

**HB**

**148**

<TARGET><BILL>HB 148</BILL><SUBJECT>HB  
148</SUBJECT><COMM>HCRA30</COMM></TARGET>

# Alaska State Legislature

State Capitol, Room 434  
Juneau, Alaska 99801-1182  
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## REPRESENTATIVE MIKE CHENAULT HOUSE DISTRICT 29 SPONSOR STATEMENT

### HOUSE BILL 148: "An Act relating to service areas in second class boroughs; and providing for an effective date."

House Bill 148 expands the authority for second-class boroughs to exercise the local option of creating a non-taxable service area to provide emergency response along state highway corridors not covered by existing emergency services areas. In particular, this legislation would enable the Kenai Peninsula Borough to establish a service area for coordinated coverage for the almost 90 miles of the heavily traveled Seward and Sterling highways that are not within the boundaries of any established emergency services area.

The bill proposes additional language in AS 29.35.490(a) Establishment of a Service Area, allowing second-class boroughs to create service areas along state highway corridors by ordinance, provided that no voters reside within the service area boundaries and no new taxes are levied for the service area. Under the current statute, approval by a majority of voters is required to create a new service area with residents — this legislation would not change that provision. The intent is to deal only with unpopulated highway right-of-way corridors. Second class boroughs within the state, besides the Kenai Peninsula Borough, are the Aleutians East Borough, the Fairbanks North Star Borough, the Ketchikan Gateway Borough, the Kodiak Island Borough and the Matanuska-Susitna Borough.

In the case of the Kenai Peninsula, subject to borough assembly approval, the municipal government could use a portion of its federal payment-in-lieu-of-taxes (PILT) allocation to cover the costs of providing highway corridor travelers with life-and-safety response services.

The Overview, Background and Conclusion brief that is included in your back up materials provides a more in-depth analysis as to why this legislation is necessary and needed.

# Fiscal Note

State of Alaska  
2017 Legislative Session

Bill Version: HB 148  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB148-DCCED-DCRA-03-03-17  
Title: SECOND CLASS BOROUGH SERVICE AREAS  
Sponsor: CHENAULT  
Requester: (H) Community & Regional Affairs

Department: Department of Commerce, Community and  
Economic Development  
Appropriation: Community and Regional Affairs  
Allocation: Community and Regional Affairs  
OMB Component Number: 2879

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018 Appropriation Requested	Included in Governor's FY2018 Request	Out-Year Cost Estimates					
			FY 2018	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

**Change in Revenues**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Estimated SUPPLEMENTAL (FY2017) cost:** 0.0 (separate supplemental appropriation required)

*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2018) cost:** 0.0 (separate capital appropriation required)

*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed? n/a

**Why this fiscal note differs from previous version:**

Not applicable, initial version.

Prepared By: Katherine Eldemar, Director	Phone: (907)465-8249
Division: Community and Regional Affairs	Date: 03/03/2017 10:07 AM
Approved By: Catherine Reardon, Director	Date: 03/03/17
Agency: Division of Administrative Services, DCCED	

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2017 LEGISLATIVE SESSION

BILL NO. HB148

**Analysis**

HB 148 amends AS 29.35.490 by adding subsection (d) allowing second class boroughs to establish a service area for the provision of emergency services within a state highway corridor.

The Division of Community and Regional Affairs does not anticipate a fiscal impact from this legislation.

# LEGAL SERVICES

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

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

## MEMORANDUM

February 25, 2017

**SUBJECT:** Service areas in second class boroughs  
(Work Order No. 30-LS0597\A)

**TO:** Representative Mike Chenault  
Attn: Tom Wright

**FROM:** Susie Shutts *CPL*  
Legislative Counsel *for*

Attached is the bill draft you requested amending AS 29.35.490 to authorize a second class borough to establish a service area to provide emergency services within a state highway corridor if no voters reside in the service area and the property in the service area is not subject to a borough tax for the service area.

