

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86 / 2

742 SCOM123: TITLE 29 POLICY REVISION ADVISORY COMM. 1980

Be Accurate

Another element of predictability is the accurate use of language in the rules.

The homogeneity and banality of much of our postwar development has been blamed in part on rigid performance requirements, like the twenty five foot front setback. The modern response from planners often has been to write performance "standards" that read like a list of buzz words. The application of such "standards" is left completely to the discretion of the decision-makers, or even to staff. Understandably, the results of the process are unpredictable.

We should, and can, demand better. By this, I do not advocate a return to rigidity, but the simple, clear articulation of the community's values and what the developer is expected to do about them. Rules should speak to root problems, not superficial or cosmetic treatments, and they should set forth the desired final condition. The technique or method for achieving that condition should be left to the ingenuity and creativity of the designer, working with the peculiarities of the site, the project and the developer's financial resources.

If performance requirements are desired, they should be set forth, not as immutable law, but as presumptive evidence that the desired results will be achieved. Thus, for instance, a twenty-five foot setback should not be a legal requirement, but merely presumptive evidence that the house will be located a safe and comfortable distance from the street.

Use the Imperative Tense

Perhaps because of the language in the National Environmental Policy Act, it has become common to ask developers what their impact will be, then to make a decision on the basis of the evidence provided. Such open-ended requirements result in great cost, time delays and uncertainty for developers, staff and others involved in the process. The evidence is usually not arrayed in a useful format for decision-making, and there is often simply too much of it to be digested by a volunteer lay decision-maker such as a planning board member. The multiple volumes of self-serving justification produced to meet such regulatory requirements are not necessary to produce quality projects.

Tell the developer what result, or impact, the community wants, then ask him how he or she will achieve that result. The clear statement of the community's goals gives the developer the direction required to be successful, cuts the evidentiary requirements, and structures the public participation and community decision.

Of course, not all community concerns can be stated as absolute rules: prohibiting this feature or requiring that one. Most of them will be expressed in terms of encouraging and discouraging, or in terms of making tradeoffs between conflicting community goals. Weighted point systems can be used to encourage or discourage features, and to structure the tradeoff between

conflicting goals. To achieve a set of rules which enables tradeoffs to be made, the actual tradeoff must be designed and put forward by the developer, considering the unique characteristics of the site, the use, and the design, and applying the particular weighted value and mix of the encourage/discourage rules, but in the development proposals. Thus, each community concern should be subject of a separate rule, and each rule should address only one community concern.

Monitor and Update Regularly

Communities change. In fact, it seems that the rate of change in both technology and political attitudes is increasing. If the rules for new development do not keep pace with the changing values and conditions in the community, the written rules will become obsolete and irrelevant, and new unwritten rules will probably be substituted. Thus, any system which aspires to completeness and accuracy must include an ongoing survey of conditions and attitudes, and a periodic updating of the development rules.

REFORMING THE DECISION-MAKING PROCESS

Once the community has established a comprehensive set of rules for developers to follow, it can begin instituting the procedural reforms which cut the time, expense and uncertainty of the development review process.

Be Comprehensive

"Comprehensive", when referring to the set of rules, means adopting rules to address each community concern. When referring to the decision-making process, it means:

1. Combining all the different permissions required of the development into one all-inclusive permit. This cuts the hearing requirements and staff review time, so the process is quicker and cheaper for staff and the developer and easier to manage for concerned citizens and lay volunteer decision-makers. It also has a valuable "substantive" benefit: Only where all concerns are combined into one decision can tradeoffs between conflicting community policies be addressed and resolved. A single comprehensive decision should be a more accurate reflection of the community's values and opinions than the sum of the decisions on dozens of single-issue permits.
2. Making every development proposal subject to the rules, regardless of its size or complexity. The only projects which should not be scrutinized (i.e., which should be uses-by-right) are those which we know will not have any offsite impact, good or bad. Moreover, we must know this from only a plat plan, and we must know this to a legal certainty.

Rather than attempting to live with the risk of failure in this regard, it would be easier to make all, or virtually all, proposals subject to review. This can be made politically acceptable by instituting the procedural reforms set forth in this essay.

Standardize the Evidentiary Requirements

Use of rules drafted in the imperative tense enables significant savings in the time and cost of assembling and reviewing the evidence on the project. A one-page standardized form for each rule can be developed, which contains space for:

1. The text of the rule and the source of data, studies or other information available to the public regarding that rule.
2. Space for the developer to describe what he has done to comply with, or implement the rule.
3. Space for staff comment, which might be limited to only boxes for the staff person to check "agree" or "disagree" with the developer's evidence.
4. Space for noting comments made by the public at the hearing.
5. Space for the planning board to record its decision.

These forms are bound together and, along with the required maps, renderings, etc., comprise the complete application and file on the project. Although this type of evidentiary package is bulky, it results in significant savings in time and expense and (because it serves as a checklist) it ensures that all community concerns are properly addressed in the project.

Use the Staff

In many communities, especially in rural areas where the planning profession has not developed a very good reputation, the staff is limited to gathering data and engineering analysis, and it is not allowed to express professional opinions or to apply community policy. This is a waste of professional staff resources.

A comprehensive, accurate set of rules is essential to the proper delegation of the authority to make judgemental decisions to the staff. Once this is done, however, it results in a saving of time and expense for the public, and in the community's wise use of its precious volunteer resources in public bodies.

Reduce Lead Time

Lead time is the advance warning given to participants in the process to enable them to adequately prepare. The most common lead-time requirements in the development review process are the period given for comment by referral agencies or groups, and the notice of a public hearing.

In many cases, lead times were established years ago in the community's organic planning documents, when both planning and communications technology required lengthy response times. Today, however:

- Many referral agencies use computerized engineering and demographic models, checklist procedures, and standardized requirements, which cut their actual review time from weeks to hours.
- To an increasing extent, sophisticated neighborhood organizations with ongoing responsibilities, and perhaps even staff support, have replaced the ad hoc coalition of activists as the medium of citizen comment.
- Official public notices can be placed on cable TV or posted on community bulletin boards much quicker than they can be published in the newspaper.

To the extent that these advances in planning, technology and political sophistication enable the community to reduce lead times without materially sacrificing the quality of public or agency participation in the process, they should be implemented.

Eliminate Dry Runs

A "dry run" is a hearing at which no substantive progress is made toward the decision. The most prevalent example is the advisory planning board hearing. It generally requires a long lead time for notice and full attendance by volunteer members of the board; complete presentations by staff, the developer, and concerned citizens; elaborate findings; and conditions on approval. But then what happens?

Nothing. The governing body calls another hearing, again with long lead times for notice. Full attendance is required. Complete presentations are made by staff, the developer, and concerned citizens. Elaborate findings are made and conditions are drafted up and then the actual decision is made on the proposal.

Of course, many controversial projects are subject to multiple continued public hearings before each body.

One of these sets of hearings is irrelevant. If all the participants in the process -- staff, developer, citizens and officials -- have done their homework, there is no need to hold two hearings. If they have not done their homework, there should not be a scheduled public hearing simply to find that out.

There are two keys to eliminate dry runs of the type just described:

1. Quasi-judicial process. At the present time, most discretionary land-use decisions are rezonings and subdivision approvals which are treated as legislative matters which are required, by state statute, to be made by the governing body. The more streamlined and predictable approach is to adopt the rules for land development proposals directly in law, and then to apply those rules to proposals as they come in. The drafting and adoption of such rules is a legislative act and must be accomplished by the governing body; the interpretation and application of those rules to a particular proposal, however, is a quasi-judicial decision which can be made by an administrative body -- in this case, the planning board. Thus, the use of a permit system instead of a rezoning system results not only in more uniform decisions (due to the application of pre-set standards), but also enables the elimination of an entire set of hearings before the governing body. Of course, it may take more than one hearing date for the planning board to take all the evidence it needs to make the decision. Also a call-up or appeal to the governing body should be available to correct mistakes in the application of the rules by the planning board.
2. Confidence. Public hearings are used to establish and maintain confidence in the decision-making process: to ensure that the decision is fair and that all of the substantive requirements have been met. Public hearings are neither efficient nor convenient, however, and multiple hearings might be reduced if the substantive merit of the decision will not be affected. To achieve this, the following must take place:
 - The governing body must have enough confidence in the planning board to delegate to it the interpretation and application of the rules (subject, of course, to an appeal).
 - There must be sufficient confidence in the staff to allow it to analyze the proposal and draw conclusions.
 - Both the developer and the concerned citizens must believe that the pre-stated rules will be the only basis for the decision, and that the only way they can affect the outcome is to argue their case on the merits.

These matters of confidence can become self-fulfilling prophecies. In communities where the planning board is given the authority to make final decisions on development proposals, it generally attracts first-rate people who can handle that responsibility. Likewise, first-rate professionals are attracted to communities which allow them to exercise their professional judgment.

Minor Projects

The impact of a project is generally proportional to its size or cost. This presents an opportunity for even further reduction in the procedural requirements for minor projects. The normal list of referral and review agencies can be reduced, as can the time limit for receiving their comments. Instead of elaborate publication in an obscure section of the newspaper, public notice might be effected by handbills distributed in the immediate neighborhood. The final decision might be made by the staff director or a hearing officer, but again with an appeal to or call up by the planning board and governing body.

Since all minor projects do not have minor impacts, staff must be given the discretion to refuse an application under such "fast-track" procedures and insist on a full review of the project.

Review and Appeal

Many elected officials would consider it a dereliction of their public responsibilities to delegate final decision-making authority to staff or an appointed planning board. They will monitor such processes closely, especially at the beginning.

If the developer or concerned citizens are given the absolute right to appeal the planning board's decision to the elected officials, the loser in any contested proceeding will of course do so. This will eliminate many of the intended advantages of the procedural reforms described above, although many decisions are not contested.

A better way of monitoring is to establish a "call up" procedure: a person who feels that the lower decision was made incorrectly has the right to make that argument before the elected officials. If a majority of the elected body agree, they can vote to "call up", or rehear, the lower decision. At first, the elected body may wish to review every decision to ensure that the system is working properly. Later, it will limit its review to substantial questions of interpretation of the rules. Of course, the governing body acts as an administrative body (just like the planning board) when it rehears a proposal in this fashion.

