

HB

133

24-LS0512'F,1
Cook
3/30/05

#1
AMENDMENT

OFFERED IN THE HOUSE
TO: CSSSHB 133(CRA)

BY REPRESENTATIVE *Lynn*

1 Page 1, line 1, following "boroughs":

2 Insert ", to annexations by local action,"

3

4 Page 2, following line 12:

5 Insert a new bill section to read:

6 **** Sec. 3. AS 29.06.040(c) is amended to read:**

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

11 (1) **a proposed annexation must be approved by a majority of votes**
12 **on the question cast by voters residing in the annexing municipality:**

13 (2) a proposed annexation or [AND] detachment must be approved by
14 a majority of votes on the question cast by voters residing in the area proposed to be
15 annexed or detached;

16 (3) [(2)] municipally owned property adjoining the municipality may
17 be annexed by ordinance without voter approval; and

18 (4) [(3)] an area adjoining the municipality may be annexed by
19 ordinance without an election if all property owners and voters in the area petition the
20 governing body."

21

22 Renumber the following bill sections accordingly.

23

LEGAL SERVICES

Revised 11/2005

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

(907) 465-3867 or 465-2450
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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 TBC

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."


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 114,¹ 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

¹ 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 723.²

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 boroughs³, six (6) Home Rule boroughs⁴, and seven (7)

² 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.*

³ 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 boroughs⁴. 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 455, 463 (Alaska 1974).⁵

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.⁷ 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

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

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

⁶ 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.

⁷ 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

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 to 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
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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

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MEMORANDUM

February 12, 2005

SUBJECT: Incorporation of boroughs (SSHB 133)

TO: Representative John Coghill
Majority Leader
Attn: Rynniva 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

MEMORANDUM**State of Alaska**

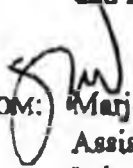
Department of Law

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
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Department of Law

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Sally Saddler

March 9, 2005

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

MV/ba

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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

ALASKA STATE HOUSE OF REPRESENTATIVES

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Session Contact:
(907)-465-3719
FAX# (907)-465-3258
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 three 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.

Finally, AS 29.06.040(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.

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.

Sectional for CSSSHB 133(CRA)

Section 1. Eliminates Local Boundary Commission's ability to amend petitions or impose conditions on petitions approved by a vote of the people.

Sec. 2. When a proposal is to be submitted to the legislature for approval, the proposal would still be required to have two public hearings in the area of the proposed action and voter approval of the voters in the proposed area.

Sec. 3 Makes it very clear that regulations cannot extend requirements beyond those requirements set in statute and clears up the conflict of aggregate votes.

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: Coghil, 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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
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
 Division: Community Advocacy
 Approved by: Edgar Blatchford, Commissioner
 Agency: Commerce, Community, and Economic Development

Phone 269-4540
 Date/Time 2/23/05 2:37 PM
 Date 2/23/2005

TO: House State Affairs

DATE: April 2, 2005

TIME: 10 AM

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

Mailing Address: Third Judicial District

c/o P.O. Box 1791

Cordova, Alaska

Rural Radio Phone: 907-424-3745

Email Address: northernngirl@ctcak.net

Mr Chairman, Paul Seaton;

I knew I would be unable to make it in to the Cordova LIO to testify in person so I offer this written testimony to be added to the record.

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

Lately it seems that 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
Denny Kay Weathers
April 2, 2005

1 001 000 0121 P. 02

A VOICE FOR THE BUSH

By Glen Marunc, Tok Resident

"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

SUPPORT

"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 Marrende
Box 192 Tok, Alaska 99790
March 2-2009*

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 Yarnan
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

ELLAMAR PROPERTIES, INC.

The Ultimate in Recreational Property
Prince William Sound

Dear Esteemed Legislators:

It has just come to my attention that there has been an end run against the democratic system of allowing a vote by the people concerned as to what kind of government they desire. I did not know of the state petition regarding Prince William Sound to the Local Boundary Commission.

As a concerned property owner in Prince William Sound, an area that receives no discernable benefit from government services (for an emergency, if called, perhaps the possibility of airplane arrival of State Police might be a possible exception), I do object to the lack of opportunity to decide the fate of a community. I do not live there but I do feel I must strongly support the efforts put forth in House Bill 133 and in Senate Bill 128 as I understand the purpose of the bills.

Thank you for your consideration.

Lucy W. Groh

Lucy W. Groh
As President of Ellamar Properties, Inc.
P.O. Box 203113
Anchorage, Alaska. 99520-3113