Do you want to define "state highway corridor"? There is no definition currently in the Alaska Statutes that would apply to the use of this term in AS 29.35.490.<sup>1</sup> In addition, do you want to set parameters on what "publicly owned property adjacent to the highway corridor" entails?

Is it your intent to allow a second class borough to provide emergency services outside the boundaries of the borough? The attached bill draft does not amend AS 29.35.020. Under AS 29.35.020, a municipality may, to the extent it is otherwise authorized by law, provide services, including emergency medical services, "outside its boundaries." The provision authorizes a municipality to regulate the "use and operation [of such services] to the extent that the jurisdiction in which they are located does not regulate them."<sup>2</sup> Under AS 29.35.020(b), before a municipality may exercise a power authorized by AS 29.35.020 within the boundaries of another municipality, "the approval of the other municipality must be given by ordinance," and approval is also required by a village.

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<sup>1</sup> "Highway corridor" is defined for the purpose of AS 19.40.210(3) regarding a prohibition on the use of off-road vehicles within five miles of the James Dalton Highway. There, "highway corridor" is defined as "land within five miles of the right-of-way of the highway."

<sup>2</sup> AS 29.35.020(a).

Representative Mike Chenault  
February 25, 2017  
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The proposed language that you provided requires that "property in the service area is not subject to a borough tax for the service area." Does this requirement aim to exclude from the emergency services service area property subject to *any* borough tax? I interpreted the request to instead prohibit a second class borough from authorizing or levying a tax for the provision of emergency services in a service area established under new subsection 29.35.490(d). Please let me know if that is not your intent.

SLS:boo  
17-198.boo

Attachment

**INCORPORATED CITIES WITHIN ORGANIZED BOROUGHS**

<b>Aleutians East Borough</b>	<b>Second Class</b>	<b>Lake &amp; Peninsula Borough</b>	<b>Home Rule</b>
Akutan	Second Class	Chignik	Second Class
False Pass	Second Class	Egegik	Second Class
Cold Bay	Second Class	New Halen	Second Class
King Cove	First Class	Nondalton	Second Class
Sand Point	First Class	Port Heiden	Second Class
		Pilot Point	Second Class
<b>Denali Borough</b>	<b>Home Rule</b>	<b>Matanuska-Susitna Borough</b>	<b>Second Class</b>
Anderson	Second Class	Houston	Second Class
<b>Fairbanks North Star Borough</b>	<b>Second Class</b>	Palmer	Home Rule
Fairbanks	Home Rule	Wasilla	First Class
North Pole	Home Rule		
<b>Kenai Peninsula Borough</b>	<b>Second Class</b>	<b>North Slope Borough</b>	<b>Home Rule</b>
Homer	First Class	Anaktuvuk Pass	Second Class
Kachemak	Second Class	Atkasuk	Second Class
Kenai	Home Rule	Barrow	First Class
Seldovia	First Class	Kaktovik	Second Class
Seward	Home Rule	Nuiqsut	Second Class
Soldotna	Home Rule	Point Hope	Second Class
		Wainwright	Second Class
<b>Ketchikan Gateway Borough</b>	<b>Second Class</b>	<b>Northwest Arctic Borough</b>	<b>Home Rule</b>
Ketchikan	Home Rule	Ambler	Second Class
Saxman	Second Class	Buckland	Second Class
		Deering	Second Class
<b>Kodiak Island Borough</b>	<b>Second Class</b>	Kiana	Second Class
Akhiok	Second Class	Kivalina	Second Class
Kodiak	Home Rule	Kobuk	Second Class
Larsen Bay	Second Class	Kotzebue	Second Class
Old Harbor	Second Class	Noorvik	Second Class
Ouzinkie	Second Class	Selawik	Second Class
Port Lions	Second Class	Shungnak	Second Class
		<b>Petersburg Borough</b>	<b>Non-Unified Home Rule Borough</b>
		Kupreanof	Second Class

