

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

741 SCOM.123: TITLE 29 POLICY REVISION ADVISORY COMM. 1980

Thus, at common borough millages of 5 or 10 and the trigger appropriation level, HB 192 revenue sharing would provide insignificant revenues to any individual non-pipeline, newly-formed borough since the total support to 21 old REAA's would have been from \$65,000 to \$1,300,000.

Shared Corporate Income Taxes

AS 43.20.016 distributes the appropriation for shared corporate income taxes in an amount equal to that received by boroughs in FY 78, or for newly-formed boroughs in amount equal to the FY 78 receipts of the borough closest in population, pro-rated if the appropriation is insufficient to fund these base levels. If it is greater, the excess is distributed per capita.

FY 78 total distribution was \$10,571,500. FY 80's appropriation was just a little above that, \$11,400,000. If appropriation levels remain sufficient to only fund base amounts the entitlements of newly-formed boroughs would be:

<u>REAA</u>	<u>Population</u> 4/	<u>Base Entitlement</u>
Adak	3,200	\$ 7,275
Alaska Central Railbelt	1,095	13,985
Alaska Gateway	788	13,985
Aleutian Region	2,375	7,275
Annette Island	962	13,985

(con't on p. 6)

3/ These estimated new Chapter 88 revenue sharing entitlements are based on a pro-ration factor of 2.61 shown on the attached Legislative Affairs computer simulation of HB 192 dated February 19, 1979. As the new boroughs took a bigger bite of the pie the pro-ration factor would decrease. Thus, the estimates for the higher millages become progressively greater than they should be. However, the estimates still give a rough idea of entitlements and a more accurate picture of the relative fiscal effect if only one or two REAA's should actually convert to boroughs.

4/ Estimated by applying ratio of total population to ages 5 through 18 from appropriate 1970 census divisions to Department of Education pupil ADM figures for FY 78 and adding population of city school districts from "Alaska Taxable 1978". The total population differs from that in Appendix I because of the inclusion of Valdez and one year later data.

<u>REAA</u>	<u>Population</u>	<u>Base Entitlement</u>
Bering Strait	4043	7,275
Chatham	3178	7,275
Chugach	7438	1,220,920
Copper River	1925	7,275
Delta/Greely	3051	7,275
Iditarod	731	13,985
Kuspuk	880	13,985
Lower Kuskokwim	7420	1,220,920
Lower Yukon	2615	7,275
Northwest Arctic	3660	7,275
Pribilof	973	13,985
Southeast Island	9408	203,145
Southwest	2620	7,275
Lake & Peninsula	923	13,985
Yukon Flats	1004	13,985
Yukon Koyukuk	2828	7,275
Total	61,117	\$2,834,615

The pattern here presents a crazy-quilt of aid in which some larger communities get less than smaller ones, with Chugach and the Lower Kuskokwim to receive substantially more than any of the others because their populations were near that of the North Slope Borough which had, of course, large business license tax receipts for FY 78.

Although the administration's estimates for the corporate petroleum income tax have remained at \$160 million a year (the calendar 1978 level), legislative finance estimates the petroleum income taxes alone, disregarding non-petroleum corporate income taxes, will mount to around \$600 million by FY 81. If distributions were at 10% of this level, \$60,000,000, the excess of roughly \$50,000,000 over base entitlements would bring \$7,500,000 to newly-formed boroughs on a per capita distribution, more nearly offsetting the other financial disincentives to borough formation.

The Lower Kuskokwim should clearly gain from borough formation as should Chugach if Valdez is incorporated into the borough, even at current appropriation levels.

#### Other Considerations

This analysis has not considered the further decline in state support to REAA's that become boroughs that would occur for school construction. Under AS 43.18.100, the state would pick up 80% of the debt service for new borough's school construction debt whereas the state now builds entirely at its own expense the necessary school facilities for REAA's.

11/15/79

Of course, with the "Hooch" case settlement new boroughs school construction needs may not be that significant for some time.

One incentive not considered is the value of municipal land selections a new borough would be entitled to under AS 29.18.203. However, it may be an incentive to postpone formation since a new borough receives 10% of state lands within its boundary at the time of incorporation. So until Alaska's land status is resolved, there are disincentives here too, considering opportunity costs.

**APPENDIX I**  
**UNORGANIZED BOROUGH ASSESSED VALUES**

The potential average assessed value of real and personal property in the unorganized borough is estimated in a roughshod way here, using data from several points in time, partially because that is the way the Department of Education does it for the foundation formula, and partially to not pretend to insupportable exactitude.

The FY 78 REAA pupil ADM was 10,729 according to the Department of Education's "1978-1979 Statistical Report". The average ratio of total population to school population (ages 5 through 18) for all census divisions outside organized cities or boroughs in the 1970 consensus was 3.01:1. Thus, total REAA population for FY 78 is estimated at 32,294. For purposes of estimating property values, we deduct 666 persons from this figure for Selawik and Eagle, which levy property taxes and have assessed value figures in "Alaska Taxable", but are part of REAA's.

Using some assumptions from Darbyshire & Associates, August 1979 Yukon Flats Regional Government Study (see attached page 139 from that study) -- namely, 3.5 persons per household, restricted deeds on 50% of residential property, \$20,000 average value per non-restricted dwelling, and \$2,000 taxable personal property per household -- I estimate assessable values outside taxing jurisdictions at \$110,714,000. This is conservative in that no commercial or industrial values are inputted; such properties are assumed to be in the taxing cities in the unorganized borough.

Adding this \$110,714,000 to the January 1, 1976 assessed value for all cities, except Valdez, which are outside organized boroughs, \$196,849,710, we get a total assessable value for the unorganized borough, excluding Valdez and oil and gas property, of \$307,563,710.

As of January 1, 1977, total population, excluding Valdez, that resided outside organized boroughs was 32,294 estimated for REAA's, plus 18,157 for school districts outside organized boroughs (from "Alaska Taxable 1977"), or 50,451.

The total pupil ADM for FY 78 was the 10,729 for REAA's plus 4,730 for all school districts, excluding Valdez, outside organized boroughs, or 15,459.

Based on these figures, the average assessed value per ADM would be \$19,895 and per capita \$6,096 in the unorganized borough for FY 78 excluding oil and gas property.

RURAL EDUCATION ATTENDANCE AREAS  
REVENUE

FY-78 Audited

	Other Federal	Federal 874	Total Federal	Foundation	Pupli Trans	In Lieu Of	Boarding Home	Other State	Total State	Rental	Interest	Other Local Income	Total Local
Adak		1,469,558	1,469,558	245,201	57,737	416,240	---	---	719,178	9,088	60,417	12,889	82,394
Alaska Central		355,136	355,136	1,226,448	160,372	241,488	---	1,107	1,629,415	19,402	35,816	---	55,218
Alaska Gateway		44,531	44,531	1,551,000	163,454	290,336	482	---	2,005,272	2,183	23,248	7,616	33,047
Aleutian		187,079	187,079	1,297,921	---	160,304	10,442	---	1,468,667	2,278	12,890	72,638	87,806
Annette Is.		974,909	974,909	23,125	5,645	219,472	---	1,984	250,226	---	21,209	2,500	26,709
Bering Strait		661,549	661,549	1,981,201	21,080	304,784	305,784	---	2,612,849	30,133	11,348	2,768	44,249
Chatham		278,532	278,532	410,502	---	127,968	---	---	538,470	24,073	1,670	---	25,743
Chugach		72,804	72,804	230,032	---	33,024	---	---	263,056	---	---	8,903	8,903
Copper River		343,113	343,113	1,870,637	289,715	482,976	9,404	---	2,652,732	---	19,314	21,838	41,152
Delta/Greely		900,583	900,583	1,244,417	267,219	533,200	1,760	---	2,046,596	---	36,343	1,351	37,694
Iditarod		465,099	465,099	1,239,901	---	195,392	---	61,145 <sup>2</sup>	1,496,438	20,829	3,101	---	23,930
Kuspuk	16,880	706,247	723,127	1,363,906	31,749	233,920	4,654	33,521	1,667,830	20,255	23,864	3,951	48,070
Kower Kuskokwim	89,098	2,173,269	2,262,367	3,154,856	50,582	1,016,176	1,070,870	---	5,292,484	95,177	75,530	142,242 <sup>3</sup>	312,949
Lower Yukon		1,480,442	1,480,442	2,227,933	---	615,072	---	51,500	2,894,505	148,234	68,122	46,405 <sup>4</sup>	262,761
Northwest Arctic		2,316,087	2,316,087	3,992,413	---	1,033,376	91,811	2,711	5,120,311	169,692	50,415	22,340 <sup>4</sup>	242,447
Pribilof		439,713	439,713	467,787	---	126,592	---	3,181	597,560	---	20,012	---	20,012
Southeast Is.		896,690	896,690	770,310	12,332	294,464	23,793	3,253	1,054,152	---	29,415	---	29,415
Southwest		1,293,592	1,293,592	1,649,017	---	359,824	---	---	2,008,841	56,090	52,532	26,605	136,027
Lake & Pen.		751,920	751,920	1,635,080	33,708	263,504	4,275	---	1,936,567	36,250	21,541	231	58,022
Yukon Flats		415,576	415,576	1,328,863	---	209,152	17,432	---	1,555,447	---	---	4,339 <sup>5</sup>	4,339
Yukon-Koyukuk		1,259,442	1,259,442	2,184,325	---	453,392	---	51,500	2,689,217	70,505	43,400	122,574 <sup>5</sup>	236,479
		17,485,871	17,591,849	30,044,955	1,093,593	7,610,656	1,540,707	209,902	40,499,813	704,959	613,187	499,190	1,817,366

- <sup>1</sup> Sale of Capital Equipment
- <sup>2</sup> Includes 21,000 Insurance Proceeds
- <sup>3</sup> Federal Payments
- <sup>4</sup> Includes Indirect Cost Payments
- <sup>5</sup> Includes AVEL Subsidy

YEAR	POPULATION	HOUSEHOLDS	PER CAPITA ASSESSED VALUE \$	MAXIMUM OPERATING BUDGET \$M	LOCALLY ASSESSED PROPERTY RESIDENTIAL			STATE ASSESSED PROP.		TOTAL TAXABLE PROPERTY INCLUDING	
					TOTAL PROPERTY \$M	EXEMPTIONS \$M	NET TAXABLE \$M	OIL PIPELINE \$M	GAS PIPELINE \$M	GAS PIPELINE \$M	GAS PIPELINE \$M
1980	1,667	476	49,710	5,593	10,712	2,380	8,332	875,500		883,832	883,832
81	1,717	490	52,190	6,049	11,030	2,450	8,580	901,850		910,430	910,430
82	1,768	505	54,800	6,540	18,865	2,525	16,340	929,550	155,480	1,101,370	938,390
83	1,821	520	57,540	7,073	19,204	2,600	16,604	957,100	368,560	1,342,664	966,204
84	1,876	536	60,420	7,651	17,060	2,680	14,380	985,150	522,750	1,522,780	994,530
1985	1,932	552	63,440	8,273	14,920	2,760	12,160	1,014,900	526,800	1,553,860	1,024,560
86	1,990	559	66,610	8,947	12,798	2,845	9,953	1,045,500	511,000	1,566,453	1,055,453
87	2,050	586	69,950	9,679	13,181	2,930	10,251	1,014,050	495,200	1,519,501	1,024,301
88	2,111	603	73,440	10,465	13,570	3,015	10,555	983,450	479,390	1,473,335	994,005
89	2,175	621	77,120	11,322	13,976	3,105	10,871	953,700	463,580	1,428,111	964,571
1990	2,240	640	80,970	12,243	14,400	3,200	11,200	925,650	447,780	1,384,630	936,850
91	2,307	659	85,020	13,240	14,829	3,295	11,534	897,600	431,970	1,341,104	909,134
92	2,376	679	89,270	14,317	15,277	3,395	11,882	870,400	416,170	1,298,452	882,282
93	2,448	699	93,730	15,488	15,731	3,495	12,236	844,900	400,370	1,257,506	857,136
94	2,521	720	98,420	16,748	16,203	3,600	12,603	819,400	384,560	1,216,563	832,003
1995	2,597	742	103,340	18,115	16,694	3,710	12,984	794,750	368,760	1,176,494	807,734
96	2,675	764	108,510	19,593	17,192	3,820	13,372	770,950	352,960	1,137,282	784,322
97	2,755	787	113,930	21,187	17,708	3,935	13,773	748,000	337,150	1,098,923	761,773
98	2,837	811	119,630	22,909	18,244	4,055	14,189	725,050	321,350	1,060,589	739,239
99	2,923	835	125,610	24,783	18,788	4,175	14,613	703,800	305,540	1,023,953	718,413
2000	3,010	860	131,890	26,797	19,350	4,300	15,050	682,550	289,740	987,340	697,600

Column 1 - The year of projection.

Column 2 - Population - Base year is 1978 - population 1,571. The annual increase in population is projected to be 3% per year. From Darbyshire & Associates "Technical Report #2 - Data Reconnaissance."

Column 3 - Households - The number of households was estimated by dividing the projected population by 2.5 persons per household.

Column 4 - Per Capita Assessed Value - The average per capita assessed value for the state as published annually by the Department of Community and Regional Affairs. It is estimated the annual increase for the projection period will be 2% per year. From 1978 to 1979 the per capita assessed value for the state increased 12%, excluding oil and gas property. Therefore, the writer estimates a 2% annual increase over the projection period is reasonable to anticipate.

Column 5 - Maximum Operating Budget - The estimated maximum amount of revenue that can be levied through property tax for the operating budget of the proposed borough.

Formula:

Population x 225% Average per Capita Assessed Value x 30 Mills = Maximum Operating Budget.

Example: 1980

1,667 x 225% x 49,710 x 0.03 = \$6,593,493.43 -- say \$6,593,490.00.

Population - As certified by the Commissioner of Community and Regional Affairs on the Assessment Date (A.S. 20.53.045a).

Average Per Capita Assessed Value - A.S. 20.53.045a.

30 Mills - A.S. 20.53.040.

Column 6 - Locally Assessed Property/Total Property - Included:

Real Property -

A - Residential,

B - Commercial-Industrial

Personal Property -

C - Individual,

D - Commercial-Industrial

A - Real Property/Residential: A survey of deeds issued by the townsite trustee indicates 50% of the residential property is subject to the covenants and restrictions of the restricted deed, and therefore not subject to property tax. It is estimated there is one dwelling unit per household with an average value of \$20,000;

Therefore:

Households x 50% x \$20,000 = Residential Assessed Value.

B - Real Property/Commercial-Industrial: It is estimated that there is \$2,500/capita invested in commercial and industrial development to support the population of the proposed borough. The growth of commercial and industrial properties will equal the growth of the population.

C - Personal Property/Individual: It is estimated the taxable personal property will average \$2,000/household.

D - Personal Property/Commercial-Industrial: It is estimated that there is \$600/capita invested in commercial and industrial equipment and inventory to support the population of the proposed borough. Value will increase in direct proportion to the population.

Column 7 - Residential Exemptions - It is assumed 50% of the dwelling units are owner-occupied and the proposed borough will grant the \$10,000 single-family owner-occupied exemption allowed under A.S. 20.53. This column gives the projected assessed value that would be exempt from taxation.

Column 8 - Locally Assessed Property/Net Taxable - Column 6 minus Column 7.

V

LEGISLATIVE PROPOSALS RELATED TO ORGANIZATION  
AND  
FINANCIAL EQUALIZATION IN THE UNORGANIZED BOROUGH

V

LEGISLATIVE PROPOSALS  
UNORGANIZED BOROUGHS

SB 101 (1969)

HB 730 (1970)

HB 161 (1971)

HB 127 (1971)

FORM OF  
REGIONAL  
GOVERNMENT  
AUTHORIZED

Six unorganized boroughs and service area within unorganized boroughs (Northwestern, Western, Interior, Southwestern, Southcentral, Southeastern) Residents of each unorganized borough represented on elected five-member advisory board.