Telephone 907-277-8791
Fax number 907-278-1311

Dated March 30, 2005



2005 Policy Statement

Approved by AML Membership
November 2004

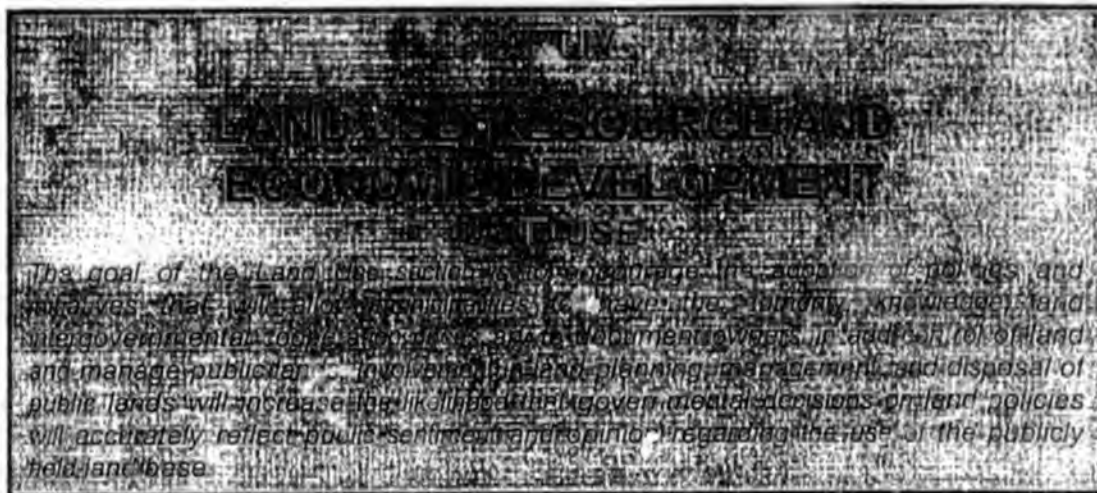
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Kevin Ritchie, Executive Director
kevin@akml.org

A.M.L.



A. LOCAL OPTIONS

1. *Planning, Zoning and Land Use:*

- a. The League feels strongly that local planning and zoning laws, review processes, and land use and subdivision regulations shall apply to all state land use actions to allow for comprehensive local control of community development.
- b. Proposed land classification through legislative action should follow a process that includes adequate notification to municipalities of the proposed action and mandatory public hearings within the affected areas. Additionally, proposed state land classifications should provide for a broad range of uses.
- c. The League supports the concept that the state and the federal governments shall comply with local land use and subdivision regulations.
- d. The League supports a requirement that the state and federal governments provide practical access to any new subdivision as would be required by a municipality or of a private individual.

B. LAND SELECTION

1. *Easements:* The League supports a state policy of preserving needed and specific rights of way and easements that provide for existing and future public access to public waterways and resources, that comply with local long range transportation and development plans. Concurrence of affected municipalities is essential. The League supports the program to survey these easements in an expeditious manner. However, these surveys should not delay conveyance.

The League urges the state to convey land to municipalities with a minimum of reservations, easements, and restrictions. Where reservations, restrictions, and easements are desired, they should be established by joint agreement with state and local government.

2. *Conveyance and Land Use:*

- a. To promote economic development, the League supports a specific appropriation to the Department of Natural Resources to expedite the process of surveying and conveying to municipalities the lands to which they are entitled in a timely manner.
- b. The League urges the immediate conveyance to municipalities or successor entities of federal and state lands presently identified and jointly agreed upon for selection.
- c. The League requests that until all municipal entitlements are conveyed, municipalities be given the right of first refusal to lands that may be selected.

- d. The League urges a cooperative intergovernmental effort to expedite conveyance of lands not yet jointly agreed upon by resolving municipal, state, and federal issues in lands affected by the land selection process.
- e. The state and federal governments should be required to clean up all hazardous material, including previously undisclosed hazardous material, such as that found at active and formerly used defense sites. The cleanup effort should meet EPA and Alaska Department of Environmental Conservation (ADEC) standards or standards acceptable to the community that are consistent with the intended use of the property.
- f. The League supports the efforts of the Department of Community and Economic Development to assist communities in preparing for land selections pursuant to Section 14, paragraph (c)(3) of ANCSA and opposes any change to this law that would reduce the ability of municipalities to receive their full entitlement to lands that are useful for community purposes including economic development.

C. STATE LAND MANAGEMENT

1. *State Land Use Decisions:*

- a. The League urges the state to fully include municipalities in state land use decisions such as land classifications, land exchanges, projects, permits, and state land use plans for state lands within or adjacent to a municipality.
- b. The League feels the state should reevaluate its land survey criteria for conveyance of large, remote areas.

2. ***Improvement Funding:*** The League also supports state funding for (1) planning grants; (2) surveying of land scheduled for disposal; (3) necessary road access; (4) state and municipal roads; (5) sewers and utilities to meet local subdivision improvement ordinances, and (6) expanded dissemination of land disposal information.

3. ***Land Disposals:*** The League supports a cooperative effort by federal, state and local manner. The League urges the Department of Natural Resources to notify municipalities of private interests in public lands that are created or relinquished in a timely and adequate manner.—Transactions should be recorded by the state at the District Recorder's offices within 30 days. Often the transactions are not prompt, which results in lost municipal property tax revenues.

4. ***Compliance with Existing Roads and Rights of Way:*** The League supports state legislation or administrative policy that would require state land use decisions to recognize existing municipal land use, planned roads, trails, and rights of way by means of right of way dedication.

5. ***State Mental Health Trust/University Land Management:*** The League urges the State Mental Health Trust and University Land Management to fully include municipalities in land use decisions such as land classifications, land exchanges, projects, permits, and state land use plans for lands within or adjacent to a municipality.

