

HB

133

ALASKA STATE HOUSE OF REPRESENTATIVES

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



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 four changes in the way the Local Boundary Commission deals with municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution.

This legislation protects the voters' right to incorporate, outline the boundaries, and select the levels of service. The Local Boundary Commission will no longer be able to amend the petition or impose conditions on the incorporation without giving public notice of each proposed amendment or condition and giving an opportunity for public comment on each proposed amendment or condition.

Also we will add a provision that requires at least two public meetings before the Local Boundary Commission can take a proposal directly to the legislature.

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.

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

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

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CSSSHB 133(JUD)
Sectional

Section 1. Changes Local Boundary Commission's ability to amend petitions or impose conditions on petitions approved by a vote of the people. The Local Boundary Commission will no longer be able to amend the petition or impose conditions on the incorporation without giving public notice of each proposed amendment or condition and giving an opportunity for public comment on each proposed amendment or condition.

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

Sec. 3. This section requires two separate votes for an annexation and both elections separately must be approved by a majority of the voters. One election is a vote of the people to be annexed and the other election is a vote of the people in the existing municipality.

Sec. 4. Makes it very clear that regulations cannot extend requirements beyond those requirements set in statute and clears up the conflict of aggregate votes. The aggregate vote regulation adds to the statutory requirements and way to annex property that is inconsistent with the constitutional provision of Article 12, 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. (Article XI deals with initiatives, referendums, and recall)

Sec. 5. This applicability clause directs the existing applications before the LBC that have not been finalized before the enactment of HB 133 to be processed by the conditions of HB 133.

Sec. 6. This is an effective date clause.

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IN THE SUPERIOR COURT FOR THE STATE OF
FIRST JUDICIAL DISTRICT AT JUNEAU

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Petitioners for the Dissolution
of the City of Skagway and
Incorporation of a Skagway
Borough,

Appellants,

v.

Local Boundary Commission,

Appellee.

FILED IN CIVIL
STATE OF ALASKA
FIRST JUDICIAL DISTRICT
AT JUNEAU

9-20-05

BY: *dh*

1JU-02-1024 CI

I. INTRODUCTION

Qualified voters in Skagway ("Skagway") petitioned the
Local Boundary Commission ("the Commission") to concurrently
incorporate a Skagway borough and dissolve the City of Skagway.
The Commission denied the petition. Skagway appeals, contending
that the Commission improperly adopted a geographic size
requirement in its Statement of Decision that is otherwise not
required by existing law. Skagway argues that the size
requirement is the equivalent of a new regulation that was not
adopted in accordance with the Administrative Procedure Act,
("APA") thus denying Skagway due process notice of the standards

1 that would apply to its petition. Skagway further argues that
2 the Commission's conclusion that a large geographic size
3 requirement is imposed by the Alaska Constitution before a
4 borough may be incorporated is in error.

5 The court concurs that the Commission's adoption of
6 "fundamental principles" that impose a minimum geographic size
7 requirement for Skagway's borough incorporation is essentially a
8 new legal requirement or regulation. This size requirement was
9 not adopted in accordance with the Administrative Procedures
10 Act. Skagway did not have notice of the new regulatory
11 requirements prior to the Commission's decision on Skagway's
12 borough petition. As such, the petition must be remanded to the
13 Commission for reconsideration based on legal standards
14 established by law.

16 The Commission remains free to deny the petition. However,
17 any decision must be based on standards adopted according to
18 law.

19 II. FACTUAL BACKGROUND

20 A. The Skagway Petition for Borough Incorporation

21 Skagway is Alaska's largest city, encompassing 443.1 square
22 miles. It includes an area at the head of the Lynn Canal,
23 surrounded by Canada, mountains, and water. Skagway has
24
25

1 approximately 800 year-round residents. The State of Alaska
2 does not provide any city services to Skagway.

3 Skagway residents have been interested in borough formation
4 since the 1970's. Interest turned to action in the early 1990's
5 when the Department of Community and Economic Development
6 ("DCED")¹ developed the Model Borough Boundary concept, which
7 recommended combining the City of Skagway with the Haines
8 Borough. Neither Skagway nor Haines accepted the model.
9

10 About this time, the City of Yakutat submitted a petition
11 to incorporate as a borough. That petition raised unique issues
12 for the Local Boundary Commission to consider because there were
13 no other cities in the area of the proposed Yakutat borough and
14 Yakutat asked to become a single-city borough. Also, Yakutat
15 did not technically meet one of the regulatory standards for
16 borough formation because its population consisted of less than
17 1,000 permanent residents.² Yakutat stressed its unique
18
19

20 ¹ The DCED serves as staff to the Local Boundary Commission.
21 It evaluates petitions filed with the Commission and issues
22 reports and recommendations on those petitions. AS 29.05.080; 3
AAC 110.530.

23 ² 3 AAC 110.050(b) provides that "[a]bsent a specific and
24 persuasive showing to the contrary, the commission will presume
25 that the population is not large enough and stable enough to
support the proposed borough government unless at least 1,000
permanent residents live in the proposed borough."

1 geographic characteristics. Yakutat, like Skagway, is
2 geographically isolated.

3 DCED opposed the concept of a single-city borough and
4 opposed relaxing the presumptive 1,000-person population
5 standard. It recommended that the Commission deny the Yakutat
6 petition. The Commission granted the petition, although it made
7 the borough smaller than that originally proposed by Yakutat.

8 Commissioner Shelley Dugan dissented from the Yakutat
9 borough decision. She set forth out a number of concepts
10 she believed should be imposed before any boroughs are
11 incorporated, including a minimum geographic size
12 requirement.

13
14 Skagway submitted its Petition on January 22, 2001. On
15 October 23, 2001, DCED accepted the petition for filing. The
16 Skagway petition called for no changes in the capacity or
17 practice of the Skagway local government regarding local
18 services. Skagway also submitted a resolution by the Haines
19 Borough Assembly urging the Commission to approve the petition.
20 Skagway also included a letter by Vic Fischer, delegate to the
21 Constitutional Convention and Secretary to the Constitutional
22 Convention's Committee on Local Government. In that letter,
23 Fischer complained about DCED's preliminary report on the
24 Yakutat petition, noting that the report improperly concluded
25

1 that a small, single-city borough violated the constitution.
2 Fischer urged the Commission to accept Yakutat as a single-city
3 borough, and urged the Commission to judge each case on its own
4 merits.