THE BRECKENRIDGE DEVELOPMENT CODE

Breckenridge, Colorado is a small Victorian mining community at 9,600 feet in the Colorado Rockies. Development of a ski area and large man-made lake spurred massive recreation development pressure in the 1960's. This pressure was intensified in 1974 with the opening of a tunnel through the mountains which made the community more accessible to the Denver metropolitan area and its international airport. During this period the town has experienced several severe cyclical swings in construction activity. In 1974 the community embarked upon an ambitious comprehensive planning program

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which included analysis and policy development on a broad range of social, economic, environmental, public facilities, demographic, historical/cultural and urban design factors. The work culminated in March of 1978 with the adoption of the Development Code and supporting administrative materials. Although, at this writing the Code has been in effect for only one building season, it has been used to process over \$115 million worth of new residential, commercial and recreational development. The twin principles of this essay -- rigorous substantive requirements coupled with procedural simplicity -- were employed in the development and adoption of the Code and the administrative materials used with it.

Description of the Code

The Code is one of the first known instances of the exclusive use of the Permit System to regulate all aspects of development. Under it, there are no uses-by-right and virtually no prohibited uses, no prescribed density or intensity of use, and no bulk or setback requirements. These matters, as well as the full range of social, economic, public facilities, environmental, and design considerations in the various Plan documents, refined for each neighborhood, are set forth in a complete set of development rules, or "policies", contained in the Code. There are three types of policies:

- Absolute Policies -- which require or prohibit certain features. Failure to implement an absolute policy defeats a development proposal.
- Relative Policies -- which encourage or discourage features by allocating positive or negative points to the proposal based on its performance. Relative policies are assigned a "multiplier": a number between one and five which indicates the policy's relative importance. The proposal's score on each policy, then, consists of its performance points multiplied by the importance factor for that policy. The development must achieve a total score, for all the relative policies, of zero or better.

The policies governing land use set forth, for each neighborhood, uses which are presumed to be compatible, uses for which the compatibility must be proven by the developer, "pre-emptive" uses which (although they may be compatible with existing development) may discourage certain kinds of future growth in the area, and uses which are presumed to be incompatible (although they are not prohibited). The only use-by-right is the existing use on the property.

- Density Policies -- Density bonuses are awarded to projects which perform above the minimum necessary to get by, in the following manner:

An optimum density is set forth for each neighborhood, and increases in density above the optimum are penalized with increasingly heavier point deductions. An excellent project will score way above zero points, the minimum necessary to obtain a permit. These "excess" points may be traded off against negative points assigned for excess density designed into the project. In this way, the developer is rewarded

with increased units for good design, amenity, or public benefit.

There are three different decision-making procedures, depending on the magnitude of the project:

- Type C Development -- Minor changes in existing buildings, which sometimes does not even require a building permit (remember that Breckenridge is a sensitive historic community set in a beautiful, but fragile natural environment). The application is very brief, and the decision is made by the staff within five days of application.
- Type B Development -- Minor subdivisions, and buildings of a value under \$100,000. Applications for Type B development may be referred to selected public agencies for comment prior to staff review of the project. A public hearing and decision are made by the staff within ten days of the application.
- Type A Development -- All other development activity in the community. The application is subject to full referral and review by public agencies and utilities, and a complete staff report is prepared. The public hearing is conducted by the Planning Commission, and a final decision is made within forty days of the application.

In all instances, the Planning Commission may rehear a staff decision and the elected Town Board may rehear a Planning Commission decision. A variety of covenants, bonding requirements, dedications and other conditions may attach to a permit to ensure that the policies are implemented as represented.

The Code in Operation

The entire Breckenridge planning staff consists of two professionals and a secretary. As mentioned above, over \$115 million worth of new development has been processed under the Code during the first building season. Although significant controversies have arisen on some projects, all decisions have been made within the time limit specified.

Processing and decision on the application focuses on the developer's "evidentiary package" which consists of the application form, plans, drawings and renderings, and one-page evidentiary forms (one for each policy) completed by the developer. Because of the small professional staff and severe time constraints written into the ordinance, a developer is not permitted to submit more evidence than can be contained on the few lines provided on each evidentiary form without the permission of the Director of Community Development.

Most referral agencies have been able to respond in the short time allowed under the Code. If they do not, they are presumed to have no comment; not to have approved the project. Thus, if a response comes in late, the "no comment" presumption is rebutted. This may cause a problem for staff, which must integrate a late comment into its report with no extension of its own processing deadlines.

Breckenridge is served only by a weekly paper, which comes out the day after the Planning Commission meets, and which has a deadline several days before publication. This posed serious problems for reducing the lead times for public hearings. Breckenridge, however, is a small community with a sophisticated and politically active citizenry. Therefore, it was determined that notice for the public hearings on minor projects would be posted on community bulletin boards rather than published in the paper. This simple expedience has cut the decision-making time for minor projects in half with no apparent decrease in the quality of the decision.

On major projects, the staff report consists of commenting on the sufficiency or quality of the developer's evidence, plus its recommendation for assignment of points. The staff report is available for review by the developer and the citizenry prior to the public hearing, and the format of the evidentiary package provides a good framework for negotiation. Most public hearings have been free of rancor, and the Planning Commission generally ratifies the staff's recommendation for assignment of points and issuance or denial of the permit. In those instances where serious disagreement has arisen between the developer and the staff or the public, the debate has proceeded one policy at a time. At the end of the evidence on each policy, the Planning Commission has assigned points and moved on to the next policy. On one recent major project, this process took almost six hours. It is possible, however, that if the decision had been made pursuant to normal rezoning procedures, it could have taken numerous hearings over a period of a year or more, and then ended in litigation.

Before each Planning Commission meeting the Director of Community Development reports on the permits he has granted and denied in the interim. The Planning Commission then hears requests for "call up", from developers or the public. Although it has reviewed staff decisions, very few instances where the Planning Commission has reversed a staff recommendation or decision have occurred. And while it monitors the permit activity of the staff and Planning Commission, the Town Board has not yet called up a lower decision.

Policies and procedures in the Code are to be reviewed annually after the building season, on the basis of what was permitted and actually built; changed conditions, if any, which have resulted from the new growth; and changes in political attitudes.

CONCLUSION

So far, two major questions have arisen about the ideas expressed in this essay, as they have been applied in the Breckenridge Code:

Does a community need an elaborate, expensive plan before
it can implement a Breckenridge-type system?

The various studies and reports which comprise the Breckenridge Plan are the analytical foundation for the policies contained in the Code, and without them many policies could not have been adopted, or could not now be implemented. According to the principles of this essay, if a rule is not adopted into law, it should not be applied to development proposals. Thus, comprehensive planning and periodic updating are essential to the adoption and implementation of the reforms described in this essay. However, an extensive, high quality program such as that undertaken in

Breckenridge is not required. In fact, the resources which most communities presently devote to comprehensive planning, if redirected to provide the foundation for a decision-making system such as the one described in this essay, would probably be more than sufficient.

What About Discretion?

Some people believe that this type of system achieves regulatory reform only by unduly constricting the discretion of elected public officials. This is not true. The system does not constrain the exercise of discretion by elected officials. It simply structures it, making decisions more uniform and predictable.

With the exception of the taking of private property without compensation, racially exclusionary practices, and other constitutional considerations, there are practically no constraints on the contents of the rules which can be adopted to govern development (and any constraints, of course would apply to zoning decisions as well). If all of the community's concerns with development are adopted as rules, then there can be no valid additional consideration or "hidden agenda". In other words, the elected officials are not giving up the right to impose any rule they choose, but only the "right" to invent new rules, or change existing ones, while a proposal is being processed.

Given a reasonable alternative, most communities (even those where environmental quality and limited growth are paramount concern) would reject the arrogant assertion of such unbridled power on the part of their elected officials.

Developers have responded positively to the Code, and the developers of larger projects have generally attempted to obtain density bonuses through provision of superior design and increased amenities. As a result, many projects approved since the Code has been in effect are clearly superior to their predecessors, and the community has expressed satisfaction -- and even pride -- with its new development.

The principles used in the Code are broadly transferrable to communities of all sizes, and with a wide range of physical conditions, human values, and growth pressures (or lack thereof) so long as the principles are modified to reflect those unique conditions. For instance, in larger cities the system should be refined to reflect the unique characteristics of each neighborhood, as well as overall community policy. Also, incentives other than density bonuses may be necessary in less dynamic communities, or communities with large amounts of vacant, developable land. Sometimes state law prevents consolidation of permits at any one level of government, or sets forth particular notice requirements and lead times. But if these or other issues thwart the adoption of one or more reforms, the entire effort should not be abandoned. The Permit System, as well as its constituent parts, can be used to advantage by almost all communities with development pressure.

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A Lot More Than Just An Ordinance: The Breckenridge Development Code

Kirk Wickersham, Jr.

Breckenridge, Colorado, was founded as a gold mining community in the 1860s. Like all mining communities, it was located for proximity to ore, not necessarily in a place conducive to human habitation. It lies 9,600 feet in the Colorado Rockies, nestled between 14,000 foot peaks. While the mines (and later on, gold dredges) were operating, the town prospered—there are many fine examples of "Mountain Victorian" architecture still evidenced in the community. However, when the mines and dredges closed down, the community became a virtual ghost town, and remained so until the Breckenridge ski area opened in the 1960s.

In the late 1960s and early 1970s the community experienced a series of boom-and-bust cycles which created severe environmental, public facilities, financial, and social problems. As a result, in 1974, the community hired a local consultant to develop data, policy, and impact analysis techniques for all growth factors of concern to the community. The study began with a thorough articulation of the social, economic, environmental, and public facilities goals of the community, eventually including professional planning reports on each subject. The final planning document analyzed land use and intensity in each of 34 neighborhoods. The policy information contained in the analysis documents applied to each neighborhood, articulating its desired pattern, intensity, design, and phase of development or redevelopment. The resulting Breckenridge Development Code then extracts policy principles from the neighborhood plan documents, adopts them directly into law, and uses the studies and reports as reference materials.

What emerges is a land use and growth decision-making system which is unique to Breckenridge. In essence, it is the ultimate permit system. However, it uses principles of policy planning and impact analysis techniques not uncommon in many progressive communities. Therefore, although the policies described below may not be particularly transferable to other communities, the ideas and principles behind the policies may be adopted by any community or neighborhood faced with development/redevelopment pressures.