D. COASTAL ZONE MANAGEMENT

1. ***Local Control and Participation:*** The League supports maximum local control and involvement in the development, management, and implementation of coastal planning and policies. The League supports the vital role that coastal districts and coastal resource service areas (CRSAs) provide in reviewing these plans and

Article I

candidates, and in having the candidates be familiar with the needs of the constituency (*Casner 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 offices 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 VII, 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.

Alaska State Legislature

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



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

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

CRA - LBC Correspondence

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 Representative Bill Thomas and Representative Kurt Olson. The signature on the left is for Bill Thomas and the signature on the right is for Kurt Olson.

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



State of Alaska Local Boundary Commission

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

February 16, 2005

The Honorable Bill Thomas, Co-Chair
The Honorable Kurt Olson, Co-Chair
Committee on Community and Regional Affairs
Alaska State House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

Dear Representatives Thomas and Olson:

Thank you for your letter of February 8 (received February 11) expressing concern about information provided by the LBC to your committee regarding municipal land entitlements.

It was not our intent to suggest that the Department of Natural Resources (DNR) has been remiss in the transfer of lands to municipalities. We did wish to suggest that additional resources might be needed by DNR in order to address the issue that the LBC raised.

The concern relayed by municipalities as articulated in the LBC annual report is that it has historically taken a significant period of years between a borough's incorporation and the transfer of entitlement lands to it. (See Annual report, p. 129, first paragraph.) Despite apparent significant progress in the conveyance of entitlement lands to some municipalities between 2003 and 2005 (e.g., Yakutat), the matter remains a concern of municipal governments as reflected in the 2005 Policy Statement of the Alaska Municipal League. That Policy Statement includes the following language:

Conveyance and Land Use:

- a. To promote economic development, the League supports a specific appropriation to the Department of Natural Resources to expedite the process of surveying and conveying to municipalities the lands to which they are entitled in a timely manner.
- b. The League urges the immediate conveyance to municipalities or successor entities of federal and state lands presently identified and jointly agreed upon for selection.
- c. The League requests that until all municipal entitlements are conveyed, municipalities be given the right of first refusal to lands that may be selected.

d. The League urges a cooperative intergovernmental effort to expedite conveyance of lands not yet jointly agreed upon by resolving municipal, state, and federal issues in lands affected by the land selection process.

AML 2005 Policy Statement, November 2004, pp. 22- 23 (emphasis added). A copy of the relevant portions of AML's policy statement regarding these issues is enclosed.

The columns of the Table on page 129 of the LBC 2005 report have been expanded in the table at the end of this letter to better highlight the land-transfer concern. The expanded table includes the year of incorporation.

The LBC made use of information that DNR furnished in 2003. The report made no changes to the information. As noted in the Table, the data were from an attachment to a letter dated February 28, 2003, from Dick Mylius, Chief of the DNR Resource Assessment and Development Section, Division of Mining, Land and Water, to Senator Thomas Wagoner, then-Chair of the Senate Community & Regional Affairs Committee of the Alaska State Senate. A copy of that letter, with its attachment, is included here.

The LBC report accurately reflected, and still reflects, the concern the Commission, boroughs, and the AML have with regard to the length of time it has historically taken to transfer land entitlements to municipalities. Even with the considerable strides reflected in DNR's latest figures, the concern is still valid. For example, consider the Northwest Arctic Borough, incorporated in 1986 and entitled to 285,438 acres of land. As of 2003 (17 years later), 4 acres had been transferred with 285,434 acres awaiting transfer. Using DNR's 2005 data, those numbers remain unchanged.

You specifically asked about the difference between the 2003 and 2005 data for Yakutat. Inasmuch as it is DNR's data that were used, I am unable to provide an explanation in that regard. It appears that DNR made significant strides in the two-year interval in the conveyance of entitlement lands to that borough. It is interesting to note that in its 2005 information, DNR indicates that Yakutat's "certified entitlement" is 21,500 acres. However, DNR also states that the "approved patented acreage" for Yakutat is 22,661 acres, with 0 acres of "estimated remaining entitlement." The data suggest that Yakutat's conveyance exceeded its entitlement by 1,161 acres of land.

However, Yakutat officials have advised the LBC that although management authority over its entitlement lands has been granted to the City and Borough of Yakutat, title to those lands has not actually been conveyed. Similarly, although the 2003 and 2005 DNR data indicate that 11,593 acres of entitlement lands have been fully conveyed to the Ketchikan Gateway Borough, borough officials indicate that title to only about half of those lands has been conveyed. The terms *approved patented acreage* and *estimated remaining entitlement* that DNR uses in its 2005 data further adds to the question as to the actual status of the transfer of the lands to the boroughs. It is the transfer issue that the LBC's report addresses.¹

¹AS 29.65.130(6) defines "patent" as "a document, issued by the director to a municipality for a previously approved selection, that conveys and quitclaims all the right, title, and interest of the state without reservation or condition except as may be required by law." (Emphasis added.)