Regional unorganized boroughs, as a prerequisite to so-called regional boroughs; service areas authorized within regional unorganized boroughs. A regional borough, once established, would be supervised by an elected regional council.

None; service areas of the unorganized borough were authorized. Authority was given to the director of Local Affairs Agency to establish, alter and abolish unorganized borough areas in accordance with standards he developed. Once established, the service areas would be controlled and directed by Regional Service Area Commissions, appointed or elected, whose principal responsibilities were advisory.

Second class boroughs with boundaries corresponding to the boundaries of the 12 geographic areas described by the Alaska Native Claims Settlement Act. The bill made provision for elections to determine the initial powers which the second class boroughs would enjoy and for the choice of initial borough officers.

MANNER OF  
INCORPORATION

Directive as to the number of unorganized boroughs; discretionary with the legislative Affairs Agency as to the subsequent establishment of service areas.

Boundary determinations for regional unorganized boroughs were mandatory; the first election for the establishment of a regional borough was also mandatory, but subsequent action seeking incorporation of regional boroughs required submission of a petition from area voters.

Discretionary with the director of the Local Affairs Agency.

Mandatory, in accordance with the provisions of the legislation which requires mandatory incorporation if no voluntary incorporation occurred before Jan. 1, 1977.

FISCAL INCENTIVES  
AND IMPLICATIONS

Authority was retained by the legislature to levy service area taxes, with the Local Affairs Agency authorized to collect any taxes which were levied; the unorganized borough boards were granted the authority to receive and expend funds.

A Regional and Community Affairs fund was established as a source of shared revenues for borough gov'ts. and for regional unorganized boroughs (with a 10% reserve for cities of the unorganized borough), to be distributed on the basis of population ratio and income deficiency. No fiscal estimate was provided. Regional unorganized boroughs might select 10% land reclamation.

No authority was granted to a service area to raise revenues within the region; presumably state grants would be made available for purposes of organization operation and provision of state services.

No incentives; the bill specifically denied to "boroughs incorporated by this act" the benefits of the then applicable ten percent land selection authorization.

**LEGISLATIVE PROPOSALS  
UNORGANIZED BOROUGHS**

**SB 122 (1973)**

**HR 291 (1973)**

**HR 292 (1973)/HR 9 (1979)**

**Governor's 1977 "Package"  
HR 596, HR 597, HR 598**

<p><b>FUND OF REGIONAL GOVERNMENT AUTHORITY</b></p>	<p>None. This was the predecessor of legislation eventually enacted in 1975 to provide for the decentralization of responsibility for the operation of schools.</p>	<p>Unorganized borough districts. This legislation is quite similar to HR 596 except that the entities are called "unorganized borough districts" and it modified the local hearing requirements with respect to the drawing of the boundaries of these districts and requires affirmative legislative approval of the proposed boundaries.</p>	<p>None.</p>	<p><b>FUND OF REGIONAL GOV'T.</b> Unorganized borough units, each of which would have authority to adopt home rule charters. (HR 596) Boundaries would be recommended by the Boundary Commission. Voters would choose 11 member advisory council in each borough.</p>
<p><b>POWER OF ORGANIZATION</b></p>	<p>Mandatory formation of educational service areas.</p>	<p>(See above and HR 596)</p>	<p>Not applicable.</p>	<p><b>POWER OF ORGANIZATION</b> Mandatory formation of unorganized borough units. (HR 596)</p> <p><b>FISCAL INCENTIVES AND IMPLICATIONS</b> Extension of the property tax levy on a statewide basis (HR 597), with the levy of a premium rate on certain real and personal property of companies engaged in oil and gas activities (HR 598), was, even with the credits &amp; exemptions allowed, expected to be sufficient to meet revenue sharing demands built into the tax bills. The sharing of general property tax revenue, involving population and fiscal capacity factors, represented a realistic effort to address economic disparities. Major source of shared revenue was to be 20 mill tax on pipeline property (HR 598) however, sharing scheme was converted in the House to one based on economic impact - real or imaginary - conducive to providing revenues on a sustained basis to meet the costs of public services at the local level.</p>
<p><b>FISCAL INCENTIVES AND IMPLICATIONS</b></p>	<p>Full state funding of the basic costs of educational services to be provided; no authorization to generate and expend revenues from local sources.</p>	<p>(See above and HR 596)</p>	<p>The levy of a millage rate, the proceeds of which are to be deposited in the General Fund to partially off-set state-funded educational costs, would constitute the first general property tax levy in the unorganized borough. The tax would necessarily fall on the improved commercial property as possibility exists 2nd Class cities would establish residential exemptions.</p>	<p>(See above)</p>

IX

REQUESTS RELATING TO BOROUGH FORMATION

17

RECORD OF INQUIRIES MADE OF THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS  
RE BOROUGH INCORPORATION

During the 1970's there have been numerous inquiries into the process of devolving borough government from communities in the unorganized borough.

Most of these inquiries were simply that -- with no action being pursued by the community. Most were initiated in response to a particular need which it was perceived local government might meet.

Admiralty Island Angoon expressed interest in borough government. Primary motivation behind interest appeared to be concern about controlling any timber development that took place on Admiralty Island. When there appeared to be no immediate threat of timber development occurring, and the Community realized that they might have a difficult time satisfying the financial requirements of a regional government, interest waned.

Cordova At the time Cordova area was seriously being considered as the southern terminus of a North Slope gas line, that area seemed very interested in borough government. Once the gas pipeline became a non-reality for the Cordova area, so did the issue of borough government.

Kobuk A petition of incorporation was received in 1974, but no follow-up action was taken to remedy deficiencies in the petition. The primary motivating factor for the request appeared to be local control of schools.

Kotzebue NANA region expressed interest in regional government 1974-75. Primary interest seemed to be the exercise of the planning power, both in the sense of controlling development within the region and controlling State and Federal activities that were taking place, at that time, on a rather random basis. NANA Regional Strategies Proposal was developed and appears to have satisfied many of the planning requirements of that particular region.

Newson Island This is a small island located in the Calista Region, which has on it the communities of Nigtnute, Toksook Bay and Tununak. In the early 1970's, there was some talk of these three communities uniting and forming a small borough. The person who was the primary mover, a consultant, disappeared and so did the enthusiasm for regional government.

Nome Nome has inquired into regional government, although the only interest the Community appears to have in borough government is how they might use it as a defense mechanism to keep themselves out of any other borough.

Prince of Wales Island Strong interest was expressed in the early 1970's. The local residents' thoughts appeared to be that they could obtain additional revenues through realization of stumpage fees for forestry activities taking place on the island, as well as have more of a say in how timber development would affect them. An additional factor for at least one community on the island was that they desired to remove themselves from the State-operated School System. However, in the end, the independent nature of the Communities of Craig, Hydaburg, Klawock and Thorne Bay rendered the situation such that they could simply not agree on the class of borough, the powers it would exercise and how the assembly ought to be composed.

X

SERVICE DELIVERY TO THE UNORGANIZED BOROUGH

SERVICE DELIVERY  
TO THE UNORGANIZED BOROUGH

The Alaska State Constitution states:

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

Article X, Section 6

There are presently three legislatively-mandated service areas:

1. Aquaculture Service Areas
2. Coastal Resource Service Areas
3. Regional Educational Attendance Areas (REAs)

AQUACULTURE SERVICE AREAS

In 1979, the Legislature amended AS 16, the Aquaculture Program, with FCCS HB 359 (Ch. 59, SLA 1979) granting the Commissioner of Commerce and Economic Development the authority to declare qualified regional associations, incorporated as non-profit corporations, as "service areas" within the unorganized borough for the purpose of providing salmon enhancement services.

Under this provision, a regional aquaculture association, comprised of associations representative of commercial fishermen and other representatives within the region, whose board of directors includes no less than one representative of each member user group, which has incorporated as a nonprofit corporation, becomes a service area within the unorganized borough with the authority to tax designated species of salmon caught commercially within the region and apply the proceeds to salmon enhancement programs.

On July 13, 1979, Judge Allen Compton, Superior Court, declared that the state may not dedicate a tax on the harvest of a natural resource of the state to a specific purpose by the device of declaring the tax for the purpose of providing a service within a so-called service area in the unorganized borough. Further, it was the Court's view that an incorporated nonprofit association may not become a "service area," either by inference or express legislative declaration. (No. 1JU-78-191 Civil Memorandum of Decision and Order - Judge Allen Compton, Superior Court.)

The Southern Southeast Regional Aquaculture Association will appeal Judge Compton's ruling.

COASTAL RESOURCE SERVICE AREAS

Coastal Resource Service Areas are authorized by the Alaska Coastal Management Act of 1977 to plan for the coastal areas. Each regional educational attendance area containing a part of the coastal area may be organized for this purpose or two or more REAAs may be consolidated as a single coastal resource service area. Implementation of the plans which are developed is the responsibility of the state.

At the present time, residents of two areas in the unorganized borough have voted to create coastal resource service areas. The Northwest Coastal Resource Service Area, comprising the area covered by REAA 1, has elected its seven-member board and will develop a coastal management plan.

On May 15, 1979, residents of REAA 3 and 4 voted to create the Yukon/Kuskokwim Delta Coastal Resource Service Area and will elect its board members on September 11, 1979. The City of Bethel opted to be excluded from this service area. In the Yukon/Kuskokwim area, the Department of Community and Regional Affairs entered into an agreement with Nunam Kitlutsisti, Inc. (Protectors of the Land,) the environmental planning area of Association of Village Council Presidents (AVCP) to provide a public outreach program presenting organizational options and procedures for coastal management in the area.

There have been expressed concerns related to how the state, through the appropriate state agencies, will actually implement an approved district coastal management program in the unorganized borough. Under AS 38.05.037, the Division of Lands has a general grant of authority to exercise zoning powers within the unorganized borough. Until recently, this has not been a problem because the zoning power was never used. However, where land-use controls are involved in coastal resource service areas, zoning will have to be established and administered by the Division of Lands.

On this subject, Mr. Vic Fischer in a memorandum to Mr. Steve Reeve, DNR, (February 2, 1979) recommends:

"If the state is deemed to have an overriding interest that requires it to exercise zoning authority in the unorganized borough, or at least within its coastal areas, neither ADL (Alaska Division of Lands) or DNR (Department of Natural Resources) appear to be the appropriate agency to manage the zoning program, with its strictly localized zoning, adjustment, appeals, and other aspects of continuing zoning administration. If the state is to engage in zoning, by far the most appropriate agency for the exercise of the function is the Department of Community and Regional Affairs (DCRA did not exist at the time ADL was granted zoning authority many years ago.)

In general, states have played only a minor role in the exercise of zoning authority beyond authorizing its use by local governments. The only exception is Hawaii, where general zoning classification is handled by the state, supplemented by local government; i.e., county, regulations in urban and other development areas. Elsewhere, zoning has been applied as a local government police power.

COASTAL RESOURCE SERVICE AREAS (Cont'd)

Except for the special authority given ADL, zoning in Alaska has traditionally been a power of cities and, more recently, of boroughs. Zoning would not have to be exercised by the state at all if provisions were made for (1) reorganization of the unorganized borough into a series of organized boroughs with planning and zoning authority (and this could be done without forcing them to tax or even manage schools) or (2) delegating the planning and zoning power to service areas within the unorganized borough, much as was done by the legislature in the case of coastal management planning."

REGIONAL EDUCATION ATTENDANCE AREAS (REAA's)

REAA's were created in 1975 as the mechanism through which the Legislature delegates to regional school boards the authority to operate the public schools using the boundaries or sub-boundaries of the regional corporations established under the Alaska Native Settlement Act or a combination of such boundaries.

Because the REAA's represent a major effort in regionalization, local control and decentralization of service delivery in the unorganized borough, the boundaries of which are also to be used for coastal zone management purposes, an in-depth history and analysis of the REAA's is included for your review.

During the early 1970's, the Center for Northern Educational Research was requested by the Department of Education to initiate a study of the delivery of educational services in the unorganized borough and the Interim Legislative Committee on Pre-Higher Education of the Eighth Legislature identified decentralization of the Alaska State-Operated Schools as the subject it wanted to study. The final report published in 1974, entitled "Pre-Higher Education in the Unorganized Borough: Analysis and Recommendations," included a wide range of recommendations. A primary point was the recognition of the need for local control of education and the relationship of that local control with local government creation.

"In order that any plan be more than temporary, the authority for controlling education should be aligned with the development of local governmental units as envisioned by Alaska's Constitution. If local control can be defined as that measure of control which a state delegates to local units of government, then the issues of local control of education cannot be treated separately from the broad issue of the creation of local units of government. And local government units formed around the delivery of education can provide the vanguard for local control over delivery of other governmental services. Therefore, the structure created to serve educational needs must be formed in anticipation of increases in appetites for control of other governmental functions. To ignore the need for legislative support to move toward creating local government units will only blunt the emerging desire of local citizens to assume the reigns and responsibility for their own destiny." p. 34

## SERVICE DELIVERY TO THE UNORGANIZED BOROUGH (Cont'd)

### REGIONAL EDUCATIONAL ATTENDANCE AREAS (REAs) (Cont'd)

The Center approached this subject with a note of caution; however,

"Local control of education in many regions is the main reason for creating local government units. All such creations, however, must await the readiness and desire of local people to assume control over them...the main sources of constituent resistance to local government stem from 1) lack of self-confidence, understandable, in the light of past history 2) groundless fear that the local tax base must be the primary source of local government, especially school funding, and 3) an acute shortage of trained personnel to handle what must seem like the endless march of administrative details.." p. 35

### BOUNDARIES OF THE REGIONAL EDUCATIONAL ATTENDANCE AREAS

AS 14.08.031 (a) provides that REAA boundaries follow regional boundaries set under the Alaska Native Claims Settlement Act unless by referendum a community votes to merge with another community contiguous to it but within the boundaries or sub-boundaries of another regional corporation. The use of regional lines was not intended to be exclusive as shown by AS 14.08.031 (b) prescribing certain characteristics for REAs.

"As far as practicable, each regional educational attendance area shall contain an integrated socio-economic, linguistically and culturally homogeneous area. In the formation of the REAs, consideration shall be given to the transportation and communication between communities that comprise the area. Wherever possible, municipalities, other governmental or regional corporate entities, drainage basins and other identifiable geographic features shall be used in describing the boundaries.."

Taken together, these two sections suggest that REAA boundaries are to follow, rather than cross, regional corporation boundaries where they contact them and conform to natural or other predetermined boundaries. This is how the State Department of Community and Regional Affairs, which was charged with administering the act in consultation with the State Department of Education, interpreted it in a series of informational meetings in rural areas around the state in July and August, 1975. Later they began implementing it similarly when hearings were held in numerous bush locations regarding proposed boundaries. The result of the hearings was a division of the state into some 21 REAs. Originally 20 REAs were created by C&RA, but after a meeting of residents of REAA 17 and the Governor, REAA 21 (including Chittier and Tatitlek) was created on September 24, 1975, dividing REAA 14 along the boundary between the Chugach and Ahtna Regional Corporations.

Frequent mention has been made of the fact that the statutory characteristics for boundary selections of the REAs are similar to the standards for borough incorporation.

## SERVICE DELIVERY TO THE UNORGANIZED BOROUGH (Cont'd)

ADMINISTRATION OF THE REAAs

REAA voters elect a board of from 5-11 members who are voted on "at large." In addition to the elected board for each REAA, every community (or military reservation) with a school has a community school committee. The Statute merely charges them to "review and make recommendations to the board" of the REAA "concerning the curriculum, program and general operation of the local school. They may, however, be delegated other functions by the school board.

Matters of employment, salaries, purchasing, and disbursement of funds are lodged with the REAA boards. Although the power to "adopt regulations governing organization, policies and procedures for the operation of the schools" and to "develop a philosophy of education, principles and goals for the schools" is a board responsibility, the Commissioner of Education is given overriding control of school operations.