Under the Breckenridge Development Code there are no uses-by-right and virtually no prohibited uses, no prescribed density or intensity of use, and no bulk or setback requirements. These matters, as well as social, economic, public facilities, environmental, and design considerations for each neighborhood are regulated by compliance with *policies* adopted as part of the code.

There are three types of policies in the code.

Absolute Policies—which require or prohibit certain features. Failure to implement an absolute policy defeats a development proposal. The town may grant variances from strict compliance with absolute policies in hardship situations.

Relative Policies—which encourage or discourage features by allocating positive or negative performance points (from +2 to -2, including 0) to the development proposal. Relative policies are assigned a number (from 1 to 5) which indicates the policy's relative importance. The development proposal's score for each policy, then, consists of its performance points multiplied by the im-

portance factor for the policy. A proposal must achieve a total score of zero or better for all the relative policies.

Density Policies—set forth for each neighborhood the density or intensity of use presumed to be compatible with the natural environment, existing public facilities, and existing development character of that neighborhood (although this is not a density-by-right). Performance better than the minimum of zero required by the code on all the relative policies taken together is rewarded with an increase in density. In this way, increased public benefit means increased private benefit—more units or net leasable space.

The Decision-Making Process

For decision-making purposes, development under the Breckenridge Development Code is divided into three types:

Type C—minor changes in existing buildings or lot line adjustments. This decision is made by the staff within 5 days of the application.

Type B—minor subdivisions, and building permits under \$100,000. The application is referred to selected public agencies for review, and then a public hearing is conducted by the staff. Decisions are made within 2 weeks.

Type A—all other kinds of development. The application is subject to full referral and review by affected outside agencies and a complete staff report on the proposal's compliance with the policies. The public hearing is conducted by the planning commission, and the decision is made within 40 days of the application.

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In all instances the planning commission may rehear a staff decision and the town board may rehear a planning commission decision. A variety of conditions may attach to a permit to ensure that the policies are implemented as represented.

The genesis of the Breckenridge code was, in many respects, the dual frustration felt by many communities faced with significant growth pressure: the need for thorough and rigorous consideration of all impacts of a development proposal of community concern, coupled with growing public outrage at the cost, delay, and uncertainty of the land use decision-making process.

The Physical Environment

Breckenridge enjoys a unique environmental setting.

- It receives over one hundred inches of snow per year.
- It enjoys unsurpassed natural beauty and vistas: dense stands of timber, and delightful flowers (although vegetation grows very slowly at such altitudes, and disturbance can result in permanent loss of these ecological, economic, and visual resources).
- Pollutants—chiefly auto emissions and fireplace smoke—can be trapped over the town for days by cold air inversions.
- An elk herd lives in and migrates through portions of the plan area.
- Portions of the plan area are subject to severe flooding, avalanches, and other natural hazards.
- The river which runs through the town was once dredged for gold, and thus the riverbanks today consist of a 200-yard wide swath of gravel—an environmental and visual disaster (but good for building foundations).
- Ground water pollution, soil erosion, noise pollution, and glare are other environmental concerns in Breckenridge.

Policies to address each of these matters directly reflect the values of

the community. For instance, snow storage areas are required by policy, and development in avalanche chutes is prohibited. Most policies are performance-oriented, mandating the use of creative, flexible solutions to the problem. For example, development must not affect the elk herd, although it is not prohibited in the area, and development must permit the passage of the 100-year flood, although it is not prohibited altogether in the floodway. Positive points are awarded for preserving mountain views from public places, preserving existing vegetation, providing bus pullouts and other inducements toward alternative transportation, and for reclaiming dredge tailings. Points may be deducted for soil disturbance or the construction of fireplaces, although most new construction will still involve these items regardless of negative points.

Economic and Social Factors

Breckenridge's economy is heavily dependent on skiing, resulting in an overreliance on one industry and an underutilization of community resources off-season. In addition, severely inflated housing costs place a burden on the relatively low-paid workers in the industry—waiters and waitresses, maids, lift operators, and the like.

Moreover, the community realizes that it is at a severe disadvantage when competing for non-recreational economic development—there is very little space left in its plan area to accommodate alternative economic activities. For this reason, a large number of points is available to a developer of non-recreational employment opportunities or off-season economic activities that would flatten the annual economic cycle. Of course, any development project may provide summertime construction jobs, a boon to the Breckenridge economy. A large number of points is awarded for the development of housing at affordable prices, for people who work in the ski and related industries. On the other hand, points may be deducted for ski-related de-

velopment on some of the last land available for diversified industry.

The community would also hope that growth will provide a socio-cultural and demographic diversification of the population, which is predominantly young, white, and upper middle class at the present time. Although such a goal is an extremely difficult one for a private developer (and may be of questionable constitutional validity), establishing a diversity of cultural experiences within the community is possible. Thus, for instance, points would be awarded for opening a Moroccan, but not an Italian, restaurant, since the community already has several excellent outlets for Italian food.

Public Facilities

The community has developed an ongoing capital improvements program similar to the one in Ramapo, New York, designed to phase growth into new areas. Development in conformance with the capital improvements program is heavily encouraged through the awarding of both positive and negative points. Locating on public water and sewer mains is required. In addition, the community has developed a fiscal impact analysis model, and has adopted a schedule of development fees designed to adequately cover the capital cost of incremental new development. A positive fiscal balance is encouraged, but not required.

Normal public improvements must be constructed to the town's standards before they are dedicated; this applies to all development, not just subdivisions. In addition, many residential projects have included recreational amenities such as tennis courts, swimming pools, exercise rooms, tot lots, and so on. Providing for the recreational needs of new residential development is rewarded with positive points, but these points are vastly increased if the recreation facilities are also made available for public use. In the intensifying downtown core, on-site parking is prohibited and membership in the

Preapplication

The developer in Breckenridge bears the burden of proving that he meets the requirements of the various absolute policies; he must earn enough points under the relative policies to proceed. As the town commits itself to a 10 day/40 day time limit described earlier, issues unresolved by the date of the hearing work to the developer's detriment. This, in turn, gives unprecedented importance to the preapplication negotiating process, allowing the planning director to work with the developer and his design team in the crucial stages of project conceptualization.

The Evidentiary Form

The actual development application consists of the usual identification and legal information, site plans and renderings, and evidentiary forms—one for each policy—completed by the applicant. Each evidentiary form begins with the text of the policy, the number of positive and negative points which may be awarded pursuant to it, the policy's importance factor or "multiplier," and a listing of plan documents or other reference materials used by the town in making its decision. Next, the form contains a small space for the applicant to indicate the number of points he believes he deserves pursuant to that policy, and the reasons why.

Next, there is space for comment on the developer's evidence by referral agencies if applicable, or by the staff. The staff reserves the right to disagree with the developer's assessment of the project, stating its reasons for disagreement. Next, there is space for the decision maker to note comments offered at the public hearing. Finally, the bottom of the form contains "yes" and "no" check boxes for absolute policies, and space for the raw score and computed "weighted" score for a relative policy.

When assembled in a loose-leaf book, the evidentiary forms then contain not only the developer's evi-

dence, but also an entire record of the decision on the application and reasons for it. By limiting the amount of evidence a developer can submit and forcing him to address the issues squarely, front end costs and the public cost of reviewing the application are cut significantly.

The Hearing and Decision

The use of the forms also focuses public comment on the adequacy and accuracy of the developer's evidence and the staff's comment. Structuring a land use decision in this way tends to ensure that it will be based on adopted policies as applied to the best available factual information; it minimizes the possibility that extraneous, irrelevant issues, or emotionalism, will influence the decision.

Because the code establishes a quasi-judicial (or administrative) type of decision, an administrative body or planning director is empowered to hold hearings on minor proposals. For major proposals, the staff issues its recommendations but the hearing and decision are handled by the planning commission. The land use decision is rendered after one, all-inclusive hearing (although, if debate is extended or the agenda is too long, the hearing might be continued another evening). Thus, the developer, staff, and interested citizens are forced to marshal their arguments for the one hearing. Having just one hearing also eliminates the need for notice and a repeat of the hearing before the town board.

Review

By majority vote, the planning commission may decide to rehear any decision made by the planning director at its next meeting. Thus, a developer or concerned citizen who feels aggrieved by the planning director's decision may take his argument to the planning commission, trying to convince them to hear the evidence. There is no appeal by right, however. The planning commission may determine to rehear the decision, limit its rehearing only to

certain contested policies, or start over from scratch. In the same fashion, the town board may call up any decision of the planning director or the planning commission.

This process is extremely expedient. The planning director holds his public hearing and makes his decisions on minor developments every second Tuesday afternoon. The planning commission meets that evening, and any request for call-ups must be made at that time. The town board meets the following Thursday evening to decide whether to call up any action from the previous Tuesday.

If the planning commission or town board does determine to rehear a lower decision, the rehearing takes place at the next regular meeting of that body, rather than at the same meeting at which the rehearing decision was made. This provision simply allows the proper scheduling of agenda items.

Since the code has been in effect, the planning commission has regularly scrutinized but never reversed the planning director's decisions on minor proposals. Informed of the permits issued by the planning director and the planning commission, the town board has thus far never called up a decision by either of them. Under Colorado law, court review to determine whether there is minimal evidence to support a decision is limited to the documentary evidence and record made in the hearing. The court's work is made easier by the administrative techniques and devices of the Breckenridge code.

Enforcement

All representations made by the developer upon which the town relies in making its decision can be secured through a variety of sophisticated bonding requirements, covenants, front end fees, dedication requirements, and similar provisions which ensure developer compliance. Inspections of the property are conducted by a county inspector. No certificate of occupancy is issued a project until the town certifies com-

formance with the permit. If changes in the project occur after construction is completed, the owner or occupant can be cited and convicted of an offense under the municipal code.

Conclusion

The ideas contained in the Breckenridge Code will prove applicable to a wide variety of growing communities and redeveloping neighborhoods of the future. Although Breckenridge was fortunate in having a thorough and highly professional set of planning documents to support the policies in the code, this is not necessarily a prerequisite to the adoption of a permit system. Indeed, a permit system is modular; policies can be added, deleted, or changed as new information becomes available, as community values change, as conditions within the community change, or as new technology becomes available. A continuously updated process assures that the best information and the most recent expression of community political values are applied to new development proposals.

