsula, Ketchikan Gateway, Kodiak Island, and Matanuska-Susitna.

<sup>6</sup> In *Abrams*, the statute was found to violate article II, section 19 of the Alaska Constitution because it created a borough in a manner different from that for incorporating other boroughs and no evidence was presented indicating any valid reason for special incorporation procedures applicable only to the one proposed borough.

<sup>7</sup> In 1978, the court articulated a unified equal protection analysis that utilizes a sliding scale to weigh the interests involved in any classification that avoids distinguishing between suspect and nonsuspect classifications. *State v. Erickson*, 574 P.2d 1 (Alaska 1978). We note that there has not been a case involving the local and special legislation prohibition since the unified equal protection test was adopted in *Erickson*.



DIVISION OF COMMUNITY ADVOCACY

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*Frank H. Murkowski, Governor*

March 8, 2005

The Honorable Paul Seaton, Chair  
House State Affairs Committee  
Alaska State Capitol  
Room 102  
Juneau, AK 99801-1182

Dear Representative Seaton:

This is to follow up the House State Affairs Committee meeting of Saturday, March 5, 2005. During the Committee's review of CSHB 121(CRA), several references were made to testimony on the bill provided by Dan Bockhorst of this agency on March 1. A copy of that testimony is attached for your ease of reference.

During the hearing, statements were made that Mr. Bockhorst's analysis of HB 121 with regard to home-rule boroughs was in error and that home-rule boroughs already have the power through charter amendments to abolish service areas.

Upon further review, I believe that Mr. Bockhorst's testimony was accurate and reflected legitimate concerns regarding principles of local government.

If HB 121 takes effect, it will make it easier for a select group of boroughs (second-class boroughs) to abolish and consolidate certain types of service areas. However, home rule boroughs would not have the same authority. We are basing our opinion on AS 29.35.450(d), which states that the service area provisions apply to a home rule or general law municipality, and AS 29.10.200(46) which lists the limitations on home rule powers. This list includes voter approval of alteration or abolishment of service areas as a limitation.

To my knowledge, it would be the first time that State law imposes greater restrictions on home-rule boroughs compared to some general-law boroughs.

The Honorable Paul Seaton  
Page 2  
March 8, 2005

While I believe that the testimony previously provided by Mr. Bockhorst, is accurate, we have asked the Department of Law to review our analysis of the matter and provide you with a statement to that effect or to clarify points on which we might have erred. I appreciate the opportunity to clarify concerns raised regarding information this agency has provided.

Sincerely,

DIVISION OF COMMUNITY ADVOCACY



Michael Black  
Director

Enclosures: DCCED Testimony of March 1, 2005

cclenc:

Representative Bill Thomas  
Representative Carl Gatto  
Representative Jim Elkins  
Representative Bob Lynn  
Representative Jay Ramras  
Representative Berta Gardner  
Representative Max Gruenberg  
Marjorie Vandor, Assistant Attorney General  
Department of Law

# DIFFERENCES AMONG HOME RULE, FIRST CLASS, SECOND CLASS AND THIRD CLASS BOROUGHS

Prepared by Local Boundary Commission Staff, February 25, 1994

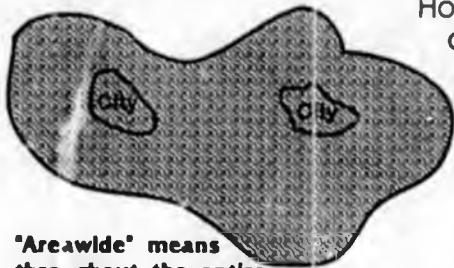
The difference in the powers available to and the duties required of home rule, first class and second class boroughs is minimal. Home rule boroughs, first class boroughs and second class boroughs all have broad capacity to take on various powers. Third class boroughs have limited capacity for areawide and non-areawide powers, but broad capacity for service area powers.