FINANCING REAAs

All funds for REAAs are furnished by the State Legislature. They receive "basic need," as used in computing foundation aid to districts, plus an amount equal to the average per pupil local tax contributions in city and borough districts. Thus, they are relieved of local effort requirements, but the amount they can receive from the state over and above basic need is indirectly determined by city and borough decisions regarding their local tax effort. (AS 14.08.12)

Among the local financial concerns of the REAAs, even as they began their first year of operation with full state support, were the following: (See Summary of Findings Alaska School Finance Study Workshops October-November 1976, published February 1977)

1. Public School Foundation Program. While few wished to change the basic funding method, concern was expressed about the ability of the formula to provide sufficient funds to meet operating costs, especially those of small attendance centers. The validity, accuracy and amounts of instructional unit allotments (regional cost differentials) were questioned. The ability of "basic need" dollars to meet the REAAs' "basic program need" was of great concern. (Two important legislative changes made in the Public School Foundation Program in 1977 responded to the financial concern of the REAAs. One recognized the plight of the very small attendance centers and provided for an increased minimum of instructional units. The second change modified the instructional unit allotments (regional cost differentials) to be more in line with the cost of doing business in rural and isolated areas of the state.)

2. School Construction. The amount of funds available for new construction, as well as the manner in which it is provided, received extensive criticism. Even as the FY 1978 building program got underway, REAAs expressed additional concern about the proportion of bond issue building funds being retained by the supervising state agencies for administrative purposes.

SERVICE DELIVERY TO THE UNORGANIZED BOROUGH (Cont'd)

FINANCING REAAs (Cont'd)

3. Equity. REAAs, with no local source of revenue, have limited ability to operate discretionary programs beyond what is possible with the amount in lieu of local taxes available to each. The possibility that legislation might be enacted to tax property in REAAs was of concern.
4. Operation and Maintenance of School Facilities. Extreme operational costs often result from inheriting substandard or poorly designed facilities. Costs of operating facilities are unpredictable, and in some cases were expected to consume as much as one-third of the operating budget. Inherited utility contracts was singled out as an item of great concern.
5. Other Financial Concerns. State and federal categorical programs were items of much concern, partly because obtaining some of these funds depends upon the grant writing ability of the REAA. High costs of travel and meeting expenses for school boards and superintendents were expected to cause problems. Inadequate funding for school food service programs was also identified as a major concern. The acceptance and operation of former BIA schools was of concern because of the possibility that current funding methods might not be adequate to provide funds necessary to operate the schools. Costs of teacher housing was a problem in some REAAs.

SERVICE DELIVERY TO THE UNORGANIZED BOROUGH (Cont'd)

CHRONOLOGY OF EVENTS: DECENTRALIZATION OF THE ALASKA STATE-OPERATED SCHOOL SYSTEM - 1974-1976

January 1974. Center for Northern Educational Research (CNER) releases its report, PreHigher Education in the Unorganized Borough: Analysis and Recommendations, produced at the request of the Eighth Alaska State Legislature's Interim Committee and of Native leaders.

January - May 1974. Eighth Alaska State Legislature meets and reviews CNER report in committee, but does not act on the recommendations of the report concerning rural education.

July 14-16, 1974. The Alaska Federation of Natives (AFN), having assessed the Legislature's inactivity, calls an Education Strategies Conference in Fairbanks to review CNER's recommendations, to prioritize issues addressed in the report, and to determine whether and how to bring CNER recommendations to the attention and action of the new State Legislature.

August 15, 1974. Mr. Gordon Jackson, Executive Vice-President for Human Resources, at the AFN presents the recommendations and strategies from the July conference to the State Board of Education and receives their unanimous support of those items.

October 14-16, 1974. The AFN Annual Convention endorses through resolutions the PreHigher Education's recommendations and strategies. The Human Resource Committee of AFN, meeting during the convention, endorses those principles and directs staff to include those concerns into the formal AFN Education Position Paper to be presented to the newly elected State Legislature.

January 1975. The Ninth Alaska State Legislature convenes, with several bills related to the CNER/AFN recommendations prefiled. These bills include Senate Bill (SB) 35, House Bill (HB) 24, and SB 94 and SB 136.

June 4, 1975. Governor Hammond signs into law (Chapter 124, SLA 75) the Free Conference version of SB 35 and HB 24. An interim administrative structure, AUBSK, is created for the transitional year.

September-October 1975. Representatives of DOE and DCRA hold formal hearings for REAAs; public hearings are held in 21 communities in the unorganized borough; 796 people attend, representing 83 communities.

July 1, 1976. Twenty-one Regional Educational Attendance Area school boards take responsibility for education in their regions.

Patrick K. Poland

The transfer of the major operational responsibilities for rural Alaska's schools from the State of Alaska (Alaska Unorganized Borough School District) to regional school districts (Regional Educational Attendance Areas) with locally elected school boards was accomplished by Ch 124, Session Laws of Alaska, 1975 (popularly referred to as Senate Bill 35).

To a great extent, the ultimate impact of Senate Bill 35 is just beginning to be realized. However, there are already several definite implications for municipal government that have arisen from the implementation of Senate Bill 35. The purpose of this discussion is to underscore these implications as they relate to the development of municipal government in the Unorganized Borough. For purposes of this discussion, municipalities consist of boroughs and first-class cities; that is, municipalities having the education function.

### Regional Identification

While rural Alaska's initial encounter with the concept of regionalism came about with passage of Public Law 92-746, the Alaska Native Claims Settlement Act (ANCSA), there is no doubt that Senate Bill 35 went far beyond the implications of the ANCSA in terms of developing regional identification. In the view of the Department of Community and Regional Affairs this was a positive step towards developing regional government in the Unorganized Borough. Prior to the passage and implementation of this particular act there were no real tests of the regional concept of service delivery taking place in the Unorganized Borough;<sup>1</sup> and while there were many advocates of this particular mechanism of service delivery, it remained, by and large, untested. However, with the mandate of regionalization created by Senate Bill 35, rural residents have, in a sense, been forced to test the concepts of regionalism in Alaska's vast Unorganized Borough.

Surprisingly, there seemed little if any real resistance to the idea of regional school districts. On the contrary, most rural residents seemed eager to embrace the concept. Much of this was undoubtedly due to the dissatisfaction many rural residents felt with the former State-Operated School System. Perhaps the strongest demonstration of this desire to participate in a regional approach to service delivery was the change in municipal status executed by the City of Selawik. In that particular instance, the City of Selawik, formerly a city of the first class in the Unorganized Borough and therefore having school responsibilities, petitioned the Local Boundary Commission<sup>2</sup> and convinced them of the need for the city to be dissolved and "reincorporated" as a second class city so that it might become a part of the particular Regional Educational Attendance Area (Northwest Arctic). Among

the arguments presented in support of Selawik's reclassification was a strong statement by residents concerning their desire to be a part of the Regional Educational Attendance Area and to receive benefits they perceived as being available only to constituents of the REAA.

The Department of Community and Regional Affairs, noting the relatively warm embrace being given regionalization by Unorganized Borough residents, early in 1976 initiated a study of the acceptability of general purpose regional governments in the Unorganized Borough. That study,<sup>3</sup> which consumed some six months, came to a number of conclusions, the most important of which appears to be the fact that rural residents are still wary of any form of government that has the authority to levy and collect taxes. Additionally, many residents expressed concern about moving too fast; while they embraced the idea of regional school districts, they felt that the concept required the test of time before jumping to yet a new form of government. Nevertheless, the department has had inquiries from several regions (most notably the Fort Yukon, Bethel, Glennallen, and Valdez regions) concerning possible borough incorporation. To date, none of those discussions has evolved into an actual petition for borough incorporation, although it does appear that many areas are getting close to taking that step. There is no doubt that formal consideration by these regions of regional government was precipitated by the establishment of REAAs.

An additional development which, to some degree, appears to be an offshoot of the regional approach fostered by Senate Bill 35, was the passage of Ch 84 SLA 1977, which established a mechanism for regions of the Unorganized Borough to establish coastal zone management (CZM) service areas for the purpose of CZM planning. Under the provisions of that particular act any Regional Educational Attendance Area, upon determination by the local electorate, may establish itself as a coastal zone management planning district. While the legislation permits consolidation of two or more Regional Educational Attendance Areas into a CZM planning district, it does not allow individual REAAs to be subdivided into smaller districts for the purposes of planning. This is an interesting development and one that seems to further reinforce the concept of delivery services on a regional basis.

Finally, in terms of regionalization, it is interesting to note the provisions of Senate Bill 35 which deal with the boundaries of Regional Educational Attendance Areas. Specifically, the bill provides that:

As far as practicable, each Regional Educational Attendance Area shall contain an integrated socio-economic, linguistically and culturally homogenous area. In the formation of Regional Educational Attendance Areas, consideration shall be given to the transportation and communication network to facilitate the administration and communication between communities that comprise the area.

Very similar statutory language exists at AS 29.18.030, which is the statutory provision establishing standards for borough incorporation. The similarity of the standards goes a long way towards defining appropriate boundaries for potential regional governments. In fact, to some observers, the boundaries of the newly created Regional Educational Attendance Areas (with some exceptions) generally conform to good borough boundaries. This has been a little alarming to many rural residents, since no small number of them are still concerned that the state is going to "foist" boroughs upon them.

### Finance

The second major subject area that has been the topic of much discussion as a result of Senate Bill 35 is that of local government finance. As presently constituted, Regional Educational Attendance Areas, in comparison to municipal school districts, have an advantageous funding schedule. In addition to 100 percent Public School Foundation Program funding, Regional Educational Attendance Areas also receive from the State an amount equal to the average local contribution per pupil in municipal school districts multiplied by the number of students in the Regional Educational Attendance Area. This advantageous funding schedule for REAAs versus municipal districts remains a hindrance rather than an enticement for REAAs to seek organized borough status.

Since most REAAs are property poor (hence, no ability to generate tax revenues), the thought of forming municipal school districts to provide services which are currently provided by Regional Educational Attendance Areas is almost out of the question. For example, the poorest existing borough has about \$20,000 worth of taxable property per capita. On the other hand, some of the Regional Educational Attendance Areas could probably expect to have considerably less than \$5,000 worth of taxable property per capita. Realistically, it is impossible to provide basic municipal services without adequate funding.

The major exceptions to this discussion, of course, are those areas surrounding "the pipeline." The regions surrounding Fort Yukon, Delta Junction, Glennallen, Copper Center, and Valdez have taxable property per capita values that could easily support borough government.

Partially in response to these obvious funding inequities, the Department of Community and Regional Affairs, as a part of its final conclusions reached in its study of regional government, recommended that a new system of financing regional governments be found. Basically, the system suggested was one that placed a state-wide property tax on all property associated with the exploitation of natural resources and then, in turn, distributed those tax revenues on the basis of population and services being provided by individual boroughs. It was determined that additional study of that particular proposal

would be needed before the feasibility of it could be determined.

Nevertheless, this particular area is still a popular subject among legislators as demonstrated by current House Bill 202 and Senate Bill 35 introduced in the first session of the 1977 Legislative Session. Both those bills would levy real property taxes on developed land in the Unorganized Borough. Hearings on House Bill 202 were held this October (1977) in Fort Yukon, Delta Junction, and Tok.

Finally, one last area of financing that again discriminates between the municipal versus REAA school district is that of school construction. Presently municipal districts must pay for 50 percent of school construction while REAAs contribute no local effort towards construction of new facilities. This is seen as a significant impediment to the development of regional government for the purpose of assuming local control of education, particularly in areas which are "poor" or are marginally deficient in terms of a real property tax base.

### Constitutionality

I mention this issue simply because it is one of concern to many involved with municipal government. Because REAAs are not units of local government they cannot be given taxing authority nor can they provide "local government" services.<sup>4</sup> While the legality of the current REAAs has not been challenged on the grounds of Article X, Section 2, of the Constitution, there is reason to believe that if additional REAA-type entities are established they will be challenged and may, on the basis of Article X, Section 2, be declared unconstitutional.

On the other hand, those defending the constitutionality of the REAAs cite Article X, Section 6, of the Constitution which authorizes the Legislature to provide services in the Unorganized Borough ostensibly through the service area mechanism. However, the significant degree of autonomy given REAAs, particularly with respect to their abilities to independently contract and incur debt, makes the argument that REAAs are service areas, and hence an arm of the Legislature, highly suspect.<sup>5</sup>

### Summary

In summary, it can be said that formation of the Regional Educational Attendance Areas can be viewed as a positive step towards the formation of regional government in rural Alaska. In particular the newly created service areas have provided a greater amount of local control over a local municipal-type service, maintained and strengthened existing regional identifications, and provided boundaries that will be useful for the establishment of boroughs in the future.

The principal negative aspect of Senate Bill 35 has been the funding formula which maintains a disincentive to formation of municipal governments and fails to properly address the extremely poor tax base of much of rural Alaska.

Ultimately, the passage of Senate Bill 35, if for no reason other than the fact that it has generated discussion and interest, is going to have had a significant effect (probably the most significant since the passage of the 1964 mandatory borough act) towards developing regional government in this state.

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### Notes

1. Admittedly, certain state and federal agencies have been administering a few programs on a regional basis. However, these agencies have had the benefit of vast government financial and technical resources to assist them. In the opinion of this writer, the availability of these resources makes any comparison between the state/federal regional approach and the REAAs invalid.

2. The Local Boundary Commission is composed of five members and is responsible for reviewing and approving or disapproving all municipal incorporation, dissolution, and boundary change proposals.

3. While a final report was not issued at the end of the study, several comprehensive memorandums summarizing various aspects of the study are available from Community and Regional Affairs. As an additional result of the study, legislation calling for a Local Government Commission to study and make recommendations to the Legislature on all aspects of state/local relations is being introduced by Governor Hammond in the second session of the Tenth State Legislature (January 1978).

4. Alaska Constitution, Article X, Section 2. All local government powers shall be vested in boroughs and cities. The state may delegate taxing powers to organized boroughs and cities only.

5. For further information, the reader may wish to consult David Getches, Law and Alaska Native Education, pp. 32-34.

\*Article reprinted from New School Districts in Rural Alaska: A Report on the REAAs After One Year, Center for Northern Educational Research, University of Alaska, 1973, pp. 137-142.

\*\*This percentage was reduced to 20 percent by the Legislature with the passage of Sec 2 Ch. 147 SLA 1978.

XIV

STATUTORY INDUCEMENTS AND DISINCENTIVES  
RELATED TO BOROUGH GOVERNMENT INCORPORATION

STATUTORY INDUCEMENTS AND DISINCENTIVES RELATED TO BOROUGH GOVERNMENT INCORPORATION

Organizational Grants (AS 29.18.180) To defray the cost of transition to borough government status and to provide for its development and interim governmental operations, each newly created borough is entitled to an organizational grant of \$25,000 or \$10 per voter voting in the incorporation election, whichever is greater.

The organizational grants have not been a statutory incentive to encourage borough incorporation because the grant is not adequate and is not intended to pay for the entire cost of borough organization. Although there are no guidelines for the use of the organizational grants, a newly incorporated borough may use the funds to defray the cost of hiring a borough administrator, paying for a local assessment of real and personal property, obtaining office space, etc.

In order to provide an incentive to borough incorporation, an organizational grant would have to be at least \$75,000 to \$100,000 plus the initial cost involved in conducting a feasibility study on borough incorporation, and an amount equal to the cost of conducting the initial assessment and appraisal of real and personal property.

Land Selections (AS 29.18.203) A newly created borough may select ten percent of the total acreage of vacant, unappropriated, unreserved land within its boundaries on the date of incorporation. In the selection of land under the Statehood Act, it has been the policy of the State to make available to boroughs and cities the maximum land area from which to make selections consistent with the State's best interest.

The municipal land selection process is an incentive to borough incorporation to the extent that the boundaries proposed for a borough would probably include the maximum allowable vacant, unappropriated, and unrestricted lands from which to select its ten percent. However, the boundaries of a proposed borough must conform to natural geography and include all areas necessary for full development of local services.