5 2. DCED Opposition to the Skagway Petition

6 In June 2002, DCED completed a 230-page preliminary report
7 on the Skagway petition, recommending denial of the petition.
8 DCED Local Government Specialist and staff to the Local Boundary
9 Commission Dan Pockhorst submitted the final recommendation to
10 the Commission on August 9, 2002. The final report addressed
11 written comments on DCED's preliminary report. The final report
12 stated that the petition did not satisfy multiple
13 constitutional, statutory and regulatory requirements,
14 essentially concluding that the proposed Skagway borough was too
15 geographically small and too small in population to be properly
16 considered for incorporation as a borough.³

18 3. The Commission Decision

19 Hearing on the petition occurred August 31, 2002. A
20 preliminary non-binding vote by the Commission was 5-0 to deny
21 the petition. On September 27, 2002, the Commission met to
22 discuss and review the draft Statement of Decision prepared by
23

24 ³ R. 515 - 519.
25

1 DCED. During the time set aside for questions, Skagway Mayor
 2 Bourcy noted that the draft Statement of Decision said that the
 3 Commission adopted ten new principles of borough formation. He
 4 asked whether public meetings had been held on the newly-adopted
 5 principles.⁴

6 Commissioner Tesche said the purpose of the principles was
 7 to make clear the Commission's view on borough formation,
 8 especially since the Commission had drawn somewhat contradictory
 9 conclusions regarding Yakutat and Skagway, two similarly-
 10 situated communities. Commissioner Tesche said the principles
 11 would provide guidance and set public policy for future borough
 12 formation.⁵

14 Lengthy discussion ensued, including:

15 TESCHE: I think that it would be incumbent on the
 16 Commission to set the record straight as far as the
 17 Yakutat decision and to adopt the principles set out
 18 in the minority decision in that case . . . so that
 19 somebody reading the decisional law . . . of the
 20 Commission can make some sense over what could be seen
 21 as two fundamentally different decisions.⁶

19 ***

20 GARDNER: [I] need clarification on this . . . [A]m I
 21 to understand now that the [Commission is] adopting

22 R. 793.

23 R. 806-11.

24 R. 806-07.

25

1 the views expressed by the dissenting Commissioner on
 2 the Yakutat borough issue as - for the purpose of [the
 3 Statement of Decision on the Skagway petition] and to
 4 set forth a clear standard governing future
 5 incorporations of boroughs in Alaska? It will be the
 6 Commission's current policy that [the Commission]
 7 adopt and set the record straight for following . . .
 8 a dissenting Commissioner when the Commission as a
 9 body approved Yakutat?'

6 TESCHE: [Y]es . . . [T]he dissenting view in that case
 7 is correct. Personnel has changed on the Commission.
 8 I think our analysis is correct in this particular
 9 case that we have before us and basically I am
 10 proposing that we, in essence, overrule the legal
 11 reasoning that was set out in the Yakutat decision . . .

11 ***

12 GARDNER: But it reads, it says, "We are to set forth a
 13 clear standard governing future incorporations of
 14 boroughs in Alaska." And as I know this, we have not
 15 had legal counsel's advice with respect to this type
 16 of public policy decision?"

15 ***

16 TESCHE: The Commission is free, in the context of this
 17 decision, to say what we believe the law is or even
 18 what our policy should be for the purpose of this
 19 decision. At another point in the agenda I will
 20 propose . . . that we ask staff to explore the
 21 possibility of a regulation that would set these
 22 principles out in . . . regulation that would go
 23 through the entire process, which means review by the
 24 Attorney General's office and public hearing and the
 25 like. In that sense it would become a strictly binding

22 R. 808.

23 Id.

24 R. 809.

1 legal principal by regulation. And obviously that has
 2 a different force if you will than a statement that we
 3 make in a decision because we can change our view of
 4 the law and our interpretation of the law in
 5 decisions. And that's precisely what I'm proposing
 6 here. I'm proposing getting back now to the motion
 7 I'm proposing that we recognize and I think that there
 8 has been a shift in how the Commission views the law
 9 and for purposes of our decisions, we can make the
 10 statements we're making. But they are not necessarily
 11 binding if you will on future Commissions because the
 12 Commission could change its mind once again. Unless
 13 we did it by regulation which I have also proposed.¹⁰

8
 9 GARDNER: [I] think the cart is, in effect, before the
 10 horse, I believe that it would be appropriate for the
 11 Commission to . . . adopt a motion to propose
 12 regulations to address this and to get legal review. .
 13 . . . I am not a lawyer and I don't believe that it's
 14 appropriate for us to adopt such a motion that says
 15 we're setting forth a clear standard governing future
 16 incorporations of boroughs in Alaska based upon a
 17 dissenting Commissioner's comments in a previous case
 18 that was approved by the Commission.¹¹

14 Commissioner Harcharek joined Commissioner Gardner's concerns.
 15 stating:

16
 17 I also voice opposition to the motion . . . The very
 18 crux of government is oversight, and the [Local
 19 Boundary Commission] . . . is intended to be the
 20 oversight committee for DCED.¹²

19 Following discussion, Commissioner Tesche responded:

20
 21 In light of the comments . . . I . . . propose
 22 [o]n the first line where it says, "The Commission

22
 23 ¹⁰ R. 810.

24 ¹¹ R. 811.

25 ¹² R. 812.

1 today adopts ten," . . . substitute . . . "recognizes
 2 several." So that first sentence would [read]: "The
 Commission recognizes several fundamental
 3 principles."¹³

4 The Commissioners voted 3-2 to include the following
 language in the Statement of Decision on the Skagway Petition:

5 The Commission recognizes several fundamental
 6 principles about the formation of organized boroughs
 in Alaska in this decision. Addressed in subsection A
 7 of this decisional statement, these principles are
 grounded in the constitutional and decisional law of
 8 the State of Alaska as well as earlier decisions of
 the Commission.¹

9
 10 ¹ Many of these principles were first addressed by
 the dissenting Commissioner in the Commission's 1992
 decision in City and Borough of Yakutat.¹⁴

11 In Section III, Part A of the Skagway Statement of
 12 Decision, the Commission outlined the fundamental nature of
 13 borough government in Alaska, specifically recognizing nine
 14 principles.¹⁵ The Commission stated that the principles are
 15 "intended to guide the Commission and others in future
 16 discussions concerning borough proposals."¹⁶

17 Skagway argues that the eleven-page discussion of
 18 fundamental borough formation principles, subsequently
 19

20
 21 ¹³ R. 816.
 22 ¹⁴ Exc. 8-9.
 23 ¹⁵ Exc. 8.
 24 ¹⁶ Id. at n.9.
 25

1 repeatedly referenced in the application of statutory standards
 2 to Skagway's petition, imposes a geographic size requirement
 3 that any proposed borough must be "large." There is language in
 4 the statement of principles and the subsequent consideration of
 5 Skagway's petition that supports this contention.

6 Principle 3 provides in part that "[b]oroughs are
 7 governments that serve relatively large natural regions."¹⁷ The
 8 heading for Subsection b of Principle 3 states:

9 "Geographically, Boroughs were Envisioned as Relatively Large
 10 Regional Units while Cities are Intended to be Relatively Small
 11 Units."¹⁸ Further discussion under Principle 3 states: "Indeed,
 12 it is difficult to suppose that a city government's boundaries
 13 could be consistent with both 3AAC 110.040(b) [providing
 14 guidelines for the establishment of city boundaries] and the
 15 constitutional and statutory standards for borough boundaries."¹⁹

17 Specifically addressing whether Skagway's petition met the
 18 first of eighteen constitutional and statutory standards for
 19

21 ¹⁷ Exc. 9.

22 ¹⁸ Exc. 11.

23 ¹⁹ Exc. 13. This language further suggests that another
 24 "fundamental principle" of borough formation is that a borough's
 25 boundaries must necessarily be larger than a city government's
 boundaries.

