

**HB**

**121**

## LEGAL SERVICES

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

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Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
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### MEMORANDUM

March 9, 2005

**SUBJECT:** Service areas in second class boroughs (CSHB 121(CRA))

**TO:** Representative Bill Thomas,  
Co-chair, House Community and Regional Affairs Committee  
Attn: Kaci Schroeder

**FROM:** Tamara Brandt Cook  
Director

TBC

You have supplied me with a letter from Michael Black, Director of the Division of Community Advocacy, and a copy of comments by Dan Bockhorst. You ask whether the analysis of CSHB 121(CRA) in these materials is correct. It is.

AS 29.35.450 applies as a home rule limitation. This means that home rule municipalities are bound by the requirements in this statute. (AS 29.10.200(46)) Subsection (c) of AS 29.35.450 is amended in CSHB 121(CRA) by creating an exception to the voting requirements of that subsection in certain circumstances to permit a borough to abolish a service area or consolidate service areas. However, the exception, by its terms, applies only to service areas of second class boroughs. The exception does not apply in unified municipalities or home rule boroughs.

TBC:med  
05-167.med

**Comments to House State Affairs Committee  
Regarding CSHB 121(CRA)**

**By Dan Bockhorst  
Department of Commerce, Community, and Economic Development**

**March 1, 2005**

Thank you Mr. Chairman and members of the Committee. For the record, my name is Dan Bockhorst, I am a Local Government Specialist with the Department of Commerce, Community, and Economic Development.

The Department endorses measures to give borough governments the flexibility needed to provide for the efficient delivery of services. This bill does that for second class boroughs.

However, the Department wishes to make two observations about this bill.

First, there is nothing unique about a second class borough that would suggest that the measures in the bill are needed for that particular class of borough, but not other classes of borough.

Consider, for example, the Ketchikan Gateway Borough. It is currently a second class borough. As such, the assembly of the Ketchikan Gateway Borough would gain needed flexibility under this bill. Yet, a petition is presently pending before the Local Boundary Commission that, if approved by the Commission and voters, would convert the Ketchikan Gateway Borough into a home rule borough. If that occurs, the Ketchikan Borough assembly would then lose the flexibility accorded to second class boroughs as the bill is currently written.

That leads me to my second observation. The bill, as written, gives greater flexibility and authority to a general law (second class borough) than it does to a home rule borough. Under Alaska's Constitution, home rule represents the maximum level of self-governance. I am aware of no instance where State law places a greater restriction on home rule local governments than it does on general law local governments. This bill would be the first in that regard. The provision seems contrary to the intent of home rule local government.

Thank you for the chance to comment.

**TABLE 2  
POWERS AND DUTIES OF ORGANIZED BOROUGHS**

<b>POWER</b>	<b>UNIFIED MUNICIPALITY AND HOME RULE BOROUGH</b>	<b>FIRST CLASS BOROUGH</b>	<b>SECOND CLASS BOROUGH</b>
Public Education (education powers have been broadly interpreted by the Al. Dept of Law)	The borough or unified municipality must provide the service areawide in accordance with AS 14.	Same as for a home rule borough.	Same as for a home rule borough.
Planning, Platting & Land Use Regulation	The borough or unified municipality must exercise the powers areawide, but not necessarily in accordance with AS 29.40.	The borough must exercise the powers areawide; in accordance with AS 29.40; the borough may allow cities to assume such powers within their boundaries	Same as for a first class borough.
Provide Transportation Systems, Water & Air Pollution Control, Animal Regulation	Determined by charter or ordinance.	May be exercised on an areawide, nonareawide or service area basis by ordinance.	May be exercised on an areawide or nonareawide basis by ordinance; approval from voters or property owners required for service area powers.
License Day Care Facilities	Determined by charter or ordinance.	May be exercised on an areawide, nonareawide or service area basis by ordinance.	May be exercised on an areawide basis by ordinance; voter approval required for exercise on a nonareawide or service area basis.
Regulate Fireworks, Provide Solid & Septic Waste Disposal, Housing Rehabilitation, Economic Development, Roads & Trails, EMS Communications, Regulate Motor Vehicles and Development Projects	Determined by charter or ordinance	May be exercised areawide upon approval of areawide voters or by transfer of powers from all cities; may be exercised by ordinance on a nonareawide or service area basis.	May be exercised areawide upon approval of areawide voters; or by transfer of powers from all cities; may be exercised by ordinance on a nonareawide basis; may be exercised on a service area basis with voter approval
Hazardous Substance Control	Determined by charter or ordinance	Same as above.	Same as above.
Other Powers Not Prohibited	Determined by charter or ordinance	Same as above.	May be exercised areawide upon approval of areawide voters; or by transfer of powers from all cities and approval of nonareawide voters; may be exercised nonareawide upon approval of nonareawide voters; may be exercised on a service area basis with voter approval