The development code process can and should be used by communities in the following circumstances:

- older, redeveloping neighborhoods where the design and intensity of new development and renovation should harmonize with preexisting traditional structures;
- rapidly expanding suburban areas where urban sprawl and strip commercial development have created dependance on the automobile and cultural homogeneity;
- rural areas where common sense dictates that zoning is an utterly inappropriate land use regulatory technique;
- boom towns; and
- communities with an active and involved citizenry that greatly values managing the rate, amount, and quality of new growth and development.

The Code should also be of special interest to developers who have been frustrated by the cost, delay, and uncertainty of the land development process; to citizens who are unable to amass the necessary resources to participate in a major community development decision; and to public officials who are interested in upgrading the quality of community development and the uniformity, fairness, and objectivity of the decision-making process.

Kirk Wickersham, Jr. is an attorney and planning consultant in Boulder, Colorado. He is the principal author of the EPA-funded book which developed the permit system, and of the Breckenridge Development Code. The code, along with the other elements of the Breckenridge community's comprehensive planning program, was awarded the 1978 American Institute of Planners Meritorious Planning Program Award. It was cited for thorough, comprehensive substantive provisions, for procedural simplicity, and for transferability to other communities. Wickersham is chairman of the Division of Planning and Law for the American Planning Association.

SAMPLE POLICIES

ENERGY CONSERVATION

Absolute Policy

A project is required to meet or exceed the minimum energy conservation standards adopted for new construction by the local building department.

YESNORelative Policy

A project is encouraged to employ non-fossil fuel sources of energy, such as solar, wind or geothermal.

(+2/0)	x	4	=	_____
PERFORMANCE		IMPORTANCE		SCORE

NOTE: See the Policy Evaluation explanation on page 22.

SAMPLE POLICIES

PROJECT DESIGN

Absolute Policy

At least 30 per cent of the site must be planted and maintained in live vegetative cover.

YESNORelative Policy

Adequate snow storage areas out of the public right of way and adjacent to public and private vehicular and pedestrian ways are encouraged. (This might be a policy in a ski resort town.)

(+2/-2)	x	5	=	_____
PERFORMANCE		IMPORTANCE		SCORE

NOTE: See the Policy Evaluation explanation on page 22.

POLICY EVALUATION

Absolute Policies

The project either meets the absolute policy requirement or it doesn't. Failure to meet an absolute policy requires the project permit to be denied.

Relative Policies

A project is measured against relative policies based on two factors: the PERFORMANCE by the developer in his effort to comply with the policy and the IMPORTANCE placed on that policy by the community. The PERFORMANCE rating multiplied by the IMPORTANCE factor results in the SCORE on that particular policy.

PERFORMANCE ratings can range from +2 to -2. They may vary from policy to policy, as indicated like this: (+2,0), which means that policy's range covers a +2, a 0 or a 0 PERFORMANCE rating. The community assigns the PERFORMANCE rating based on how well the developer attempts to meet the policy: +2 means he did an excellent job of meeting the policy, +1 means he did a good job, 0 means he did a satisfactory job, -1 means he did a poor job and -2 means he made no effort at meeting the policy. Another way to look at it is that projects scoring a +1 or +2 will leave the community better off in the future, while projects with scores of -1 or -2 will leave the community worse off.

IMPORTANCE factors reflect the priority placed on each relative policy by the community. An IMPORTANCE factor of 5 means the policy is of the utmost importance to the community, while a factor of 1 means it's not so important. Factors of 2, 3 or 4 prioritize policies between those two extremes.

SAMPLE EVIDENTIARY FORM

(With Review Comments)

Relative Policy

ENERGY CONSERVATION

A project is encouraged to employ non-fossil fuel sources of energy, such as solar, wind or geothermal. IMPORTANCE FACTOR: 4.

DEVELOPER'S EVIDENCE: Glass-enclosed pool area on South
end of building will provide a substantial amount of
"passive" solar gain. This heat can be used to warm
other parts of the building. I request an award
of +2 points.

STAFF COMMENT: Glass is single paned mounted on metal sash which will allow for
for a lot of heat loss. Project contains no plans for system to circulate air
from pool area to rest of building. Also, a large number of windows (cheap,
aluminum frame and single paned glass) on the north side of building will account
for large and unnecessary heat losses. Recommend 0 points.

PUBLIC COMMENT (Made at Public Hearing): _____

$$\begin{array}{ccccccc} 0 & & \times & & 4 & & = \boxed{0} \\ \text{(PERFORMANCE)} & & & & \text{(IMPORTANCE)} & & \text{(SCORE)} \end{array}$$

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SERVICES

DEVELOPMENT OF A PERMIT SYSTEM

WHAT A COMMUNITY WILL RECEIVE

There are six steps in the development of a Permit System:

1. Formatting the community's data for use in decision-making.
2. Drafting the policies.
3. Drafting the procedural and definitional elements of the regulations (that is, the Permit System Ordinance).
4. Designing the administrative materials and procedures needed to operate the Permit System.
5. Training everyone involved in the use of the System.
6. Following through with the community and fine tuning the System during the first building season it is in use.

WICKERSHAM AND ASSOCIATES, INC.

PRICING

The cost of developing a Permit System will vary from one community to the next. Here are the principles we use in determining the price of our services:

<u>CLIENT</u>	<u>BASE PRICE</u>
Rural county with moderate growth	\$20-25,000 *
Town or city under 5000	\$15,000 *
City of 5000 to 20,000	\$15-20,000
City of 20,000 to 50,000	\$15-25,000
City over 50,000	\$30,000 +
Towns and counties served by a regional agency	\$25,000 + *

* Smaller communities can join with neighboring jurisdictions, or use the services of a regional agency, to develop several Systems simultaneously. This can reduce the cost to as low as \$5000 to \$7000 per community.

THE BASE PRICE WILL INCREASE IF THE COMMUNITY:

- Is hard to reach from one of our regional offices.
- Is experiencing "boom" growth.
- Has little or no staff time to devote to the development of the System.
- Is experiencing significant political or social problems.
- Is in a complex natural environment.

THE BASE PRICE WILL DECREASE IF THE COMMUNITY:

- Is very accessible from one of our regional offices.
- Can combine its project with that of other communities in the area.
- Has significant professional resources available to devote to development of the System.

WA WICKERSHAM AND ASSOCIATES, INC.

OUR GUARANTEE

The services of Wickersham and Associates are guaranteed. As long as the community keeps working, we keep working with it until the system is adopted and operational, no matter how much effort is required. There is no additional cost.

OTHER SERVICES

WORKSHOPS

- Full day workshops on the Permit System for public officials, staff, business and community leaders cost approximately \$1000 to \$2000.

PLAN IMPLEMENTATION WORKSHOPS

- Transferrable Development Rights
- Open Space Programs
- Tax Incentives and Disincentives
- Land Banking
- Traditional Controls

DATA DEVELOPMENT

- Land Capability Analysis
- Demographic Analysis
- Fiscal Impact Analysis
- Goal Identification

COMMUNITY CAPACITY BUILDING

- Grants
- Administrative Assistance
- Growth Management Systems
- Housing
- Recreation
- Capital Improvements Programs

PLAN CHECKING SERVICES FOR SMALLER COMMUNITIES

HISTORIC PRESERVATION

DOWNTOWN AND NEIGHBORHOOD IMPROVEMENT PROGRAMS

PROJECT DESIGN AND ADVOCACY FOR THE PRIVATE SECTOR

PLANNING AND DECISION-MAKING ASSISTANCE TO STATE AND FEDERAL AGENCIES

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.



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Alaska State Legislature

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COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
LOCAL GOVERNMENT STUDY

Co-Chairmen
Senator Arliss Sturgulewski
Representative Bill Parker

Address all
correspondence to:

LOCAL GOVERNMENT STUDY

Pouch V
State Capitol
Juneau, Alaska 99811

A FINAL REPORT PREPARED BY THE
JOINT SENATE AND HOUSE
COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
LOCAL GOVERNMENT STUDY

Submitted to the
LEGISLATIVE COUNCIL
JANUARY, 1980

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EXHIBITS

Research and Analyses Papers Sponsored by the Joint Committee	A
Local Government Study Final Report	B

EXHIBIT A

- I. Borough Incorporation Standards as Interpreted by Local Boundary Commission
Marjorie Gorsuch, Administrative Assistant, House Community & Regional
Affairs, August, 1979
- II. Bureau of Indian Affairs and Comprehensive Employment and Training Assistance
Contracting Procedures, August, 1979
Jim Sanders, Graduate Student Intern
- III. Distribution of Flow of Funds in Alaska, June, 1979
Elke Kallab, Policy Analyst, Division of Legislative Research Services, Leg-
islative Affairs Agency
- IV. Financial Disincentives to Borough Formation, November, 1979
Milt Barker, Fiscal Analyst, Legislative Finance Division
- V. Legislative Proposals related to Organization and Financial Equalization in the
Unorganized Borough, August, 1979
Jack Chenoweth, Legislative Counsel, Legislative Affairs Agency
- VI. Local Government Study - Report of Local Government Symposium, 9/20/79
- VII. Pipeline Boroughs, January, 1980
Vic Fischer, Consultant
- VIII. Property Tax Revenues of Pipeline Boroughs, November, 1979
Milt Barker, Fiscal Analyst, Legislative Finance Division
- IX. Requests relating to Borough Formation, August, 1979
Pat Poland, Local Government Specialist, Department of Community and
Regional Affairs
- X. Service Delivery to the Unorganized Borough, August, 1979
Marjorie Gorsuch, Administrative Assistant, House C&RA
- XI. Services and Programs Provided by the Non-Governmental and Quasi-Governmental
Organizations in the Unorganized Borough, August, 1979
Jim Sanders, Graduate Student Intern
- XII. State/Federal A95 Review Process, August, 1979
Lamar Cotten, Graduate Student Intern
- XIII. State Municipal Land Trustee Program, August, 1979
Lamar Cotten, Graduate Student Intern
- XIV. Statutory Inducements and Disincentives re Municipal Government Incorporation,
August, 1979
Eric Simpson, Director, Division of Community Services, Department of
Community and Regional Affairs
- XV. Taxing Capacity of the Unorganized Borough, June, 1979
Alexander Hoke, Jack Kreinheder, Research Analysts Division of Research
Services
- XVI. Traditional, Non-Traditional and Quasi-Governmental Native Methods of
Organization, August, 1979
Lamar Cotten, Graduate Student Intern

I

BOROUGH INCORPORATION STANDARDS
AS INTERPRETED BY LOCAL BOUNDARY COMMISSION

LOCAL BOUNDARY COMMISSION INTERPRETATION OF BOROUGH INCORPORATION STANDARDS

A review of the requests for borough incorporation which have been denied is helpful for the insight it gives into the Local Boundary Commission's interpretation of incorporation standards.