Representatives Olson and Thomas
Page 3
February 16, 2005

In the case of Yakutat and Ketchikan, borough officials indicate that conveyance of title is restrained by the need to perform exterior boundary surveys of the entitlement lands. Presumably other boroughs face the same circumstances. Under AS 29.65.070, the cost of such surveys must be borne by the municipality. That requirement is clearly an impediment to the timely conveyance of entitlement lands. For more detail with regard to this issue, please review the AML's *2005 Policy Statement*.

The foregoing discussion will hopefully clarify the issue in the Commission's report. In closing, I can assure you that every effort possible was made to ensure that all information in our report was accurate. Thank you for the opportunity to address your concerns. Land-entitlement transfer is just a very small part of the issues raised by the Commission with regard to boroughs and borough formation. However, we continue to view adequate amounts of lands and the timely conveyance as an appropriate incentive for the organization of boroughs. The LBC and staff will be happy to provide you with additional information to answer any further questions you have.

Sincerely,

LOCAL BOUNDARY COMMISSION



Darroll Hargraves
Chair

Enclosure:

- 1) February 28, 2003 DNR Letter with attachment, to Senator Thomas Waggoner.
- 2) Excerpt from AML *2005 Policy Statement*.

cc/enc: LBC Commissioner Bob Hicks
LBC Commissioner Georgianna Zimmerle
LBC Commissioner Bob Harcharek
LBC Commissioner Tony Nakazawa
Senator Gary Stevens, Chair, Senate Community and Regional Affairs Committee
Commerce Commissioner Edgar Blatchford
DNR Commissioner Tom Irwin
Robert Loeffler, Director, DNR Division of Mining, Land, and Water
Kevin Ritchie, Director, AML

Representatives Olson and Thomas
 February 16, 2005

Borough	Original Entitlement	Year Incorporated	Acreage Remaining to Convey as of 2003	Interval Between Incorporation and 2003	Estimated Remaining Acreage Entitlement as of 2005	Interval Between Incorporation and 2005	Apparent Number of Acres Conveyed Between 2003 and 2005
Aleutians East Borough	7,633	1987	5,713	16 years	5,620	18 years	93
Municipality of Anchorage	44,893	1964	277	39 years	0	41 years	272
Bristol Bay Borough	2,898	1962	349	41 years	349	43 years	0
Denali Borough	49,789	1990	29,303	13 years	29,299	15 years	4
Fairbanks North Star Borough	112,000	1964	177	39 years	0	41 years	177
Haines Borough	2,800	1968	25	35 years	35	37 years	(10)
City and Borough of Juneau	19,584	1963	160	40 years	100	42 years	60
Kenai Peninsula Borough	155,780	1964	20,892	39 years	19,500	41 years	1,392
Ketchikan Gateway Borough	11,593	1963	0	40 years	0	42 years	0
Kodiak Island Borough	56,500	1963	0	40 years	0	42 years	0
Lake and Peninsula Borough	125,000	1989	92,885	14 years	93,374	16 years	(489)
Matanuska-Susitna Borough	355,210	1964	8,489	39 years	3,000	41 years	5,489
North Slope Borough	89,850	1972	89,486	31 years	89,486	33 years	0
Northwest Arctic Borough	285,438	1986	285,434	17 years	285,434	19 years	0
City and Borough of Sitka	10,500	1963	0	40 years	0	42 years	0
City and Borough of Yakutat	21,500	1992	20,088	11 years	0	13 years	20,088



State of Alaska
Local Boundary Commission

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March 31, 2005

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

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

Dear Representative Seaton:

I am aware that the House State Affairs Committee will be holding a hearing on CSSSHB 133(CRA) on Saturday, April 2. Regrettably, I am unable to participate. The Local Boundary Commission met in public session on March 25 to address this bill and voted unanimously to oppose it for reasons that Commissioner Bob Hicks and I articulated in our individual comments to the House Community and Regional Affairs Committee on February 24. Rather than repeat those comments here, they are enclosed with this letter for your review.

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,

Darroll Hargraves
Chair

Enclosures

- 2/24 prepared comments of LBC Chair Darroll Hargraves
- 2/24 prepared comments of LBC Vice Chair Bob Hicks

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

Members: Darroll Hargraves, Chair; Georgianna Zimmerle, First Judicial District;
Robert Harcharek, Second Judicial District; Bob Hicks, Third Judicial District;
Tony Nakazawa, Fourth Judicial District

Statement of the L.B.C.

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

**Darroll Hargraves, Chair, Local Boundary Commission
February 24, 2005**

Regarding Sponsor Substitute for House Bill Number 133

Thank you Mr. Chairman, members of the Committee. For the record, my name is Darroll Hargraves; I serve as Chair of the Alaska Local Boundary Commission. I am testifying this morning from Dillingham.

Also participating by teleconference this morning is Bob Hicks, Vice-Chair of the Local Boundary Commission. Commissioner Hicks is an attorney who has practiced law in Alaska for more than three decades. He specializes in municipal law. During his distinguished career, Commissioner Hicks frequently represented municipalities regarding matters involving the Local Boundary Commission.

I am going to address policy concerns regarding HB 133. Following my testimony, Mr. Chairman, I will ask that you allow Commissioner Hicks to briefly address additional concerns regarding the legislation.