Table continued on next page

**TABLE 2 - Continued  
POWERS AND DUTIES OF ORGANIZED BOROUGHS**

POWER	UNIFIED MUNICIPALITY AND HOME RULE BOROUGH	FIRST CLASS BOROUGH	SECOND CLASS BOROUGH
Property Tax	Limited to 30 mills except where a higher levy is necessary to avoid default on debt; voter approval to levy property taxes is required by some charters	Same as home rule except there is no charter. Still some general law boroughs have more limited taxing authority established by local action.	Same as for a first class borough.
Sales Tax	The rate of levy may be limited by charter and voter approval to levy sales taxes may be required by charter.	No limit exists on the rate of levy; however, voter approval is required to levy sales taxes.	Same as for a first class borough.
Assembly composition and apportionment	Flexible; determined according to AS 29.20.060 - 29.20.120	Same as for a home rule borough.	Same as for a home rule borough.
Election and Term of Mayor	Established by charter or ordinance.	Elected at large for a 3 year term, unless a different term not to exceed 4 years is provided by ordinance.	Same as for a first class borough.
Vote by Mayor	Established by charter or ordinance.	may vote to break a tie vote only if the borough has a manager form of government	Same as for a first class borough.
Veto Power of the Mayor	Generally determined by charter, except veto not permitted of ordinance prohibiting possession of alcohol.	generally has veto power, except veto not permitted of ordinance prohibiting possession of alcohol.	Same as for a first class borough.
Ability to Attain Home Rule Status	Already has home rule status.	Voters may adopt home rule charter.	Same as for a first class borough.

F.Y.I. Case

**Louie Flora**

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**From:** Sally Saddler [sally\_saddler@commerce.state.ak.us]  
**Sent:** Monday, February 28, 2005 3:43 PM  
**To:** Louie Flora  
**Cc:** Dan R Bockhorst; Michael L Black; Darwin R Peterson  
**Subject:** Comment on HB121 Service Areas in 2nd Class Boroughs

up tomorrow

Hi Louie--I just thought I'd follow up with a note on our comment on HB121.

The department didn't weigh in on this bill when it was heard in House CRA. The hearing conflicted with our Senate Finance budget subcommittee meeting.

This bill provides that a second-class borough is not subject to the provisions of AS 29.35.450(c) if the assembly makes certain determinations. A home-rule borough assembly is not granted the same right (see AS 29.10.200(45)). Even though we currently have no first-class boroughs, the right to render AS 29.35.450(c) inapplicable is also denied in the case of a first-class borough. Nine of the sixteen existing organized boroughs are home-rule; the remaining seven are second-class.

The only difference between HB 121 and CSHB 121(CRA) is the addition of the immediate effective date in the latter. We do not see where either the original bill or the CS has any fiscal impact on this agency, thus our zero fn on this bill. We have no position on legislation but offer the comment for your consideration.

I left a message for Dan Bockhorst indicating that you would like to have him on-line via teleconference in case there are any questions that come up on HB121. He will dial in to 1.800.395.5073.

Let me know if you need anything else!

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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

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

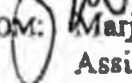
Department of Law

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

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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 Ketchikan*, 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

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Second Class boroughs<sup>4</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*.



**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, 99801-1182

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**FAX COVER SHEET**

DATE: 2-7-05

TO: Rynniva Moss

FROM: Kaci Schroeder

RE: HB 121 DOL Legal Opinion

PAGES TO FOLLOW: 3



# 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

**SUPPORT**

JW:csm/arb



## Fairbanks North Star Borough

## Assembly

809 Pioneer Road

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[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."

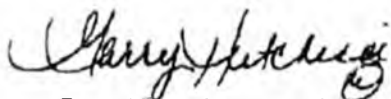
In 2001, amendments were made to AS 29.35.450 adding requirements for an election within service areas when there is a proposal to abolish, replace, or annex tax lots to that area. This was in addition to an election being held in the area that had petitioned for services causing two questions for each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



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Tel (907) 586-1325 • Fax (907) 463-5480 • 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

# FISCAL NOTE

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

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB121  
 ( ) Publish Date: \_\_\_\_\_

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1057 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 (FY2006) 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 29.31.050 (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 Phone: 907.269.4540  
 Division: Community Advocacy Date/Time: 2/14/05 4:48 PM  
 Approved by: Edgar Blatchford, Commissioner Date: 2/14/2005  
 Agency: Commerce, Community & Economic Development

# 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: 2-26-05

To: Representative Seaton, Chair House State Affairs Committee  
Representative Gatto, Vice Chair House State Affairs 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.

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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.