1 borough incorporation, the "common interests" standard, the
2 Commission stated:

3 [T]he Commission finds that the Skagway borough
4 proposal does not embrace an area and population with
5 the fundamental characteristics of a borough as
6 outlined in Section III-A of this decisional
7 statement. In other words, the 443.1 square mile
8 territory in question lacks the geographic scope and
9 social, cultural, and economic characteristics of an
"area," as that term is used in the Constitution of
the State of Alaska, Alaska Statutes, and Alaska
Administrative Code with respect to borough
incorporation proposals. *

10 *The Commission ascribes significance to the fact
11 that the term "area" is used both in Article X,
12 Section 3 of the constitution and AS 29.05.031 with
13 respect to a borough. The word "area", in that
14 context, is a term of art that describes a regional
territory possessing all of the fundamental
characteristics of a borough outlined in Section III-A
of this decisional statement.²⁰

15 The Commission went on to conclude that while Skagway would
16 otherwise meet certain other statutory standards, it did not
17 meet those statutory standards after application of the
18 "fundamental principles" of borough formation. By example, the
19 Commission found that Skagway "clearly has the resources needed
20 to provide the current level of municipal services" in
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22
23

24 ²⁰ Exc. 20 (text and n.28)
25

1 addressing the "borough resources" standard.²¹ However the
 2 Commission then stated:

3 Notwithstanding, the Commission concluded earlier
 4 (Section III-B) that the 443.1 square miles proposed
 5 for incorporation and to which the proposed borough
 6 would provide services does not possess the
 7 characteristics of an "area" in the context of Article
 8 X, Section 3 of Alaska's constitution and AS
 9 29.05.031(a). For that reason, the Commission reaches
 10 the conclusion that the proposed Skagway borough does
 11 not satisfy the standard set out in [the resources
 12 standard].²²

13 The Commission similarly relied on its Section III-B
 14 principles of borough formation to conclude that the Skagway
 15 petition did not meet the population size and stability
 16 standard,²³ the communications and exchange standard,²⁴ the media
 17 and transportation standard,²⁵ the natural geography standard,²⁶
 18 and the adequate land and water standard.²⁷

19 ²¹ Exc. 24-25.

20 ²² Exc. 25.

21 ²³ Exc. 25.

22 ²⁴ Exc. 28.

23 ²⁵ Exc. 28-29.

24 ²⁶ Exc. 29.

25 ²⁷ Exc. 30.

1 The Final Statement of Decision on the Skagway petition was
2 adopted by the Commission in a 3-2 decision. Reconsideration
3 was denied. This appeal followed.

4 **III. STANDARD OF REVIEW**

5 Questions of law, including the interpretation of statutes
6 and regulations, are decided on an independent judgment basis.²⁸
7 If the issue involves agency expertise or a determination of
8 fundamental policy questions on subjects committed to an
9 agency's discretion, the court uses a rational basis standard.²⁹

10 Deciding whether the fundamental principles relied upon by
11 Commission in its final decision is the equivalent of a new
12 regulation is a question of law that includes interpretation of
13 statutes and regulations.³⁰

14 **IV. DISCUSSION**

15 A. That Portion of the "Fundamental Principles" for
16 Borough Formation Set Forth in the Statement of
17 Decision that Requires that Boroughs Encompass
18 "Relatively Large" Geographic Areas That Are Larger
19 than the Skagway Borough's Proposed Size Is the
20 Equivalent of a New Regulation

21 ²⁸ Chalovich v. Dep't of Natural Resources, 104 P.3d 125, 128
22 (Alaska 2004).

23 ²⁹ Id.

24 ³⁰ Jerrel v. State, Dep,t of Natural Resources, 999 P.2d 138,
25 141 (Alaska 2000).

1 Administrative agencies must comply with APA guidelines
2 when altering, amending or issuing regulations.³¹ Agency action
3 creates a regulation when it establishes a future course of
4 conduct, has the effect of a standard of general application, or
5 makes an addition of substance to an existing policy or
6 regulation.³²

7 In Jerrel v. State, Department of Natural Resources,³³ the
8 issue presented was whether the Department of Natural Resources
9 ("DNR") created a new regulation by interpreting an existing
10 regulation that required animal branding or marking to "show
11 distinctly" to mean "plainly distinguishable from a distance of
12 twenty feet."³⁴ DNR contended that its expertise allowed it the
13 power to make policy rules interpreting regulations.
14

15 The court applied a two-part test to decide whether the
16 policy was a *de facto* regulation: (1) whether the policy or rule
17 interprets or makes specific the law enforced or administered by
18 the agency; and (2) whether the policy or rule affects the
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21 ³¹ Id. at 143.

22 ³² Id. At 146.

23 ³³ 999 P.2d 138 (Alaska 2000).

24 ³⁴ Id. at 142.
25

1 public or is used by the agency in dealing with the public.³⁵
2 The court concluded that the twenty-foot visibility rule met
3 both standards and was thus a regulation adopted without
4 compliance with the Administrative Procedures Act.

5 In Alaska Center for the Environment v. State,³⁶ the issue
6 presented was whether a state division's decision as to the
7 applicability of regulations governing a "major energy facility"
8 in turn created a regulation. The court concluded that the
9 division's interpretation of standards did not amend,
10 supplement, or revise existing law and did not provide for new
11 or more specific requirements. Rather, the court held that the
12 agency interpretation was simply "the interpretation of the
13 regulation according to its own terms."³⁷

15 The Commission's "fundamental principles" interpret the
16 Alaska Constitution, state statutes and regulations to
17 implicitly require that boroughs be "relatively large regional
18 units."³⁸ As set forth in detail in Skagway's briefing, there is
19 no constitutional, statutory or regulatory language that imposes
20

21 ³⁵ Id. At 143.

22 ³⁶ 80 P.3d 231 (Alaska 2003).

23 ³⁷ Id. at 243-44.

24 ³⁸ Exc. 11.
25

1 a minimum size requirement for incorporation as a borough.

2 Also, although the Commission cites Vic Fisher, recognized
3 by the Supreme Court and the Commission as "an authority on
4 Alaska government"³⁹ they do not include his statement to
5 Constitutional Convention Delegate Nordale regarding the meaning
6 of the language in Article X, Section 3 of the Alaska
7 Constitution that "[e]ach borough shall embrace an area and
8 population with common interests to the maximum degree
9 possible." Delegate Nordale asked whether the "maximum extent
10 possible" language "refers to the common interests, not to the
11 area, the size?" Mr. Fisher responded, "No, that is right."⁴⁰

12
13 The Commission here concluded that the term "area" as used
14 in Article X, Section 3 of the Alaska Constitution and Alaska
15 Statute 29.05.031⁴¹ is "a term of art that describes a regional
16 territory possessing all of the fundamental characteristics of a
17

18
19 ³⁹ Exc. 11 n.15; Keane v. Local Boundary Commission, 893 P.2d
1239, 1244 (Alaska 1995).

20 ⁴⁰ 4 Proceedings of the Alaska Constitutional Convention 2711
21 (January 20, 1956).

22 ⁴¹ AS 29.05.031(a)(1) provides in pertinent part that an "area
23 that meets the following standards may incorporate as a home
24 rule, first class, or second class borough, or as a unified
25 municipality: (1) the population of the area is interrelated
and integrated as to its social, cultural, and economic
activities"

1 borough outlined in Section III-A of this decisional
2 statement."⁴² The Commission then repeatedly stated that
3 Skagway's 443.1 square miles do not possess the characteristics
4 of an "area" in the context of Article X, Section 3 of Alaska's
5 constitution and AS 29.05.031(a).

6 It might otherwise be found that a "fundamental principle"
7 that boroughs must be "relatively large" is essentially
8 meaningless because "relatively" is a relative term.⁴³ However,
9 application of the Commission's fundamental principle requiring
10 relatively large boroughs to its clear finding that the proposed
11 Skagway Borough size of 443.1 square miles is not an "area"
12 meeting borough incorporation standards effectively imposes a
13 specific size standard for boroughs, i.e., they must be larger
14 than Skagway's proposed 443.1 square miles.

15 This new standard is the functional equivalent of a
16 regulation. It interprets and makes specific the generally
17 flexible considerations for borough incorporation set forth in
18

19
20 ⁴² Exc. 20 n.28.

