

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4497 HCRA SB 282 - SB 321

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282

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

House C+RA 2-29-88 3:00p.m.

2/22
D
David
will
2/23

(R)

F

Gov
P

Gov.
N

BILL PREPARATION/ACTION*

Bill # CS SB 282 (CRA) Date Referred: 2/19/88 Out:

Title: Municipal Sales & Use Taxes

Sponsor: S CRA Referrals: CRA

CONTACTS:*****

Name _____

DCRA FN PP w Bill; 2/24 [2/24]

Wes Coyner 2/23 but info to David;

Markie Campbell 3818 union & his wife's version 2/25 [2/24]; 2/29 school CT unless has other notes

REMARKS:*****

MEETINGS:*****

Date _____ Action _____

2/29/88 Passed 3DP

*See other side for additional information.

CONTAC.TXT

HOUSE COMMITTEE REPORT

CS SB 282
(CRA)

(5)

Date referred: 2/19/88

FURTHER REFERRALS:

Judiciary

FEB 29 1988

DATE: _____

The Community and Regional Affairs Committee has considered CSSB 282 (C&RA)

"An Act relating to municipal sales and use taxes; and providing for an effective date."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published 2/10/88
- zero with analysis

SIGNING DO PASS:

Bette Auto Auto
Jim Zawacki Zawacki
Heinrich Springer Springer

SIGNING OTHER RECOMMENDATIONS:

Springer Heinrich Springer
 Chairman's signature



Official Business

COMMITTEE:

HOUSE COMMUNITY & REGIONAL AFFAIRS

DATE: Monday, Feb. 29, 1988

SIGN-IN

Subject of meeting: *(A) JB 292*

CSSB 282(CRA) Municipal Sales & Use Taxes

~~*HB 487 Hazardous Waste Placards & Reporting~~

~~CBSB 317(FIN) Fisheries Tax Refunds to Local Govt.~~

NAME (PLS PRINT)	YOUR TITLE & ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
------------------	-------------------------	-------	--------------	----------------------------

DIANE CHILIMPI	VICE PRESIDENT P.O. BOX 21449	586-4329	ALASKA STATE EMPLOYEE FED CIL AK CIL LETTER	YES
Sen. Stenguleski				
Scott Burgess	AML			

File Contents

CSSB 282(CRA) - Municipal Sales and Use Taxes

<u>No.</u>	<u>Description</u>
1.	Bill copy
1.1.	Fiscal Note - DCRA
2.	Position Paper - Alaska Banker's Association
3.	Bill Review - HCRA Staff-Harrison
4.	Memo - SCRA
5.	Statutes

STATE OF ALASKA
1988 LEGISLATIVE SESSION

1.1 CS SB 282 (CRA) CS for 2/1/88 ME
BILL VERSION: SB 282 (CRA)
PUBLISH DATE: 2-10-88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to municipal sales and use taxes."
Sponsor: Senate C&RA Committee
Requestor: _____

Agency Affected: Community & Regional Affairs
BRU: Municipal & Regional Assistance
Components: State Assessor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jim Plasman, Deputy Director
Division: Municipal & Regional Assistance Phone: 465-4750
Date: 1-19-88
Approved by Commissioner: [Signature] Date: 1-19-88
Agency: Community & Regional Affairs

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

ALASKA BANKERS ASSOCIATION

December 15, 1987

Draft Position Paper For Amending Alaska Law Relating To Liens
For Sales, Use And Personal Property Taxes.

Brief History of Municipal/Borough Priority Tax Lien Issue

Local government entities have experienced difficulty in collecting unpaid sales, use and personal property taxes for a number of years. During the 1970's various municipalities enacted laws to establish sales tax liens as a means of collecting unpaid taxes; however, in 1980 the Alaska State Supreme Court ruled that municipalities which levied sales and use taxes had no authority to assert a lien for unpaid taxes except through the normal judicial process. The Supreme Court said further that authorization of such liens "should be addressed by specific legislation rather than by municipal, or judicial fiat".

In 1983, legislation was proposed that would have given boroughs and municipalities a sales tax lien with the full force, priority and duration of a judgement lien; however, this legislation did not become law. When this legislation became law in 1985, the provision that the sales tax obtain an attachment lien was changed in the final draft to give the lien a priority; a priority over all other liens including mortgages, security interests, judgement liens, and the claims of anyone who claims an interest in either real or personal property. This change from the initial version of the 232 page Municipal Code Revision, and the full impact this change was not observed by the banks, the title companies, nor other affected parties. Only when some of the boroughs and municipalities began enforcing their new priority lien, was its significant impact realized.

No Other Tax Lien Has Such A Priority

Not even the State of Alaska, nor the Internal Revenue Service, have such a priority lien. Real property taxes have a clear priority over all other interests. But the real property tax is a charge against the property itself and real estate is immobile. All who deal with real estate know it is subject to annual taxation by a single authority. The lien amount can be readily determined and a reserve fund established to ensure its payment. This is not possible with a sales tax or a tax on personal property. It is patently unfair that, under present law, a lender can make a loan secured by real or personal property with all taxes or liens current and have a subsequent lien due to unpaid taxes at some future date preempt the position. There is no way for a lender to protect itself from this kind of action.

Existing Law Is Not Specific Who Must Pay - It Is Aimed At Everybody

The priority lien provision A.S. 29.45.650(e) gives broad authority to municipalities/boroughs to exact payment from prior lienholders who had nothing to do with the transaction that gave rise to the tax and also to innocent buyers who pay the tax to a seller and then the seller fails to remit the proceeds to the municipality. The priority lien law goes further; it authorizes a municipality to assert a lien on any property of the buyer and it accords that lien a priority over any other lien.

Personal property is highly mobile and can be readily moved from district to district. There is no means of knowing that it is subject to a sales or use tax lien nor any way to determine the amount.

Does an individual now have to call local government to find out if a local auto dealer has remitted all sales tax collected and paid his personal property taxes? Under this law he does or he can lose the automobile, and the lienholder will also lose its lien. In effect, the priority tax lien requires an innocent third party to guaranty tax payments to a municipality or a borough.

A lender relies on the information available at the time a loan is made and then relies on its priority lien to protect it over the term of its loan. Permitting a higher priority lien long after a loan is made and over which a lender has no knowledge or control to erode its safety margin is unfair. It will also have an effect on secondary financing by outside investors and could eventually impact AHFC and AIDA programs as existence of the priority lien becomes known.

Existing Law Is Unclear

It appears that this outcome is not what the drafters of the priority lien provision wanted. What is wanted is authority for a lien on the seller's property to secure the seller's obligation to remit the taxes collected, yet the only authority the present statute grants is for a lien to secure payment of the tax, a liability of the buyer. It is now clear that a revision is needed in this new law to better describe who has the tax obligation and what is a fair priority for a lien on a violator's property.

It is not contended that municipalities and boroughs with sales and use taxes should not have the authority to assert liens; however, that authority should be confined to asserting the lien against property of the violator and the lien's relative priority over other innocent claimants should be determined by the date notice of the lien is filed.