State Revenue Sharing Program (AS 43.18.010-045) The State Revenue Sharing Program annually distributes grants to cities and boroughs based on the number of local residents in a municipality, the eligible powers exercised by each local government, the cost of living allowance used in computing total grant entitlements and the total appropriation approved for the grant program.

During each fiscal year, the Department of Community and Regional Affairs distributes State Revenue Sharing Funds to eligible cities or organized boroughs which provide specific services, and exercise the powers as follows:

<u>Municipal Service</u>	<u>Rate of Entitlement</u>
Police Protection	\$12. per capita
Military	\$ 6. per capita
Fire Protection	\$ 7.50 per capita
Water or Air Pollution	\$ 2. per capita
Land-Use Planning	\$ 2. per capita
Parks and Recreation	\$ 5. per capita

STATUTORY INDUCEMENTS AND DISINCENTIVES RELATED TO BOROUGH  
GOVERNMENT INCORPORATION (Cont'd)

<u>Municipal Service (Cont'd)</u>	<u>Rate of Entitlement (Cont'd)</u>
Military	\$ 1.25 per capita
Transportation Facilities	\$ 5.00 per capita
Military	\$ 2.50 per capita
Road Maintenance	
- Public Roads	\$ 1,500. per mile
- Ice Roads	\$ 900. per mile
Health Facilities	\$ 4,000. per fac. OR
	\$ 1,000. per bed
Health Services	\$ 2. per capita
Hospitals	\$75,000. per host. OR
	\$25,000. per hosp. OR
	\$ 1,000. per bed
State Construction Aid	\$ 2,500. per bed

State Revenue Sharing has had an increasing impact on municipalities since its enactment in 1969. The program funding has increased from \$2.0 million in 1970 to \$18.6 million in FY 1979, and municipalities have become increasingly dependent on these grants. However, due to the limited amount of funding made available for the program each year, municipalities have not received 100 percent of their grant entitlements. Last fiscal year municipalities received only 88.7 percent of their total grant entitlements and next fiscal year the Department of Community and Regional Affairs expects the program to be funded at approximately 85 percent of all the grant entitlements.

The current formula is intended to encourage existing local governments to provide financial incentives to exercise powers, improve upon existing services provided and reduce any local taxes.

Local Service Road and Trail Program (LRS&T) (AS 19.30.111-251) The Local Service Roads and Trail Program provides state assistance in the development of roads and trails on routes that are not eligible for Federal-aid highway funds. These funds are intended to provide local service roads, year-around foot trails, winter trail staking, bicycle paths, erosion control, foot bridges, boardwalks, etc.

This program is 100 percent State-funded through State bond issues. Under the program, funds are allocated to organized boroughs and home-rule cities according to a strict area/population formula. Each local government receives its allocation by submitting a three-year program with project priorities noted to the Regional Highway Engineer by October 1 of each year. A portion of the fund is also allocated to the unorganized boroughs; this money is administered by DOTPF. The communities within the unorganized boroughs receive funding based on priority and need. Each community selects its project and submits it to the Department for consideration.

The Department of Transportation and Public Facilities (DOTPF) is responsible for maintaining, causing to be maintained, or constructing any project under the LSR&T Program. However, a project constructed within the boundaries of a local government which exercises the power of streets and sidewalks may be transferred to a local government upon the approval of DOTPF and acceptance by the local government.

STATUTORY INCENTIVES AND DISINCENTIVES RELATED TO BOROUGH  
GOVERNMENT INCORPORATION (Cont'd)

Local Service Road and Trail Program (LRS&T) (AS 19.30.111-251) (Cont'd)

A road, street or highway transferred to a local government under this process can be eligible to receive State Revenue Sharing funding equal to \$1,500 a mile for each eligible mile for streets or highways maintained by the local government.

Although a borough stands a greater chance of being awarded local service roads and trails projects under the area/population formula, and although roads, streets and highways may be transferred to a municipality, the LSR&T Program has not been a sufficient incentive to encourage borough incorporation.

Regional Education Attendance Area (REAA's) REAA's were created with the passage of Chapter 124, Session Laws of Alaska, 1975 (popularly referred to as Senate Bill 35,) thus transferring the major operational responsibilities for rural Alaska schools (Alaska Unorganized Borough School District) to regional school districts (REAA's.) Although the REAA's created have provided a greater amount of local control over local municipal-type services, strengthened the existing regional identification of these areas, and provided boundaries that are useful to establishing future boroughs, the State funding formula has been a disincentive to the formation of borough government, and it fails to properly address the extremely poor tax base for much of rural Alaska. In addition to receiving funding for 100 percent of the Public School Foundation Program and 100 percent of the cost for new school construction, REAA's receive from the State an amount equal to the average local contribution per pupil in municipal school districts multiplied by the number of students which will approximate \$710 per student this year. The Public Foundation Program will be funded approximately at 100 percent this year, and the State school construction cost will only be funded at approximately 80 percent this year. The advantageous funding schedule mentioned above for REAA's still remains a disincentive to the formation of organized boroughs unless the borough school districts can obtain additional funding to offset the increased level of funding for REAA's.

State-Shared Taxes State-shared taxes are specific taxes levied and collected by the State of Alaska (Department of Revenue) and are, in part, refunded to cities and boroughs providing municipal services. State-shared taxes refunded to municipalities include the following:

Amusement and Gaming Taxes (AS 43.35.010-090) Fifty percent of the taxes collected under this program are refunded to the municipality in which the tax is collected. Payments are made automatically, on a semi-annual basis, to all cities and boroughs upon receipt of notice of incorporation.

Aviation Fuel Taxes (AS 43.40.010-040) Sixty percent of the taxes collected under this program are refunded to the municipality in which the tax is collected, if that municipality owns and/or operates a public airport.

Corporate Income Taxes (AS 43.20.010) Effective July 1, 1979, each municipality will receive a refund equal to the amount they received as a refund under the former Business License Tax Program. Refunds are mailed automatically to municipalities, once a year.

STATUTORY INDUCEMENTS AND DISINCENTIVES RELATED TO BOROUGH  
GOVERNMENT INCORPORATION (Cont'd)

Liquor License Taxes (AS 04.10.460) One hundred percent of the amount collected under this tax program is refunded to the municipality in which it was collected if the municipality has a police force and actively enforces State, Federal, and local liquor laws. Refunds are mailed automatically to municipalities semi-annually.

Punchboard Taxes (AS 43.35.100-150) Seventy-five percent of the amount collected under this tax program is refunded to the municipality in which it was collected. Refunds are mailed automatically to municipalities once a year.

Raw Fish Taxes (AS 43.75.130-135) Currently each borough receives twenty percent of the amount of tax revenues collected in the area outside cities and ten percent of the amount of tax revenues collected within cities. Refunds to eligible municipalities are mailed annually.

Telephone and Electric Cooperative Taxes (AS 10.25.570) One hundred percent of the tax collected from telephone and electric cooperatives is refunded to the municipalities in which the cooperative does business. A municipality's entitlement is based upon the amount of gross revenue the cooperative received from operations within the municipality's boundaries. The tax is refunded annually.

With the exception of the raw fish tax refunds, all other State-shared taxes contribute a relatively small amount of revenue to an organized borough and would not provide a statutory inducement to municipal incorporation. Depending on the amount of fish products processed within the boundaries of a proposed borough, the raw fish tax could provide an incentive to borough incorporation; i.e., the Aleutian Islands.

## FISCAL IMPACT OF STATE STATUTES AND REGULATIONS ON MUNICIPALITIES

Part I of the Municipal League's legislative policy statement deals with local taxation and finance. One aspect of local revenue and expenditures which is not treated in the policy statement is the effect of State laws and regulations on the costs of local government.

Two bills introduced last session would have addressed this issue. Senate Bill No. 352 called for the preparation of fiscal notes on local costs of proposed bills by the Department of Community and Regional Affairs. This bill was a result of the work done by the Joint Community and Regional Affairs Committees' interim Local Government Study. The Municipal League was active in its support of this bill. (The companion bill in the House was numbered (Committee Substitute for House Bill) CSHB586.

Senate Bill No. 309 dealt with the local cost of State regulations, and took a somewhat different approach. SB 309 called for the preparation of "fiscal impact statement" for any change of regulations which would affect the revenue available to communities or their required expenditures. Major questions on the original bill centered around the concept of the "fiscal impact statement":

- was it to be a detailed analysis of fiscal effects on local governments or a simple fiscal note similar to that used by the Legislature;
- was it to be done on a municipality-by-municipality basis or by a lump sum figure;
- how technical should it be;
- should only direct fiscal impacts, or should indirect effects also be included;
- should there be a "threshold" level of fiscal impact or should all changes in level of impact be covered; and
- how would the fiscal impact statement process be implemented?

The Community and Regional Affairs Committee amended SB 309 to narrow the scope of fiscal impacts to direct effects on municipal revenues or expenditures. Also the Department of Community and Regional Affairs was written into the process of developing an agency's fiscal impact statement. Before this bill is reintroduced, the legislative intent in regard to the remaining issues must be clarified.

A related bill, SB 292, that required fiscal notes on the impacts of regulations on State agencies did become law. These State level impacts can be more directly estimated in terms of increased appropriations requests by each agency. However, the possible fiscal impacts on local governments are much more varied, and for the most part do not relate directly to state appropriation requests.

The goal is to develop a method of assessing the fiscal impacts of any proposed bill or regulation on local governments. In any case, the fiscal impact statements required in SB 309 and SB 352 must be completed within definite time frames. The introduction of legislation, or the submission of new regulations by a state agency for review and comment, are relatively short-term processes that will influence the nature of the fiscal impact statement process.

Any direction from the Municipal League on the scope and the level of detail that such fiscal statements should include would be greatly appreciated. It would be especially helpful to know what specific types of fiscal impacts you feel need to be addressed in such an analysis.

Senator Arliss Sturgulewski  
Presentation to the  
Municipal League Legislative Committee

BY THE RULES COMMITTEE BY REQUEST  
OF THE LEGISLATIVE COUNCIL (for the  
Community and Regional Affairs  
Committee Interim Joint Local  
Government Study)

1 IN THE SENATE

2 SENATE BILL NO. 352

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act requiring fiscal notes for bills affecting a  
7 municipality."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 24.30.035 is amended to read:

10 Sec. 24.30.035. FISCAL NOTES ON BILLS. Before a bill is reported  
11 from the committee of first referral, there shall be attached to the  
12 bill a fiscal note containing an estimate of the amount of the appropria-  
13 tion increase or decrease which would result from enactment of the bill  
14 for the ensuing fiscal year and at least two succeeding fiscal years.  
15 If enactment of the bill would require an expenditure or appropriation  
16 by any municipality, a fiscal note shall be attached to the bill con-  
17 taining an estimate of the amount of the total expenditure or appropria-  
18 tion which would be required during each of the first three fiscal  
19 years by all affected municipalities. If [OR, IF] the bill has no  
20 fiscal impact, a statement to that effect shall be attached. The fiscal  
21 note or statement relating to a state program shall be prepared by the  
22 department or departments affected. The fiscal note or statement relat-  
23 ing to municipalities shall be prepared by the Department of Community  
24 and Regional Affairs, but that department may obtain the assistance of  
25 any other state agency in the preparation of the note or statement. If  
26 the bill is presented by the governor for introduction in accordance  
27 with AS 24.30.060(b) and the uniform rules of the legislature, the  
28 fiscal note or statement shall be attached to the bill before the bill  
29 is introduced. An amendment or a substitute bill proposed by a commit-

BY THE RULES COMMITTEE BY REQUEST  
OF THE LEGISLATIVE COUNCIL (for the  
Community and Regional Affairs  
Committee Interim Joint Local  
Government Study)

1 IN THE SENATE

2 SENATE BILL NO. 352

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act requiring fiscal notes for bills affecting a  
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8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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10 Sec. 24.30.035. FISCAL NOTES ON BILLS. Before a bill is reported  
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12 bill a fiscal note containing an estimate of the amount of the appropria-  
13 tion increase or decrease which would result from enactment of the bill  
14 for the ensuing fiscal year and at least two succeeding fiscal years.  
15 If enactment of the bill would require an expenditure or appropriation  
16 by any municipality, a fiscal note shall be attached to the bill con-  
17 taining an estimate of the amount of the total expenditure or appropria-  
18 tion which would be required during each of the first three fiscal  
19 years by all affected municipalities. If [OR, IF] the bill has no  
20 fiscal impact, a statement to that effect shall be attached. The fiscal  
21 note or statement relating to a state program shall be prepared by the  
22 department or departments affected. The fiscal note or statement relat-  
23 ing to municipalities shall be prepared by the Department of Community  
24 and Regional Affairs, but that department may obtain the assistance of  
25 any other state agency in the preparation of the note or statement. If  
26 the bill is presented by the governor for introduction in accordance  
27 with AS 24.30.060(b) and the uniform rules of the legislature, the  
28 fiscal note or statement shall be attached to the bill before the bill  
29 is introduced. An amendment or a substitute bill proposed by a commit-

tee of referral that changes the fiscal impact of a bill shall be explained in a revised fiscal note or statement attached to the bill.

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Original sponsors: Hackney, Ziegler  
and Kelly

Offered: 3/27/80  
Referred: Judiciary

1 IN THE SENATE

BY THE COMMUNITY AND  
REGIONAL AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 309

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to adoption, amendment, repeal and  
7 filing of regulations and requiring the preparation of  
8 a local government fiscal impact statement."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. AS 44.62 is amended by adding a new section to read:

11 Sec. 44.62.195. LOCAL GOVERNMENT FISCAL IMPACT STATEMENT. If the  
12 adoption, amendment, or repeal of a regulation would result in a change  
13 in the amount of revenue available to, or the expenditures required of,  
14 a municipality, the department or agency proposing to adopt, amend, or  
15 repeal the regulation shall, in cooperation with the Department of  
16 Community and Regional Affairs, prepare a fiscal impact statement. In  
17 the fiscal impact statement the department or agency shall identify and  
18 describe the change in the amount of revenue available to or the  
19 expenditures required of the municipality by the adoption, amendment, or  
20 repeal of the regulation.

21 \* Sec. 2. AS 44.62.200(a) is amended by adding a new paragraph to read:

22 (5) a summary of the local government fiscal impact statement  
23 required under AS 44.62.195.

24 \* Sec. 3. AS 44.62.320(b) is amended to read:

25 (b) At the same time a regulation is filed by the lieutenant  
26 governor, the lieutenant governor shall submit the regulation to the  
27 chairman and all members of the Administrative Regulation Review Com-  
28 mittee for review under AS 24.20.400 - 24.20.460 together with any fis-  
29 cal impact statement required to be prepared under AS 44.62.195.

## CREATION OF UNORGANIZED BOROUGHS

Major legislation introduced as a result of the Joint Community and Regional Affairs Committees' interim Local Government Study included Senate Bill 348.

Senate Bill 348 would have divided the present unorganized borough into distinct unorganized boroughs. These unorganized boroughs would be based on the present Regional Education Attendance Area boundaries, with adjustments made by the Department of Community and Regional Affairs. In determining boundaries for the unorganized boroughs, the Department must consider the standards applicable for borough incorporation, Native corporation boundaries and census divisions. SB 348 provided a mechanism for identifying the boundaries of the unorganized boroughs and for instituting a comprehensive planning program for each unorganized borough.

As stated in SB 348, one primary purpose of this legislation was to provide residents of the unorganized borough the opportunity to assist in planning and program development for their own regions.

In addition, State statutes on incorporation would be changed to allow an unorganized borough to incorporate directly as a home-rule borough. A procedure for preparing a home-rule charter and holding an election on the charter was included in the legislation.

Senator Arliss Sturgulewski  
Presentation to the  
Municipal League Legislative Committee

Original sponsor: Rules/Legislative Council

Offered: 3/26/80  
Referred: Finance

1 IN THE SENATE

BY THE COMMUNITY AND  
REGIONAL AFFAIRS COMMITTEE

2

CS FOR SENATE BILL NO. 348

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

ELEVENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to unorganized boroughs, establishing unorganized boroughs, establishing a program of financial assistance for the preparation of regional plans by unorganized boroughs, permitting adoption of home rule charters by unorganized boroughs, and directing submission of recommendations concerning adjustment of the boundaries of service areas of the unorganized borough; and providing for an effective date."