21 ⁴³ The North Slope Borough, at 94,770 square miles, is
22 presumably "large" as it is the largest borough in the state.
23 Alaska Department of Community and Economic Development,
24 Borough Government in Alaska at p. 3. (Nov. 2000). However,
25 Bristol Bay Borough encompasses 850 square miles and is less
than 1% of the geographic size of the North Slope Borough. Id.
Presumably both boroughs constitute a sufficient area for a
borough, despite the great difference in size.

1 the constitution, state statute and regulation. It was used by
2 the Commission in dealing with the public in that the
3 fundamental principles were repeatedly applied to the Skagway
4 petition. It establishes a future course of conduct and has the
5 effect of a standard of general application.

6 B. The Commission Did Not Promulgate the "Relatively
7 Large/Larger Than Skagway Geographic Size Requirement"
8 in Accordance With the Administrative Procedures Act

9 As noted, the Commission adopted and applied its
10 "relatively large" geographic size requirement to determine that
11 443.1 square miles does not qualify as an "area" for borough
12 incorporation. This action was taken without deference to the
13 Administrative Procedures Act, although at least one
14 Commissioner indicated that he would seek to have the
15 fundamental principles adopted as regulations in the future.

16 In United States Smelting, Refining and Mining Co. v. Local
17 Boundary Commission,⁴⁴ the Alaska Supreme Court considered the
18 proper scope of judicial review of an administrative decision by
19 the Local Boundary Commission in order to assure compliance with
20 due process under Alaska law. The court held that former AS
21 44.19.260(a)(2), requiring the Commission to develop proposed
22 standards and procedures for changing local boundary lines, was

24 ⁴⁴ 489 P.2d 140 (Alaska 1971).

1 mandatory and that the exercise of Commission discretion was
2 conditioned upon the development of such standards and
3 procedures.⁴⁵ The court concluded that the challenged annexation
4 was invalid because the Commission had not developed standards
5 prior to the annexation hearings.⁴⁶

6 The same due process concerns enunciated in United States
7 Smelting guide the court in this case. This court agrees with
8 the state's argument that the Commission has the discretion to
9 reject a petition for borough incorporation even if the petition
10 meets the statutory standards for incorporation.⁴⁷ The court
11 also agrees with the state's argument that it is possible that
12 the Skagway petition could be denied due to failure to meet the
13 statutory and regulatory standards for incorporation, without
14 reference to the fundamental principles.

15
16 However, the issue presented in this appeal is not whether
17 the Commission reached the correct result. Rather, the core
18

19
20 ⁴⁵ Id. at 141-42. Current AS 44.33.812(a)(2) states in
21 pertinent part that the Local Boundary Commission "shall" adopt
22 regulations providing standards and procedures for municipal
reclassification and dissolution. Here, Skagway sought
dissolution and reclassification as a borough.

23 ⁴⁶ Id. at 142.

24 ⁴⁷ This argument is presumably premised on the assumption that
25 the Commission would not act in an arbitrary and capricious
manner in exercising its discretion.

1 issue here is whether the result was reached in a manner
 2 consistent with fundamental notions of due process, i.e., fair
 3 notice of the standards that would be applied to the petition.

4 The proper limit of judicial review where the issue is one
 5 of due process compliance has been stated as follows:

6 The safeguard which due process assures is not that a
 7 court may examine each factual finding to see that it
 8 is correct, or even that it is supported by
 9 substantial evidence. Rather, we will review to
 10 assure that the trier of fact was an impartial
 11 tribunal, that no findings were made except on due
 12 notice and opportunity to be heard, that the procedure
 at the hearing was consistent with a fair trial, and
 that the hearing was conducted in such a way that
 there is an opportunity for a court to ascertain
 whether the applicable rules of law and procedure were
 observed."⁴

13 Here, fair and statutorily-required notice of the new standards
 14 for borough incorporation set forth in the "fundamental
 15 principles" was not given to Skagway.

16 The Commission argues that Skagway knew that the regional
 17 nature of its government functions would be considered for
 18 borough incorporation. This is likely true. However, the
 19 problem here is that, without prior notice, the Commission
 20 applied a newly-enunciated "fundamental principle" to conclude
 21 that 443.5 square miles is not "relatively large" enough to be a

22 _____
 23 ⁴ United States Smelting, 499 P.2d at 143, quoting K & I
 24 Distributors, Inc. v. Murkowski, 486 P.2d 351, 357 (Alaska
 25 1971) (footnote omitted).

1 borough. This new standard, if it is to be adopted, must be
 2 done according to law, following the public process provisions
 3 of the Administrative Procedures Act.

4 The Commission also argues that it should be able to
 5 consider non-statutory criteria. The court again agrees. The
 6 Commission is free to consider non-statutory criteria in
 7 deciding a borough incorporation petition and the geographic
 8 size of a proposed borough naturally may have some relation to
 9 existing statutory and constitutional standards.

10 Again, however, the problem with the decision at issue is
 11 not whether geographic size is an appropriate factual
 12 consideration in deciding borough incorporation. Rather, as
 13 previously stated, the Commission can not impose minimum size
 14 requirements for borough incorporations without taking those
 15 necessary steps to assure that any new standards are adopted
 16 according to law.

17
 18 **IV. CONCLUSION**

19 For the reasons set forth above, this matter is remanded to
 20 the Local Boundary Commission for reconsideration consistent
 21 with this decision. The Commission is not required to hold a new
 22

1 hearing unless it intends to apply new legal standards to its
2 decision.

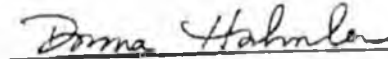
3 DATED at Juneau, Alaska this ⁴20 day of September, 2005.

5 

6 _____
7 Patricia Collins
8 Superior Court Judge

9 CERTIFICATION

10 The undersigned hereby certifies that on the 20th day of
11 September, 2005 a true copy of the foregoing document was served
12 on Robert Blasco via courtbox and Michael Mitchell via US mail.

13 

14 _____
15 Donna Hahnlen
16 Assistant to Judge Collins
17
18
19
20
21
22
23
24
25



State of Alaska Local Boundary Commission

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

May 2, 2005

The Honorable Gary Stevens, Chair
Senate Committee on Community and Regional Affairs
State Capitol, Room 103
Juneau, AK 99801-1182

RE CSSSHB 133(JUD) am

Dear Senator Stevens:

I regret that I am unable to testify before the Senate Committee on Community and Regional Affairs this afternoon regarding HB 133. Please consider the enclosed "Statement in Opposition to CSSSHB 133(JUD) am" and include the statement in the record as the official position of the Local Boundary Commission (LBC).

The LBC expressed its opposition to the bill (CSSSHB 133(CRA)) by a unanimous vote on March 25. Since then, the bill has been amended to address some of the concerns of the LBC. However, the LBC remains opposed to the bill.

Sincerely,

A handwritten signature in cursive script that reads "Darroll Hargraves".

Darroll Hargraves
Chair

Enclosure: Statement in Opposition to CSSSHB 133(JUD) am

cc: Members of the Local Boundary Commission



State of Alaska Local Boundary Commission

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

STATEMENT IN OPPOSITION TO CSSSHB 133(JUD) AM **Before the Alaska State Senate Committee on Community & Regional Affairs** **By Darrell Hargraves, Chair, Local Boundary Commission** **May 2, 2005**

The Local Boundary Commission (LBC) provided substantial testimony before various committees of the Alaska State House of Representatives regarding different versions of House Bill 133. The version passed by the House was the fifth adaptation of the original bill.