Proposed Compromise Amendment

At a November 13, 1987 meeting between the Alaska Bankers Association and attorneys for the Alaska Municipal League, a compromise solution was recommended. The municipalities and boroughs would give up the 1985 priority lien position in exchange for a sales and use tax lien which is the equivalent of an attachment lien but without the need of first bringing suit. The municipalities and boroughs could also obtain a priority lien on the seller's business assets to secure the seller's obligation to collect and remit sales tax. A priority lien could be achieved on all additional or future advances but only after giving legal notice to senior lienholder(s) that sales and/or use taxes are due and unpaid. A simple lien search will reveal if a senior lienholder exists and its address. This priority lien on commercial financing of business assets (i.e. accounts receivable and inventory) is similar to the lien priority that can be obtained by the Internal Revenue Service and offers the senior lienholder(s) the option of either declining further advance requests or insuring that sales or use taxes are paid. It also elevates concern for remitting local tax payments to a much higher level for local businessmen. The Alaska Bankers Association finds this type of compromise acceptable.

Summary

The 1985 statute authorizing a priority lien for municipal sales and use taxes, as it now exists, is an onerous law and goes beyond what is reasonable and fair. With a single last minute word change, local government gained the power to assert its lien on any property of any innocent buyer (a consumer who purchased in good faith and paid his tax) and it can place a secured creditor in a subordinated position without notice, without knowledge, and even though he had no part in the taxable transaction. Further, the municipalities and borough governments did not achieve a very good vehicle to collect from the real potential violator, the seller who fails to remit taxes collected.

The Alaska Bankers Association does not believe there should be no authority for sales and use tax liens. However, such a law should be worded carefully to restrict the lien to only property of the violator and lien priority to other innocent lienholders should be based on date notice is filed. This law should treat all parties in commerce equally and offer an opportunity to do business without a surprise. A provision that permits a priority lien against subsequent advances after direct notice to a secured party seems fair and should go far in solving the delinquent sales and use tax problems the boroughs and municipalities have experienced.

Alaska State Legislature

House of Representatives

Committee on Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4831



2/29/'88

TO: Rep. Henry Springer, Chairman HCRA

FROM: David C. Harrison, P.A. HCRA

Subject: BILL REVIEW:
CS SB 282 (CRA) "An Act relating to municipal sales and use taxes: and providing for an effective date." [Sponsor: SCRA]]

*Section 1. AS 29.10..200(42) is amended to read:

(42) AS 29.45.650.(c), (d), (e), and (f) (sales and use tax)

Sec. 2. AS 29.45.650.(e) is amended to read:

(e) A borough may provide for the creation, recording, and notice of a lien on real and personal property to secure the payment of a sales and use tax, and the interest, penalties, and administration costs in the event of delinquency. When recorded, the sales tax lien has priority over all other liens except (1) liens for property taxes and special assessment; and (2) liens that were perfected before the recording of the sales tax lien. This subsection applies to home rule and general law municipalities.

COMMENTS: The underlined section provides for certain conditions in which banks, institutions and or individuals must record and perfect liens before the recording of the sales or use tax liens in order to establish priority lien on real or personal property.

Home rule and general municipalities sales tax liens and special property assessments have priority lien when recorded prior to liens record by banks, institutions and or individuals.

Deleted part: [When recorded, a lien authorized under this section has priority over other liens except those for property taxes and special assessments.]

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
TIM KELLY, Vice Chairman
RICK HALFORD
MIKE SZYMANSKI
FRED ZHAROFF



P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4989

Senate Community and Regional Affairs Committee

TO: SENATE C&RA MEMBERS

FEB 9, 1988

FROM: SENATE C&RA STAFF

A handwritten signature in dark ink, appearing to be "MEL".

RE: CSSB 282 (C&RA) - "AN ACT RELATING TO MUNICIPAL SALES AND USE TAXES."

UNDER EXISTING LAW (29.45.650(E)) MUNICIPALITIES MAY PLACE LIENS ON REAL OR PERSONAL PROPERTY TO SECURE PAYMENT OF SALES AND USE TAX. THIS ABILITY IS NEW, ADDED UNDER THE TITLE 29 REVISION TWO YEARS AGO.

THE SECTION WAS ADDED TO TITLE 29 IN RESPONSE TO A FAIRBANKS COURT CASE IN WHICH THE JUDGE RULED THAT MUNICIPALITIES DID NOT HAVE THE POWER TO PLACE SUCH LIENS. THE TITLE 29 TECHNICAL COMMITTEE AT THE TIME RECOMMENDED THAT SUCH LIENS HAVE THE FORCE OF JUDGEMENT LIENS, HOWEVER, ALSO ADDED AT THAT TIME WAS A SENTENCE THAT GAVE SUCH LIENS PRIORITY OVER OTHER LIENS, EXCEPT FOR PROPERTY TAXES AND SPECIAL ASSESSMENTS.

THIS PRIORITY CONFLICTS WITH 34.36.060 WHICH GIVES LABOR LIENS FIRST POSITION AND MORTGAGES SECOND POSITION. ACCORDING TO REPRESENTATIVES OF THE HOME MORTGAGE INDUSTRY, INCLUDING AHFC,

THIS PRIORITY FOR SALES TAX LIENS COULD CAUSE MAJOR DISRUPTIONS IN THE HOME MORTGAGE INDUSTRY AND RAISE INTEREST RATES.

SB 282 WOULD ALTER THIS PRIORITY. THE PROPOSED CS GIVES SALES TAX LIENS PRIORITY OVER ALL OTHER LIENS EXCEPT (1) LIENS FOR PROPERTY TAXES AND SPECIAL ASSESSMENTS; AND (2) LIENS THAT WERE PERFECTED BEFORE THE RECORDING OF THE SALES TAX LIEN FOR AMOUNTS ACTUALLY ADVANCED BEFORE THE RECORDING OF THE SALES TAX LIEN.

THIS DRAFT WAS DEVELOPED WITH THE ASSISTANCE OF TOM BOEDEKER, MUNICIPAL ATTORNEY FOR THE KENAI BOROUGH, AND WES COYNER, LOBBYIST FOR THE BANKING INDUSTRY. MR. BOEDEKER, WHO HAS TAKEN THE LEAD FOR THE MUNICIPALITIES ON THIS ISSUE, WOULD PREFER TO LIMIT THE PRIORITY TO PROPERTY TAXES, SPECIAL ASSESSMENTS, AND PRIOR RECORDED MORTGAGES, TRUST DEEDS, AND LAND SALE CONTRACTS; BUT HE BELIEVES THE PROPOSED CS IS REASONABLE AND TECHNICALLY CORRECT.

BOTH GENTLEMEN WILL BE AT THE COMMITTEE TO TESTIFY. THE CS HAS A ZERO FISCAL NOTE FROM THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS.

Chapter 29.45, 1964
November 1964

Sec. 29.45.570. SALES AND USE TAX. (a) A borough may levy and collect a sales tax not exceeding six percent on sales, rents, and on services made within the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) No change.

(c) No change.

(d) If the assembly of a home rule or general law borough charges interest on sales taxes not paid when due, the rate of interest may not exceed 15 percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

new (e) A borough may provide for the creation, recording, and notice of a lien on real or personal property to secure the payment of a sales or use tax, and for interest, penalties and administration costs in the event of delinquencies. A lien established under this section has the force, priority and duration of a judgment lien.