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

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\* Section 1. PURPOSE. The legislature finds that the single unorganized borough of the state has proven unworkable in accommodating demands from its residents for change and recognizes that a more systematic approach to the planning and delivery of services for residents of this area is necessary. In providing, in this Act, for identifying a common set of boundaries by which to subdivide the state's single unorganized borough into multiple unorganized boroughs, it is the purpose of the legislature to extend the opportunity to residents of unorganized boroughs to assist in planning and program development by

24

(1) preparing regional plans; and

25

(2) broadening the range of methods by which residents may in-

26

corporate a regional government.

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\* Sec. 2. INTENT. In providing for the division of the state's unorganized borough into unorganized boroughs, it is the intent of the legislature that all future transfers of functions or services from state agencies to

1 regions within unincorporated areas be made only within the boundaries for  
2 unorganized boroughs established under AS 29.03.011 - 29.03.021, added by  
3 sec. 3 of this Act.

4 \* Sec. 3. AS 29.03 is amended by adding new sections to read:

5       Sec. 29.03.011. ESTABLISHMENT OF UNORGANIZED BOROUGHES. Except as  
6 the boundaries are adjusted as provided in AS 29.03.021, the geographic  
7 area within each regional educational attendance area established under  
8 AS 14.08.031 is, effective 180 days after the effective date of this  
9 Act, established as an unorganized borough.

10       Sec. 29.03.021. ADJUSTMENT OF BOUNDARIES BY COMMISSIONER. (a)  
11 The commissioner of community and regional affairs may establish boun-  
12 daries other than the boundaries of a regional educational attendance  
13 area for an unorganized borough under AS 29.03.011. Before establishing  
14 boundaries for unorganized boroughs under this section, the commissioner  
15 shall hold at least one public hearing within each regional educational  
16 attendance area. In establishing boundaries under this section, the  
17 commissioner shall consider

18               (1) the standards applicable to the incorporation of boroughs  
19 under AS 29.18.030;

20               (2) the regional boundaries adopted by the Native regional  
21 corporations established under the Alaska Native Claims Settlement Act;  
22 and

23               (3) census divisions of the state used for the 1980 census.

24       (b) The commissioner of community and regional affairs may not  
25 establish boundaries so that an unorganized borough includes territory  
26 within more than one Native regional corporation established under the  
27 Alaska Native Claims Settlement Act.

28 \* Sec. 4. AS 44.47 is amended by adding a new section to read:

29       Sec. 44.47.085. ASSISTANCE FOR REGIONAL PLANS IN THE UNORGANIZED

1 BOROUGH. (a) The commissioner may contract with a municipality, a  
2 group of municipalities, or one or more regional Native corporations  
3 organized as nonprofit corporations under the laws of the state to  
4 prepare a regional plan for an unorganized borough.

5 (b) The commissioner may contract for the preparation of only one  
6 regional plan for each unorganized borough. The commissioner may con-  
7 tract only if he is satisfied that the party with whom he contracts is  
8 capable of preparing a regional plan that considers the entire popu-  
9 lation of the unorganized borough.

10 (c) When a municipality, group of municipalities, or one or more  
11 regional Native nonprofit corporations proposes to prepare a regional  
12 plan for an unorganized borough, the commissioner shall request pro-  
13 posals for preparation of a regional plan. The residents of an un-  
14 organized borough may petition the commissioner to request proposals for  
15 preparation of a regional plan, and the commissioner shall request  
16 proposals if the petition is signed by a number of qualified voters  
17 equal to not less than 15 percent of the number of votes cast in the  
18 unorganized borough at the last state general election.

19 (d) A request for proposal for preparation of a regional plan for  
20 an unorganized borough made under (c) of this section shall be adver-  
21 tised. The commissioner shall advertise for a period of not less than  
22 45 days by public notice announcements provided to newspapers and radio  
23 and television stations. The advertisement of a request for a proposal  
24 for the preparation of a regional plan shall

25 (1) invite a municipality, group of municipalities or re-  
26 gional Native nonprofit corporation to submit a proposal for the  
27 preparation of a regional plan;

28 (2) outline the work to be completed; and

29 (3) contain other information which the commissioner believes

1 will inform the public of the work to be completed under the contract,  
2 and which will assist him in evaluating proposals received.

3 (e) After receiving the proposals for preparation of a regional  
4 plan, the commissioner shall evaluate them. In evaluating the pro-  
5 posals, the commissioner may request advice from residents of an un-  
6 organized borough for which the regional plan is proposed. The commis-  
7 sioner may refuse all proposals and readvertise, or may accept a pro-  
8 posal and enter into a contract as provided in (f) of this section.

9 (f) A contract entered into under this section

10 (1) shall require that the regional plan include

11 (A) an analysis and recommendations concerning incor-  
12 poration of a borough government for all or a portion of the un-  
13 organized borough;

14 (B) an evaluation of the economic development potential  
15 of the unorganized borough;

16 (C) a recommendation concerning capital facility needs  
17 of the unorganized borough;

18 (D) an examination of demographic, social and environ-  
19 mental factors affecting the unorganized borough;

20 (E) an examination of

21 (i) interrelationships among the regional educa-  
22 tional attendance area, the coastal resource service area, and  
23 any other regional entity responsible for services in the  
24 unorganized borough; and

25 (ii) the interrelationships between the governments  
26 of cities within the unorganized borough and regional entities  
27 listed in (i) of this subparagraph; and

28 (F) a process for implementing the recommendations made  
29 as part of the regional plan;

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(2) shall provide

(A) a mechanism for securing public participation in the preparation of the regional plan;

(B) that the regional plan be completed not later than the June 30 following the third anniversary of the date of the contract; and

(C) that payment for work performed under the contract is subject to legislative appropriation to the account established in (g) of this section;

(3) may permit the contractor to subcontract parts of the work to be performed to one or more subcontractors.

(g) There is established in the Department of Community and Regional Affairs the unorganized borough regional planning account. The account shall be administered by the commissioner and shall be used to pay for contracts entered into under this section.

(h) During each fiscal year, the commissioner may not pay to a contractor under a contract authorized by this section more than \$25,000 plus \$25 per capita for each person residing within the unorganized borough for which the regional plan is to be prepared, as determined by the commissioner.

(i) In this section, "unorganized borough" means a subdivision established under AS 29.03.011 - 29.03.021.

\* Sec. 5. AS 29 is amended by adding a new chapter to read:

CHAPTER 19. DIRECT INCORPORATION OF A HOME RULE BOROUGH.

Sec. 29.19.010. INCORPORATION. (a) The residents of an unorganized borough established in accordance with AS 29.03.011 - 29.03.021 may apply for the incorporation of a home rule borough. The petition for borough incorporation shall be filed with the Department of Community and Regional Affairs and shall include the information and signatures

1 required by AS 29.18.050. Petitions for incorporation filed under this  
2 section shall be processed, reviewed and determined in accordance with  
3 AS 29.18.060 - 29.18.090.

4 (b) A petition submitted under (a) of this section shall

5 (1) specify the number of members of the charter commission,  
6 but the number of members may not exceed 15; and

7 (2) describe the manner of election of members of the charter  
8 commission; if election is to be by district, a description of the  
9 boundaries of each district shall be included in or attached to the  
10 petition.

11 (c) If the petition submitted under (a) of this section requests  
12 election of charter commission members on a basis other than at large  
13 within the unorganized borough, the manner of election of the members of  
14 the commission shall conform to standards applicable to the composition  
15 and apportionment of legislative bodies which are imposed by art. I,  
16 sec. 1 of the state constitution.

17 (d) The standards applicable to the incorporation of an organized  
18 borough under art. X, sec. 3 of the state constitution and AS 29.18.030  
19 apply to the incorporation of an unorganized borough under this section.

20 Sec. 29.19.020. CHARTER ELECTION. (a) If the Local Boundary  
21 Commission accepts the petition filed under AS 29.19.010, it shall  
22 immediately notify the lieutenant governor. Within 30 days after noti-  
23 fication, the lieutenant governor shall order an election within the  
24 proposed home rule borough to determine whether the voters will elect a  
25 charter commission, and to determine the persons elected to serve on the  
26 charter commission.

27 (b) Charter commission candidates are nominated by petition signed  
28 by at least 50 registered voters residing within the unorganized  
29 borough. The lieutenant governor shall allow not less than 20 or more

1 than 30 days during which candidates for the charter commission may  
2 present nominating petitions.

3 (c) The election on the question of election of a charter com-  
4 mission and the determination of persons elected to serve on the charter  
5 commission shall be held not less than 60 or more than 75 days after the  
6 date of the election order.

7 Sec. 29.19.030. PREPARATION OF CHARTER. (a) If, at the election  
8 called by the lieutenant governor under AS 29.19.020, a majority of the  
9 voters favors election of a charter commission, the persons receiving  
10 the highest number of votes cast at that election constitute the charter  
11 commission. The charter commission shall prepare a proposed charter and  
12 submit it to the Department of Community and Regional Affairs within one  
13 year of the first meeting of the charter commission. The commissioner  
14 of community and regional affairs shall review the proposed charter for  
15 compliance with laws applicable to home rule municipalities and, if it  
16 complies, request the lieutenant governor to submit the proposed borough  
17 incorporation petition and proposed home rule charter to residents of  
18 the proposed home rule borough. If the proposed charter does not comply  
19 with law, the commissioner of community and regional affairs shall  
20 return the proposed charter to the charter commission with a statement  
21 of the legal deficiencies.

22 (b) Within 90 days of the receipt of the statement of the commis-  
23 sioner of community and regional affairs indicating that the proposed  
24 home rule charter does not comply with law, the charter commission may  
25 prepare and submit to the commissioner an amended charter which meets  
26 the objections to the original proposed charter.

27 Sec. 29.19.040. RATIFICATION OF CHARTER. The lieutenant governor  
28 shall order an election on the question of whether the unorganized  
29 borough shall be incorporated as a home rule borough in accordance with

1 the charter approved by the commissioner of community and regional  
2 affairs. The proposed charter shall be posted throughout the proposed  
3 borough by the lieutenant governor before the election is held. The  
4 election shall be held not less than 60 or more than 90 days following  
5 the election order.

6 Sec. 29.19.050. RESULTS OF RATIFICATION ELECTION. (a) The votes  
7 cast at an election held under AS 29.19.040 shall be tabulated in two  
8 classifications. One classification shall consist of all votes cast  
9 within cities of the proposed home rule borough. The second classi-  
10 fication shall consist of all votes cast in the remaining area of the  
11 proposed borough. If a majority of the votes cast in each classifica-  
12 tion by the qualified voters of the proposed borough favors incorporation  
13 of the borough under the proposed home rule charter, the lieutenant  
14 governor shall declare that the unorganized borough in which the  
15 election was held is incorporated as an organized borough and a  
16 municipal corporation in accordance with the provisions of the home rule  
17 charter. The lieutenant governor shall provide for the election of the  
18 officers provided for in the charter.

19 (b) The election and qualification of officers under (a) of this  
20 section shall be completed by the lieutenant governor in accordance with  
21 AS 29.18.120 and the provisions of the home rule charter of the borough.

22 Sec. 29.19.060. RESUBMISSION OF CHARTER. If a proposed charter is  
23 rejected, the charter commission shall prepare, adopt and submit a  
24 second proposed charter to the voters in accordance with AS 29.19.030 -  
25 29.19.050. The second proposed charter shall be submitted to the voters  
26 within one year of the date of the charter election held under AS 29.-  
27 19.040. If the second proposed charter is rejected, the charter com-  
28 mission is dissolved.

29 Sec. 29.19.070. VOTERS, ELECTIONS, COSTS, AND VACANCIES. (a) A

1 person is qualified to vote in an election authorized by AS 29.19.010 -  
2 29.19.060 if he is qualified to vote in state elections and if he is a  
3 resident of the unorganized borough proposed for incorporation as a home  
4 rule borough.

5 (b) The lieutenant governor shall conduct elections authorized by  
6 AS 29.19.010 - 29.19.060 substantially in the manner provided in the  
7 Alaska Election Code (AS 15.05 - 15.60), and shall certify the results  
8 of all elections under this chapter. Costs of elections under this  
9 chapter shall be paid by the office of the lieutenant governor.

10 (c) Costs of charter preparation under this chapter shall be paid  
11 by the Department of Community and Regional Affairs.

12 (d) The commissioner of community and regional affairs shall ap-  
13 point a registered voter of the unorganized borough for which a charter  
14 is being prepared to fill a vacancy occurring on the charter commission  
15 established under this chapter.

16 Sec. 29.19.080. APPLICABILITY OF TRANSITIONAL PROVISIONS. The  
17 provisions of AS 29.18.130 - 29.18.180 apply to home rule boroughs  
18 incorporated under this chapter.

19 Sec. 29.19.090. STATUS OF HOME RULE BOROUGHES. (a) A home rule  
20 borough incorporated under this chapter shall exercise all powers  
21 required of a borough under AS 29.33.

22 (b) For purposes of acquisition of areawide powers, the provisions  
23 of AS 29.38.010 apply to a home rule borough incorporated under this  
24 chapter unless otherwise specifically provided in the charter of the  
25 borough.

26 \* Sec. 6. AS 29.03.010 and 29.03.020 are repealed.

27 \* Sec. 7. UNORGANIZED BOROUGH SERVICE AREAS. (a) The commissioner of  
28 education shall recommend to the legislature, not later than January 31,  
29 1981, whether changes should be made in the boundaries of a regional

1 educational attendance area organized under AS 14.08 to conform the bound-  
2 aries of the regional educational attendance area to an unorganized borough  
3 of which it is a part.

4 (b) The Alaska Coastal Policy Council shall recommend to the legis-  
5 lature, not later than January 31, 1981, whether changes should be made in  
6 the boundaries of an existing coastal resource service area organized under  
7 AS 46.40 to conform the boundaries of the coastal resource service area to an  
8 unorganized borough of which it is a part.

9 \* Sec. 8. This Act takes effect immediately in accordance with AS 01.10.-  
10 070(c).

## STATE AGENCY COORDINATION

The purpose of Senate Bill 350 was to coordinate State agency program management and service delivery. SB 350 required all state agencies to adopt a common set of geographic districts for the purposes of program planning and for data collection and publication of statistics and reports. The units were to be boroughs, home-rule municipalities, and the set of unorganized boroughs created by SB 348. REAA's would take the place of unorganized boroughs if SB 348 did not pass.

A major purpose of this legislation was to standardize the delivery of state services along a common set of districts. The legislation specifically directed State agencies to develop and implement agency plans (and coordinate their plans with other agencies) on the basis of these common geographic units.

A second intent of this legislation was to make an analysis of State service delivery easier by having all information based on the same geographic units. In addition, a variety of supporting data--such as income levels, population, health statistics, unemployment statistics, and so on--would be available for the same geographic units.

Information on both agency programs and socio-economic measures would then be available for a specific geographic area. The legislative response, in terms of agency budget requests and needed appropriations for projects or capital improvements, should become more direct and effective with this information base.

While this bill speaks primarily in terms of the unorganized borough, there are benefits to organized municipalities as well. The establishment of a common set of State agency program planning districts based on borough boundaries should prove to be a very powerful tool. In addition, the formal designation of boroughs and unorganized boroughs as "State planning districts" would affect federal program planning and service delivery districts as well. Overall, the existing boroughs and unified municipalities should gain in their ability to influence State and Federal agency programs because information on all agency plans can be coordinated and compared. The inter-relation of agency plans can be seen more directly, and can be responded to more efficiently. Finally, the availability of socio-economic data on a borough-by-borough basis will make it easier for local governments to respond to a variety of data requirements used in State and Federal agency programs.

Your comments on the desirability of having State agencies adopt a common set of program planning and service delivery boundaries would be helpful.