However, authority to exercise any power must be lawfully obtained. There is considerable distinction among the four classes of boroughs concerning the manner in which each may gain authority to exercise a particular power. These distinctions are summarized in the following chart. The chart is followed by a discussion of the topic.

| POWER                       | AREAWIDE  |             |              |             | NON-AREAWIDE |             |              |             | SERVICE AREA |             |              |             |
|-----------------------------|-----------|-------------|--------------|-------------|--------------|-------------|--------------|-------------|--------------|-------------|--------------|-------------|
|                             | Home Rule | First Class | Second Class | Third Class | Home Rule    | First Class | Second Class | Third Class | Home Rule    | First Class | Second Class | Third Class |
| Education                   | .         | .           | .            | .           | .            | .           | .            | .           | .            | .           | .            | .           |
| Taxation of Property        | .         | .           | .            | .           | .            | .           | .            | .           | .            | .           | .            | .           |
| Taxation of Sales           | +         | .           | .            | .           | .            | .           | .            | .           | .            | .           | .            | .           |
| Plan, Plat., Land Use Reg.  | +         | .           | .            | NA          | .            | .           | .            | .           | NA           | ◆           | ×            | ◆           |
| Transportation Systems      | ◆         | ×           | ×            | NA          | ◆            | ×           | ×            | ×           | NA           | ◆           | ×            | ◆           |
| Water Pollution Control     | ◆         | ×           | ×            | NA          | ◆            | ×           | ×            | ×           | NA           | ◆           | ×            | ◆           |
| Air Pollution Control       | ◆         | ×           | ×            | NA          | ◆            | ×           | ×            | ×           | NA           | ◆           | ×            | ◆           |
| Regulation of Animals       | ◆         | ×           | ×            | NA          | ◆            | ×           | ×            | ×           | NA           | ◆           | ×            | ◆           |
| License Day Care Facilities | ◆         | ×           | ×            | NA          | ◆            | ×           | *            | *           | NA           | ◆           | ×            | ◆           |
| Regulate Fireworks          | ◆         | *           | *            | NA          | ◆            | ×           | ×            | ×           | NA           | ◆           | ×            | ◆           |
| Solid Waste                 | ◆         | *           | *            | NA          | ◆            | ×           | ×            | ×           | NA           | ◆           | ×            | ◆           |
| Housing Rehab               | ◆         | *           | *            | NA          | ◆            | ×           | ×            | ×           | NA           | ◆           | ×            | ◆           |
| Economic Development        | ◆         | *           | *            | NA          | ◆            | ×           | ×            | ×           | NA           | ◆           | ×            | ◆           |
| Roads & Trails              | ◆         | *           | *            | NA          | ◆            | ×           | ×            | ×           | NA           | ◆           | ×            | ◆           |
| EMS Communications          | ◆         | *           | *            | NA          | ◆            | ×           | ×            | ×           | NA           | ◆           | ×            | ◆           |
| Regulate Motor Vehicles     | ◆         | *           | *            | NA          | ◆            | ×           | ×            | ×           | NA           | ◆           | ×            | ◆           |
| Development Projects        | ◆         | *           | *            | NA          | ◆            | ×           | ×            | ×           | NA           | ◆           | ×            | ◆           |
| Hazardous Substance Control | ◆         | *           | *            | NA          | ◆            | ×           | ×            | ×           | ×            | ◆           | ×            | ◆           |
| Other Powers Not Prohibited | ◆         | *           | *            | NA          | ◆            | ×           | *            | *           | NA           | ◆           | ×            | ◆           |

- A mandatory power which must be exercised in the manner set out in statute.
- + A mandatory power, however, certain discretion is permitted regarding the manner in which the power is exercised.
- ◆ May be exercised in the manner set out in the home rule charter.
- ×
- \* May be exercised upon non-areawide voter approval.
- ★ May be exercised upon approval of the voters areawide or by transfer of power from all cities within the borough.
- ☆ May be exercised upon approval of the voters areawide, or transfer from all cities and approval of the voters non-areawide.
- ◆ May be exercised upon approval of voters in service area or by all property owners in service area.
- NA Not available
- May be exercised upon approval of voters in service area, DNR for certain state lands.

**MANDATORY AREAWIDE DUTIES**



'Areawide' means throughout the entire borough -- inside and outside cities.

Home rule, first class and second class boroughs must exercise all of the powers noted in this section on an areawide basis.

Third class boroughs must exercise all of these powers on an areawide basis, except planning, platting and land use regulation.