The Department of Commerce, Community, and Economic Development, which serves as staff to the LBC, has prepared a bill analysis setting out the effects of the bill. Dan Bockhorst, representing that agency, is available at the Anchorage teleconference site to answer questions. I have asked Mr. Bockhorst to provide a copy of my prepared remarks to the staff of the Community and Regional Affairs Committee.

As noted in the bill analysis, Section 1 of the bill expressly prohibits the LBC from amending and imposing conditions on a petition to incorporate city governments and borough governments. To remove such authority would render the incorporation of city and borough government particularly rigid proceedings. A petition could only be approved or denied.

If there were a fatal error in a proposal – for example, a borough assembly apportionment plan that does not meet the equal representation provisions of the State and U.S. Constitutions – the LBC would have no alternative but to deny the petition. Under existing law, the petitioners would be precluded from resubmitting a substantially similar proposal for two years.

Experience has clearly demonstrated that flexibility is needed in carrying out the duties of the LBC. That is why the legislature has long provided express statutory authority for the Commission to amend and impose conditions for all

matters that come before the LBC. That includes proposals for city reclassification and each of the six fundamental boundary changes that come before the LBC (incorporation, annexation, detachment, dissolution, merger, and consolidation).

Section 1 of the bill would impose great obstacles with regard to city and borough incorporation proposals. Additionally, as Commissioner Hicks will discuss shortly, we believe that Section 1 has substantial legal flaws.

Section 2 of the bill would only allow the LBC to submit a legislative review borough incorporation proposal if the voters of the area first approved the proposal.

The framers of Alaska's Constitution expressed a preference for voluntary borough incorporation. The LBC shares that preference. However, those who wrote our Constitution recognized that the State could compel a region to incorporate if that region had the administrative and fiscal capacity to do so, but took no initiative to organize. (See: *Borough Government in Alaska*, Thomas Morehouse and Victor Fischer, p. 61 – 62 (1971).

In 1963, the State Legislature established a clear policy that areas with the capacity to organize must do so. The 1963 Legislature mandated boroughs encompassing eight regions and more than 80 percent of all Alaskans. Voters in those eight regions were given no choice as to whether they would organize.

Nine years later, the State Legislature instituted a similar policy by mandating that every second-class city with at least 400 residents be reclassified, without a vote, to first-class city status. First-class cities in the unorganized borough have the same duties and obligations as boroughs. Thus, the effect of the 1972 Act was similar to the 1963 Mandatory Borough Act.

Section 2 of SSHB 133 represents a clear reversal of the legislative policies of 1963 and 1972. If the Legislature now chooses to annul those long-standing policies, it could generate fundamental questions of fairness among the 84 percent of Alaskans that today live in boroughs that were formed under the 1963 Mandatory Borough Act. The same issue exists with regard to residents of cities in the unorganized borough that were reclassified without voter approval by the 1972 Mandatory City Reclassification Act.

Section 3 of the bill is apparently intended to nullify the aggregate voter method of annexation. That method was established by the LBC under its constitutional authority to "establish procedures whereby boundaries may be adjusted by local action" (Article X, Section 12, Constitution of the State of Alaska) and the

Commission's statutory duty to do so.¹ It is unclear, however, whether Section 3 of the bill actually accomplishes that end.

The aggregate voter method of annexation provides local governments and residents additional tools to seek boundary changes. Some local governments and some local residents prefer that method to others. If that option is eliminated, petitioners will likely rely on the legislative review method of boundary change, which provides for no local vote.

Section 4 of the bill nullifies any proposal pending before the LBC that does not comply with the new terms of this bill. As noted, I have questions whether Section 3 actually accomplishes what it is apparently intended. Moreover, a petition for annexation using the aggregate voter method is currently pending before the LBC. I question whether Section 4 runs afoul of the prohibition in Article I, Section 15 of our Constitution that prohibits the passage of any ex post facto law.

That concludes my prepared remarks. If you have questions, I would be happy to try to address them. Again, Mr. Chairman, I would ask you to allow Commissioner Hicks to address this bill.

¹ AS 29.06.040(c) provides that, "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."

As reflected in the bracketed text above, AS 01.10.040(b) states, "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.'"

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 SSHB 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.

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. 7/31/82, Register 123; am 5/18/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.08.040; 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. 7/31/02, 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 owners of the territory; *AS 29.06.040(c)(3)*

(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



State Constitution



Article X "Local Government"

SECTION 1. PURPOSE AND CONSTRUCTION.

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax levying jurisdictions. A liberal construction shall be given to the powers of local government units.

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.

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.

SECTION 4. ASSEMBLY.

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

SECTION 5. SERVICE AREAS.

Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services.

SECTION 6. UNORGANIZED BOROUGHS.

The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

SECTION 7. CITIES.

Cities shall be incorporated in a manner prescribed by law, and shall be a part of the borough in which they are located. Cities shall have the powers and functions

conferred by law or charter. They may be merged, consolidated, classified, reclassified, or dissolved in the manner provided by law.

SECTION 8. COUNCIL.

The governing body of a city shall be the council.

SECTION 9. CHARTERS.