EXPLANATION: (a) changed to make it clear that tax can be levied on sales and rents, not just one or the other. (d) interest rate raised from eight to 15 percent. (e) added to allow liens for the collection of sales and use taxes.

TITLE 29 TECHNICAL COMM.

furnished and labor was done "in connection with the work done upon the claims" does not comply with the statute. *Goldstein v. Noble*, 6 Alaska 282 (1926).

A lien on a building for materials furnished cannot include another structure against which a lien is not filed, and into the construction, alteration, and repairs of which some or all of the materials were employed or used. *Burr v. House*, 3 Alaska 641 (1909).

The general rule is that a lessee cannot impose any charge upon the reversion or estate of the lessor (hereof. *Morris v. Marsh*, 3 Alaska 140 (1906)).

Nor does the fact that the lessor acquiesces in the improvement by the lessee subject his reversion to the mechanics' liens therefor. *Morris v. Marsh*, 3 Alaska 140 (1906).

Unless lessor fails to give notice of nonresponsibility or his agent causes improvement. — This section, AS 34.35.050 and AS 34.35.065, construed together, mean that the person in charge of the work shall prima facie be deemed to be the agent of the owner, and the property of the latter shall be charged with the lien under the express provisions of AS 34.35.050; that, if the person in charge is not in fact such agent, the interest of the owner shall, nevertheless, be liable for the improvement if it is constructed with his knowledge, and he fails to post the required notice disclaiming responsibility; and that, if the work is done for a lessee of the property, liability is confined to the

lessee's estate, if the owner had no knowledge of the construction of the improvement, or if, having such knowledge, he gave notice that he would not be responsible. *Caswell v. Winchell*, 101 F. 241 (9th Cir. 1901). See AS 34.35.115.

To determine whether or not modular units are sufficiently attached to the land on which they are situated, the supreme court will look to the following elements: (1) physical annexation, (2) adaptation to use with real property, (3) intention to annex to realty, (4) relationship of the claiming parties, (5) the relative difficulty of removal, (6) the nature of the article annexed, and (7) whether the fact of the annexation is open and apparent. *Dannemiller v. AMFAC Distribution Corp.*, Sup. Ct. Op. No. 1152 (File No. 2895), 566 P.2d 615 (1977).

Applied in *Torkko-Korman-Engineers v. Penland Ventures*, Sup. Ct. Op. No. 2757 (File No. 6489), 673 P.2d 769 (1983).

Quoted in *Jorgensen Co. v. Sheldon*, 2 Alaska 607 (1905).

Stated in *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Collateral references. — 53 Am. Jur. 2d, *Mechanics' Liens*, §§ 28-48.

Public property as subject to lien. 28 ALR 325.

Vendor's interest as subject to mechanic's lien. 58 ALR 911; 102 ALR 233.

Quantity or area of land around improvement which may be subject to lien. 84 ALR 123.

Sec. 34.35.060. Priorities. (a) Except as provided in (c) of this section, an encumbrance which is properly recorded shall be preferred to a lien created under AS 34.35.050 — 34.35.120 unless the claim of lien under AS 34.35.070 or notice of right to lien under AS 34.35.064 has been recorded before the encumbrance. The preference granted for a prior mortgage or deed of trust under this section applies without regard to when the sums are disbursed or whether the disbursements are required under the terms of a loan agreement.

(b) [Repealed, § 19 ch 175 SLA 1978.]

(c) A lien created by AS 34.35.050 — 34.35.120 in favor of an individual actually performing labor upon a building or other improvement in its original construction or of a trustee of an employee benefit trust for those individuals is preferred to a prior encumbrance upon the land on which the building or other improvement is constructed.

(d) In enforcing the lien, the building or other improvement may be sold separately from the land. When sold separately, the purchaser may remove the building or other improvement within a reasonable time after the sale, not to exceed 30 days, upon the payment to the owner of the land of a reasonable rent for its use from the date of its purchase to the time of removal. If removal is prevented by legal proceedings, the 30 days does not begin to run until the final determination of the proceedings in the court of first resort, or in the appellate court if appeal is taken. (§ 26-1-3 MCLA 1919; am § 1 ch 111 SLA 1953; am § 1 ch 7 SLA 1955; am §§ 2, 3, 19 ch 175 SLA 1978)

NOTES TO DECISIONS

Editor's notes. — The cases annotated below were decided under this section as it existed prior to the 1978 amendment, which, among other things, rewrote subsection (a) and repealed subsection (b), which provided when a lien created by AS 34.35.050 — 34.35.120 was preferred to a lien, mortgage, or other encumbrance which is unrecorded.

Legislative intent. — The legislative intent is to limit the priority granted generally to situations where the construction preceded all other construction in and upon a given area of vacant or cleared land. *Lynch v. McCann*, Sup. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970).

In the case of "original construction," the legislature intended in subordinate to some extent the principle of first in time, first in right, to a social interest in securing mechanics' liens. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

For purposes of this section, a deed of trust and a mortgage are not differentiated. *Thorpe Constr. Co. v. Irvin & Co.*, 367 F. Supp. 87 (D Alaska 1973).

This section protects the security of a mortgage or beneficiary of a deed of trust against mechanics' liens so long as his encumbrance attaches and is recorded before the mechanics' lienor commences his labor or furnishes materials, except where "original construction" is performed. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

A beneficiary of a deed of trust whose interest attaches and who records before

any alteration or repair begins or materials are furnished has priority over a mechanics' lienor, except in the case of original construction under this section. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 659 (File No. 1119, 1154), 478 P.2d 829 (1970).

Scheme of priorities not overcome by posting notices of nonresponsibility. — Mortgagees and beneficiaries of deeds of trust need not post notices of nonresponsibility, and if they do, the notices do not overcome the scheme of priorities established in this section. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

A mechanics' lienor has priority over the beneficiary of a deed of trust in the case of original construction under subsection (c), regardless of whether the beneficiary of the deed of trust posts a notice of nonresponsibility. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

The legislature, in subsection (c), provided that mechanics' lienors performing original construction should have priority over earlier security interests. The scheme of priorities endorsed by the legislature in the circumstances of original construction would be defeated if beneficiaries of deeds of trust could attain priority over mechanics' lienors by posting notices of nonresponsibility. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Construction lenders can protect themselves from mechanics' liens on

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: SB 282
Publish Date: _____

REQUEST: _____
Revision Date: _____
Title: "An Act relating to municipal sales and use taxes."
Sponsor: Senate C&RA Committee
Requestor: _____

Agency Affected: Community & Regional Affairs
BRU: State Assessor
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Mike Worley, State Assessor
Division: Municipal & Regional Assistance

Phone: 465-4750
Date: 5/6/87

Approved by Commissioner: Mike Worley for D.H. Hoffman
Agency: Community & Regional Affairs

Date: 5/6/87

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

SB

292

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

Joint H+S C+RA	1-26-88	3:40 p.m.
Senate C+RA	1-26-88	4:25 p.m.
House C+RA	5-4-88	3:00 p.m.