Article X Section 3 of the State Constitution outlines the standards for borough incorporation as follows:

"The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law."

These standards are further refined in the statutes.

AS 29.18.030 Organized boroughs An area may incorporate as an organized borough if it conforms to the following standards:

- (1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support organized borough government;
- (2) the boundaries of the proposed borough conform generally to natural geography and include all areas necessary for full development of local services;
- (3) the economy of the area includes the human and financial resources capable of providing local services; evaluation of an area's economy includes land use, property valuation, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough;
- (4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated local government.

It is the role of the Local Boundary Commission to determine if a proposed borough meets the standards for incorporation. (AS 29.18.090 (a))

In 1973 the Local Boundary Commission had requests for borough incorporation from the Anchorage area (Cook Inlet Borough petition) and the Kenai area including the City of Kenai and the North Kenai Fire Service area (Nikiski Borough petition). The two were rejected on similar grounds.

The Department of Community and Regional Affairs, in its May 11, 1973 report to the Commission, made reference to the underlying principles which prompted the framers of the state constitution to provide for the borough system of government. It reviewed the concept of borough government as an approach to areawide and regional government, functionally adaptable throughout the State as variation in geography, economy and other circumstances required. The report emphasized that the boundaries of a city are not fixed -- that the constitutional framers directed that the boundaries might be altered and the power of a city extended in response to growth and development outward from the central core.

The Department recommended that the petition be denied unless the borough boundaries were expanded to include Tetlin, Tanaccross, Dot Lake, Northway --the entire area between Delta Junction and Tok--as the proposed borough stating, "We find no reason why the entirety of the valley, an area geographically distinct, economically sound, and having the requisite transportation facilities sufficient to foster communication and interrelationship of people in their activities should be divided into separate units." (Department of Community and Regional Affairs report to Local Boundary Commission on the Delta Borough proposal, p. 33)

In its final decision on July 12, 1974, the Local Boundary Commission found that even if the boundaries were expanded, that based on the testimony received from the residents of the area, the boundaries of the area would not comply with the provisions of AS 29.18.030 (1) "as the population of the area was not interrelated and integrated as to its social, cultural, and economic activities..."

In its statement of decision on the petition for detachment of the Chugiak-Eagle River area from the Greater Anchorage Area Borough and for incorporation of a second class borough in the Chugiak-Eagle River area (March 15, 1976), the Commission cited the following reasons for rejecting the petition.

1. The proposed petition fails to meet statutory and regulatory standards for detachment and incorporation contained in AS 29.18.030 and AAC 19.15.230 in that the area is an integral part of the municipality of Anchorage culturally, socially, and economically.
2. There are no natural boundaries separating the area from the remainder of the Anchorage municipality.
3. The detachment would be inimical to the interest of the State in that the constitutional mandate of a minimum of local government units and tax levying jurisdictions would be violated.
4. The area is not stable enough to support organized borough government in that the Eagle River-Chugiak tax base is not large enough to support necessary services without the support of the larger tax base of the entire Anchorage area.

The interpretation of the incorporation standard related to boundaries (AS 29.18.030 (2)) again became an issue with the formation of the North Slope Borough. The appellants in Mobil Oil Corporation v. Local Boundary Commission argued that neither the geography nor the transportation standards had been satisfied and that the Local Boundary Commission had erred in granting borough status to the North Slope.

In the Supreme Court decision on the case (January 16, 1974), the Court made reference to Article X Section 1 of the Constitution and stated:

"We read this to favor upholding organization of boroughs by the Local Boundary Commission whenever the requirements for incorporation have been minimally met."

The Court further found that the inclusion of Naval Petroleum Reserve No. 4 was desirable for integrated local government so that it might fall within the new borough's planning and zoning power. The record gave evidence of the Reserve's importance to the subsistence lifestyle of area residents and this evidence justified such inclusion.

IV

FINANCIAL DISINCENTIVES TO BOROUGH FORMATION

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
POUCH WF-STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3795

November 15, 1978

MEMORANDUM

TO: Arliss Sturgulewski, Chairman
Senate Community & Regional Affairs Committee

FROM: Milt Barker, ^{MB} Fiscal Analyst
Legislative Finance Division

SUBJECT: Financial Disincentive to Borough Formation

In this memo the net change in state aid and local effort for all REAA's upon their conversion to organized boroughs is estimated. The date of the assumed conversions is July 1, 1977; the period of state aid is fiscal year 1978. The following principal elements are considered:

1. public school foundation support (AS 14.17)
 - (a) in-lieu funds for REAA's (AS 14.08.121)
 - (b) basic need
 - (c) required local effort (AS 14.17.071)
2. municipal revenue sharing under the terms of HB 192
3. shared corporate income taxes (AS 43.20.016)

Foundation Support

Current state funding for REAA's is at 100% of basic need under the foundation program as well as a state contribution equal to the number of REAA pupils times the average local tax contributions per pupil in the organized school districts during the prior fiscal year, which in this case was \$688 per pupil for FY 77 (AS 14.08.121).

Upon conversion to borough status, an REAA loses this latter "in-lieu" contribution of \$688 per pupil. For all REAA's, the loss of this support would have amounted to

"In-Lieu"

(\$7,610,656)

for FY 78.

Also upon conversion, the new borough would have received less than 100% of basic need, the actual percentage depending on the new borough's assessed value per ADM relative to the average assessed value per ADM for all districts in the state, but in no case being less than 97% (ADM is average daily membership of pupils).

For FY 78 foundation support, the "Alaska Taxable", January 1, 1976, assessed valuation of municipalities of \$9,805,715,960 was used. Using a method described in Appendix I, I estimate assessed value of outside municipalities at \$110,714,000 for a total statewide valuation of \$9,916,429,960 excluding oil and gas property in the unorganized borough.

With 83,274 pupils in ADM for FY 78 according to the Department of Education's "Statistical Report 1978-79", this would have been a statewide average assessed value per ADM of \$119,082. As further described in Appendix I, the average assessed value per ADM for an REAA with no oil or gas property would have been \$19,895.

Plugging these assessed values per ADM into the formula for determining state support (AS 14.17.021(c)) yields a level of state aid equal to 99.5% of basic need for REAA's that would have become boroughs.

From the attached statement of REAA FY 78 revenues prepared by the Department of Education, we see that total basic need for all REAA's is \$47,530,826, this being the sum of amounts under the headings "federal 874" and "foundation" since PL 81-874 funds are deducted from foundation support for both REAA's and organized school districts (AS 14.08.121(a)(1) and AS 14.17.021(a)). Thus, the decrease in foundation support would be \$47,530,826 times .5% or

Basic
Need

(\$237,654)

for all REAA's in total.

Finally, the assumption of borough status by an REAA would have required local effort for the first time. The required local to state match would have been 1 to 199 for all newly formed boroughs on average.

The state contribution would have been the \$47,530,826 in basic need reduced by the \$237,654 equilization amount and by the \$17,485,871 in PL 81-874 funds or \$29,807,301. This would have required a local match of

Local
Effort

(\$149,785)

Thus, the total financial disincentive under the school foundation program for borough formation is

(\$7,998,095)

and is due almost entirely to loss of the "in-lieu" funds. The additional loss is about 5% on top of the "in-lieu" funds. A glance at the DOE table on REAA FY 78 revenues allows one to estimate the disincentive for any particular REAA.

It must be cautioned that these estimates are in terms of averages and that the results could differ for individual REAA's. However, the differences should not be that significant, especially for non-pipeline REAA's; even at the minimal level of 97% state support (which only pipeline REAA's would come close to) the loss of foundation support for all REAA's would have been at most \$1,425,924, with required local effort decreasing to \$44,100 because the match ratio drops to a minimum of 1:32. Thus, the total loss to any individual REAA would probably have been no more than 19% on top of the "in-lieu" loss.

More likely to affect these estimates are changes overtime in the contributions per ADM of organized school districts that determine "in-lieu" funds. The continued increases in the statutory level of basic need (an increase of 10% is scheduled for FY 80 -- AS 14.17.056) should not be significant since the loss due to the equalization factor was only \$237,654 to start with.

Municipal Revenue Sharing

Under the method proposed in HB 192, municipal revenue sharing funds would be distributed based on a formula that takes account of population and local effort in relation to assessed valuation per capita (proposed AS 29.88.010). 1/

1/ For purposes of the revenue sharing formula, a municipality's assessed valuation may not be less than 15% of the average statewide assessed value per capita. Using the \$9,916,429,960 statewide assessed value derived above and the "Alaska Taxable 1977" January 1, 1977 statewide population estimate of 398,983, we have average per capita of \$24,854 of which 15% would be \$3,728 per capita. However, estimated un-organized borough valuation per capita is \$6,096. (from Appendix I)

If we use the Appendix I population and valuation per capita figures for the unorganized borough excluding oil and gas property (50,451 persons and \$6,096 per capita) and assume the only local effort is the required school foundation match (\$149,785), the total revenue sharing to all new boroughs would be only

\$64,130

HB 192
revenue
sharing

on the assumption that the appropriation for all revenue sharing is \$27,000,000, the level at which HB 192 becomes effective. ^{2/}

The \$149,785 level of local effort is the equivalent of .49 mills. If the new boroughs increased their local effort above the minimum .49 mills required for school foundation aid, they would receive revenue sharing support as follows: ^{3/}

<u>Mills</u>	<u>Local Effort</u>	<u>HB 192 Revenue Sharing</u>
5	\$1,528,418	\$ 654,387
10	3,056,836	1,308,775
20	6,113,673	2,617,551
30	9,170,510	3,926,326

If the revenue sharing appropriation were roughly \$63,000,000 it would on average provide a 1 to 1 match of entitlement to local effort for new boroughs (other than pipeline boroughs).

Depending on the average mill rate in the new boroughs, the appropriation would have to be much larger to offset \$7,610,656 "in-lieu" disincentive under the foundation program:

<u>Mills</u>	<u>Revenue Sharing Appropriation Required to Offset "in-lieu"</u>
5	\$377,000,000
10	220,000,000
20	141,000,000
30	115,000,000

^{2/} Sec. 11 of HB 192 provides a minimum entitlement of \$25,000 plus a COLA during the first fiscal year the act is effective. Thus, if the act takes effect before a new borough formation, this floor is of no value to new boroughs and would not in any event provide increased support beyond the first year.