The qualified voters of any borough of the first class or city of the first class may adopt, amend, or repeal a home rule charter in a manner provided by law. In the absence of such legislation, the governing body of a borough or city of the first class shall provide the procedure for the preparation and adoption or rejection of the charter. All charters, or parts or amendments of charters, shall be submitted to the qualified voters of the borough or city, and shall become effective if approved by a majority of those who vote on the specific question.

SECTION 10. EXTENDED HOME RULE.

The legislature may extend home rule to other boroughs and cities.

SECTION 11. HOME RULE POWERS.

A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.

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.

SECTION 13. AGREEMENTS; TRANSFER OF POWERS.

Agreements, including those for cooperative or joint administration of any functions or powers, may be made by any local government with any other local government, with the State, or with the United States, unless otherwise provided by law or charter. A city may transfer to the borough in which it is located any of its powers or functions unless prohibited by law or charter, and may in like manner revoke the transfer.

SECTION 14. LOCAL GOVERNMENT AGENCY.

An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law.

SECTION 15. SPECIAL SERVICE DISTRICTS.

Special service districts existing at the time a borough is organized shall be integrated with the government of the borough as provided by law.

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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

AS 29.06.040

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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Note to HTML Version:

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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



Sec. 44.33.810. Local Boundary Commission.

There is in the Department of Commerce, Community, and Economic Development a Local Boundary Commission. The Local Boundary Commission consists of five members appointed by the governor for overlapping five-year terms. One member shall be appointed from each of the four judicial districts described in AS 22.10.010 and one member shall be appointed from the state at large. The member appointed from the state at large is the chair of the commission.

Sec. 44.33.812. Powers and duties.

(a) The Local Boundary Commission shall

- (1) make studies of local government boundary problems;
- (2) adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution;
- (3) consider a local government boundary change requested of it by the legislature, the commissioner of commerce, community, and economic development, or a political subdivision of the state; and
- (4) develop standards and procedures for the extension of services and ordinances of incorporated cities into contiguous areas for limited purposes upon majority approval of the voters of the contiguous area to be annexed and prepare transition schedules and prorated tax mill levies as well as standards for participation by voters of these contiguous areas in the affairs of the incorporated cities furnishing services.

(b) The Local Boundary Commission may

- (1) conduct meetings and hearings to consider local government boundary changes and other matters related to local government boundary changes, including extensions of services by incorporated cities into contiguous areas and matters related to extension of services; and
- (2) present to the legislature during the first 10 days of a regular session proposed local government boundary changes, including gradual extension of services of incorporated cities into contiguous areas upon a majority approval of the voters of the contiguous area to be annexed and transition schedules providing for total assimilation of the contiguous area and its full participation in the affairs of the incorporated city within a period not to exceed five years.

Sec. 44.33.814. Meetings and hearings.

The chair of the commission or the commissioner of commerce, community, and economic development with the consent of the chair may call a meeting or hearing of the Local Boundary Commission. All meetings and hearings shall be public.

Sec. 44.33.816. Minutes and records.

L B C. Powers + Duties

The Local Boundary Commission shall keep minutes of all meetings and hearings. If the proceedings are transcribed, minutes shall be made from the transcription. The minutes are a public record. All votes taken by the commission shall be entered in the minutes.

Sec. 44.33.818. Notice of public hearings.

Public notice of a hearing of the Local Boundary Commission shall be given in the area in which the hearing is to be held at least 15 days before the date of the hearing. The notice of the hearing must include the time, date, place, and subject of the hearing. The commissioner of commerce, community, and economic development shall give notice of the hearing at least three times in the press, through other news media, or by posting in a public place whichever is most feasible.

Sec. 44.33.820. Quorum.

Three members of the commission constitute a quorum for the conduct of business at a meeting. Two members constitute a quorum for the conduct of business at a hearing.

Sec. 44.33.822. Boundary change.

A majority of the membership of the Local Boundary Commission must vote in favor of a proposed boundary change before it may be presented to the legislature.

Sec. 44.33.824. Expenses.

Members of the Local Boundary Commission receive no pay but are entitled to the travel expenses and per diem authorized for members of boards and commissions under AS 39.20.180.

Sec. 44.33.826. Hearings on boundary changes.

A local government boundary change may not be proposed to the legislature unless a hearing on the change has been held in or in the near vicinity of the area affected by the change.

Sec. 44.33.828. When boundary change takes effect.

When a local government boundary change is proposed to the legislature during the first 10 days of any 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.

Article 10. BOROUGH FEASIBILITY STUDIES

Sec. 44.33.840. Borough feasibility studies.

The commissioner may contract for studies of the feasibility of establishing boroughs in the unorganized borough. A study may be conducted under this section only if

(1) appropriations are available for that purpose; and

(2) the study is requested by a person residing in the area to be studied or by a city located in the area to be studied.

Sec. 44.33.842. Requests for studies.

A request for a study of the feasibility of establishing a borough in the unorganized borough shall be submitted to the commissioner in writing and must include

- (1) a description of the boundaries of the area of the proposed study; and
- (2) an indication of local interest in the proposed study consisting of either

(A) a petition requesting the study containing the signatures and addresses of five percent of the voters residing in the area of the proposed study based on the number of voters who voted in the area in the last statewide election; or

(B) resolutions requesting the study adopted by the governing bodies of at least five percent of the cities within the area of the proposed study.