- ◆ **Education.** All classes of borough must establish, maintain and operate a system of public schools on an areawide basis as provided in AS 14.14.060.
- ◆ **Assessment, Levy and Collection of Property Taxes.** All classes of borough must assess and collect property taxes that are levied within their boundaries (areawide, non-areawide, service area and city levies). State laws governing the assessment, levy and collection of property taxes apply equally to all classes of boroughs.
- ◆ **Levy and Collection of Sales and Use Taxes.** All classes of borough must collect sales and use taxes that are levied within their boundaries. Boroughs may levy sales and use taxes on an areawide, non-areawide and/or service area basis.

Not all of the State laws that govern the levy and collection of sales and use taxes apply to home rule boroughs (while they do apply to first, second and third class boroughs).

For example, State law requires that the adoption of a sales tax or an increase in the rate of a sales tax by a first, second or third class borough must be approved by a majority of the voters. That provision does not apply to a home rule borough.

Because the provision does not apply to a home rule borough, the borough's charter would dictate how the borough gains the authority to levy or increase the rate of levy of a sales tax. The charter could be written with terms identical to the law which applies to first and second class boroughs (i.e., a requirement for approval by a majority of the voters). Alternatively, the charter could impose an even greater standard (e.g., a requirement for approval by 2/3 of the voters). Conversely, the charter could allow the Assembly to set the sales tax rate without any requirement for voter approval.

- ◆ **Planning, platting and land use regulation.** Home rule, first class and second class boroughs must provide areawide planning, platting and land use regulation. Again, not all State laws governing such apply to home rule boroughs. First and second class boroughs must comply with all 20 sections in AS 29.40. However, home rule boroughs are compelled to follow only one full section of AS 29.40 and parts of another. For example, first and second class boroughs must adopt a comprehensive plan, however, a home rule borough has no such obligation unless required by charter or borough code. A third class borough is prohibited from exercising areawide planning, platting and land use regulation.

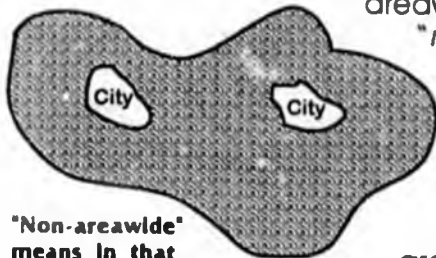
**OPTIONAL AREAWIDE POWERS**

A home rule borough acquires additional areawide powers in the manner set out in its charter. Such might allow the borough to assume some or all powers on an areawide basis by simply adopting an ordinance. Conversely, it could require voter approval for the assumption of some or all additional areawide powers.

A first class or second class borough may assume 5 specific areawide powers by simply adopting an ordinance. These relate to transportation systems, water pollution control, air pollution control, licensing of day care facilities and regulation of animals.

A first class borough may assume any other areawide power *"not otherwise prohibited by law"* by a majority vote at an areawide election or by having the power transferred from all cities in the borough.

A second class borough may assume any other areawide power *"not*



**"Non-areawide" means in that part of the borough outside cities.**

*otherwise prohibited by law"* by a majority

vote at an areawide election, or

power transferred

from all cities in the borough and a majority vote at a non-areawide election.

A third class borough is prohibited from exercising any other power on an areawide basis.

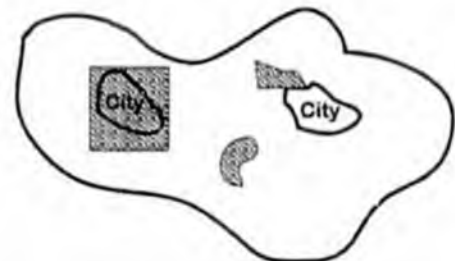
**OPTIONAL NON-AREAWIDE POWERS**

A home rule borough acquires additional non-areawide powers in the manner set out in its charter. Such might allow the borough to assume some or all powers on a non-areawide basis by simply adopting an ordinance. Alternatively, it could require voter approval for the assumption of some or all additional non-areawide powers.

A first class borough may assume any non-areawide power *"not otherwise prohibited by law"* by adopting an ordinance.

A second class borough may assume 13 specific non-areawide powers by adopting an ordinance. These relate to: transportation systems, regulation of fireworks, regulation of animals, solid waste collection and disposal, air pollution control, water pollution control, housing rehabilitation, economic development, local service roads and trails,

emergency services communications regulation of motor vehicles & operators, development projects, and hazardous substance control.