HOUSE COMMITTEE REPORT

(5)

Date referred: 5/3/88

FURTHER REFERRALS: Finance

DATE: 5-4-88

The Community and Regional Affairs Committee has considered CSSB 292(C&RA)am

"An Act authorizing compensation for members of the state Local Boundary Commission; and providing for an effective date."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

Heinrich Springer Springer _____

James Zawacki Zawacki _____

John Lato Lato _____

John Collins Collins _____

SIGNING OTHER RECOMMENDATIONS:

Heinrich Springer
Springer
Chairman's signature

File Contents

CSSB 292(CRA)am - Boundary Commission Compensation

<u>No.</u>	<u>Description</u>
1.	Bill - CSSB 292(CRA)am
1.1	Fiscal Note (impact) - DCRA, LBC
2.	Bill Review - Fischbach
3.	Original SB 292 + changes
4.	Memo - to Eliason from Sturgulewski, 4/18/88
5.	Chart - Compensation to Boards and Commissions
6.	Old Fiscal Note (before deletion of travel time) DCRA
7.	Bill History
8.	Minutes, 1/26/88, Jt H & S CRA meeting on LBC
9.	Draft Senate CRA Minutes, 1/26/88, SB 292 hearing
10.	EXCERPT, Senate Finance Minutes, 3/28/88

STATE OF ALASKA
1988 LEGISLATIVE SESSION

(1.1) CSSB 292 (CRA) am
BILL VERSION: CSSB 292 (CRA) am
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 5/4/88
Title: "An act authorizing compensation for members of state LBC"
Sponsor: C&RA Committee
Requestor: _____

Agency Affected: Community & Regional Affairs
BRU: Local Government Assistance
Components: Local Boundary Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		12.75	12.75	12.75	12.75	12.75
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		12.75	12.75	12.75	12.75	12.75

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		12.75	12.75	12.75	12.75	12.75
FEDERAL FUNDS						
OTHER						
TOTAL		12.75	12.75	12.75	12.75	12.75

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This fiscal note assumes 17 days per year qualifying for payment for five LBC members at \$150 per day.

Jim Plasman

Prepared by: Jim Plasman, Deputy Director
Division: Municipal & Regional Assistance

Phone: 465-4750
Date: 5/4/88

Approved by Commissioner: *David K. R...*
Agency: Community & Regional Affairs

Date: 5/4/88

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)



Alaska State Legislature

House of Representatives

Committee on Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

M E M O R A N D U M

To: House CRA Committee Members
From: HCRA Staff *Z*
Date: May 4, 1988
Subject: Bill Review - CSSB 292 (CRA) am

This bill authorizes members of the Local Boundary Commission (LBC) to receive compensation for service on the Commission.

The Dept. of Community and Regional Affairs (DCRA) supports the LBC and the concept of the legislation, but does not support CSSB 292 (CRA) am because the funding is not included in the Governor's budget.

After introduction of the original SB 292, the Senate CRA Committee added an effective date of July 1, 1988, and on the Senate floor, it was amended to limit compensation to meeting time only (travel time was deleted). The deletion of travel time lowered the Fiscal Note from 18.75 to 12.75.

HCRA Committee members heard some testimony previously, at the Joint House and Senate CRA meeting on Jan. 26, 1988, on the LBC. The Senate heard SB 292 following the Joint meeting that day (minutes attached).

*original bill - SB 292
+ changes*

1 IN THE SENATE

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

2

SENATE BILL NO. 292

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act authorizing compensation for members of the
7 state Local Boundary Commission."

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

9 * Section 1. AS 44.47.579 is repealed and reenacted to read:

10 Sec. 44.47.579. COMPENSATION AND EXPENSES. A member of the
11 Local Boundary Commission is entitled to compensation at a rate of
12 \$150 for each day the member is attending a meeting of the commission
13 ~~or in travel to or from the meeting.~~ A member is also entitled to
14 receive per diem and travel expenses authorized for members of boards
15 and commissions under AS 39.20.180.

Sec. 2 This Act takes effect July 1 1988

deleted by Senate floor amendment 5/2/88

added by (S) CRA 1/28/88

SENATOR
ARLISS STURGULEWSKI

Chairman, Senate Community and Regional Affairs Committee
Vice-Chairman, Senate Judiciary Committee
Member, Senate Resources Committee



2937 SHELDON JACKSON STREET
ANCHORAGE, ALASKA 99508

While in Juneau
P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3818

Senate

April 18, 1988

TO: Senator Eliason

FROM: Senator Sturgulewski (D)

RE: SB 292 "An Act authorizing compensation for members of the State Local Boundary Commission."

SB 292 authorizes Local Boundary Commission Members to receive compensation for their service on the commission. The constitutional framers recognized the importance of the LBC by providing for it in the constitution.

LBC decisions affect the distribution of millions of dollars of state assistance, require travel to remote areas, extensive homework, and if they are not made properly, they leave the state vulnerable to lawsuit. Members of many other boards and commissions receive compensation for their service.

I have attached a copy of the bill, the fiscal note, and the bill history. I urge your consideration for calendaring for Senate action. Thank you.

BOARDS & COMMISSIONS WITH COMPENSATION OTHER THAN STANDARD TRAVEL & PER DIEM

<u>Board/Commission Name</u>	<u># Members</u>	<u># Meetings</u>	<u>Compensation</u>
Commercial Fisheries Entry Commission	3	120	Salaried
Commercial Fishing & Agricultural Bank	7	11, (22Day)	\$250/Day Max.
Disability Review Board, Pub. Emp & Teachers	5	Call-Chair	Hourly Comp.
Fisheries, Board of (met 43 days in 1987)	7	6	\$150/Day-Reg. \$100/Day-Other
Game, Board of (met 35 days in 1987)	7	2	\$150/Day-Reg. \$100/Day-Other
Historical Records Advisory Board, State	7	3	Fed. Funding
Housing Finance Corporation, AK	5	16	\$100/Day
Industrial Development & Export Authority, AK	5	26	\$100/Day
Medical Indemnity Corporation of Alaska	9	4 30Day	Necessary Expenses
Municipal Bond Bank Authority, Alaska	5	5	Actual Expenses
Occupational Safety & Health Review Board	3	2 6Day	\$50/Day
Oil & Gas Conservation Commission, Alaska	3	N/A	Salaried
Parole, State Board of	5	4 Min.	Set by Governor
Permanent Fund Corporation Board of Trustees	6	7 40Day	\$400/Day
Pharmacy, Board of	7	3 9Day	Actual Expenses
Public Offices Commission, Alaska	5	6 15Day	\$50/Day
Railroad Corporation, Board of Directors	7	4 Min.	\$400/Day
Teachers' Retirement Board	5	2 6Day	Actual Expenses
Utilities Commission, Alaska Public	5	Cont.	Salaried
Western Interstate Commission for Higher Ed.	3	2 10Day	Actual Expenses
Workers' Compensation Board, Alaska	9	2	\$50/Day

5 CS SB 292 (CRA) am

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSSB 292 (C&RA)
PUBLISH DATE: (SENATE) 3/28/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An act authorizing compensation
for members of state LBC"
Sponsor: _____
Requestor: _____

Agency Affected: Community & Regional Affairs
BRU: Local Government Assistance

Components: Local Boundary Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		18.75	18.75	18.75	18.75	18.75
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		18.75	18.75	18.75	18.75	18.75

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		18.75	18.75	18.75	18.75	18.75
FEDERAL FUNDS						
OTHER						
TOTAL		18.75	18.75	18.75	18.75	18.75

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This fiscal note assumes 25 days per year qualifying for payment for five LBC members at \$150 per day.