**Remainder of Alaska Boroughs That Do Not Contain Incorporated Cities**

Municipality of Anchorage	Unified Home Rule
Bristol Bay Borough	Second Class
Haines Borough	Home Rule
City & Borough of Juneau	Unified Home Rule
City & Borough of Sitka	Unified Home Rule
Municipality of Skagway	First Class
City & Borough of Wrangell	Unified Home Rule
City & Borough of Yakutat	Home Rule



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

**Department of Public Safety**

DIVISION OF ALASKA STATE TROOPERS  
Office of the Director

5700 East Tudor Road  
Anchorage, Alaska 99507-1225  
Main: 907.269.5511  
Fax: 907.337.2059

March 3, 2017

The Honorable Mike Chenault  
Alaska State Legislature  
State Capitol Room 434  
Juneau AK, 99801

RE: House Bill 148 Service Areas in Second Class Boroughs

Dear Representative Chenault:

As the Director of the Alaska State Troopers, I am writing to express my support for House Bill 148, allowing second-class boroughs to establish emergency service corridors via ordinance. The Kenai Peninsula Borough needs to ensure consistent coordinated coverage for the almost 90 miles of heavily traveled Seward and Sterling highways bordered predominately by unoccupied land. I fully support the efforts of the Kenai Peninsula Borough to identify and implement a local solution to this problem.

The proposal by the Kenai Peninsula Borough to create a highway corridor service area funded by federal PILT payments presents a unique solution with many benefits for communities and the state. This will allow the Kenai Peninsula Borough to provide resources, support, and coordination to supplement struggling volunteer agencies in sparsely populated areas, and will greatly improve the efficiency of the services that do exist.

Currently, local communities, nearby EMS service areas, and other response organizations respond to accidents in the region in an inefficient patchwork manner. Local communities have few volunteers, and those they do have are overtaxed with accidents on the highway that can require long transport times. When a local agency is unable to respond due to lack of resources, agencies as far as 60 miles away may be called on to respond. This can result in multi-hour waits for care, and the current system does not ensure a response. This legislation would allow for the borough to establish consistent and coordinated response to roadway accidents.

This also presents a solution that allows second-class boroughs to service a community gap without requiring a complete overhaul of long existing emergency response systems. Many service areas within the KPBB - and throughout the state - have long histories of providing quality service to their region. Restructuring these organizations in order to address a specific gap creates unnecessary obstacles for municipalities attempting to ensure emergency care for the travelers on their roads. For the Kenai Peninsula Borough, this corridor solution would allow them to provide resources to a specific roadway without requiring a much larger change, such as the adoption of borough-wide powers. While the adoption of borough-wide powers may be technically possible, the complexities of such an overhaul would be extremely extensive with the potential for numerous roadblocks along the way.

Representative Mike Chenault

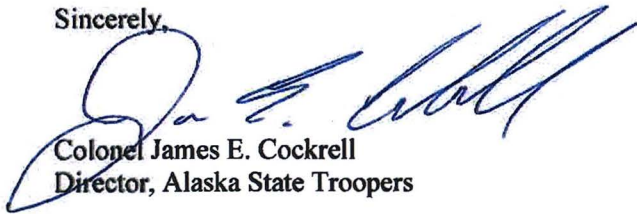
Page 2

March 3, 2017

The solution in HB 148 requires no obligation from the State of Alaska and allows local governments to determine the best solution for their communities. Improved emergency response along crucial highways in the state will benefit all Alaska residents.

I support the passage of HB 148, allowing second-class boroughs to establish emergency service corridors via ordinance. Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "James E. Cockrell", is written over a large, stylized blue scribble or flourish.