I am pleased that many of the concerns expressed by the LBC are reflected in the final version of the bill. However, the LBC still has concerns regarding Sections 3, 4, and 5 of the bill.

Section 3 is characterized by supporters of the bill as requiring any annexation to be approved both by the voters within an annexing municipality and, separately, within the area or territory proposed for annexation. That characterization is overly broad. It does not recognize, for example, that Article X, Section 12 of Alaska's Constitution allows any annexation without any vote. Moreover, the LBC views the methods set out in AS 29.06.040(c) as being exclusive, or independent of one another. If the counter view is correct, however, the bill will allow a relatively tiny number of voters to thwart the interests of a vastly superior number of voters by denying a legitimate local action annexation proposal.

Section 4 is characterized by supporters as nullifying the aggregate voter method of annexation. The LBC does not interpret the bill as having that effect. However, if the supporters are correct, it will eliminate one local action method by which annexation may occur. It will likely result in an increase in the number of legislative review annexation proposals, which have no provision for any local vote.

Section 5 of the bill purports to annul any "municipal incorporation, annexation, detachment, merger, consolidation, reclassification, or dissolution proposal that has not taken effect on or before the effective date of this Act and that has been initiated or considered under regulations that do not meet the requirements of AS 44.33.813(a)(2), as amended in sec. 4 of [HB 133]." One petition for annexation by the aggregate voter method is currently pending before the LBC. Other such petitions may be filed with the LBC before the Act takes effect. The Commission is concerned that any annulment of such petitions by HB 133 will encounter legal challenges.

Given these concerns, the LBC urges the Senate Community and Regional Affairs Committee to not give favorable consideration to the bill. The LBC is certainly willing to

Statement in opposition to CSSH B 133(JUD) am
May 2, 2005
Page Two

cooperate with individual legislators during the interim to better understand and address any concerns they may have regarding procedures for local action annexation.

Alaska State Legislature

Senator Gary Stevens, Chair
Alaska State Capitol, Room 103
Juneau, Alaska 99801-1182
Phone 907-465-4925
Fax 907-465-3517



Committee Members:
Senator Bert Stedman
Senator Tom Wagoner
Senator Johnny Ellis
Senator Albert Kookesh

Senate Community and Regional Affairs Committee

Agenda

Monday, May 6, 2005, 1:30 – 3:30 p.m.
Beltz Comm. Room 211

- **CS SS HB 133(JUD)am Relating to incorporation of boroughs, to annexation by local action, and to regulations of the LBC to provide standards and procedures for municipal incorporation, reclassification, dissolution, and certain municipal boundary changes**

Held

Rynniva Moss from Representative Coghill's office will re-introduce the bill. We do not need to adopt a CS. She has prepared a draft amendment to help with a situation with the City of Petersburg where they filed a petition to annex an area. The version passed by the House is before us. It has a further referral to the Senate State Affairs Committee. There is an updated zero fiscal note that should be adopted. A few people have indicated that they may call into the teleconference. Mike Black will be online to testify and answer questions.

adopted u.c.

- **HB 217 Full and true value of taxable municipal property determinations.**

We've received the original version of the bill. ^{*here*} Pete Fellman from Rep. Harris's office will introduce via teleconference. The bill has a further referral to the Sen. Finance Committee. Steve VanSant will be online for questions/testimony, and Mike Black will be here. There is a **previous zero** fiscal note to adopt.

*R.O.
5-6-05*

- **HB 293 Relating to a borough sales tax exemption for a source that is taxed by a city in that borough.** Previously reported out of Sen. CRA (4/15/05) as SB 161

*R.O.
5-6-05*

HB 133 - plea to report to Sen. STA

AMENDMENT

OFFERED IN THE SENATE

TO: CSSSHB 133(JUD) and

1 Page 3, lines 15 - 20:

2 Delete all material.

3 Insert "the effective date of this Act and that has been initiated before the effective
4 date of this Act remains valid and subject to AS 29.05.100(a), AS 29.06.040(c),
5 AS 44.33.812(a), and regulations adopted under those provisions, as those provisions and
6 regulations read on the day before the effective date of this Act."



CITY OF PETERSBURG
P.O. BOX 329 • PETERSBURG, ALASKA 99833
TELEPHONE (907) 772-4519
FAX (907) 772-3759

May 2, 2005

To: Senate Community & Regional Affairs Committee

Cc: Delegation

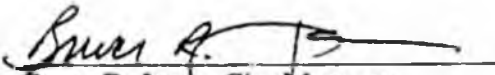
Fr: City of Petersburg

RE: HB 133

The City of Petersburg requests that Section 5, Applicability, of HB133, be considered for amendment.

The City is presently preparing a response brief to public comments and briefs filed on its petition to annex that was filed with the Boundary Commission in December, 2004. The response brief is due to the boundary commission by July 15, 2005. The City does not want its petition void if this Act passes as considerable time, personnel resources and money have been placed into the petition application.

Consideration should be given to allow incorporations, annexations, detachments, mergers, consolidations, reclassifications or dissolutions that are currently in process to be amended to meet the requirements of AS 44.33.812 (2) or under procedures that do meet the requirements of AS 29.05.115.


Bruce R. Jones, City Manager



DIVISION OF COMMUNITY ADVOCACY

Frank H. Murkowski, Governor

May 6, 2005

The Honorable Gary Stevens, Chair
Senate Committee on Community and Regional Affairs
State Capitol, Room 103
Juneau, AK 99801-1182

RE CSSH B 133(JUD) am

Dear Senator Stevens:

The Department of Commerce, Community, and Economic Development (Department) welcomed the modifications to HB 133 that result in the current version, CSSH B 133(JUD) am, (hereafter "HB 133") that passed the House. The Department views this legislation, in its present form, as providing an additional option to municipalities to annex by local action, and it requires the Local Boundary Commission (LBC) to establish procedures for the new local action option.

It has been the long-standing interpretation of the LBC that AS 29.06.040(c)(1) - (3) is a listing of the minimally required methods for which the LBC must provide procedures with respect to municipalities that seek annexation or detachment by local action. This interpretation stems from the language used in AS 29.06.040(c) which reads in relevant part: "The procedures established under this section *must include*¹ a provision . . ." The language "must include" does not act as a limitation on the LBC; instead it requires the LBC to provide, at a minimum, procedures for the listed methods. HB 133 would add one more required method for which the LBC must provide procedures under AS 29.06.040(c); namely, when a municipality chooses the option of proposing annexation "by a majority of votes on the question cast by voters residing in the annexing municipality."

¹AS 01.10.040(b) provides 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."*

The Honorable Gary Stevens
May 6, 2005
Page 2

It is also apparent from reading the specifics of the required methods for local action annexation or detachment (AS 29.06.040(c)(1) – (3)), that these methods are independent of one another. For example, a municipality seeking an annexation under AS 29.06.040(c)(2) --“municipally owned property adjoining the municipality may be annexed by ordinance without voter approval” -- would not also need to conduct an election under (c)(1). Nor would a municipality need to have “ all property owners and voters in the area petition the governing body” under (c)(3) if it were seeking annexation under (c)(2). In fact, the procedures in (c)(2) and (c)(3) allow annexation by local action “without” any type of election. Similarly, if a municipality seeks annexation or detachment under the local action method under (c)(1), which requires approval by “a majority of votes on the question cast by voters residing in the area proposed to be annexed or detached” it would not be necessary to also meet the requirements of (c)(2) or (3) as discussed above. We are confident in our interpretation based upon principles of statutory construction as well as the historical interpretation of AS 29.06.040(c).