**"Service areas" are parts of the borough receiving higher levels of services -- a service area may include a city.**

A second class borough may assume any other non-areawide power *"not otherwise prohibited by law"* upon non-areawide voter approval.

A third class borough may by ordinance may exercise on an non-areawide basis the power necessary to clean-up or prevent a release of oil or

hazardous substance. A third class borough may not exercise other powers on a non-areawide basis.

### SERVICE AREA POWERS

A borough may create a service area to provide services which are not provided on an areawide or non-areawide basis. A service area may also be used to provide a higher level of service than that provided on an areawide or non-areawide basis (e.g., education, or planning).

A home rule borough gains authority to exercise powers on a service area basis in the manner set out in its charter. Such might allow the borough to exercise some or all service area powers by adopting an ordinance. Conversely, it could require voter approval for the exercise of some or all powers on a service area basis.

A first class borough may, by ordinance, exercise any power on a service area basis that is granted to a first class city or which can be provided on a non-areawide basis by a first class

borough. Such gives first class boroughs authority to exercise "*any power not prohibited by law*" on a service area basis.

A second class borough may also exercise on a service area basis, "*any power not prohibited by law.*" However, it must first gain approval from a majority of the voters in the proposed service area or all of the property owners in the proposed service area.

A third class borough may also exercise "*any power not otherwise prohibited by law*" upon approval of the voters residing in the service area. A third class borough may also establish a service area upon concurrence of the Department of Natural Resources, for an area including only vacant, unappropriated and unreserved state land classified for disposal to individuals. By ordinance a third class borough may provide services in a service area necessary to develop state or municipal land as required by the planning, platting, and land use regulations of the borough. ■



# *Kodiak Island Borough*

## *OFFICE of the MAYOR*

710 Mill Bay Road

Kodiak, Alaska 99615

Phone (907) 486-9301 Fax (907) 486-9374

March 4, 2005

Senator Gary Stevens  
State Capitol, Room 417  
Juneau, AK 99801-1182

Dear Senator Stevens;

On behalf of the Kodiak Island Borough Assembly, I am writing this letter to express strong support for House Bill 121: An Act relating to Consolidating or abolishing certain service areas in second class boroughs; and providing for an effective date.

Over the past several years, the Fairbanks North Star Borough has been struggling to address some serious issues regarding their road service areas.

House Bill 121 is designed to enable the Fairbanks North Star Borough to consolidate or dissolve the service areas that are nonfunctional or are functioning below minimum standards.

Consolidation or dissolution would be enacted by the governing body of the borough only after following the proper procedures and providing for a hearing process. Also, House Bill 121 protects those service areas that are taxing property owners adequately to maintain the safety of their roads.

The Kodiak Island Borough Assembly strongly urges your support of this important piece of legislation.

Sincerely,

OFFICE OF THE BOROUGH MAYOR

Jerome M. Selby  
Borough Mayor

Cc: Representative Gabrielle LeDoux  
Fairbanks North Star Borough  
Mark Hickey, Borough Lobbyist



# Fairbanks North Star Borough

Office of the Mayor

809 Pioneer Road

P.O. Box 71267

Fairbanks, Alaska 99707-1267

907/459-1300

Fax 907/459-1102

Email [mayor@co.fairbanks.ak.us](mailto:mayor@co.fairbanks.ak.us)

February 4, 2005

Representative Bill Thomas, Co-Chair &  
House Community and Regional Affairs  
State Capital, Room 428  
Juneau, AK 99801-1182

Representative Kurt Olson, Co-Chair  
House Community and Regional Affairs  
State Capital, Room 110  
Juneau, AK 99801-1182

Dear Representative Thomas and Olson:

This letter is to express my strong support of House Bill 121. Over the last several years the Fairbanks North Star Borough has been struggling to address some serious issues concerning our road service areas.

As you may know, we have over 100 service areas that are currently attempting to deal with significant changing circumstances, largely financial, arising from the zeroing out of state funding. Currently, we have some of our service areas that have chosen not to tax themselves and provide no service to their residents. Others provide only very limited service and do not have the minimum number of voluntary commissioners. While the Borough bears the ultimate financial responsibility for these service areas, it currently lacks the ability to address these problems through either consolidation or dissolution.