Sec. 44.33.844. Boundaries.

The boundaries of an area studied shall conform to the boundaries indicated in the request for the study under AS 44.33.842 unless the commissioner, after a public hearing held in the area of the proposed study, determines that the boundaries should be altered. In determining the boundaries of an area to be studied, the commissioner shall consider

- (1) the standards applicable to the incorporation of boroughs under AS 29.05.031 ;
- (2) boundaries of regional corporations established under 43 U.S.C. 1606;
- (3) census divisions of the state used for the 1980 census;
- (4) boundaries of the regional educational attendance areas established under AS 14.08.031 ; and
- (5) boundaries of coastal resource service areas organized under AS 46.40.110 - 46.40.210.

Sec. 44.33.846. Contracts.

(a) The commissioner shall contract for a study of the feasibility of establishing a borough in the unorganized borough by following the procedures under AS 36.30 (State Procurement Code). The commissioner shall include terms in the contract that provide for

- (1) public participation in the preparation of the study;
- (2) completion of the study not later than June 30 of the third year after the year the contract is executed.

(b) A study under this section must include

- (1) a recommendation for or against incorporation of a borough containing all or part of the area studied;
- (2) an evaluation of the economic development potential of the area studied;

- (3) an evaluation of capital facility needs of the area studied;
- (4) an evaluation of demographic, social, and environmental factors affecting the area studied;
- (5) an evaluation of the relationships among regional educational attendance areas, coastal resource service areas, and other regional entities responsible for providing services in the area studied;
- (6) an evaluation of the relationships between the existing cities within the area studied and regional entities responsible for providing services in the area; and
- (7) specific recommendations for
 - (A) organization of a home rule or general law borough government if one is recommended;
 - (B) changes in organization of cities in the area studied; or
 - (C) the improvement of the delivery of services to the public by the state in the area studied.

Sec. 44.33.849. Definition.

In AS 44.33.840 - 44.33.849, "commissioner" means the commissioner of commerce, community, and economic development.

Article 11. ALASKA REGIONAL ECONOMIC ASSISTANCE PROGRAM

Sec. 44.33.895. Alaska regional economic assistance program. [See delayed repeal note].

(a) The department shall

(1) encourage the formation of regional development organizations by providing assistance in forming organizations to interested individuals, including information on how to qualify and apply for regional development grants and federal funding under 42 U.S.C. 3121 - 3246 (Public Works and Economic Development Act of 1965), as amended;

(2) assist an interested individual in establishing boundaries for a proposed organization to ensure that the region

(A) is of sufficient geographic size and contains a large enough population to form an economically viable unit with shared interests, resources, traditions, and goals;

(B) contains at least one municipality that serves as a regional center; and

(C) contains the entire area of each municipality included in the region;

(3) gather information about regional economic issues, international trade, and tourism from organizations;

(4) serve as liaison between organizations and other state agencies and encourage other agencies to make resources available to help accomplish goals of the organizations;

(5) assist each organization to

(A) provide services designed to encourage economic development to local communities and businesses;

(B) collect and distribute economic information relevant to the region;

(C) participate in state marketing campaigns and join state trade missions that are relevant to the region; and

(D) develop and implement strategies to attract new industry expand international trade opportunities, and encourage tourism within the region.

(b) Subject to (c) of this section, the department may make regional development grants to organizations for projects the department determines will be of value in encouraging economic development. During a fiscal year, the department may make no more than 15 grants and may only make grants to one organization from a particular region. An organization that is designated an economic development district under 42 U.S.C. 3171 qualifies for grants under this subsection. The department shall by regulation adopt procedures for applying for regional development grants, including application deadlines. The department may by regulation establish additional grant eligibility requirements.

(c) To qualify for a grant, a regional development organization must match the grant by providing an amount of money from nonstate sources. The department shall establish by regulation a formula that determines the amount of the match required under this subsection based on the capability of each organization to generate money from nonstate sources. The amount of match required may not exceed the amount of grant money and may not be less than 20 percent of the grant. The total amount of grant money provided to an organization during a fiscal year may not exceed \$100,000.

(d) There is established in the department the regional development fund consisting of appropriations to the fund. Money from the fund may be used only for regional development grants.

(e) In this section,

(1) "department" means the Department of Commerce, Community and Economic Development;

(2) "regional development organization" or "organization" means a nonprofit organization or nonprofit corporation formed to encourage economic development within a particular region of the state that includes the entire area of each municipality within that region and that has a board of directors that represents the region's economic, political, and social interests.

Article 12. ALASKA FOREST PRODUCTS RESEARCH AND MARKETING PROGRAM

Sec. 44.33.900. Alaska forest products research and marketing program.

(a) The Alaska Forest Products Research and Marketing Program is established in the Department of Commerce, Community, and Economic Development.

(b) The program is established to provide a statewide information clearinghouse and coordinator to gather and disseminate information relating to research and development, including technical, logistical,

financing, marketing, and other relevant information regarding the manufacture of specific value-added wood products and the establishment of new high value-added manufacturing facilities in the state, and to assist in coordinating existing research and development efforts by state and federal agencies and other public and private entities.