It is our view that Section 5 of the bill does not annul regulations of the LBC already promulgated, particularly regulations providing for an aggregate voter method as one of the local action annexation options available to municipalities. As stated above, we believe the amendment to AS 29.06.040(c) made in Section 3 of the bill provides municipalities with an additional option for local action annexation and the LBC must provide procedures for this additional method. It does not nullify other procedures the LBC may provide for in regulation.

As noted by the LBC in testimony before the House Community and Regional Affairs Committee, the House State Affairs Committee, and the Senate Community and Regional Affairs Committee, one petition for annexation by the aggregate voter method is currently pending before the LBC. Specifically, the City of Petersburg has one such proposal pending before the LBC. Under our interpretation of HB 133, in its current form, that annexation petition process will not be affected by the changes proposed to AS 29.06.040(c) in Section 3 of the bill.

In concert with the above comments, HB 133 does not, in any manner, eliminate or limit the LBC's authority with respect to a boundary change effected under AS 29.06.040 (b) -- the legislative review method provided for in Article X, Section 12 of the Alaska Constitution. Further, as provided in AS 29.06.040(d), a boundary change proposed under the legislative review method prevails over a boundary change initiated by local action, without regard to priority in time.

Therefore, the Department has no objection to this bill in its current form. Thank you for this opportunity to comment on this legislation.

Cordially,



Mike Black
Director

cc: The Honorable John Coghill, House Majority Leader
The Honorable Darroll Hargraves, Chair, Local Boundary Commission

HB133 Comments

William Egan expressed the view that boroughs represented a "better form of local government." In 1963, Governor Egan signed the Mandatory Borough Act into law. This created 8 boroughs, which today encompasses almost 84% of the state's population. These people did not vote to form a borough, but those borough governments have been working fine for the past 42 years.

A borough is an important if not essential tool to respond to the impacts of low levels of education funding and in dealing with cuts in funding for local governments, i.e. revenue sharing. It is also the most effective means to address important regional planning and economic development issues. Borough formation represents good public policy from a statewide perspective in several important aspects.

1. It fosters greater compliance with the equal protection clause of Article 1, Section 1 of the state constitution. Specifically, it would increase the extent to which citizens of Alaska have comparable obligations to support local services.

2. Article 10, Section 1 of the state constitution encourages borough formation. The constitutional concept of municipal government in Alaska is predicated upon the presumption that organized boroughs will exist wherever areas are capable of supporting them.

3. Creation of boroughs would dramatically ease the financial burdens on the state. For example, education costs for the state would decline because local contributions required of borough school districts would increase.

In 1988, the city of Valdez organized a PWS Borough Feasibility Study Group. The group hired Darbyshire & Associates to conduct the study, which was completed in April of 1988. The conclusions reached by the study indicated that a basic borough exercising only mandatory powers is a very viable proposition for residents of the area.

Another study was conducted for PWS by Northern Economics, ResourceEcon and Darbyshire & Associates in 1997, which concluded that the people of PWS would be better served by leaders who are proactive in the matter of borough formation rather than waiting to react to other borough annexation requests or the state legislature.

Requiring a vote on every borough formation can be likened to an annexation into a city. Those people that are outside the city limits reap the benefits of schools, libraries, roads and more, yet pay little or nothing in taxes to support those services. They resist annexation to avoid paying those taxes and would certainly vote against it. In 1992, the City of Cordova passed a resolution requesting to annex population developments near the old city. In 1993, the Local Boundary Commission approved the annexation and passed that recommendation along to the state legislature, which approved it by legislative review. No vote was cast in this annexation.

The same issues arise with borough formation, but can be taken one step further. When local officials in some areas are strongly opposed to being included with other communities in regional boroughs, their views are likely shared by many of the voters in the area as well. Thus, voters in parochial or special interest areas would most times dictate the out come of an election, in effect preventing any borough formation. Passage of HB133 will prevent future borough formation and municipal annexations except in special interest areas, which will insure that only small special interest boroughs will ever form and freeze city boundaries at their current locations, which is contrary to the ideas of the framers of the state constitution.

Jim Joyce

Mayor

Cordova, Alaska

AMENDMENT

OFFERED IN THE SENATE

TO: CSSSHB 133(JUD) am

1 Page 3, lines 15 - 20:

2 Delete all material.

3 Insert "the effective date of this Act and that has been initiated before the effective
4 date of this Act remains valid and subject to AS 29.05.100(a), AS 29.06.040(c),
5 AS 44.33.812(a), and regulations adopted under those provisions, as those provisions and
6 regulations read on the day before the effective date of this Act."

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSSSHB 133(JUD) AM
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title: Municipal Boundary Changes/Commission RDU: Comm Assist & Ec Dev (405)
 Component: Community Advocacy
 Sponsor: COGILL, Harris, Salmon, Thomas, Elkins,
Neuman
 Requester: Senate Community & Regional Affairs Component No. 2703

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by: Michael Black, Director Phone 269-4540
 Division: Community Advocacy Date/Time 5/2/05 12:36 PM
 Approved by: Edgar Blatchford, Commissioner Date 5/2/2005
 Agency: Commerce, Community, and Economic Development

LEGISLATIVE REFERENCE LIBRARY

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3808
FAX (907) 465-2029
Mail Stop 3101

150 Seward Street, Suite 400
Juneau, Alaska 99801-2105

Copies of minutes listed below were originally included in this file. The minutes are available on the legislative computer database. In order to save space copies of minutes have not been left in the files.

Mary Pagenkopf

House Judiciary 4/18/05 @ 3:28 pm

From: Vic Fischer <vicfischer@alaska.com>
To: Senator Gary Stevens' <Senator_Gary_Stevens@legis.state.ak.us>
Date: Tue, April 26, 2005 5:28 pm
Subject: *****SPAM***** CSSSHB 133(JUD) AM

Hi Gary -- I appreciate the opportunity to communicate with you.

CSSSHB 133(JUD) AM, referred to C&RA today, is a real abomination. It's another effort to subvert the constitution and undermine municipal governments. I'll be glad to elucidate.

My hope is that HB 133 will be held in committee for further study during the interim.

If hearings must be held, and I'm sure the House leadership will push for the bill, be sure to invite LBC to meet with the committee or testify in person. During House hearings on the bill, LBC testimony was overwhelmed by dozens of people ranting and raving about not wanting to pay taxes, hating government, opposing annexation, and the like.

Very best personal regards

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

From: Senator Gary Stevens [mailto:Senator_Gary_Stevens@legis.state.ak.us]
Sent: Tuesday, April 26, 2005 5:08 PM
To: vicfischer@alaska.com
Subject: Re: *****SPAM***** FW: SB 128, re Local Boundary Commission

>

Thanks so much Vic. We've been investigating several issues, talking to Commissioner Blatchford plus several of the mining reps. I appreciate your giving this your attention.