^{3/} See next page for footnote

11/15/79

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 4/</u>	<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	208,145
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	Pupil 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	---	24,209	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 ²	1,496,438	20,829	3,101	---	23,930
Kuspuk	16,880	706,247	723,127	1,363,986	31,749	233,920	4,654	33,521	1,667,830	20,255	23,864	3,951 ⁴	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 ³	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 ⁴	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 ⁴	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	720,310	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	56,890	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 ⁵	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 ⁵	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

*1 Sale of Capital Equipment

2 Includes 21,000 Insurance Proceeds

3 Federal Payments

4 Includes Indirect Cost Payments

5 Includes AVEL Subsidy

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
YEAR	POPULATION	HOUSEHOLDS	PER CAPITA ASSESSED VALUE \$	MAXIMUM OPERATING BUDGET \$M	LOCALLY ASSESSED PROPERTY TOTAL PROPERTY \$M	RESIDENTIAL EXEMPTIONS \$M	NET TAXABLE \$M	STATE ASSESSED PROP. OIL PIPELINE \$M	GAS PIPELINE \$M	TOTAL TAXABLE PROPERTY INCLUDING GAS PIPELINE \$M	EXCLUDING 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	368,960	1,342,664	966,204
84	1,876	536	60,420	7,651	17,060	2,680	14,380	985,150	522,750	1,522,280	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	569	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	1,473,395	994,005
89	2,175	621	77,120	11,322	13,976	3,105	10,871	953,700	463,580	1,428,151	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 3.5 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 3% 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 3% 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 249,710 x 2.25 x 0.03 = \$5,593,493.48 --
\$47,593,490.00.

Population - As certified by the Commissioner of Community and Regional Affairs on the Assessment Date (A.S. 29.53.045a).

Average Per Capita Assessed Value - A.S. 29.53.045c.

30 Mills - A.S. 29.53.080.

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

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 \$800/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 enact the \$10,000 single-family owner-occupied exemption allowed under A.S. 29.53. 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

LEGISLATIVE PROPOSALS UNORGANIZED BOROUGH

SB 101 (1969)

HB 730 (1970)

HB 161 (1971)

HB 122 (1971)

POWER 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.

POWER OF ORGANIZATION

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 require 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 entitlement.

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 BOROUGH**

SB 122 (1973)

IM 291 (1973)

IM 292 (1972)IM 2 (1979)

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

**PURCH OF
REGIONAL
GOVERNMENT
AUTHORITY**

None. This was the predecessor of legislation eventually enacted in 1975 to provide for the decentralization of responsibility for the operation of schools.

Unorganized borough districts. This legislation is quite similar to IM 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.

None.

100% OF REGIONAL GOV'T. Unorganized borough units each of which would have authority to adopt home rule charters. (IM 596) Boundaries would be recommended by the Boundary Commission. Voters would choose 11 member advisory council in each borough.

**MANNER OF
ORGANIZATION**

Mandatory formation of educational service areas.

(See above and IM 596)

Not applicable.

100% OF ORGANIZATION Mandatory formation of unorganized borough units (IM 596)

**FISCAL INCENTIVES
AND IMPLICATIONS**

Full state funding of the basic costs of educational services to be provided; no authorization to generate and expend revenues from local sources.

(See above and IM 596)

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.

FISCAL INCENTIVES AND IMPLICATIONS Extension of the property tax levy on a statewide basis (IM 597), with the levy of a premium rate on certain real and personal property of companies engaged in oil and gas activities (IM 598), was, even with the credits & exemptions allowed, expected to be sufficient to meet revenue sharing demands built into the two 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 (IM 598) however, sharing scheme was converted in the House to one based on economic impact - real or imagine-non-conductive to providing revenues on a sustained basis to meet the costs of public services at the local level.

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 developing 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 Nightmute, 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

X

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 (REAA's)

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.

SERVICE DELIVERY TO THE UNORGANIZED BOROUGH (Cont'd)

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.

SERVICE DELIVERY TO THE UNORGANIZED BOROUGH (Cont'd)

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 (REAA's) (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 REAA's.

"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 REAA's, 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 REAA's. Originally 20 REAA's were created by C&RA, but after a meeting of residents of REAA 17 and the Governor, REAA 21 (including Whittier 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 REAA's 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.

LOCAL GOVERNMENT SYMPOSIUM - August 4/5, 1979

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;¹ 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 Commission² 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

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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,³ 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.

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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

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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.⁴ 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.⁵

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.

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, 1978, pp. 137-142.

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

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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 INDUCEMENTS 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.

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DESCRIPTION: POSTER FORMAT REPORT

**"LOCAL GOVERNMENT STUDY - 1979" FINAL REPORT
ALASKA STATE LEGISLATURE**

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STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE COUNCIL

627
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

July 3, 1980

MEMORANDUM

TO: Billy G. Berrier

FROM: Senator George H. Hohman, Jr.
Chairman, Legislative Council

George H. Hohman, Jr.

SUBJECT: Title 29 Revision

As Chairman of the Legislative Council, I am allocating \$53,800.00 to the Legislative Affairs, Division of Legal Services. These funds are for the implementation of SCR66, revising Title 29 of the Alaska Statutes.

cc: M. R. Charney
Senator Sturgulewski
Representative Parker
Senator Ray

bcc: Dick Berg ✓

STATE OF ALASKA

THE LEGISLATURE

1980

Source

CSSCR 66

Legislative
Resolve No.

39



Directing the Alaska Legislative Council to revise AS 29
(Municipal Government).

FURTHER RESOLVED that the policy advisory group consist of two members of each house of the legislature appointed by the presiding officer of each house; public members of the policy advisory group shall be selected by the presiding officer of each house from persons recommended by legislative members, by the Department of Community and Regional Affairs, the Alaska Municipal League, the Rural Alaska Community Action Program, Inc., the Department of Law, and by the legal services division; and be it

FURTHER RESOLVED that a proposed revision of AS 29 be presented to the legislature during the first 30 days of the First Session of the Twelfth Legislature.

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

WHEREAS Alaska has a system of local government that differs uniquely in constitutional concept and in law from traditional local government; and ✓

WHEREAS the law governing municipalities in Alaska was last reviewed completely in 1972 at which time significant elements of the local government structures were still in a formative stage; and ✓

WHEREAS numerous amendments to the municipal code have been made since its adoption which have not been fully integrated into the code; and ✓

WHEREAS much experience in the Alaska system of local government has been gained since adoption of the municipal code; and ✓

WHEREAS there is a need for a comprehensive revision of the municipal code which will consider the 1972 code, amendments to it, and the experience gained since its adoption; ✓

BE IT RESOLVED by the Alaska State Legislature that under the provisions of AS 24.20.090 and Uniform Rule 48(c) the Alaska Legislative Council is directed to prepare a revision of Title 29 of the Alaska Statutes (Municipal Government) by directing the legal services division of the Legislative Affairs Agency to prepare the revision with the assistance of a policy advisory group representative of the concerned public from all areas of the state and persons experienced in the application of AS 29, and soliciting the advice of the Alaska Code Revision Commission; and be it

SENATE
JOURNAL SUPPLEMENT

February 16, 1981

Monday

No. 10



Alaska State Legislature
Senate

SB
180

MEMORANDUM

12 February 1981

TO: Representative Hugh Malore
Chairman, Legislative Council

FROM: Senator Arliss Sturgulewski
Chairman, Title 29 Revision Policy Advisory Group

As chair of the Title 29 Policy Advisory Group, I am pleased to submit a bill revising Title 29 of the Alaska statutes. This revision of the municipal government statutes was mandated last year by SCR 66 "Directing the Alaska Legislative Council to revise AS 29 (Municipal Government)". Under this resolution, a thirteen member Policy Advisory Group was appointed to oversee the revision process. In addition to four legislative members; Senator Bob Mulcahy, Representative Charles Parr, Representative Margaret Branson, and myself, nine members represented various levels of local government and geographic areas of the state.

This proposed bill represents a tremendous volume of work completed within a limited time frame. However, the revision of Title 29 has been thoroughly and carefully considered in spite of this time constraint. This is due in large measure to the real concern about local government shared by all members of the Policy Advisory Group. Excellent assistance was provided by a Technical Group composed of two Advisory Group members, municipal attorneys, and a city clerk. This Technical Group was formed to assist the legislative legal staff and the Advisory Group in interpreting provisions of the law and in revising specific statutes. Policy decisions were made by the Policy Advisory Group.

Since the first organizational meeting in August 1980, three complete redrafts of Title 29 have been prepared and reviewed. The legislative Legal Services staff, under the direction of Billy Brier, is due special recognition for the tremendous amount of staff work provided to the Policy Advisory Group, especially Ms. Tamara Brandt Cook, who was responsible for the successive drafts of Title 29.

Public testimony was received during the monthly meetings of the Policy Advisory Group from representatives of local government, Native organizations and state agencies. Numerous presentations were made to interested organizations, including a work session at the Alaska Federation of Natives annual meeting, participation at the annual Alaska Municipal League conference and numerous presentations to various interest groups.

A complete report of all changes proposed in Title 29, as well as an explanation of those sections that were deleted from the final bill, has been prepared. This section-by-section analysis will be submitted to respective Senate and House committees of first referral.

The Policy Advisory Group voted unanimously to recommend this bill to the Legislature for passage. While, overall, the committee is satisfied with this bill, it necessarily represents compromises on issues of local government structure by all members of the group. The Policy Advisory Group provided for the submission of minority reports with the Title 29 bill. One minority report was received, and is being submitted with the proposed bill.

The Policy Advisory Group, in its initial meetings, developed two basic guidelines for its revision of Title 29. These can be characterized as the simplification of the title's organization and the achievement of maximum flexibility in the structure and functioning of local government. Simplification of the organization of Title 29 will make it easier for everyone involved with, or interested in municipal government to understand the state's municipal code. Simplification included the clarification of the range of local governmental powers and how those powers can be assumed.

Flexibility in carrying out local administrative and procedural responsibilities meant reducing unnecessary statutory directives on local actions. The Policy Advisory Group recommended the deletion of a number of technical requirements on how local governments were to undertake day-to-day functions. These provisions included requirements for specifying a particular date for council and assembly meetings, the form of local ordinances, specific election dates and procedures, and so on.