In addition to the liability and financial concerns resulting from struggling service areas, their inability to provide even minimal services to Borough residents presents a real impediment to economic growth in the Borough.

Accordingly, as the Mayor of the Fairbanks North Star Borough I strongly support House Bill 121 as I believe that passage of this bill will enable the Borough to better manage service areas not only to ensure minimum services are provided to Borough residents but also to protect all Borough taxpayers from the consequences of financially strapped service areas.

Sincerely,

Jim Whitaker, Mayor

JW:csm/arb



## Fairbanks North Star Borough

## Assembly

809 Pioneer Road

P.O. Box 71267

Fairbanks, Alaska 99707-1267 907/459-1401

Fax 907/459-1224

Email: [clerks@co.fairbanks.ak.us](mailto:clerks@co.fairbanks.ak.us)

[www.co.fairbanks.ak.us](http://www.co.fairbanks.ak.us)

February 4, 2005

Representative Bill Thomas, Co-Chair  
House Community and Regional Affairs  
State Capital, Room 428  
Juneau, AK. 99801-1182

Representative Kurt Olson, Co-Chair  
House Community and Regional Affairs  
State Capital, Room 110  
Juneau, AK. 99801-1182

Dear Representative Thomas and Olson,

As Presiding Officer of the Fairbanks North Star Borough Assembly, I would like to submit this letter as support of House Bill 121, "An act relating to consolidating or abolishing certain service areas in second class boroughs."

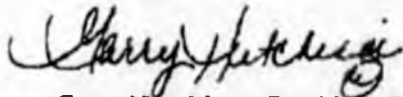
In 2001, amendments were made to AS 29.35.450 adding requirements for an election within service areas when there is a proposal to abolish, replace, or annex tax lots to that area. This was in addition to an election being held in the area that had petitioned for services causing two questions for each election and requiring both questions to pass.

The Alaska Constitution mandates that the local assembly have the authority to manage and make decisions regarding service areas. Service areas are a part of the borough and, according to the Alaska Supreme Court, are not a separate legal entity from the borough and can not sue or be sued. The borough, therefore, bears the ultimate financial responsibility for service areas.

A borough can not legally pass on service area costs to areawide borough taxpayers but some service areas no longer have sufficient funds to pay for the direct costs of providing services and a considerable number of service areas have experienced significant difficulties in maintaining even the minimum number of service area commissioners necessary to legally conduct service area business. Although, the borough bears the ultimate financial responsibility for service areas, the assembly does not have the power to address issues arising from these types of difficulties, particularly in service areas that do not provide any or only provide minimal services. House Bill 121 corrects these problems by allowing boroughs the power to better manage service areas and provide for services to its residents.

The Fairbanks North Star Borough fully supports House Bill 121 and believes its passage will provide for better services for its residents.

Sincerely,



Garry Hutchison, Presiding Officer  
Fairbanks North Star Borough



217 Second Street, Suite 200 • Juneau, Alaska 99801

Tel (907) 586-1325 • Fax (907) 463-5480 • [www.akml.org](http://www.akml.org)

February 14, 2005

Representatives Bill Thomas and Kurt Olson  
House Community and Regional Affairs Committee  
State Capitol  
Juneau, AK 99811

Re: Support of HB 121 "relating to consolidating or abolishing certain service areas in second class boroughs. "

Dear Representatives Thomas and Olson,

The AML Local Government and Public Services Legislative subcommittee has reviewed this bill and strongly supports it. It is consistent with the AML Policy Statement adopted by the AML membership in November 2004.

This bill is also consistent with the Alaska Constitution. Article 10, Section 5, which states that service areas within a borough may be "established, altered, or abolished by the Assembly subject to the provisions of law or charter." This bill establishes standards for an Assembly to take necessary steps to protect the community as a whole or individuals areas. The standards require that the Assembly determine that the action to be taken is necessary to either:

- "Protect the finances of the borough,"
- "Resolve financial or legal problems of a service area," or
- "Ensure that adequate service is provided to the residents of a service area."

This is a key local control measure to help second class boroughs efficiently and fairly provide services.

Thank you for your consideration.

Sincerely,

*Scott Brandt-Erichsen*

Scott Brandt-Erichsen, Chair  
Local Government and Public Services Committee