Best regards,
Gary

Law Offices of

ERWIN & ERWIN, LLC

From the Desk of: Robert C. Erwin

733 W. 4th Avenue, Suite 400
Anchorage, Alaska 99501
Telephone (907) 276-3125
Facsimile (907) 276-4125
e-mail: erwinllc@alaska.net

Robert C. Erwin
Robert C. Erwin

December 21, 2001

Dan Blockhorst:

State of Alaska, Local Boundary Commission
Municipal and Regional Assistance Division
Department of Community and Economic Development
550 West 7th Ave., Suite 1790
Anchorage, AK 99501

Re: Homer Annexation
Effect of City Annexation on Borough Service Area under AS 29.35.405(e)
Our File No.: JERV-03

Dear Mr. Blockhorst:

I have reviewed the plain language of recently passed AS 29.35.450(e) requiring a vote of people when there is an attempt to alter or reduce the size of a properly designated service area for roads, fire protection, or parks and recreation services.

The opinion of the Attorney General's office which takes the position that the specific statutory language requiring a vote of the residents of the service area affected does not apply when the service area is to be annexed to the City of Homer appears questionable from a legal standpoint. The Attorney General's office does not cite any legal authority for the exception claimed, but attempts to argue that the fact a vote was never taken in the past in the area to be annexed to a city indicates that the State does not need to do so now.

This legal conclusion simply ignores the new statute and its purpose to preserve a previously created service area which was constructed in the past to provide needed services. Generally the old service area required the purchase of equipment and possible staff which was supported by taxation of the service area members. The elimination of a substantial number of the members from the service area without a vote and a decision of

Dan Blockhorst
December 21, 2001
Page 2

how future services and present debts will be provided and/or paid can provide a substantial hardship.

Each enactment of the Alaska Legislature is presumed to be constitutional and it will not be set aside unless the provisions show a substantial and plain violation of Alaska Constitutional law. See, *Suber v. Alaska State Bond Committee*, 414 P.2d 546, 557 (Alaska 1966); *Sheldon Jackson College v. State*, 599 P.2d 127, 130 (Alaska 1979).

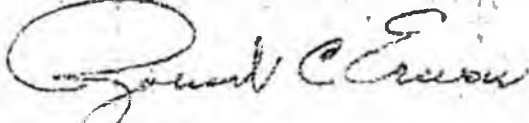
The claim that the Executive Branch of the State government is not bound by a statute passed by the Alaska Legislature is clearly incorrect. The statute is valid until declared invalid by the Court.

Such a statute is valid under the Constitutional Doctrine of separation of government power. The doctrine of separation of powers is implicit in the Alaska Constitution and the purpose of the doctrine is to preclude the exercise of arbitrary power by any one branch of government. *State v. Fairbanks North Star Borough*, 736 P.2d 1140, 1142 (Alaska 1987). This doctrine also requires the court to construe a properly passed statute to avoid constitutional infirmity where possible. *State v. Fairbanks North Star Borough*, at 1142.

Here there is no clear constitutional violation affecting a properly passed statute of the Alaska Legislature which was signed into law by the Governor. Thus, there is no legal basis to ignore its provisions which are to protect existing service areas from destruction without a vote of those people who helped create them in the first place.

Very truly yours,

ERWIN & ERWIN, LLC



Robert C. Erwin
Attorneys for Vi Jerrel, Doris Cabana and
Alaskans Opposed to Annexation

RCE:la

cc: Vi Jerrel
Doris Cabana

4-28-09

1173133

John Coghill

re. Kodiak Borough.
JC. tension. Inger swallowing
fish. annexing up to pipeline

re. In. aggregate
how to regulate in TSC / that would up in
court.

TSC can still propose an
Amend. to the legislative
bill. although legis can
reject.

Could legislat. overrule of Chasol H. H. S.

fish. annexing P. S. without (popul.
area)
v. H. S.
condoned by TSC?

29.04 Re-classify of cities
29.10 Munc. charter

Dir. Brockton top down /
Const. bottom up

ALASKA STATE HOUSE OF REPRESENTATIVES

**Contact:**

Interim Address:

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

Session

(907)-465-3719

FAX# (907)-465-3258

State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

MEMORANDUM

Date: May 3, 2005

To: Tam Cook, Legal Counsel

From: Rynnieva Moss, Legislative Aide *R. Moss*

Re: HB 133

I have attached a letter given to Senate C & RA. They want Section 5 amended believing their petition would be void is passed as is. It was my belief that Section 5 would void a petition that was voted on by aggregate vote or was submitted to the legislature without two public hearings. Is my interpretation wrong and does Section 5 have a broader effect on petitions currently being worked on?



CITY OF PETERSBURG
P.O. BOX 329 • PETERSBURG, ALASKA 99833
TELEPHONE (907) 772-4519
FAX (907) 772-3759

May 2, 2005

To: Senate Community & Regional Affairs Committee
Cc: Delegation
Fr: City of Petersburg
RE: HB 133

John will get back to me on this!

Rep. Coghill
↓

The City of Petersburg requests that Section 5, Applicability, of HB133, be considered for amendment.

The City is presently preparing a response brief to public comments and briefs filed on its petition to annex that was filed with the Boundary Commission in December, 2004. The response brief is due to the boundary commission by July 15, 2005. The City does not want its petition void if this Act passes as considerable time, personnel resources and money have been placed into the petition application.

Consideration should be given to allow incorporations, annexations, detachments, mergers, consolidations, reclassifications or dissolutions that are currently in process to be amended to meet the requirements of AS 44.33.812 (2) or under procedures that do meet the requirements of AS 29.05.115.

Bruce R. Jones
Bruce R. Jones, City Manager

COPY

Post-It* Fax Note	7671	Date	5/2/05	# of pages	1
To	Rep Wilson	From	PSig KLB		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #	907.465.3175	Fax #	907.772.3779		

FRANK H. MURKOWSKI
GOVERNOR
GOVERNOR@GOV.STATE.AK.US



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

P.O. Box 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3500
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

April 28, 2005

The Honorable John Coghill
Majority Leader
State Capitol, Room 204
Juneau, AK 99801-1182

Dear Representative Coghill:

Thank you for your letter of April 22, regarding my position on the subject of forced formation of boroughs.

Since taking office I have been committed to improving the quality of life for Alaskans while maintaining the Alaskan lifestyle we all cherish.

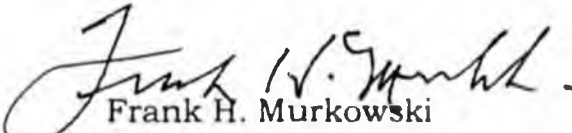
For many issues local control is the best way of ensuring new opportunities do not replace our Alaskan lifestyle or circumvent local priorities. The formation of Title 29 subdivisions, including boroughs, empowers local communities to make their own choices

I fully support local government.

The testimony of agencies supporting and advocating for the formation of Title 29 political subdivisions is not a deviation from earlier positions. I continue to favor the utilization of local control but will not force the imposition of local government. I have been, and remain consistent in this position.

I am encouraged by the numerous discussions on local government taking place in the Capitol and around Alaska. I hope to seize this enthusiasm and work with you on developing policies that promote borough formation around Alaska.

Sincerely yours,


Frank H. Murkowski
Governor

ALASKA LEGISLATURE - ONLINE TELECONFERENCE ORDER FORM

Note: All Fields Must Be Completed

Sponsor and/or Committee Name: Senate C&RA Committee

Date of Teleconference: Monday, May 2, 2005

Start Time: 1:30 p.m. End Time: 3:30 p.m.