Colonel James E. Cockrell  
Director, Alaska State Troopers

Cc: Walt Monegan, Commissioner  
Bill Comer, Deputy Commissioner  
Allison Hanzawa, Special Assistant to the Commissioner  
Mayor Mike Navarre, Kenai Peninsula Borough



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March 8, 2017

Representative Mike Chenault  
Alaska State House  
Alaska State Capitol  
Juneau, Alaska

RE: HB 148: An Act relating to service areas in second class boroughs; and providing for an effective date.

Dear Representative Chenault,

The Alaska Municipal League stands in support of HB 148. This bill appears to address a real concern and actually comes up with a workable solution.

The Kenai Peninsula Borough finds itself with just under 100 miles of road through unoccupied land, which presently lacks consistent coordinated emergency service coverage. The Borough wishes to create a highway corridor service area funded by federal Payment in Lieu of Taxes (PILT) funds.

While the larger boroughs may have excellent coverage to specific areas, often there are gaps in that coverage due to uninhabited land masses. Accidents taking place in those areas are many times served based on specific availability during that particular incident. Obviously, consistent and planned response should be in place. This bill will allow that to happen. Current statutes require a service area to be created through voter approval. This legislation, however, specifically deals those areas devoid of voters which may still require services.

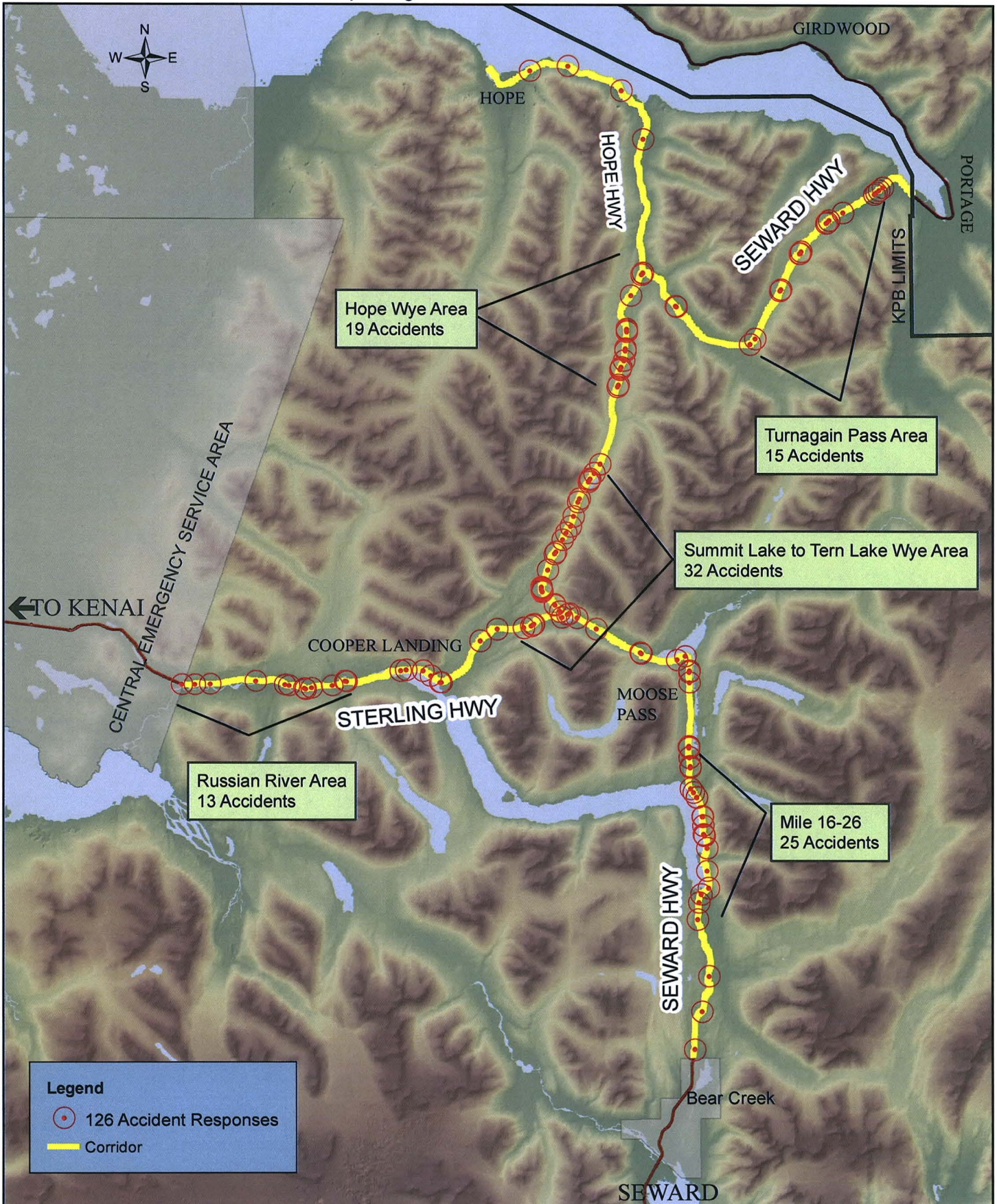
We applaud your office for submitting a bill that addresses a real need in a community and one which can be used in many boroughs throughout the state.