However, in meeting the public's desire for more flexibility in the functioning of local government, the Policy Advisory Group was well aware that they were in effect eliminating a model for governmental activities that could be used by newly formed municipalities. Although it does not appear in the proposed revision of Title 29, the Policy Advisory Group found that more technical assistance in defining local government's structure and procedure will be required by local governments once the revision of Title 29 is adopted. To this end, the committee recommends that the capability of the Department of Community and Regional Affairs to provide expanded technical assistance be evaluated and matched to the future demand for the Department's services.

The mandate given the Policy Advisory Group was to prepare a revision of Title 29 for submission to the Legislature. With the submission of this bill, the Policy Advisory Group has fulfilled their mandate. However, there were a number of major policy issues brought before the Policy Advisory Group that could not be addressed within the scope of the revision of Title 29. I would like to outline some of these major issues which the Policy Advisory Group feels will merit further consideration by the Legislature.

The major policy issue beyond the scope of the Title 29 revision was the widespread demand for more local control, both over local matters and over state and federal programs affecting communities. The public brought a variety of proposals before the Policy Advisory Group, from demands for more local direction of state programs, to the granting of municipal rights and powers to Native governments; to the desire for self-governing regional organizations that would be something other than boroughs or unified municipalities. Major policy issues relating to these proposals include the constitutional and statutory basis of such self-governing organizations; questions of representation that must meet federal Supreme Court mandates; and problems of designing mechanisms that will enable the diverse range of local governments to effectively influence state and federal programs.

In testimony before the Policy Advisory Group, two state agencies proposed that local governments consider taking over those agency programs that were primarily local in nature. While responding to the desire for more local control over their programs, neither agency had a clear idea of the cost or manpower requirements such decentralization would place on local governments. As a result, it was not possible to determine whether the total costs of these programs would increase with decentralization, when staff and program costs would be duplicated among several local governments. An important question to be answered by the Legislature, is how much the state is willing to pay to meet the demands for local control. Local governments will need support to carry out statutory mandates. Is the Legislature willing to provide more support to local governments than it presently provides state agencies?

A common problem faced by rural residents is the multiplication of agencies and organizations formed to respond to state and federal program requirements. There was a general call for coordinating and streamlining requirements that now result, in some cases, in up to 10 local boards and organizations. These may include a city council, IRA council, village corporation board and subcommittees, membership in various non-profit organizations (for aid to provide health services, state and federal contract construction services, BIA funded social services, regional housing authorities, and so on) and regional Coastal Resource Service Areas and Regional Education Attendance Areas and so on.

Comments on the "pros" and "cons" of the service area concept and its use were brought to the Policy Advisory Group. Some rural residents expressed a strong feeling that the creation of separate single-purpose service areas led to a fragmenting of local control. Others felt that service areas would be the best vehicle for additional public services in the unorganized borough. In any event, the creation of additional single-purpose service areas, to be superimposed on the existing system of REAs, Coastal Resource Service Areas and Aquaculture Districts, needs to be given serious thought. This is especially true in light of the constitutional intent of a simplified system of local government. Or, put in another way, should the Legislature create a multi-layered type of governmental system in the unorganized borough that is considered undesirable within an organized city or borough?

February 16, 1981

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In short there is a widespread and growing concern in all areas of the state about the nature and structure of local government. The proposed revision of Title 29 addresses many of the difficulties of organized local governments, and will hopefully make it easier for areas to incorporate and function as municipalities. In addition to this revision the Legislature will be faced with a number of questions on the very substance and purpose of local government and local self-determination that go far beyond the recommended revision of Title 29. In order to answer these public concerns, the Legislature will have to be prepared to reassess the constitutional and philosophical foundations of local government in Alaska.

I see the revision of Title 29 as the first necessary step in this reevaluation of the structure and function of local government in our state. When our constitution was adopted in 1956, its provisions for local government were the most advanced in the nation. As with the update of the municipal code in 1972, the present effort to revise Title 29 reflects a continuing commitment to developing a healthy, flexible, and most functional system of local government possible to meet Alaska's needs.

In closing, I would like to request that this memorandum be made a part of the Journal Supplement upon submission of this bill.

Attachments:

Minority Report
Policy Group Members List
Technical Group Members List

CHARLIE PARR

ALASKA LEGISLATURE

P. O. Box 50599
Fairbanks, Alaska 99701
454-3029

Pouch V
Juneau, Alaska 99811
465-4908

January 21, 1981

Senator Arliss Sturgulewski
Chairman
Title 29 Revision Commission
Pouch V
Juneau, Alaska 99811

Dear Senator Sturgulewski:

As we discussed during the Title 29 Revision Commission meeting of January 17-18, 1981, I wish to submit a minority report.

In general, I agree with the direction taken, and in some instances do not consider issues of sufficient import to justify taking written exception. I think it speaks well for the Commission that mine will probably be the only minority report, and that I can confine myself to two issues.

It was a pleasure to work with you.

Sincerely,

Charles H. Parr
Charles H. Parr

TITLE 29 REVISION COMMISSION

Minority Report

At the first meeting of the Commission I laid out what appeared to me to be two general directions in which work should proceed:

- 1 - The garage mechanic, housewife, or other average citizen, when elected to the city council or borough assembly, should be able to read the Code and understand it.
- 2 - After ensuring that the Code contained provisions which would guarantee democratic rights common to all citizens of the State, we should "take the strings off" the municipalities as much as possible.

In my view, the Commission's work went a long way toward reaching this first goal. Although the Code is still somewhat confusing, it is much improved in organization and a number of passages with convoluted syntax have been removed.

I do not agree with the Commission's recommendation for abolition of the third class borough. No one has, in my judgment, presented compelling arguments for depriving citizens of this local government alternative. The third class borough at the present time offers a form of local government which is less demanding than that of the first and second class borough, and yet it has powers other than education. It may exercise these powers on a service area basis.

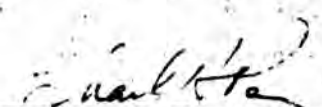
Apparently the crux of the matter is the fact that the third class borough is not required to exercise planning and zoning functions and this is anathema to the professional planners in our midst. I can find no other justification for their opposition.

The second point on which I wish to disassociate myself from the Commission's majority recommendations is that of State compliance with local subdivision regulation. It is common knowledge that the present administration, by its refusal to release land into private ownership, held down the safety valve on the steam boiler and caused the Beirne initiative explosion. We were rescued from the (probably) devastating effects of the initiative by the Supreme Court ruling that it was an appropriation and therefore unconstitutional. In an attempt to release some pressure from the "boiler", the Legislature has established the land disposal program and is insistent that sufficient land be made available to prevent a future such initiative which might meet constitutional tests.

If the State must meet subdivision requirements, several things will happen:

- 1 - The land disposal program will be delayed as necessary roads, and perhaps other improvements, must be constructed and pass municipal inspection before the land can be disposed of.
- 2 - The cost of improvements will be high and the State will be faced with a large subsidy for each parcel disposed of. If this large subsidy is not to be made, the parcels of land will be priced out of reach of many of the persons who would like to have them (especially young couples getting started).
- 3 - Subdivision standards vary from place to place. The State will be, in effect, favoring those municipalities which have higher subdivision standards. This could well lead to municipalities upgrading their standards in order to receive more from the State.

The whole issue of what the State should do in land disposal will be before the Legislature this year and a number of major policy decisions need to be made. I do not consider it appropriate to make such decisions in what was intended to be a non-policy revision of Title 29.


Charles H. Farr

February 16, 1981

SENATE JOURNAL
SUPPLEMENT

No. 10

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TITLE 29 REVISION POLICY ADVISORY GROUP

Senator Arliss Sturgulewski
Chairman

Senator Bob Mulcahy

Representative Charles Parr

Representative Margaret Branson

Ted Berns
Attorney, Municipality of Anchorage

Terry Cook
City Council, City of Alakanuk

Marilyn Dimmick
Borough Assembly, Kenai Peninsula Borough

James Kohler
City Manager, City of Yakutat

Ronald Larson,
Mayor, Matanuska-Susitna Borough

Gene Moore
City Manager, City of Kotzebue

Jonathan Solomon
Mayor, City of Fort Yukon

Donna Sherby
City Clerk, City of Cordova

Russell Walker
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Bond Counsel, Preston, Thorgrimson, Ellis, Holman &
Fletcher

Jim Nordale
Attorney, Fairbanks North Star Borough

Gerald Lee Sharp
Attorney, City and Borough of Juneau

JoAnne Shanley
City Clerk, City of Seward

TITLE 29 REVISION EX-OFFICIO MEMBERS

Ginny Chitwood
Executive Director, Alaska Municipal League

Palmer McCarter
Director, Division of Local Government Assistance
Department of Community and Regional Affairs

Phil Smith
Director, RuralCAP

To A - re

March 31, 1980

TO: Senator Clem Tillion
FROM: Senator Arliss Sturgulewski
RE: Revision of AS 29

It is generally recognized, especially by those who work most closely with it, that AS 29 is in need of revision. Since the time of original enactment, changes in the title, problems in its application, and policy questions of importance have been noted by municipal attorneys, city managers and clerks, and such other municipal officials as assessors. The Legislative Revisor has indicated that AS 29 should be next approached in terms of needed revision.

The work of revision is complicated and, at times, highly technical. I have received numerous inquiries and requests for a process by which to revise AS 29. I have discussed this problem with many people, including Mr. Berrier, and Ms. Chitwood of the Alaska Municipal League.

I would like to suggest the following as an approach to the revision of AS 29 during the period of time between this session and the 1981 session. Funds and responsibility for this project would be directed by the Legislative Council to Mr. Billy Berrier, Legislative Legal Services, to conduct the revision. I foresee the project as follows: two groups would be selected by Mr. Berrier from recommendations provided by the Department of Community and Regional Affairs, Alaska Municipal League and other interested and affected parties. The first group would be a policy advisory group composed of a variety of perspectives and interests, representing the diversity of local governments across the state, and would include a representative of the legislature. The second, a much smaller group, would be a working group, composed of people who have had experience in the application of AS 29. The work group should consist of municipal attorneys, representatives of the Department of Community and Regional Affairs and the Department of Law, as well as a staff member of Legislative Legal Services; other municipal staff functions should also be represented, such as managers or clerks. While the actual technical work would be conducted by the working group, the policy group would provide overall guidance and assistance on policy questions.