Prepared by: Jim Plasman, Deputy Director
Division: Municipal & Regional Assistance

Phone: 465-4750

Date: 2/22/88

Approved by Commissioner: Mark A. Hoffmann
Agency: Community & Regional Affairs

Date: 2-22-88

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

New fiscal note for
Senate amended version
will be delivered
today by DC + RA
will be lower. M&B

Excerpt
SENATE FINANCE COMMITTEE
Minutes of March 28, 1988

SFC-88, #37, Side 2

SENATE BILL NO. 292

"An Act authorizing compensation for members of the state Local Boundary Commission."

Co-chairman Halford moved that SB 292 be brought on for discussion. Senator Arliss Sturgulewski came before committee, advising that the bill seeks compensation for members of the constitutionally established Local Boundary Commission. Framers of the constitution recognized the importance of the commission and the fact that it resolves many, difficult issues that would otherwise be brought before the legislature. Decisions made by the commission affect the distribution of millions of dollars in state and local funds.

The commission currently meets 25 to 27 days a year. Senator Sturgulewski explained that recent concern regarding mandatory boroughs and formation of local governments has created an additional time demand upon the commission. Commission meetings are generally held in small, outlying communities rather than urban areas and the time and costs involved have become burdensome. SB 292 would provide \$150 per day. The Senator acknowledged that the state has no established policy for boards and commissions. Many board members receive per diem:

1. Alaska Railroad and Permanent Fund board members receive \$400 a day.
2. CFAB directors receive \$250.
3. Fish and Game Board members receive \$150.
4. AHFC directors receive \$100.

The \$150 requested for Local Boundary Commission members appears reasonable. The function of the commission is important. If the job is not done well, lawsuits follow. The Senator noted, again, that the commission is constitutionally mandated, and she expressed strong support for the legislation, noting again hardships incurred by members who exercise their statutory responsibility and only receive compensation for travel expenses.

Directing attention to the fiscal note of approximately \$19.0, Senator Sturgulewski urged support for both the legislation and its funding.

Co-chairman Halford noted current inequities surrounding membership on boards and commissions and voiced need for uniform policy.

The Co-chairman then asked if Senator Sturgulewski would object to an amendment providing per diem for the commission for a

maximum of 30 days per year. Senator Sturgulewski advised that she would have no objection given the understanding that the cap could be reviewed and changed, if necessary. Co-chairman Halford explained that should additional meetings beyond 30 be required, members would continue to be reimbursed for their costs. Senator Duncan suggested that establishment of a 30-day cap would increase the inequity between the Local Boundary Commission and other boards and commissions, citing the Alaska Railroad board as an example. Discussion of current inequities followed.

Senator Uehling noted considerable differences in terms of the kinds of work done by individual boards and commissions, but also voiced need for policy and consistency. Senator Sturgulewski explained that the per diem for the LBC was set at the rate used for the Board of Fish and Game. She stated that the LBC is a quasi-judicial commission. Recommendations from the commission become effective unless overridden by the legislature. It is a deliberative board with established guidelines for hearings, etc.

CHARLES BETTISWORTH, Chairman, Local Boundary Commission, next came before committee, voicing support for SB 292. He explained that similar legislation had been brought before the legislature over the past five years but had never before received a hearing. He advised that he had been a member of a commission for eight years. When his membership commenced, the commission met two to three times a year and dealt with "relatively minor issues of annexation, etc." Since that time the commission's role has increased substantially. It now deals with major, regional issues. As an example, he noted meetings last fall in Dillingham relating to the raw fish tax. Mr. Bettisworth advised that the commission seeks per diem only for actual meeting days not for days involved in travel.

Speaking to the 30-day cap proposed by Co-chairman Halford, Mr. Bettisworth explained that commission meetings are not "at our determination." The commission is on call to communities that petition for action. The cap would limit ability to respond to local requests. Mr. Bettisworth advised that commission members are otherwise employed and therefore must meet on weekends. This, in some cases is a disservice to communities where weekday meetings would be preferable. In his closing remarks, Mr. Bettisworth voiced objection to the proposed cap and urged passage of the bill.

Co-chairman Halford advised of his belief that since the commission is constitutionally mandated, it has a higher calling than other boards. He again stressed need for consistent policy covering all boards and commissions. He added, however, that an attempt to deal with the issue at this time might mean that the Local Boundary Commission would, in the end, suffer a greater inequity than it has in the past, and suggested that the committee pass the bill as it came to committee. Senator Hensley concurred, advising that the commission deals with difficult,

"screaming" issues, and that members have provided valuable service to many communities.

Senator Hensley MOVED for passage of CSSB 292 (C&RA) from committee with individual recommendations. No objection having been raised, CSSB 292 (C&RA) was REPORTED out of committee accompanied by the \$18.75 fiscal note from the Dept. of Community and Regional Affairs. Co-chairman Halford and Senators Duncan and Hensley signed the committee report with a "do pass" recommendation. Co-chairman Binkley and Senator Uehling signed "no recommendation."

Original sponsor: Community and Regional
Affairs Committee

1 IN THE SENATE

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

2

CS FOR SENATE BILL NO. 292 (C&RA)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act authorizing compensation for members of the
state Local Boundary Commission; and providing for an
effective date."

7

8

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

10

* Section 1. AS 44.47.579 is repealed and reenacted to read:

11

Sec. 44.47.579. COMPENSATION AND EXPENSES. A member of the

12

Local Boundary Commission is entitled to compensation at a rate of

13

\$150 for each day the member is attending a meeting of the commission.

14

~~[or in travel to or from the meeting.]~~ A member is also entitled to

15

receive per diem and travel expenses authorized for members of boards

16

and commissions under AS 39.20.180.

17

* Sec. 2. This Act takes effect July 1, 1988.

deleted by Senate floor amendment

SB

317

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

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

May, 1988

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

Mary Van Nimwegen

House C+RA

2-29-88

3:00pm.

HOUSE COMMITTEE REPORT **(5)** CS SB 317

(5)

(FIN)

Date referred: 1/27/88

FURTHER REFERRALS:

Resources
Finance

FEB 29 1988

DATE: _____

The Community and Regional Affairs Committee has considered CSSB 317(Fin)

"An Act relating to payment of fisheries tax proceeds to municipalities; and providing for an effective date."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published 1/18/88
- zero with analysis

SIGNING DO PASS:

Jim Zawacki Zawacki _____

Bob Cato Cato _____

Heinrich Springer Springer _____

SIGNING OTHER RECOMMENDATIONS:

Springer

Heinrich Springer
Chairman's signature

File Contents

CSSB 317 (FIN) - Fisheries Tax Refunds to Local Government

<u>No.</u>	<u>Description</u>
1.	Bill Copy
2.	Fiscal Note - Dept. of Revenue
3.	Memo from sponsor
4.	Bill Review - HCRA Staff-Harrison

FISCAL NOTE

(2) CS SB 317(FIN)

REQUEST: _____

Revision Date: 1/15/88
Title: "An Act relating to fisheries tax sharing."
Sponsor: Senators Fischer and Kertulla
Requestor: Senate Resources

Agency Affected: Revenue
BRU: Income and Excise Audit Division
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Steven E. Kettel *SK*
Division: Income and Excise Audit

Phone: 465-2320
Date: January 12, 1988

Approved by Commissioner: Hugh Malone
Agency: Department of Revenue

Date: January 18, 1988

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Alaska State Legislature



Senator Paul A. Fischer
Senate District D
Box 784
Soldotna, Alaska 99669
(907) 262-9420 W
262-9269 H

While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-3791

State Senate

MEMORANDUM

FEB 11 1988

TO: Representatives Henry Springer
House Community & Regional Affairs Committee

FROM: Senator Paul Fischer *PF*

SUBJECT: Senate Bill 317
(payment of fisheries tax proceeds to
municipalities)

DATE: February 9, 1988

I would appreciate your scheduling the above referenced bill before the House Community & Regional Affairs Committee at your earliest possible convenience.