Senator Arliss Sturgulewski  
Presentation to the  
Municipal League Legislative Committee

Original sponsor: Rules/Legislative Council

Offered: 3/26/80  
Referred: Finance

1 IN THE SENATE

BY THE COMMUNITY AND  
REGIONAL AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 350

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the responsibilities of executive  
7 departments of state government for certain state  
8 programs; and providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. AS 44.17 is amended by adding new sections to read:

11 ARTICLE 2. PLANNING AND MANAGEMENT OF STATE SERVICES.

12 Sec. 44.17.100. PROGRAM DATA AND INFORMATION. (a) A principal  
13 department of the executive branch of state government, including a  
14 board or commission assigned to a department for administrative pur-  
15 poses, shall use the home rule and general law boroughs, unified muni-  
16 cipalities, and regional educational attendance areas as the geographic  
17 units by which to collect and report data and information and process  
18 and analyze statistics about each of its programs.

19 (b) The information, data and statistics required to be collected  
20 and reported by this section include but are not limited to

21 (1) information which may be required by the division of  
22 policy development and planning in the Office of the Governor to  
23 describe the geographic distribution of the state's population, economic  
24 activities, and public services; and

25 (2) information about the program, including

26 (A) the estimated number of persons needing a service;

27 (B) the number of persons served by the program;

28 (C) the costs of the services provided by the program;

29 and

1 (D) the conditions addressed or corrected by a service  
2 provided by the program.

3 (c) A department, board or commission may request an exemption  
4 from this section. An exemption granted under this subsection expires  
5 on June 30, 1982. The request for exemption shall be submitted to the  
6 governor, who may grant the exemption if he finds that additional ex-  
7 pense, increased workload, or decreased efficiency in the operation of a  
8 program or development of a new program would be substantially greater  
9 than the public interest in compliance with this section. A department,  
10 board or commission requesting an exemption under this subsection shall  
11 submit to the governor a written statement

12 (1) naming the program for which an exemption is requested;

13 (2) describing the problems which would be encountered if the  
14 department, board or commission were required to conform to this sec-  
15 tion; and

16 (3) evaluating the effect of an exemption granted under this  
17 subsection on the collection and reporting requirements of (a) of this  
18 section for other programs administered by the department, board or  
19 commission.

20 \* Sec. 2. AS 44.17 is amended by adding new sections to read:

21 Sec. 44.17.110. PROGRAM PLANNING AND MANAGEMENT. (a) A principal  
22 department of the executive branch of state government, including a  
23 board or commission assigned to a department for administrative pur-  
24 poses, shall use the home rule and general law boroughs, unified muni-  
25 cipalities, and regional educational attendance areas of the state as  
26 the geographic units by which to develop and implement plans for provid-  
27 ing services and to coordinate program planning and administration with  
28 the plans and programs of other agencies, municipalities and the federal  
29 government.

1 (b) A department, board or commission may combine one or more home  
2 rule boroughs, general law boroughs, unified municipalities, and regional  
3 educational attendance areas to define the geographical area within  
4 which a program is provided.

5 Sec. 44.17.120. REPORTING OF SERVICE COSTS. (a) A principal  
6 department of the executive branch of the government, including a board  
7 or commission assigned to a department for administrative purposes,  
8 shall provide information giving the direct cost of providing services  
9 to each municipality and regional educational attendance area used by  
10 the department under AS 44.17.110(a) for the management and administra-  
11 tion of its programs. The information shall be available to

12 (1) the division of budget and management in the Office of  
13 the Governor, for its use in making recommendations for the program  
14 budget of a department, board or commission;

15 (2) the legislature, for its use in consideration of the  
16 state budget and other legislation relating to state services; and

17 (3) the public, upon request to the department, board or  
18 commission.

19 (b) In this section, "direct cost" means a cost which is related  
20 to providing a service, exclusive of general administrative and support  
21 costs.

22 Sec. 44.17.130. EXEMPTION. The provisions of AS 44.17.110 -  
23 44.17.120 do not apply to

24 (1) a program of an executive department, board or commission  
25 which provides only professional or technical support services for  
26 another state department, board or commission, as determined by the  
27 governor; and

28 (2) a program for which exemption is specifically requested  
29 by the department, board or commission, and granted by the governor

1 because

2 (A) the program concerns the conservation or development  
3 of a natural resource; and

4 (B) the application of AS 44.17.110 - 44.17.120 would  
5 cause a substantial impediment to the performance of duties by the  
6 department, board, or commission.

7 Sec. 44.17.140. DEFINITION. In AS 44.17.100 - 44.17.140, "regional  
8 educational attendance area" means a subdivision of the part of the  
9 state not within an organized borough as determined by the commissioner  
10 of community and regional affairs under AS 14.08.031.

11 \* Sec. 3. AS 44.17 is amended by adding new sections to read:

12 ARTICLE 2. PLANNING AND MANAGEMENT OF STATE SERVICES.

13 Sec. 44.17.100. PROGRAM DATA AND INFORMATION. (a) A principal  
14 department of the executive branch of state government, including a  
15 board or commission assigned to a department for administrative pur-  
16 poses, shall use the home rule and general law boroughs, unified muni-  
17 cipalities, and unorganized boroughs as the geographic units by which to  
18 collect and report data and information and process and analyze statis-  
19 tics about each of its programs.

20 (b) The information, data and statistics required to be collected  
21 and reported by this section include but are not limited to

22 (1) information which may be required by the division of  
23 policy development and planning in the Office of the Governor to describe  
24 the geographic distribution of the state's population, economic activi-  
25 ties, and public services; and

26 (2) information about the program, including

27 (A) the estimated number of persons needing a service;

28 (B) the number of persons served by the program;

29 (C) the costs of the services provided by the program;

1 and

2 (D) the conditions addressed or corrected by a service  
3 provided by the program.

4 (c) A department, board or commission may request an exemption  
5 from this section. An exemption granted under this subsection expires  
6 on June 30, 1982. The request for exemption shall be submitted to the  
7 governor, who may grant the exemption if he finds that additional ex-  
8 pense, increased workload, or decreased efficiency in the operation of a  
9 program or development of a new program would be substantially greater  
10 than the public interest in compliance with this section. A department,  
11 board or commission requesting an exemption under this subsection shall  
12 submit to the governor a written statement

13 (1) naming the program for which an exemption is requested;

14 (2) describing the problems which would be encountered if the  
15 department, board or commission were required to conform to this sec-  
16 tion; and

17 (3) evaluating the effect of an exemption granted under this  
18 subsection on the collection and reporting requirements of (a) of this  
19 section for other programs administered by the department, board or  
20 commission.

21 \* Sec. 4. AS 44.17 is amended by adding new sections to read:

22 Sec. 44.17.110. PROGRAM PLANNING AND MANAGEMENT. (a) A principal  
23 department of the executive branch of state government, including a  
24 board or commission assigned to a department for administrative pur-  
25 poses, shall use the home rule and general law boroughs, unified muni-  
26 cipalities, and unorganized boroughs of the state as the geographic  
27 units by which to develop and implement plans for providing services and  
28 to coordinate program planning and administration with the plans and  
29 programs of other agencies, municipalities and the federal government.

1 (b) A department, board or commission may combine one or more home  
2 rule boroughs, general law boroughs, unified municipalities, and un-  
3 organized boroughs to define the geographical area within which a pro-  
4 gram is provided.

5 Sec. 44.17.120. REPORTING OF SERVICE COSTS. (a) A principal  
6 department of the executive branch of the government, including a board  
7 or commission assigned to a department for administrative purposes,  
8 shall provide information giving the direct cost of providing services  
9 to each municipality and unorganized borough used by the department  
10 under AS 44.17.110(a) for the management and administration of its  
11 programs. The information shall be available to

12 (1) the division of budget and management in the Office of  
13 the Governor, for its use in making recommendations for the program  
14 budget of a department, board or commission;

15 (2) the legislature, for its use in consideration of the  
16 state budget and other legislation relating to state services; and

17 (3) the public, upon request to the department, board or  
18 commission.

19 (b) In this section, "direct cost" means a cost which is related  
20 to providing a service, exclusive of general administrative and support  
21 costs.

22 Sec. 44.17.130. EXEMPTION. The provisions of AS 44.17.110 -  
23 44.17.120 do not apply to

24 (1) a program of an executive department, board or commission  
25 which provides only professional or technical support services for  
26 another state department, board or commission, as determined by the  
27 governor; and

28 (2) a program for which exemption is specifically requested  
29 by the department, board or commission, and granted by the governor

1 because

2 (A) the program concerns the conservation or development  
3 of a natural resource; and

4 (B) the application of AS 44.17.110 - 44.17.120 would  
5 cause a substantial impediment to the performance of duties by the  
6 department, board, or commission.

7 Sec. 44.17.140. DEFINITION. In AS 44.17.100 - 44.17.140, "un-  
8 organized borough" means a subdivision of the part of the state not  
9 within an organized borough as determined by the commissioner of com-  
10 munity and regional affairs under AS 29.03.011 - 29.03.021.

11 \* Sec. 5. RESPONSIBILITIES OF THE DIVISION OF POLICY DEVELOPMENT AND  
12 PLANNING. The division of policy development and planning in the Office of  
13 the Governor shall

14 (1) by December 31, 1980, evaluate the cost and suitability of  
15 data and information reference systems and recommend the use of a system by  
16 the principal departments of the executive branch of the state government,  
17 including boards and commissions assigned to those departments for adminis-  
18 trative purposes; the data and information system recommended by the division  
19 shall

20 (A) permit cross-referencing of data and information by the  
21 executive departments, boards and commissions; and

22 (B) classify data and information on the basis of the geo-  
23 graphic units used by a department, board or commission for program  
24 management and cost reporting under AS 44.17.110 - 44.17.120.

25 (2) report to the legislature by July 1, 1983, alternatives and  
26 recommendations for improving coordination of programs which provide direct  
27 services to people, which are not exempt under AS 44.17.130.

28 \* Sec. 6. Sections 3 and 4 of this Act take effect and secs. 1 and 2 of  
29 this Act are repealed only if a version of an Act entitled "An Act relating

1 to unorganized boroughs, establishing unorganized boroughs, establishing a  
2 program of financial assistance for the preparation of regional plans by  
3 unorganized boroughs, permitting adoption of home rule charters by un-  
4 organized boroughs, and directing submission of recommendations concerning  
5 adjustment of the boundaries of service areas of the unorganized borough; and  
6 providing for an effective date", becomes law.

7 \* Sec. 7. Sections 1 and 3 of this Act take effect July 1, 1981.

8 \* Sec. 8. Sections 2 and 4 of this Act take effect July 1, 1982.

9 \* Sec. 9. Sections 5 and 6 of this Act take effect immediately in accor-  
10 dance with AS 01.10.070(c).

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## CAPITAL PROJECTS FOUNDATION FUND

A Capital Projects Foundation Fund would have been established by CSSB546. This Fund would provide capital construction and maintenance funds to all areas of the State. The allocation of funds, based on a formula incorporating both population and land area, would guarantee that funds are available annually to each area of the State.

To be eligible for Foundation funds, each area--whether it is a borough, unified municipality, home-rule municipality or REAA (or "unorganized borough" if created under SB 348)--must have a capital improvements program (CIP). Projects funded must appear on the local CIP, but need not be funded in order. Foundation funds would not lapse, but could be held over from one year to the next to fund a major project. Foundation funds can also be used as local match required for other State and Federal grant programs.

The attached information sheets summarize the provisions of SB 546 in more detail.

The Municipal League gave its support to SB 546 during a statewide teleconference hearing held on April 16, 1980. The key issues brought out at that hearing centered around: the allocation formula; the role of first and second class cities within boroughs and to the regional planning councils established for REAA's (or unorganized boroughs if applicable); and whether the Foundation was intended to replace or simply supplement existing state capital programs. The Municipal League also expressed concern about the make-up of the regional planning councils.

The committee substitute for SB 546 attempted to satisfy the concerns expressed on these issues. Most importantly, the allocation formula was changed to give more weight to an area's population, while still maintaining some sensitivity to the scale of improvements required in areas with a small population dispersed over a wide area. The present formula provides that 70% of the annual appropriation will be distributed on the basis of population, and 30% on the basis of land area. Under this formula, for example, Anchorage would receive about 30% of the total appropriation, which is comparable to the proportion of the state's total general and special capital appropriations the Municipality received for fiscal year 1980. This revised formula should help reassure Alaska's larger communities that they are not, in actuality, giving up potential capital funds to other areas of the State.

The second major issue addressed in the revision of SB 546 was the relation of first and second class cities to boroughs and to the regional planning councils in the unorganized borough. CSSB546 specifically allows first and second class cities to undertake funded projects on their own, if they exercise the authority to operate the facility to be funded. In those cases where a city is located within a borough that also exercises the same authority, the city and borough can agree on how the responsibility for constructing and operating a facility is to be divided. In the unorganized borough, project responsibility may be transferred by DOT/PF to the city, upon concurrence of the city council.

First and second class cities are also guaranteed representation on the regional planning councils established in the unorganized borough. Each first class city will be represented on the planning council by at least one elected city official. Other members of the regional planning council will be drawn from elected officials of second class cities within the region, and from unincorporated communities.

Finally, the Capital Projects Foundation Fund was intended to supplement the present grant programs for specific capital projects that are administered by various State agencies. In fact, CSSB546 specifically states that Foundation Funds may be used as match for State and Federal grant programs. The intent was to partially institutionalize the present system of general and special capital appropriations to communities, rather than replace existing State grant programs.

In summary, the Capital Projects Foundation Fund is a very important piece of legislation in terms of municipal capital planning and financial management. The Municipal League's support of this concept was greatly appreciated. Any suggestions on how this idea can be improved would be helpful and receive serious consideration. Your continued support of this idea will be critical during the next legislative session.

Senator Arliss Sturgulewski  
Presentation to the  
Municipal League Legislative Committee



Official Business

# Alaska State Legislature

Senate

Committee on  
Community & Regional Affairs

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 24, 1980

Senator Arliss Sturgulewski

Information Sheet

## CAPITAL FOUNDATION FUND

The Capital Foundation Fund will, by appropriation, provide funds to all areas of the State for certain capital improvements. To expend funds, each area will need to develop an areawide capital improvement plan, approved by the local assembly when there is one, and developed with the Department of Transportation and Public Facilities when there is no local government.

Organized and unorganized boroughs are encouraged to conduct regionwide planning to avoid costly duplications of capital projects and to prioritize, on the local level, needs among communities, rather than leaving this process to state level government.

Each area, so long as appropriations are made, is certain of a source of funding for local projects. Each area will receive a formula share of the appropriation. This stability will be advantageous to local governments for planning purposes. Additionally, unlike the current situation, areas may have greater ability to use capital projects for anti-cyclic economic benefits by being in control of fund expenditures. Annual funds do not lapse and may be accumulated for locally determined purposes.

Capital Foundation Funds may be used as the local match required for certain state and federal projects. This will be particularly significant in rural areas which do not now have a source of local match.

Funds are eligible for both construction and maintenance costs. This means that local governments will be encouraged to consider life-cycle costs and encouraged to maintain buildings and other improvements in order to maximize the efficiency of their capital dollars.

Local governments, under the Capital Foundation Fund program, will be assured of a steady supply of state funds for capital improvements that will be directed toward locally determined project needs and can be expended at a locally determined pace.

CS SB 546

Section 1: Statement of Intent

Section 2: Gives regulation adoption authority to DOTPF

Section 3: Description of the Capital Foundation Fund to provide assistance for local construction projects to organized and unorganized boroughs, home rule municipalities and municipalities.

The amount of appropriation established at not less than \$400 times the state population. Sec. 44.42.110 lists eligible projects, that is, projects of local interest and not part of statewide capital plans. (b) states that projects may only be built in local governments that have adopted the appropriate powers (ex. park facilities require adoption of park powers).

Sec. 44.42.120 Regional councils are established for unorganized boroughs for capital improvement planning. Board composition is specified.