Administrative and secretarial responsibility would rest in Legal Services. In order to support this project funds would be required for travel and per diem. Most local governments will be glad to contribute staff time to this project. However, for both the policy and the working group it will be necessary to provide travel funds. As often as possible, teleconferencing will be used to reduce travel needs and to expedite the

project. A draft bill will be ready for January 1981.

It is anticipated that \$20,000 should cover the cost of this project.
Any funds remaining would be returned.

Thank you for your attention to this matter.

SCOMM

#23:6

IRA + TRAD-
ITIONAL Councils

Issues AND
Legislation

*Introduced for Discussion
Primarily - needs
conceptual work 925*

Introduced: 4/17/80
Referred: ~~Community &~~
Regional Affairs

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 SENATE BILL NO. 565

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 Native village governments.

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

8 * Section 1. FINDINGS AND PURPOSE. (a) The legislature has determined
9 that

10 (1) there exist in the state several communities which have Native
11 village governments recognized as the traditional local government; and

12 (2) the law and customs of Native village governments include
13 notions of democracy, liberty and the exercise of personal rights consistent
14 with the state and federal constitution.

15 (b) It is the purpose of this Act to

16 (1) insure that the state recognizes Native village governments as
17 local governments and encourages them in the administration of government for
18 the benefit of their people; and

19 (2) provide for interaction between the state government and
20 Native village governments.

21 * Sec. 2. AS 29 is amended by adding a new chapter to read:

22 CHAPTER 70. NATIVE VILLAGE GOVERNMENTS.

23 Sec. 29.70.010. NATIVE VILLAGE GOVERNMENTS. A Native village
24 government, in a village which is not incorporated and not an organized
25 borough is recognized by the state as the governing body of that village
26 A Native village government recognized by the state under this section
27 is eligible to participate in all state programs to the same extent and
28 in the same manner as a second class city. A Native village government
29 recognized under this section is entitled to notice concerning proposed

1 actions by the state to the same extent as the government of a second
2 class city is entitled to notice. A Native village government recognized
3 under this section shall be consulted by the state on state actions and
4 programs which affect the village to the same extent that the government
5 of a second class city is consulted on state actions and programs.

6 Sec. 29.70.020. AGREEMENTS. A Native village government or group
7 of Native village governments may negotiate agreements with the commis-
8 sioner of community and regional affairs regarding coordination of state
9 activities with the activities of the Native village government or group
10 of native village governments, including proposals to coordinate state
11 services with services provided by a Native village government such as
12 judicial services, law enforcement services, and correctional services.

13 (b) When the commissioner of community and regional affairs nego-
14 tiates an agreement under this section, he shall first consult with the
15 head of each principal executive department which may be affected by the
16 agreement. The commissioner of community and regional affairs shall
17 next submit the proposed agreement to the governor. The governor may
18 approve an agreement and upon approval the agreement shall define the
19 respective responsibilities of the state and of the Native village
20 government during the period of time covered by the agreement.

21 Sec. 29.70.030. NONDISCRIMINATION. A Native village government
22 which is a party to an agreement under AS 29.70.020 may not adopt a rule
23 or operate a program which creates or extinguishes a benefit, liability,
24 privilege, immunity or license dependent on racial classification or
25 membership in a Native tribe, clan, or organization, except that a
26 Native village government may participate in federally funded programs
27 which provide services to persons or organizations because of their
28 status as Native persons or Native organizations. Violation of this
29 section renders an agreement entered into under AS 29.70.020 void.

1 Sec. 29.70.040. LIMITATIONS. Nothing in this chapter authorizes
2 the alienation, encumbrance, or taxation of real or personal property,
3 including water rights, belonging to a Native person or Native village
4 that is held in trust by the United States or is subject to a restriction
5 against alienation imposed by the United States, or authorizes regulation
6 of the use of property in a manner inconsistent with a federal treaty,
7 agreement, statute, or a regulation, or extends the jurisdiction of the
8 state to adjudicate the ownership or right to possession of property.
9 Nothing in this chapter deprives a Native person, Native village, or
10 Native corporation of any right, privilege or immunity afforded under
11 federal or state treaty, agreement, or law, or alters the jurisdiction
12 of the state, its political subdivisions, or a Native village government.

13 Sec. 29.70.050. DEFINITIONS. In this chapter

14 (1) "Native person" means a person who meets the requirements
15 for membership in a Native village or organization authorized, char-
16 tered, or incorporated under the authority of a Native village govern-
17 ment;

18 (2) "Native village government" means a local governing body
19 organized by authority of the Act of Congress of June 18, 1934, 25 U.S.C.
20 sec. 476, or a local governing body of a Native village which meets the
21 requirements of the Alaska Native Claims Settlement Act, 43 U.S.C. secs.
22 1601 et seq.

COMPOSITE INDIAN REORGANIZATION ACT FOR ALASKA

Alaska amendment of May 1, 1936:

That sections 1, 5, 7, 8, 15, 17, and 19 of the Act entitled "An Act to conserve and develop Indian lands and resources; to extend to Indians the right to form business and other organizations; to establish a credit system for Indians; to grant certain rights of home rule to Indians; to provide for vocational education for Indians; and for other purposes", approved June 18, 1934 (48 Stat. 984), shall hereafter apply to the Territory of Alaska: *Provided*, That groups of Indians in Alaska not heretofore recognized as bands or tribes, but having a common bond of occupation, or association, or residence within a well-defined neighborhood, community, or rural district, may organize to adopt constitutions and bylaws and to receive charters of incorporation and Federal loans under sections 16, 17, and 10 of the Act of June 18, 1934 (48 Stat. 984).

SEC. 2. That the Secretary of the Interior is hereby authorized to designate as an Indian reservation any area of land which has been reserved for the use and occupancy of Indians or Eskimos by section 8 of the Act of May 17, 1884 (23 Stat. 26), or by section 14 or section 15 of the Act of March 3, 1891 (26 Stat. 1101), or which has been heretofore reserved under any executive order and placed under the jurisdiction of the Department of the Interior or any bureau thereof, together with additional public lands adjacent thereto, within the Territory of Alaska, or any other public lands which are actually occupied by Indians or Eskimos within said Territory: *Provided*, That the designation by the Secretary of the Interior of any such area of land as a reservation shall be effective only upon its approval by the vote, by secret ballot, of a majority of the Indian or Eskimo residents thereof who vote at a special election duly called by the Secretary of the Interior upon thirty days' notice: *Provided*, however, That in each instance the total vote cast shall not be less than 30 per centum of those entitled to vote: *Provided further*, That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the land so occupied.

The following provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat. p. 984), are applicable to Alaska:

That hereafter no land of any Indian reservation, created or set apart by treaty or agreement with the Indians, Act of Congress, Executive order, purchase, or otherwise, shall be allotted in severalty to any Indian.

* * * * *

SEC. 5. The Secretary of the Interior is hereby authorized, in his discretion, to acquire through purchase, relinquishment, gift,

exchange, or assignment, any interest in lands, water rights or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed \$2,000,000 in any one fiscal year: *Provided*, That no part of such funds shall be used to acquire additional land outside of the exterior boundaries of Navajo Indian Reservation for the Navajo Indians in Arizona and New Mexico, in the event that the proposed Navajo boundary extension measures now pending in Congress and embodied in the bills (S. 2499 and H. R. 8927) to define the exterior boundaries of the Navajo Indian Reservation in Arizona, and for other purposes, and the bills (S. 2531 and H. R. 8982) to define the exterior boundaries of the Navajo Indian Reservation in New Mexico and for other purposes, or similar legislation, become law.

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to this Act shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

SEC. 7. The Secretary of the Interior is hereby authorized to proclaim new Indian reservations on lands acquired pursuant to any authority conferred by this Act, or to add such lands to existing reservations: *Provided*, That lands added to existing reservations shall be designated for the exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservations.

SEC. 8. Nothing contained in this Act shall be construed to relate to Indian holdings of allotments or homesteads upon the public domain outside of the geographic boundaries of any Indian reservation now existing or established hereafter.

SEC. 9. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, such sums as may be necessary, but not to exceed \$250,000 in any fiscal year, to be expended at the order of the Secretary of the Interior, in defraying the expenses of organizing Indian chartered corporations or other organizations created under this Act.

SEC. 10. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the sum of \$10,000,000 to be established as a revolving fund from which the Secretary of the Interior, under such rules and regulations as he may prescribe, may make loans to Indian chartered corporations for the purpose of promoting the economic development of such tribes and of their members, and may defray the expenses of administering such loans. Repayment of amounts loaned under this authorization shall be credited to the revolving fund and shall be available for the purposes for which the fund is established. A report shall be made annually to Congress of transactions under this authorization.

SEC. 11. There is hereby authorized to be appropriated, out of any funds in the United States Treasury not otherwise appropriated, a sum not to exceed \$250,000 annually, together with any unexpended balances of previous appropriations made pursuant to this section, for loans to Indians for the payment of tuition and other expenses in recognized vocational and trade schools: *Provided*, That not more than \$50,000 of such sum shall be available for loans to Indian students in high schools and colleges. Such loans shall be reimbursable under rules established by the Commissioner of Indian Affairs.

SEC. 12. The Secretary of the Interior is directed to establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed, without regard to civil-service laws, to the various positions maintained, now or hereafter, by the Indian Office, in the administration of functions or services affecting any Indian tribe. Such qualified Indians shall hereafter have the preference to appointment to vacancies in any such positions.

SEC. 15. Nothing in this Act shall be construed to impair or prejudice any claim or suit of any Indian tribe against the United States. It is hereby declared to be the intent of Congress that no expenditures for the benefit of Indians made out of appropriations authorized by this Act shall be considered as offsets in any suit brought to recover upon any claim of such Indians against the United States.

SEC. 16. Any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or of the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe. Such constitution and bylaws when ratified as aforesaid and approved by the Secretary of the Interior shall be revocable by an election open to the same voters and conducted in the same manner as hereinabove provided. Amendments to the constitution and bylaws may be ratified and approved by the Secretary in the same manner as the original constitution and bylaws.

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local Governments. The Secretary of the Interior shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of the Budget and the Congress.

SEC. 17. The Secretary of the Interior may, upon petition by at least one-third of the adult Indians, issue a charter of incorporation