This legislation is a local option bill and provides that a city could adopt an ordinance to transfer all or a portion of the fisheries tax revenues to the borough in which the city is located (currently a city can adopt an ordinance to transfer a portion of the funds received to the borough). Additionally, the bill provides that a borough may adopt an ordinance to transfer all or a portion of the fishery tax revenue to the city in which the tax revenue was collected. A Senate Finance Committee substitute was prepared and added language to allow the Department of Revenue to make the fund transfers and payments authorized by the city or borough ordinance only if the city or borough notifies the department of the adoption of an ordinance prior to June 1, of the preceding fiscal year. This addition was simply an accounting procedure requested by the Department.

Committee Substitute to Senate Bill 317 (Finance) passed the Senate January 26, with a vote of 16 Yeas and 0 Nays.

PAF/sgn



Alaska State Legislature

(4) CSSB 317 (FIN)

House of Representatives

Committee on Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

TO: Rep. Henry Springer, Chairman, HCRA
FROM: David C. Harrison, P. A., HCRA
RE: Bill Review - CSSB 317 (FIN)
"An Act relating to payment of fisheries tax proceeds to municipalities; and providing for an effective date."
[Fischer/Kertula]

* Section 1. AS 43.75.130(e) is amended to read:

(e) Notwithstanding the provisions of (d) of this section, a city may adopt an ordinance to transfer all or a portion of the funds that it may receive [RECEIVED] under (d)(1) of this section to the borough in which the city is located.

Comments: Under (d)(1) of this section the city initiates the request to transfer all or a portion of the funds to the borough it may receive. This change in the present law reference Sec. 43.75.130 "(B) 25 percent of the amount of tax revenue collected in cities located within the borough from taxes levied by this chapter."

Under (d)(2)--

A borough may adopt an ordinance to transfer all or a portion of the funds that it may receive under (a)(3)(B) and (d)(2) of this section to the city in which the tax revenue was collected. The department shall make fund transfer and payment authorized by the transfer ordinance adopted by a city or borough under this subsection for funds payable during a fiscal year only if the city or borough notifies the department of the adoption of the ordinance before June 1 of the preceding fiscal year.

If passed the effective date of this bill is July 1, 1988.

Attachment: AS 43.75.130

S B

321

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

House C+RA 2-1-88 3:00p.m.

BILL PREPARATION/ACTION*

Bill # ^{SB} 321 (HB 360) Date Referred: 1/22/89 Out: 1 / 1
 Title: Appro. Alutians East Borough State Cr.
Zharoff Referrals: _____

CONTACTS:*****

<u>Name</u>	<u>Organization</u> <u>Address</u>	<u>Phone</u>	<u>Date Contacted</u>
<u>Zharoff</u>	<u>122 [* 2/1]</u>		
<u>DCRA - Plummer</u>	<u>P.P. - w/ sen. - get file from SCRA</u> <u>[* 2/17] send 1b2</u>		
<u>SCRA</u>	<u>req. for 3/26 ✓ send 1/28</u>		

 REMARKS: _____

ANALYSIS: Same as HB 360 Completed: ✓

MEETINGS:*****

<u>Date</u>	<u>Action</u>

(5)

HOUSE COMMITTEE REPORT 5 SB 321

Date referred: 1/22/88

FURTHER REFERRALS: Finance

FEB - 1 1988

DATE: _____

The Community and Regional Affairs Committee has considered SB 321

"An Act making a supplemental appropriation to the Organization Grant Fund for payment as an organization grant to the Aleutians East Borough; and providing for an effective date."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

[Signature] _____
[Signature] _____
[Signature] _____
 Udelheid Herrmann _____
 Heinrich Springer _____

SIGNING OTHER RECOMMENDATIONS:

Zawacki _____
 Collins _____
 Cato _____
 Herrmann _____
 Springer _____

Springer *[Signature]*
 Chairman's signature

File Contents

SB 321 - Approp: Aleutians East Borough Start-up

<u>No.</u>	<u>Description</u>
1.	Bill - SB 321
2.	Bill Review -HCRA Staff
3.	Information from Sponsor (Aleutians East)
4.	Position Paper - DCRA

SB321.FIL
1/27/88

Bill Review

SB 321 - "An Act making a supplemental appropriation to the Organization Grant Fund for payment as an organization grant to the Aleutians East Borough; and providing for an effective date."

Review:

Supplemental grants are needed from time to time based upon new borough incorporations. In this case, East Aleutian Borough was formed and its officials elected in the election of 1987.

Section 29.05.200 establishes an organization grant fund whereby supplemental appropriations based on Sec. 29.05.190 funnels transitional grants to any newly incorporated borough.

HB 360 provides for the sum of \$300,000 to be appropriated from the general fund to the organizational grant fund per AS 29.05.200. Payment under AS 29.05.190 prescribed incremental amounts from organization grant fund of:

- (1) \$300,000 for borough's 1st full or partial fiscal year
- (2) \$200,000 for borough's 2nd fiscal year; and
- (3) \$100,000 for borough's 3rd fiscal year.

HB 360 provides that the Act takes effect immediately under AS 01.10.070(c).

2 SB 321

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
TIM KELLY, Vice Chairman
RICK HALFORD
MIKE SZYMANSKI
FRED ZHAROFF

P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4989



Senate Community and Regional Affairs Committee

TO: Senate C&RA Committee

January 12, 1988

FROM: Senate C&RA Staff

A handwritten signature in dark ink, appearing to be "MEL".

RE: SB 321 - "An Act making a supplemental appropriation to the Organization Grant Fund for payment as an organization grant to the Aleutians East Borough; and providing for an effective date."

State law provides for a \$300,000 organization grant to new boroughs. Last year the Aleutians East Borough was formed after the budget was passed. The budget contained intent language instructing DC&RA to request a supplemental for any new local government formed in FY '88.

SB 321 would fund the first year's organization grant. The Governor's proposed budget contains the funding for the second year grant as required by law.

The City of Sand Point is currently fronting the borough's cost pending passage of this supplemental.



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99815 (907) 486-5259

DURING SESSION:

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Arliss Sturgulewski, Chair
Senate Community & Regional Affairs Committee

FROM: Senator Fred F. Zharoff *F. Zharoff*

DATE: January 11, 1987

SUBJ: Scheduling of Committee Hearing for SB 321

Senate Bill 321, "An Act making a supplemental appropriation to the Organization Grand Fund for payment as an organization grant to the Aleutians East Borough; and providing for an effective date" was introduced today under my sponsorship and referred to the Community & Regional Affairs Committee with an additional referral to the Finance Committee.