Sincerely,

Kathie Wasserman  
Executive Director

# EMS HIGHWAY RESPONSES

Reporting Period JAN 2015 - DEC 2016



KPB EMS Workgroup  
February 10, 2017

0 2.5 5 10 15 20 Miles

Sec. 29.35.490. Service areas in second and third class boroughs.

(a) A second class borough may exercise in a service area any power granted a first class city by law or a nonareawide power that may be exercised by a first class borough if

(1) the exercise of the power is approved by a majority of the voters residing in the service area;  
or

(2) all owners of real property in the service area consent in writing to the exercise of the power if no voters reside in the service area.

(b) If the exercise of the power is approved by a majority of the voters residing in the service area, a third class borough may exercise in a service area any power not otherwise prohibited by law.

(c) A second or third class borough may establish a service area that includes only vacant, unappropriated, and unreserved land owned by the borough. A second or third class borough may establish a service area, with the concurrence of the commissioner of natural resources, that includes only vacant, unappropriated, and unreserved land owned by the state and classified for disposal to individuals. By ordinance a second or third class borough may provide the services in a service area established under this subsection necessary to develop state or municipal land as required by the planning, platting, and land use regulations of the borough.

History -

(Sec. 10 ch 74 SLA 1985)

Decisions -

When voter approval not required. - Where a mayor and assembly are exercising the same powers within the same geographical area and are subject to the same constraints with respect to approval and appropriation that existed before the alteration, voter approval of an ordinance is not required. *North Kenai Peninsula Rd. Maintenance Serv. Area v. Kenai Peninsula Borough*, 850 P.2d 636 (Alaska 1993).

Road service tax. - Challenge to a road service tax was rejected because it was not a special assessment. It was calculated by applying a mill rate to the assessed value of the property; moreover, a borough has authority to tax for road services, and the validity of the tax does not depend upon whether the property owner receives a special benefit. *DeVilbiss v. Matanuska-Susitna Borough*, 356 P.3d 290 (Alaska 2015).

# House Bill 148

## Overview

This legislation would expand the authority for second-class boroughs to exercise the local option of creating a non-taxable service area to provide emergency response along state highway corridors not covered by existing emergency services areas. In particular, this legislation would enable the Kenai Peninsula Borough to establish a service area for coordinated coverage for the almost 90 miles of the heavily traveled Seward and Sterling highways that are not within the boundaries of any established emergency services area.

Alaska Department of Transportation statistics for 2015 show the average traffic count on those unprotected stretches of the Seward and Sterling highways at between 3,000 and 4,000 vehicles a day — with summer peaks at three times that level. In addition, several miles of the Hope Highway would be included in the proposed corridor service area. There were 126 traffic accidents (injuring almost 180 people) on those sections of the highways in 2015-2016. This legislation would allow for consistent and coordinated response to roadway accidents, rather than the current practice of “borrowing” emergency services personnel from neighboring areas to fill the gap. The legislation’s intent is improved year-round public safety, covering the heavy traffic of summer recreational and fishing travelers to the dark and icy roadways of winter.