Sec. 44.42.130 Requires a capital improvement plan as a condition of entitlement receipt. Plans must be at least for five years. Plans for unorganized areas must include specific considerations.

Sec. 4. 44.42.140 Describes the allocations and distribution of entitlements. Direct distribution to organized boroughs which may distribute to cities. Commissioner keeps an account for unorganized boroughs and may enter into an agreement to distribute funds to cities in the unorganized boroughs, if project is identified for construction in that year.

Formula specified : 7/10 on basis of population, 3/10 on basis of area.

Sec. 5. 44.42.150 Use of Entitlements. For projects specified in the cip. Ownership (title) discussed, especially in relationship to local government powers.

Entitlements may be used to match state and federal grants.

44.42.160 Definitions are provided.

Sec. 6 and Sec. 7. Effective dates: the planning process starts July 1, 1980, but the funding does not begin til July 1, 1981

Original sponsor: Community and Regional  
Affairs Committee

Offered: 5/15/80  
Referred: Finance

1 IN THE SENATE

BY THE COMMUNITY AND REGIONAL  
AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 546

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to state aid for local capital pro-  
7 jects; establishing the capital projects foundation  
8 fund; and providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. It is the purpose of AS 44.42.100 - 44.42.160 to create a  
11 program which can provide a source of money which will be equitably distrib-  
12 uted throughout the state to be used, alone or with money from other sources,  
13 to finance capital projects. It is the intent of the legislature that plan-  
14 ning for capital projects reflect local needs and priorities and that, when-  
15 ever possible, political subdivisions of the state have sole responsibility  
16 for the expenditure of state money provided through the program. Nothing in  
17 AS 44.42.100 - 44.42.160 is intended to restrict the legislative authority to  
18 appropriate money.

19 \* Sec. 2. AS 44.42.020 is amended by adding a new paragraph to read:

20 (14) adopt regulations for management of the capital projects  
21 foundation fund established under AS 44.42.100 and administer that fund.

22 \* Sec. 3. AS 44.42 is amended by adding new sections to read:

23 ARTICLE 2. CAPITAL PROJECTS FOUNDATION ENTITLEMENTS.

24 Sec. 44.42.100. CAPITAL PROJECTS FOUNDATION FUND AND ENTITLEMENTS.

25 (a) There is established in the department a capital projects founda-  
26 tion fund for the purpose of providing state assistance for improvement,  
27 maintenance and new construction costs of local capital projects.

28 Within the limits of appropriations for the purpose, the department  
29 shall make entitlements for capital projects to organized boroughs, to

1 home rule municipalities as defined in AS 29.08.010, and to municipali-  
2 ties unified under AS 29.68 which have capital improvement plans.

3 (b) Within the limits of appropriations for the purpose, the  
4 department shall make and manage entitlements for capital projects for  
5 unorganized boroughs if a version of an Act entitled "An Act relating to  
6 unorganized boroughs, establishing unorganized boroughs, establishing a  
7 program of financial assistance for the preparation of regional plans by  
8 unorganized boroughs, permitting adoption of home rule charters by  
9 unorganized boroughs, and directing submission of recommendations con-  
10 cerning adjustment of the boundaries of service areas of the unorganized  
11 borough; and providing for an effective date" is enacted. If that bill  
12 is not enacted, the department shall make and manage entitlements for  
13 capital projects for each regional educational attendance area organized  
14 under AS 14.08.031.

15 (c) The amount of appropriation authorized for the capital im-  
16 provements foundation fund for each fiscal year is not less than \$400  
17 times the state population as annually determined by the Department of  
18 Labor.

19 Sec. 44.42.110. ELIGIBLE FACILITIES. (a) An entitlement from the  
20 capital projects foundation fund may be used for improvement, main-  
21 tenance, or construction costs of the following facilities

- 22 (1) libraries;
- 23 (2) community and emergency detention facilities;
- 24 (3) fire halls, including the purchase of fire vehicles;
- 25 (4) community parks and recreational facilities;
- 26 (5) water and sewer facilities;
- 27 (6) health facilities;
- 28 (7) community centers;
- 29 (8) cultural facilities;

1 (9) transportation facilities which do not duplicate state  
2 facilities and which are not inconsistent with the state transportation  
3 plan under AS 44.42.050 as determined by the department, including

- 4 (A) service roads;  
5 (B) trails;  
6 (C) harbors and docks for small boats;  
7 (D) seaplane floats;  
8 (E) public transit facilities, including the purchase of  
9 transit vehicles;

10 (F) emergency and recreational airstrips for small  
11 aircraft.

12 (b) A facility is eligible for an entitlement under this section  
13 only if it is identified in a capital improvement plan formulated under  
14 AS 44.42.130.

15 (c) If a facility is located in or to be located in a home rule or  
16 unified municipality or organized borough, it is not eligible for an  
17 entitlement under this section unless the borough or municipality

- 18 (1) has or will have title to the facility; and  
19 (2) has authority under AS 29 to operate the facility.

20 Sec. 44.42.120. REGIONAL COUNCILS. (a) A regional council shall  
21 be established for each unorganized borough if a version of an Act  
22 entitled "An Act relating to unorganized boroughs, establishing un-  
23 organized boroughs, establishing a program of financial assistance for  
24 the preparation of regional plans by unorganized boroughs, permitting  
25 adoption of home rule charters by unorganized boroughs, and directing  
26 submission of recommendations concerning adjustment of the boundaries of  
27 service areas of the unorganized borough; and providing for an effect  
28 date." is enacted. If that bill is not enacted, a regional council shall  
29 be established for each regional educational attendance area. A regional

1 council shall be composed of no more than 11 members as follows:

2 (1) at least one person from each first class city which is  
3 located within an unorganized borough or regional educational attendance  
4 area, or which is included in an unorganized borough's capital improve-  
5 ment plan or a regional educational attendance area's capital improve-  
6 ment plan under (b) of this section and who is an elected city official  
7 selected by the city council;

8 (2) additional members selected by the governor from persons  
9 nominated by the Department of Community and Regional Affairs who are  
10 from second class cities and unincorporated communities within an unor-  
11 ganized borough or regional educational attendance area; members from  
12 second class cities shall be elected officials.

13 (b) A first class city which has not adopted a home rule charter  
14 and which is outside of an organized borough and outside of a regional  
15 educational attendance area shall be represented on the regional council  
16 of a regional educational attendance area or an unorganized borough  
17 which borders the city and shall be included in the capital improvement  
18 plan.

19 Sec. 44.42.130. CAPITAL IMPROVEMENT PLANS. (a) With assistance  
20 from the department, each regional council established under AS 44.42.120  
21 shall formulate a capital improvement plan. A capital improvement plan  
22 formulated in accordance with this section shall be a five-year plan  
23 updated annually, and shall

24 (1) identify all capital projects needed in the unorganized  
25 borough or regional educational attendance area;

26 (2) assign a priority to each capital project identified;

27 (3) include cost estimates for each capital project identi-  
28 fied;

29 (4) include a list of needed capital projects which are not

1 eligible for an entitlement from the capital improvement foundation  
2 fund;

3 (5) identify possibilities for capital projects involving  
4 facilities having more than one use;

5 (6) consider the feasibility of waste heat utilization and  
6 other energy-saving measures for capital projects;

7 (7) provide for site acquisition for capital projects; and

8 (8) provide for needed public access and utilities.

9 (b) A capital improvement plan and revisions to a capital improve-  
10 ment plan for an unorganized borough or regional educational attendance  
11 area shall be adopted by the regional council after a public hearing and  
12 submitted to the department.

13 (c) To qualify to receive an entitlement from the capital projects  
14 foundation fund, an organized borough, home rule municipality, or unified  
15 municipality shall formulate and annually update a capital improvement  
16 plan which covers at least a five-year period. A capital improvement  
17 plan and revisions to a capital improvement plan for an organized  
18 borough, home rule municipality, or unified municipality shall be sub-  
19 mitted to the city council or borough assembly. After a public hearing,  
20 and after approval by the council or assembly, the capital improvement  
21 plan shall be submitted to the department.

22 \* Sec. 4. AS 44.42 is amended by adding a new section to read:

23 Sec. 44.42.140. ALLOCATION AND DISTRIBUTION OF ENTITLEMENTS. (a)  
24 Entitlements from the capital projects foundation fund shall be distri-  
25 buted annually by the department to each organized borough, home rule  
26 municipality, and unified municipality which has submitted a capital  
27 improvement plan as required by AS 44.42.130(c). An organized borough  
28 may agree that a city in the borough may receive and use money from an  
29 annual entitlement for the borough which is for a facility located in

1 the city, if the city has authority under AS 29 to operate and hold  
2 title to that type of facility.

3 (b) Entitlements from the capital projects foundation fund shall  
4 be distributed annually to accounts established by the department for  
5 each unorganized borough or for each regional educational attendance  
6 area which has submitted a capital improvement plan as required by  
7 AS 44.42.130(a) and (b). The commissioner shall enter into an agreement  
8 with a city in an unorganized borough or regional educational attendance  
9 area which elects to receive and use money from an annual entitlement to  
10 the unorganized borough or regional educational attendance area which is  
11 for a facility located in the city, if the city has authority under  
12 AS 29 to operate and hold title to that type of facility.

13 (c) Entitlements shall be annually allocated from the capital  
14 projects foundation fund as follows:

15 (1) seven-tenths on the basis of the population of the organ-  
16 ized borough, home rule municipality, unified municipality, or un-  
17 organized borough or regional educational attendance area; and

18 (2) three-tenths on the basis of the area of the organized  
19 borough, home rule municipality, unified municipality, or unorganized  
20 borough or regional educational attendance area.

21 \* Sec. 5. AS 44.42 is amended by adding new sections to read:

22 Sec. 44.42.150. USE OF ENTITLEMENTS. (a) An entitlement from the  
23 capital projects foundation fund distributed to an organized borough,  
24 home rule municipality, or unified municipality may be used only for  
25 projects identified in a capital improvement plan submitted to the  
26 department. Each recipient shall determine which project or projects to  
27 finance with the entitlement received each year under AS 44.42.140(a).

28 (b) A facility for which an entitlement from the capital projects  
29 foundation fund is received which is located in an organized borough but

1 outside of a city shall be owned, operated and maintained by the borough.  
2 A facility for which an entitlement from the capital projects foundation  
3 fund is received which is located in a city within an organized borough  
4 shall be owned, maintained and operated

5 (1) by the borough, if the borough has the authority under  
6 AS 29 to operate and hold title to that type of facility;

7 (2) by the city, if the city has the authority under AS 29 to  
8 operate and hold title to that type of facility; or

9 (3) by either the borough or city as they may agree, if both  
10 the city and the borough have authority to operate and hold title to  
11 that type of facility.

12 (c) An entitlement from the capital projects foundation fund for a  
13 project in a first or second class city which is part of the capital  
14 improvement plan of an unorganized borough or a regional educational  
15 attendance area may be distributed to the city with the concurrence of  
16 the city council subject to the following terms:

17 (1) that the city will secure, retain and protect title to  
18 the site of an existing facility or to the site on which a new facility  
19 is to be constructed; for purposes of this paragraph it is sufficient  
20 that title is obtained in fee or by a lease which provides that the city  
21 enjoys exclusive use of the site and any improvements for the estimated  
22 life of the facility;

23 (2) that the city will assume responsibility for the operation  
24 of the facility to be financed with the entitlement, and the feasibility  
25 of the discharge of this obligation shall be demonstrated to the satis-  
26 faction of the commissioner before the payment of the entitlement.

27 (d) If it appears that the cost of a capital project financed by  
28 an entitlement from the capital projects foundation fund to an organized  
29 borough, home rule municipality, or unified municipality will vary

1 substantially from the cost estimated at the time the entitlement was  
2 made for the capital project, the recipient is responsible for obtaining  
3 the additional money needed to complete the project. If a capital  
4 project financed by an entitlement from the capital projects foundation  
5 fund to an organized borough, home rule municipality, or unified municipi-  
6 pality costs less to complete than estimated at the time the entitlement  
7 was made, the recipient may use the excess entitlement for other capital  
8 projects in its capital improvement plan.

9 (e) Each regional council shall annually determine which projects  
10 in its capital improvement plan to finance with entitlements from the  
11 capital projects foundation fund to an unorganized borough or regional  
12 educational attendance area. The department is responsible for the  
13 design and construction of the projects selected by a regional council  
14 under this subsection and shall carry out the projects in accordance  
15 with AS 35 unless the commissioner allows a city to receive and use an  
16 entitlement in accordance with AS 44.42.140(b).

17 (f) An entitlement from the capital projects foundation fund may  
18 be used to match state or federal grants.

19 Sec. 44.42.160. DEFINITIONS. In AS 44.42.100 - 44.42.160

20 (1) "area" means the area in square miles of a home rule  
21 municipality, unified municipality, organized borough, or unorganized  
22 borough or regional educational attendance area which has a capital  
23 improvement plan;

24 (2) "population" means the population, as annually determined  
25 by the Department of Labor using the latest figures of the United States  
26 Bureau of the Census, of a home rule municipality, unified municipality,  
27 organized borough, or unorganized borough or regional educational attend-  
28 ance area which has a capital improvement plan;

29 (3) "improvement" means renovations and additions to an

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existing facility which allow for better service than the facility provided in its original condition;

(4) "improvement, maintenance or construction costs" includes, in addition to costs directly related to the project, the total of all costs of financing and carrying out the project; these include, but are not limited to, the costs of surveys, plans and specifications, architectural, engineering or other special services, acquisition of real property, site preparation and development, purchase, construction, reconstruction and improvement of real property;

(5) "maintenance" means restoration and repair needed to keep a facility as close as possible to its original condition.

\* Sec. 6. Sections 1 - 3 and 5 - 7 of this Act take effect July 1, 1980.

\* Sec. 7. Section 4 of this Act takes effect July 1, 1981.

## PROPERTY TAX LEGISLATION

Part I-B of the Municipal League's 1980 Legislative Policy Statement addresses the local property taxing system and the place of state mandated property tax exemptions and reimbursements.

There were a number of specific property tax exemption bills introduced during this legislative session. A summary of that legislation in a letter to Dave Walsh was included with your agenda for this committee meeting. In some cases, that legislation did not provide for state reimbursement of revenues lost by local governments.

Item I-B-1 and I-B-2 both call for reimbursement of lost tax revenues by the State. This policy could receive more legislative support through the passage of a bill such as SB 352, requiring a fiscal note on the local costs of proposed bills. The clear presentation of the costs of legislative action to local governments would make lawmakers more aware of the effect of property tax exemption on local government.

There are a number of other taxation issues not directly addressed in the League's Legislative Policy Statement that are worthy of consideration. These policy questions include the following:

- 1) The long-term effects on state revenues and expenditures.

As Alaska's population and economy grow, the value of the exempted property will also grow. Senior citizen's homeowner tax exemptions, for example, have increased from \$197,050 in 1973 to \$1.8 million for fiscal year 1979. (Part of this increase was due to lifting the \$10,000 maximum allowable exemption in 1974.)

State analysts project a decrease in state oil and gas revenues starting in 1990, dropping by 5% to 10% annually thereafter. Creating a number of mandatory property tax exemptions, including such exemptions as business inventory, the first \$25,000 assessed residential property values, and so on, will simply add to the future drain on state revenues. This situation will become critical when total revenues decline to present levels and below.

The long-term concern is that communities will be left without reimbursement for property tax exemptions if state revenues decline. Will the Legislature continue to fund exemptions? Will tax laws be revised to eliminate various mandatory exemptions in the future? Or will local governments simply be left with smaller tax bases?

Local property taxes are potentially a major component of state income. As of January 1, 1979, locally assessed property was valued at \$13 billion, while state assessed oil and gas property was valued at another \$12 billion, of which \$7.6 billion was located within local taxing jurisdictions.

## 2) The equity of mandatory exemptions.

Mandatory exemptions raise a number of equity questions. As the list of mandatory exemptions grows, the local tax burden falls on an increasingly narrow portion of the local population. This is especially critical for exemptions which result in loss of local revenue which is not reimbursed by the state. Even if local revenue losses are made up by the state, the equity question is still pertinent, as some other, non-local source of revenue is paying for local services from which it may not benefit.