As you are aware, the Aleutians East Borough was created by approval of the voters in that region last October. This election establishes the borough during fiscal year 1988. Under AS 29.05.190(a)(1) a newly formed borough is entitled to a grant of \$300,000 for the borough's first full or partial fiscal year of incorporation for transitional expenses.

In addition, the Department of Community & Regional Affairs is requesting \$200,000 in their FY 89 budget proposal for the second year of the borough's incorporation.

Therefore, I respectfully request scheduling of a committee hearing on SB 321 at your earliest possible convenience in order to expedite these funds being made available to the borough to defray their transitional expenses.

My staff will prepare back-up information for the committee's use in their deliberations. Thank you and please give me a call if you have any questions regarding this request.

DEPARTMENT ISSUES DRAFT REPORT ON NEW BOROUGH

The Department of Community and Regional Affairs has sent out for review a draft of its report and recommendations on the proposed incorporation of the Aleutians East Borough.

The new borough would include the communities of Akutan, Cold Bay, False Pass, King Cove, Nelson Lagoon, Port Moller, and Sand Point. As proposed, it would contain about 27,022 square miles, including the area from Strogonof Point and Stepovak Bay on the Alaska Peninsula to and including Akutan Island. (See the adjacent map.)

A final report is expected to come out of DCRA to the Local Boundary Commission by mid-June, with reviewers and local citizens having the opportunity to contact the Local Boundary Commission with their comments or to speak up or ask questions at informational meetings in Sand Point, King Cove, and Cold Bay next week. (See the meeting notice elsewhere in these pages.)

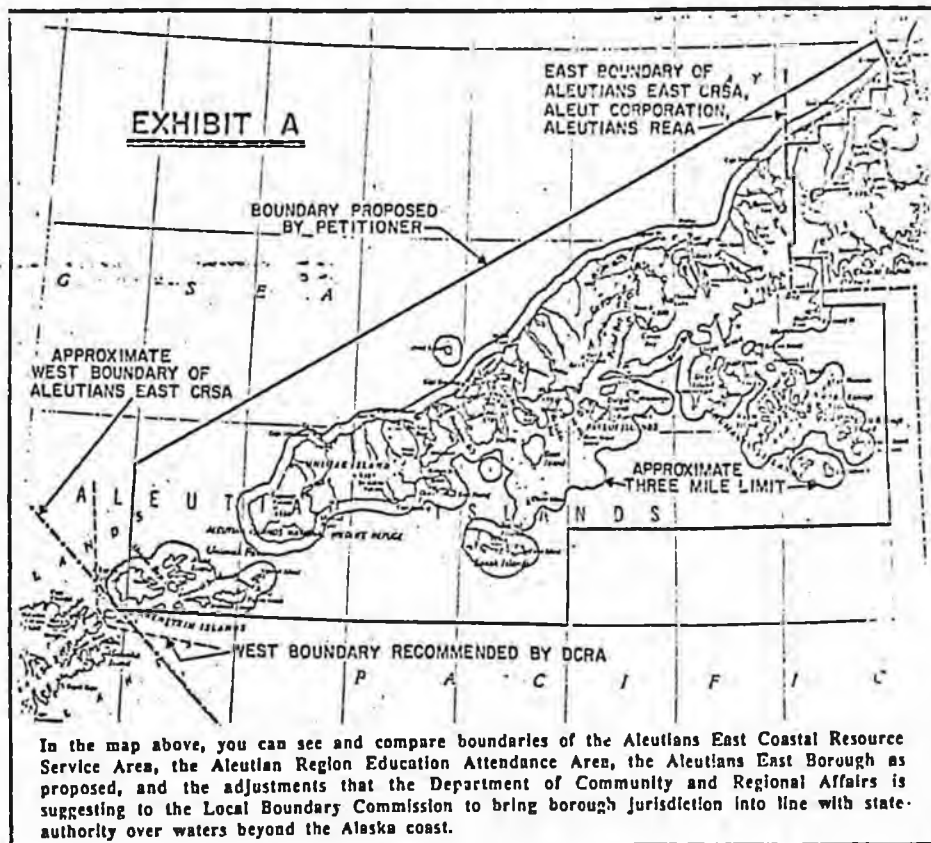
As well as recommendations, the report, required by law, includes the petitioners' reasons for wanting to incorporate and an evaluation of the petition against standards and regulations that must be met if incorporation is to be allowed, should the voters approve.

The petitioners see more local support and more options in terms of boundaries for a borough formed from local initiative as opposed to one that may be mandated for them. They believe as a borough, residents will be better able to raise the required local funding under the new foundation formula for education than would the cities within the unorganized borough. With a local government of local citizens, the interests of residents can best be served; they will have a strengthened and unified voice in dealings with state and federal governments; and the plans and decisions affecting them will be based on knowledge of the local realities.

After having evaluated the petition, staff of DCRA conclude that if incorporated, the new borough would meet the standards of having a population interrelated and integrated as to its social, cultural and economic activities and being large and stable enough to support borough government. They accept the existing land, water, air and telecommunications facilities as sufficient to allow the communication and exchange necessary for the development of integrated borough government.

The department also concludes that the economy of the area includes the human and financial resources capable of providing municipal services. In reaching this conclusion, consideration was given to the area's land use patterns, property values, total economic base, total personal income, resource and commercial development, anticipated functions, and expenses and income of the proposed borough. Further, the department concludes that there are sufficient anticipated revenues to maintain and operate, at a minimum, the mandatory powers of the proposed second class borough government; the estimates of revenue included in the petition for incorporation appear to be conservative, yet realistic.

The borough has said it will impose an area-wide sales tax of 2 percent upon



raw fish only and does not intend to promote imposition of a borough property tax. DCRA notes in its report that the new borough will face transition delays in receipt of many of its sources of income, and will have to rely principally upon the proceeds from its proposed sales tax and expected Coastal Management Program grant for initial operating funds.

In terms of boundaries, DCRA finds that, all factors considered, the boundaries proposed by the petitioners

and discussions contained in the report, the department recommends that, because approximately 60 percent of all borough revenues anticipated by the petitioners will be generated by the annual proceeds of the proposed sales and use tax, the petition be approved by the Local Boundary Commission with the stipulation that the proposed sales and use tax levy be submitted to the voters at the time the incorporation proposition is presented, and that incorporation be made dependent upon the passage of the tax

publicly noticed by the petitioners.

4. The department holds at least one public information meeting in the area proposed for incorporation.

5. The department submits a report and recommendation to the LBC on the proposed incorporation. (Above, the draft of that report has been described.)

6. The LBC holds a public hearing in the area proposed for incorporation.

7. Within 90 days of the public hearing, the LBC makes a decision to accept or reject the petition or to accept the petition with amended boundaries.

8. If approved by the LBC, the Director of the Alaska Division of Elections is notified and orders an election to determine whether borough formation shall occur, to elect initial borough officials, and (if appropriate) to provide an opportunity for voters to grant the assembly authority to impose a sales tax.

9. In compliance with Federal Voting Rights Act requirements, the department sends the incorporation proposal and proposed date of the election to the U.S. Department of Justice for approval.