The bill proposes additional language in AS 29.35.490(a) Establishment of a Service Area, allowing second-class boroughs to create service areas along state highway corridors by ordinance, provided that no voters reside within the service area boundaries and no new taxes are levied for the service area. Under the current statute, approval by a majority of voters is required to create a new service area with residents — this legislation would not change that provision. The intent is to deal only with unpopulated highway right-of-way corridors.

In the case of the Kenai Peninsula, subject to borough assembly approval, the municipal government could use a portion of its federal payment-in-lieu-of-taxes (PILT) allocation to cover the costs of providing highway corridor travelers with life-and-safety response services.

## Background

Over the past year, the Kenai Peninsula Borough has been working to identify ways to address inconsistent emergency services coverage along the highway corridor that serves as the sole road connection between the peninsula and the rest of the state. Like many other highway corridors in Alaska, this route is bordered predominately by non-taxable federal property and passes through miles of terrain far from established emergency response services. Due to the length of the highway segments, and the lack of taxable property in the area, it is not feasible to create a traditional service area to provide emergency personnel response along the corridor. The minimal tax base is just not sufficient to provide services for the large volume of traffic — much of which is visitor travel — that relies on the highway to and from the Kenai Peninsula. As such, a borough working group explored alternative structures to address this coverage gap.

Pursuant to AS 29.35.490(a)(2), a second-class borough can form a service area by municipal ordinance — without a vote of the public — if the service area has no resident voters and if all of the owners of real property in the service area give their consent. The Kenai's proposed highway service area is unpopulated, but obtaining that required consent for the highway corridor emergency services area would confront the legal complexity and uncertainty of determining the correct parties to provide the consent for rights-of-way held by the state for a highway across federal land. The ensuing bureaucratic untangling would complicate the process, perhaps blocking it entirely if a single federal agency was unable or unwilling to consent to creation of the service area. In this way, it seems consent based on "ownership" may be lacking practicality and relevance when the service area is effectively highway right-of-way.

The Kenai Peninsula Borough does not intend to create a new taxation district for providing highway corridor emergency services. In fact, the legislation would prohibit any new taxation specifically for such service areas. However, the borough administration believes that federal payment-in-lieu-of-taxes (PILT) is well suited to address this funding. The federal law establishing such payments recognizes that the inability of local governments to collect property taxes on federally owned land can impose a financial burden on municipalities. The need for emergency response services along the highway corridor through federal lands is an appropriate example for using such funds to meet local needs. The Kenai Borough in Fiscal Year 2017 anticipates receiving \$2.6 million in federal PILT dollars, which will go into the borough's general fund. This legislation would give the elected borough assembly the option of creating a highway corridor service area, the expenses of which could be covered by appropriating a portion of the federal PILT dollars.

## **Conclusion**

This highway corridor is a crucial connection between the Kenai Peninsula and the rest of the state. Timely emergency response is critical for peninsula residents traveling to and from the rest of the state, and for the tens of thousands of Alaskans (and visitors) who drive the highway each year for work and recreation. This legislation would provide a solution for the Kenai Borough — and other boroughs throughout the state in similar situations — to decide by local option whether to create response corridors along state highways. This statutory change would give municipalities the flexibility to provide needed services to their communities and visitors, without imposing any additional burden on the state.

The proposed legislation is intended to specifically enable creation of a service area where the measures of voters, ownership and property taxation are generally not applicable because the service area is not designed around tax-supported services but rather around serving people on a state highway and funded through federal PILT. We believe this is a practical and fair way to provide for the essential services along the highway corridor, primarily across federal lands.