## 3) A Rational Exemption System.

Can there be any rational system developed for deciding which groups of taxpayers should be relieved of a property tax burden. The Department of Community and Regional Affairs suggests that an exemption must result in a clear public benefit, in order to justify an increased burden for other taxpayers.

There is at present no set of guidelines on how this "public benefit" is to be measured or assessed, or no policies of how deserving groups within the population should be identified or treated. A number of "worthy" groups were identified in last session's legislation, including disabled veterans, surviving spouses of senior citizens that had received property tax exemptions, and so on. Is there any way that the desirability of tax exemptions for these groups can be distinguished from disabled persons and veterans, as a whole, or other deserving segments of Alaska's population.

## 4) Corporate U.S. Residential Property.

What is the relation of exemptions for business property to exemptions for the real and personal property used for residential purposes. A bill introduced last session would have exempted business inventory from taxation, with state reimbursement to municipalities for lost revenues. Would this type of exemption create sufficient public good to justify shifting this tax burden to the State general fund?

## 5) Part I-C of the League's 1980 Legislative Policy Statement focuses on local taxing powers. A bill introduced last session (SB 299) would have reduced the maximum rate of taxation from 3% of assessed value (30 mills) to 0.9% of assessed value (9 mills). This limitation would seriously constrain local ability to raise revenue.

## 6) Renters and Property Owners.

Balancing the property tax exemption benefits of property owners and renters presents another equity question. A property tax equivalency payment is currently made to senior

citizens who rent their homes. Legislation passed this session raised the level of payment that will be made to renters that are senior citizens.

Will the State adopt similar equivalency payments for other types of property tax exemptions in the future? This is especially important in the case of general property tax exemptions. Senate Bill 296 would have mandated that the first \$25,000 of assessed value of owner-occupied homes be exempted from taxation. Should such an exemption be also applied to all renters, and how could it be done equitably?

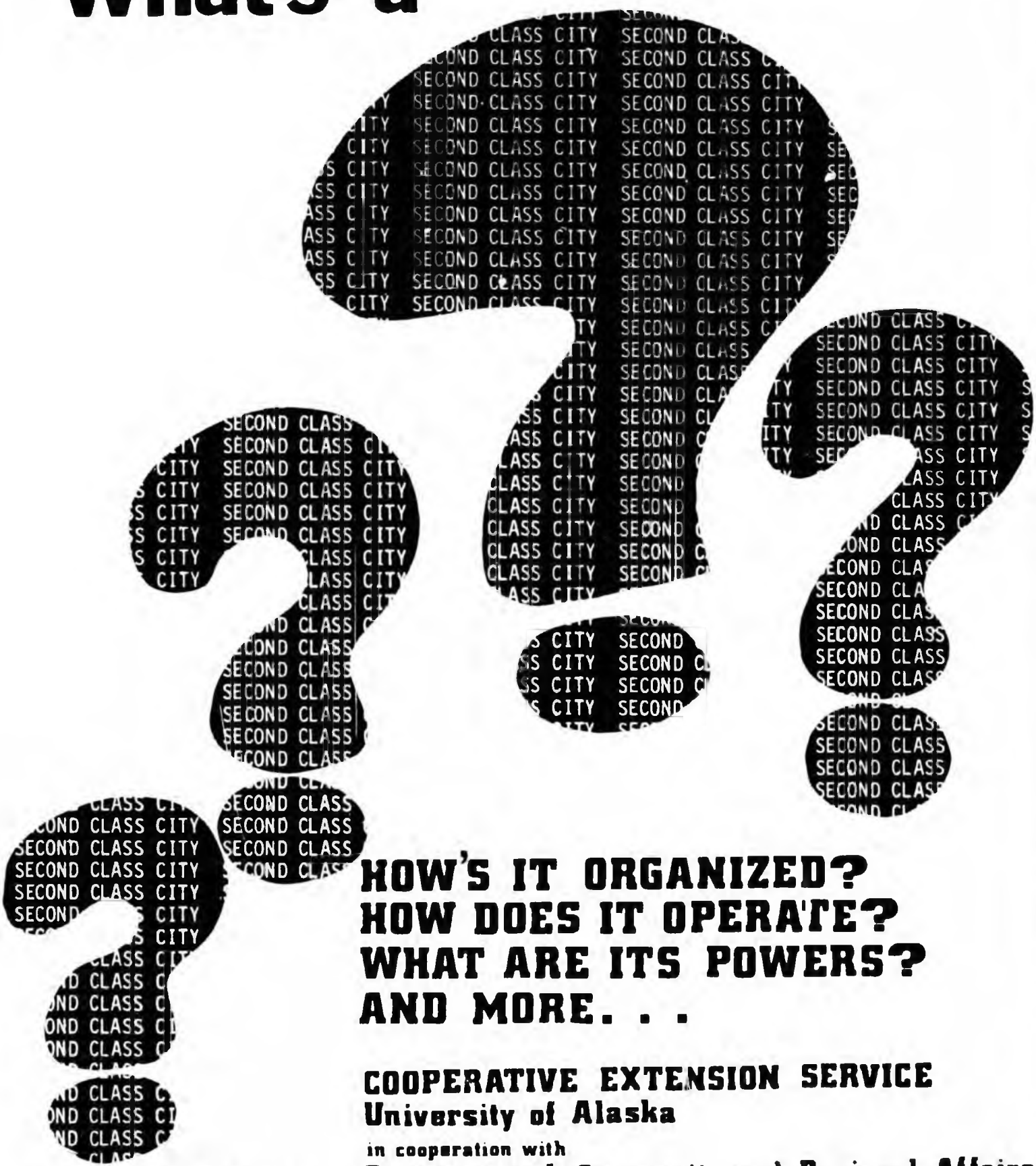
In summary, there are far-reaching questions on the purpose, nature and benefits of property tax exemptions. These questions need more thought and understanding.

There will undoubtedly be a major effort during the next legislative session to reduce or eliminate the property tax liability of various groups and interests. The Municipal League is the organization that most directly reflects the combined opinions and desires of the state's municipal governments. It would certainly be in the Municipal League's best interests to develop a thorough policy statement on the overall question of property tax exemptions, and on the nature of property tax legislation most acceptable to local governments in Alaska.

Senator Arliss Sturgulewski  
Presentation to the  
Municipal League Legislative Committee

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**HOW'S IT ORGANIZED?  
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in cooperation with  
**Department of Community and Regional Affairs  
STATE OF ALASKA**

Revised February 1978  
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**An Information manual for operation of  
second class cities under Alaska Statutes Title 29**

**This publication originally was largely federally  
financed under TITLE I, HEA, 1965, P.L. 89-329.**

**David Hendrickson, Coordinator  
Local Government Program  
Cooperative Extension Service  
University of Alaska  
and U.S.D.A. Cooperating**

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Remarks:

This is some descriptive material  
on an innovative form of  
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THE PERMIT SYSTEM

WORKSHOP MATERIALS

CONTENTS

An Experiment in Regulatory Simplification . . . . .	1
(Article Reprint)	
Breckenridge Development Code. . . . .	16
(Article Reprint)	
Sample Policies. . . . .	20
Development of a Permit System . . . . .	24

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BRECKENRIDGE, COLORADO:  
AN EXPERIMENT IN  
REGULATORY SIMPLIFICATION

By

Kirk Wickersham, Jr.

INTRODUCTION

It has been my experience that land developers will accede to almost any demand on the part of public planners -- even unreasonable and illegal demands -- if in doing so they can move their project forward or make its approval more certain. This observation underlies the basic philosophy of this essay. Substantive controls can be as rigorous and comprehensive as any community could reasonably wish without serious protest from development interests, so long as the decision-making process is quick, cheap, straightforward, fair and predictable.

There are some interesting corollaries which flow from this thesis:

- If we do not clean up the procedural aspects of land use decision-making, we run the risk of losing the substance of land use, environmental and growth controls in a popular backlash to over-regulation and bureaucratic meddling.
- Procedural reform need not reduce the substantive requirements for performance by the developer.
- Some of the developers' savings from procedural reform can be passed on to the future residents of the project in the form of lower initial prices or increased amenities, or to the public through an increase in the amount or quality of dedicated public improvements.

Procedural simplification is in the best interests of everyone involved in the development process: developers, future residents, concerned citizens, staff, and elected and appointed officials.

This essay begins with an analysis of the gradual development of complex regulations, and proceeds to a series of specific proposals for uncorking the regulatory bottleneck. It then describes an application of these ideas in the recently adopted Breckenridge, Colorado, Development Code.

## THE EVOLUTION OF COMPLEX DEVELOPMENT REGULATIONS

### Traditional Controls

The simplest form of land use regulation always has been, and still is, the use-by-right under traditional zoning. It usually consists of only a perfunctory check of the plans by the zoning administrator, and involves no notice, hearing or discretionary decision.

Subdivision regulations were first adopted to ensure that lots close, that streets were of the proper width and alignment, and that the tax assessor was apprised of the new ownership configuration. Because these issues are handled by elected officials at a public hearing, they became the vehicle for enforcing an ever-increasing number of public concerns with development. Today, subdivision regulations are the most common form of "impact assessment" and discretionary control over development.

Traditional controls are not just procedurally simple, they are also substantively simple. That is, they address only a few of the myriad impacts of new development and redevelopment on the community, and by present standards, the traditional controls have not served their purpose. The old elements of the urban environment which we cherish, and now seek to preserve and restore, were developed prior to any land use controls. Yet much of what we consider ugly, banal, stale, and wasteful -- tract housing, strip commercial development, high-rise redevelopment and the auto-dominated, landscape -- has been developed pursuant to traditional zoning and subdivision regulations.

### Discretionary Controls

The demand, from both developers and consumers, for variety and innovation in the design of new development has led to the widespread use of two types of discretionary controls: the special review use and the planned unit development. Both are a direct outgrowth of the traditional functions of the board of adjustment. They recognize that planning and design considerations, and not just "hardship", are proper grounds for variances from rigid use, density and setback requirements.

Special review uses (sometimes called "conditional uses") are uses which may be compatible with surrounding development, depending on the circumstances. They are granted in the discretion of the governing body on the basis of an impact analysis.

Planned unit development is a technique which permits variation in rigid requirements, and encourages good site design, in medium to large scale projects. It, too, is granted in the discretion of the governing body, on the basis of an analysis of the site design.

### Single Purpose Controls

During the late 1960's and early 1970's, general prosperity, easy credit and the formation of new households by children of the post-war baby boom combined to create massive new development pressure. At the same time, all levels of government became more actively involved in the development process.

On the one hand, the federal government passed, in rapid succession, a series of financial incentive programs designed to revitalize decaying inner cities and rural areas. Each of these programs, of course, fostered its own blinding maze of eligibility and compliance requirements to be met by the applicant.

Simultaneously, federal, state and local governments all responded to the public demand for an end to mindless degradation of the environment and waste of irreplaceable resources. At the federal level, the prominent programs included legislation on air pollution, water pollution (sewage treatment), management of coastal areas, and, of course, the National Environmental Policy Act. Many states passed their own environmental policy acts, and laws loosely modeled after the American Law Institute's Model Land Development Code, which called for more stringent regulation of critical areas and major development projects.

Generally, local governments or local councils of government bore the burden of implementing and administering this federal and state legislation on a daily basis. In addition, local government was expected to revitalize core areas, protect established neighborhoods, and control growth in fringe areas.

Within the span of a few short years, the development review process passed from a rather perfunctory check of an engineer's subdivision drawings to a years-long, multi-faceted, adversary process, involving dozens of public hearings before as many different local, regional, state, and federal bodies; massive, multi-volume technical evidentiary and impact-analysis materials; and a star-studded multidisciplinary, synergistic cast of lawyers, planners, engineers, ecologists, sociologists, geologists, and intergalactic philosophers.

Each law passed during this period addresses only a single issue, but has its own unique set of substantive and procedural requirements. The responsibility for juggling all these requirements falls completely and exclusively on the developer, since a defeat on any major permit or financial incentive program can doom an entire project. Thus:

If  $N$  is the number of independent requirement for getting ultimate permission to develop, then the number of steps necessary to coordinate these requirements is roughly  $N^2$ ; therefore, as governments add development requirements arithmetically, problems for developers increase exponentially.

Almost everyone will agree that the substance of this recent patch quilt of regulation has resulted in better designed and engineered development, has protected sensitive natural areas and encouraged inner-city revitalization, has begun to clean up our air and water, and has forced us to carefully examine our conventional of (probably able to cause all

generally to the public benefit. However, the procedural aspects of this regulation have raised the cost, lengthened the time and heightened the uncertainty of the land development process. This, in turn, has driven many small- and medium-sized developers out of business, and apparently has significantly increased the price of housing to the ultimate consumer.

At this time, the attack on regulation of the land development process is part of the general public reaction to inept and excessive government, and public servants are defensive. It is possible that, if the procedural problems with development regulation are not solved, the general backlash to bureaucratic red tape will reduce or eliminate the substantive gains which were achieved in this recent legislation.

### The Hassle Theory of Managing Growth

There is an implicit assumption in the above discussion that communities do not intend to saddle developers with excessive and repetitive procedural requirements. This is not true in some cases, where local officials or citizen groups have perverted procedural requirements to create outrageous evidentiary requirements or processing times, or to contrive a Catch-22. The purpose of this is to bankrupt the developer or to so discourage him that he will abandon the project before a decision is made on the merits.

In such communities, procedure has become substance. Although responsible management of the rate, location or ultimate amount of new growth is now recognized as a valid public concern, accomplishing that goal by hassling developers is insidious for a variety of reasons:

First, it is fundamentally deceitful, since it implies something which is not true: that permission to develop will be granted upon compliance with all stated rules.

Second, it defeats all principles of proper planning, since tenacious, litigious, rich developers can prevail, while smaller, more civilized, developers will be defeated regardless of the merits of their respective projects.

And last, it produces bad value for the consumer since the costs incurred in fighting the local government must be passed on to the ultimate purchaser, even though they add no substantive value to the development.

### THE BASIS FOR A SOLUTION

Before we begin the analysis of the principles of reform as contained in the Breckenridge Code, there are some general considerations to be mentioned:

1. There is a distinction to be observed between substantive requirements and procedural requirements. At this time "simplifying" the substantive requirements for development is not in the overall public interest in most communities. Indeed, most communities continue to be built poorly, with little regard for the social, environmental, economic, fiscal, aesthetic or energy impacts of redevelopment and

development. These communities might benefit from additional controls (or at least better controls) in these substantive areas.

2. The only valid purpose for the procedural requirements in processing a development proposal is to ensure that it complies with the community's previously adopted substantive requirements.

By way of comparison, here are some invalid purposes:

- To kill the proposal or create a "chilling effect" on making other proposals.
- To provide employment for lawyers, planning consultants and other "experts".
- To provide employment for the planning staff.
- To give the public sector time to dream up new rules to apply to the project.

With these two principles in mind, we can turn to some specific aspects of procedural reform.

#### REFORMING THE RULES

To maximize the decision-making utility of the community's plan, draft one section of it as specific rules to be applied to development proposals and adopt those rules directly into law.

#### Be Comprehensive

One way to simplify the development regulation process is to make it predictable, so that everyone involved knows that, if the developer complies with the rules the project will be approved and if he does not it will not be approved. This requires that all the rules be stated up front.

In most cases all the true concerns of the community are not set forth in the written rules, because the community has conflicting goals, or because some lawyer told the city council that there is no precedent for such a rule or because the planning process did not uncover the public concern. None of these are good excuses for failure to articulate the concern or adopt the rule.

Generally, the true concerns of the community are applied to development proposals regardless of whether they are set forth in the adopted rules. When an "unwritten" rule is applied against a developer he feels ambushed. When one is applied over the protests of the citizenry, they feel betrayed.

Since the unwritten rule will probably be applied anyway, why not write it down and adopt it?