(c) The program coordinator shall identify unfilled needs and problems impeding the development of a high value-added wood products industry in the state, gather information and conduct analyses, and propose solutions by exploring successful models in other states and nations.



STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING, LAND AND WATER

FRANK H. MURKOWSKI, GOVERNOR

RESOURCE ASSESSMENT
& DEVELOPMENT SECTION
550 W. 7th Ave., Suite 1050
Anchorage, Alaska 99501-3578

PHONE (907) 265-8534

FAX (907) 269-8915

February 28, 2003

The Honorable Thomas Wagoner
Chair, Senate Community and Regional Affairs Committee
State Capitol, Room 427
Juneau, Alaska 99801-1182

Dear Senator Wagoner:

The following information about municipal land entitlements was requested at the February 12, 2003 joint meeting of the Senate and House Community and Regional Affairs Committees. Dan Bockhorst, staff to the Local Boundary Commission, conveyed the request to DNR. The committees requested information regarding municipal land grants for prospective boroughs and the status of municipal land entitlements for existing boroughs.

Grants for Prospective Boroughs. The following are very rough estimates of municipal land grants for prospective boroughs in the areas defined by model borough boundaries. In order to determine these figures accurately, DNR staff will need to review land status plats for each township within the proposed municipality. This will be done at the time the municipality incorporates, as required by AS 29.65.030. However, the figures below provide a relative idea of the magnitude of entitlements.

Please note that because these are estimates and land status is constantly changing, these figures could change significantly. The two most significant variables that could alter these figures are: first, additional land transfers to the state could increase these figures; and second, land transfers out of state ownership, such as a future University land grant, could reduce these figures. The impact of future land transfers will vary by area, for example, if the state conveys land to the University this could significantly reduce the already small entitlements for potential SE Boroughs as the University has shown considerable interest in acquiring land in SE Alaska. State land sales also reduce land available for future Boroughs.

The estimated entitlements represent ten percent of the vacant, unappropriated, unreserved (VUU) state land as defined in AS 29.65.130(10). VUU is determined by land classifications and legislative designations effecting state lands. The small entitlements in the four Southeast areas reflect the fact that state owns less land in Southeast. This is because the Statehood Act restricted state land selections in the Tongass National Forest. However, per acre, these Southeast lands are generally significantly greater in value than lands elsewhere in Alaska.

Municipal Land Entitlements

"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."

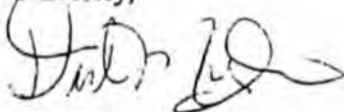
The following are the entitlement estimates for the eight areas the Committees inquired about:

1. Aleutians West - 0 acres (the state owns no general selection lands in this area, land ownership is limited to a few DOTPI acquired parcels).
2. Upper Tanana Basin - 270,000 acres
3. Copper River Basin - 40,000-60,000 acres
4. Prince William Sound - 40,000-60,000 acres
5. Glacier Bay - 330 acres
6. Chatham - 67 acres
7. Wrangell-Petersburg - 3,800-5,600 acres
8. Prince of Wales Island - 5900-6,000 acres

Status of Existing Borough Entitlements. Regarding the status of municipal land entitlements for existing boroughs, please see the attached table. All totaled, the legislature has committed 1.4 million acres of state land to municipalities (cities and boroughs), about 800,000 acres of this has been approved by DNR. You will note on the attached table that most of the acreage still pending approval is within six boroughs. Most of these were large land grants that were established in the recent years, at a time when DNR simultaneously received cutbacks in staff to process these land grants. Last year, the legislature appropriated additional funds to DNR in order to facilitate the transfer of these land grants. For that reason, we expect to be significantly accelerating our municipal entitlement transfers during the next few years.

If you have any additional questions, please contact me at 269-8532.

Sincerely,



Dick Mylius, Chief
DNR Resource Assessment and Development Section

cc: Tom Irwin, Commissioner, DNR
Dan Bockhorst, DCED, Local Boundary Commission Staff
Bob Loeffler, Director, DNR Division of Mining, Land and Water
Janet Burleson-Baxter, DNR Legislative Liaison

BOROUGH AND UNIFIED MUNICIPALITIES LAND ENTITLEMENTS - AS 29.65

<u>Municipality</u>	<u>Original Entitlement</u>	<u>Acreage Remaining to convey</u>
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

MUNICIPAL LAND ENTITLEMENTS - AS 29.05

MUNICIPALITY	CERTIFIED ENTITLEMENT	APPROVED PATENTED ACREAGE	ESTIMATED REMAINING ENTITLEMENT
Aktavik 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
Prudhoe 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	408	0
City and Borough of Juneau	19,584	19,584	100
City of Kenai	307	307	0
Kenai Peninsula Borough	155,780	138,280	18,500
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	31,828	93,374
Metanuska-Sustna 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	285,438	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	585	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	600	600	0
City of Wrangell	551	551	0
City and Borough of Yakutat	21,500	22,661	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 29.05 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	58,500	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

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 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.

Local Action

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.

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.