Chairing Site: Beltz Committee Room Juneau Room: Cap. Rm. 211

- | | | | |
|------------|---------------------------------------|-----------------------|--|
| Testimony: | <input checked="" type="radio"/> Yes | Testimony Time Limit: | <input type="radio"/> 1 min |
| | <input type="radio"/> No | | <input type="radio"/> 2 min |
| | <input type="radio"/> Invitation Only | | <input type="radio"/> 3 min |
| | <input type="radio"/> N/A | | <input type="radio"/> 5 min |
| | | | <input checked="" type="radio"/> no time limit |
| | | | <input type="radio"/> other - see instructions |

Contact Person Melanie Lesh

Telephone Number 465-4989

- | | | | | |
|------------|---|----------------------|--------------------------------------|-----------------|
| LIO sites: | <input checked="" type="checkbox"/> Anchorage | Other sites may add? | <input checked="" type="radio"/> Yes | Offnet Name (s) |
| | <input type="checkbox"/> Barrow | | <input type="radio"/> No | |
| | <input type="checkbox"/> Bethel | | | |
| | <input type="checkbox"/> Cordova | | | |
| | <input type="checkbox"/> Delta Junction | | | |
| | <input type="checkbox"/> Dillingham | | | |
| | <input type="checkbox"/> Fairbanks | | | |
| | <input type="checkbox"/> Glennallen | | | |
| | <input type="checkbox"/> Homer | | | |
| | <input type="checkbox"/> Juneau | | | |
| | <input type="checkbox"/> Kenai | | | |
| | <input type="checkbox"/> Ketchikan | | | |
| | <input type="checkbox"/> Kodiak | | | |
| | <input type="checkbox"/> Kotzebue | | | |
| | <input type="checkbox"/> Matsu | | | |
| | <input type="checkbox"/> Nome | | | |
| | <input type="checkbox"/> Petersburg | | | |
| | <input type="checkbox"/> Seward | | | |
| | <input type="checkbox"/> Sitka | | | |
| | <input type="checkbox"/> Tok | | | |

- Valdez
- Wrangell
- No LIOs

Subject of meeting and/or Bills on Agenda

HB 133 MUNICIPAL BOUNDARY CHANGES/ COMMISSION

ALASKA STATE HOUSE OF REPRESENTATIVES



Session

Contact:


Interim Address:

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

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

REPRESENTATIVE JOHN COGHILL

MEMORANDUM

Date: April 26, 2005
To: Senator Gary Stevens, Chairman, Senate CRA Committee
From: Representative John Coghill 
Re: CSSSHB 133(JUD) am

I am requesting a hearing in Senate CRA at your earliest convenience for CSSSHB 133 (JUD) am, an Act relating to the Local Boundary Commission at the manner in which it annexes, incorporates, reclassifies, dissolve, changes boundaries of municipalities.

I have attached relevant information for your members.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

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

LEGAL SERVICES

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

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

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

MEMORANDUM

April 9, 2005

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

TO: Representative John Coghill
Majority Leader
Attn: Rynnieva Moss

FROM: Tamara Brandt Cook
Director *TBC*

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

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

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

Representative John Coghill

April 9, 2005

Page 2

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

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

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

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

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

Representative John Coghill

April 9, 2005

Page 3

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

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

TBC:lmb

05-111.lmb

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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STATE OF ALASKA

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

MEMORANDUM

February 12, 2005

SUBJECT: Incorporation of boroughs (SSHB 133)

TO: Representative John Coghill
Majority Leader
Attn: 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

Melanie,

Top page is Mike Black's
testimony. These people
are incredible. Tam is
drafting a memo about
section 3. I also have a
memo addressing Petersburg.
Kyndrew

Testimony on CSSH 133 Senate Committee on CRA May 4, 2005

The Department is satisfied with the modifications to the original HB 133 language. In its present form the Department characterizes the legislation as providing additional options to the Local Boundary Commission for conducting local action elections in relation to municipal annexations.

As has been the past practice of the LBC, provisions described in Section 3 of AS 29.06.040(c) provide a list of methods for conducting local actions elections. HB 133 adds a provision that annexations may be required to be approved by a majority of votes on the question cast by voters residing in the annexing municipality. In other words, the Department views the methods set out in AS 29.06.040(c) as being independent of one another. We are confident in our interpretation based upon historical interpretation of Section 3 provisions in regards to past actions by the LBC.

Section 5 of the bill was in our estimation incorrectly characterized as annulling petitions for annexation using the aggregate voter method. As noted by the Local Boundary Commission in testimony before the House Community and Regional Affairs Committee, the House State Affairs Committee, and this Committee, one petition for annexation by the aggregate voter method is currently pending before the Commission. Specifically, the City of Petersburg has one such proposal pending before the LBC. Under our interpretation of the effect of this bill, we do not think that the annexation petition process will be affected.

Therefore, the Department has no objection to this bill based upon our interpretation of its effect. Thank you for this opportunity to comment on HB 133.

Rynnieva Moss

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

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

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

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

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

In full, AS 29.06.040(c) states:

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

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

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

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

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

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

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

Cordially,

Dan Bockhorst
269-4559

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

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

Kynniewa 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.

SKAGWAY CITY SCHOOL

MAR 29 2005

P.O. Box 497

• Skagway, Alaska 99840

• (907) 233-2960

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

Attn: Senator Coghill Fax to: 907-465-32568 FYI

Written testimony to the Senate Judiciary Committee regarding SB 128

By Glen Marunde

April 8, 2005

To the Chairman and members of the Senate Judiciary Committee.

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

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

This story, more than anything else I know of, supports the aims and goals of SB28. I urge you to vote for SB 128.

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

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

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

The Matsu Borough leaders recognized that some day this area could become a major recreational area with a tax base and they reached their talons over a mountain range and thru the notch at the top of Gunsight Mountain and snatched up Lake Louise. The LBC eagerly approved the Matsu petition and forced the Lake Louise residents to be annexed to the Matsu Borough by use of the legislative review method. That's the method whereby the LBC makes a recommendation to the Legislature to annex and it becomes law, if not voted down by a majority in both houses within 45 days. The

annexation can become law without a vote of the Legislature and without a vote of the Lake Louise citizens. The annexation becomes law without the vote of any elected person.

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

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

But the DCRA attached stipulations to the detachment. They recommended that the Lake Louise residents pay for a proportional share of the Matsu bonded indebtedness. Next they recommended that Lake Louise pay required local contributions for education and that they assume responsibility for a 23 acre sewage management site currently operated by the Matsu Borough. The dollar amount of these stipulations came to \$160,000.00.

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

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

Let's sum up, again.

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

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

The saga continues.

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

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

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

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

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

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

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

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

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

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



Willow Seay

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

This email is a reply to the bill that mr coghill has purposed house bill # 133. Is a very good idea. It is my opinion that the borough mayor and some of borough assembly do not care about the peoples opinion.

Just spend money on things not needed. We do not need to put more money into the schools. As a borough tax payer I am so tired of Mr. Whitaker he is the worst mayor we have had. The only way to stop some of his stupid ideas is to put it to the vote of the people. Thank you, Bonnie Kulzer

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

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

<<Newsletter 2.pdf>>

Dear Constituents,

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

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

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

Willow Seay
Legislative Aide
Rep. John Coghill

To Whom It May Concern:

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

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

We urge you to support this bill in its entirety.

Thank You,

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

March 19, 2005

Box 192
Tok, Alaska 99780

My fax: 907-883-4601

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

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

Dear Senator Kookesh

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

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

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

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

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

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

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

Sincerely,

Glen Marunde

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

A VOICE FOR THE BUSH

By Glen Marunde, Tok kResident

"It's Government for rabbits"

Testimony for HB 133

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

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

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

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

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

Judge Stewart "Absolutely!"

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

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

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

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

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

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

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

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

Glen Marvande
Box 192 Tok, Alaska 99750
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