10. The local election is held by mail-in ballot or conventional method (whichever is selected by the Division of Elections in accordance with AS 15.20.800) on the date ordered by the Alaska Division of Elections.

11. The election is certified and, if approved by a majority of voters, the department issues a certificate of incorporation for the new borough.

**Public Hearings
PROPOSED INCORPORATION
ALEUTIANS EAST BOROUGH**
Anchorage, King Cove, Cold Bay and Sand Point, Alaska
JUNE 9, 11, AND 12 1987

Anchorage June 9, 1:30 P.M. Anchorage MRAD Conference Room (Room 404)
949 E. 36th Avenue

Sand Point June 12, 7:00 P.M. Sand Point Municipal Building
King Cove June 12, 1:30 P.M. King Cove City Office Building
Cold Bay June 12, 7:00 P.M. Cold Bay Municipal Building

with the additional inclusion of Unalga and Baby Islands, generally conform to the natural geography of the area and comprise all areas necessary for full development of municipal services.

The department notes, however, that in fact the proposed borough's authority is limited by the state's, with waters beyond the three-mile limit beyond borough authority. The size of the proposed borough would thus be more on the order of 15,200 square miles than the 27,022 square miles described in the petition.

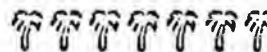
Based on its conclusions, observations

proposition.

Procedures

The procedure for borough incorporation is established in state law. The steps are as follows:

1. A petition with a supporting brief is submitted to the department.
2. The form and content of the petition are reviewed by the department to determine whether they substantially conform to the requirements of law.
3. If the form and content of the petition are substantially proper and correct, submission of the petition is



CITY OF KING COVE

P.O. Box 37 • King Cove, Alaska 99612 • (907) 497-2340

FEB 27 1987

February 23, 1987

Honorable Fred Zharoff
Alaska State Senate
Pouch V
Juneau, Alaska 99811

RE: Aleutians East Borough Formation

Dear Senator Zharoff:

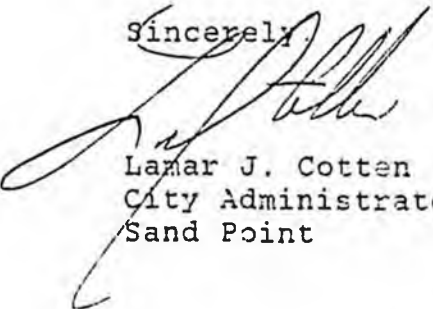
The communities of the Aleutians East region are pursuing incorporation of a borough government. As we have discussed, the region needs your support and action on two funding issues to accomplish borough incorporation. These actions are:

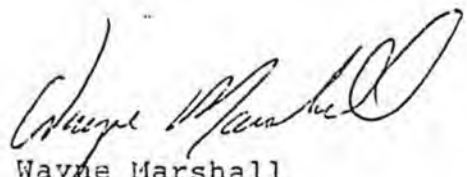
o A legislative appropriation of \$30,000 to assist the Aleutians East region in its present efforts to organize a borough government. The region has also been working with the Department of Community and Regional Affairs to obtain funds for this effort.

o A legislative appropriation of \$300,000 in the FY 88 budget for the first year organizational grant for the newly incorporated Aleutians East Borough. The award of this organizational grant is stipulated in AS 29.05.190.

The attached position papers provide supplemental information on these requests. The communities of the Aleutians East region request your support and assistance in obtaining those funds.

Sincerely,


Lamar J. Cotten
City Administrator
Sand Point


Wayne Marshall
City Manager
King Cove

1689 'C' Street
Anchorage, Alaska 99501

attachments

INCORPORATION GRANT TO THE ALEUTIANS EAST BOROUGH

Request: A Legislative appropriation of \$300,000 in the FY 88 budget for the first year organizational grant for the Aleutians East Borough. The region needs assistance from its Legislators and the Department of Community and Regional Affairs to ensure this request is included in the FY 88 budget.

Background: Residents of the Aleutians East region have decided to pursue incorporation of a borough government, and are working toward a Fall 1987 vote on this issue. If this vote is positive, the borough would be operational around January 1, 1988. AS 29.05.190 stipulates that newly incorporated borough governments shall receive a first year organizational grant of \$300,000 from the State. The Department of Community and Regional Affairs is responsible for disbursing these grant funds.

Need for and use of \$300,000 Grant: The Borough will use the \$300,000 it is stipulated to receive by Alaska Statutes to meet initial year operating costs of the Borough. The monies will be needed around January 1, 1988, so they must be requested in the State FY 88 budget.

In addition, AS 29.05.190 stipulates a second year organization grant of \$200,000, and a third year organizational grant of \$100,000. These monies will be needed in the State FY 89 and FY 90 budgets respectively.

ORGANIZATION OF THE ALEUTIANS EAST BOROUGH

REQUEST:

Award of \$30,000 to assist the communities of Akutan, Cold Bay, False Pass, King Cove, Nelson Lagoon, and Sand Point in their present efforts to organize a borough government for the Aleutians East region. The region requests a legislative appropriation of funds from the Department of Community and Regional Affairs for this purpose.

BACKGROUND:

Over the last 2-3 years, residents of the Aleutians East region have examined and analyzed establishing a borough government as a way to enhance local control and service delivery, particularly because of the anticipated decline in state and federal monies to the region. At a February 3, 1987 meeting in Anchorage, leaders from each of the region's six communities (at least three representatives from each community) decided to pursue forming a borough. The region is preparing the required petition that states its intent to establish a borough and working toward a Fall 1987 vote on this issue.

Community leaders have decided to pursue forming a borough. These leaders have identified the need to establish a committee of one representative from each community to travel to each of the region's communities. This travel will give the representatives an opportunity to describe their decision, demonstrate that it is a region-wide harmonious decision, and respond to questions. The committee would like to start its travel in March, and needs funds to accomplish this effort.

In addition, Alaska Statutes dictate a complex process to establish a borough government. A petition must be submitted, the petition is analyzed and acted upon by the State Local Boundary Commission, meetings must be held and finally there is a local vote on if a borough should be established. This process will take 6-9 months and funds to accomplish.

Thus, the \$30,000 requested would be used to:

- o enable travel of the borough organizing committee to each community;

- o prepare and submit the required organizing petition;
- o conduct public information meetings in the communities on borough incorporation;
- o prepare public information materials; and
- o respond to questions of the Local Boundary Commission on incorporating the borough.

The Aleutians East Coastal Resource Service Area (CRSA) would be the best organization to administer these funds.



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259
DURING SESSION:
P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

(3) SB 321

JAN 25 1988

FM
CRA

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

22 January, 1988

MEMORANDUM:

TO: Representative Springer, Chairman
House C&RA Committee

FROM: Senator Fred Zharoff

M.T. for FZ

I would like to thank you for your prompt scheduling consideration for SB 321 "An act making a supplemental appropriation to the organization grant fund for payment as an organization grant to the Aleutians East Borough; and providing for an effective date".

Under As 29.05.190 (a) (1), a newly formed borough is entitled to a grant of \$300,000 for the borough's first full or partial fiscal year of incorporation. The Aleutians East Borough was formed during the interim, October 23rd, 1987, and is currently operating on a loan from the community of Sand Point pending receipt of its organizational grant. Prompt scheduling of this measure will help expedite transitional expense funding for the new borough.

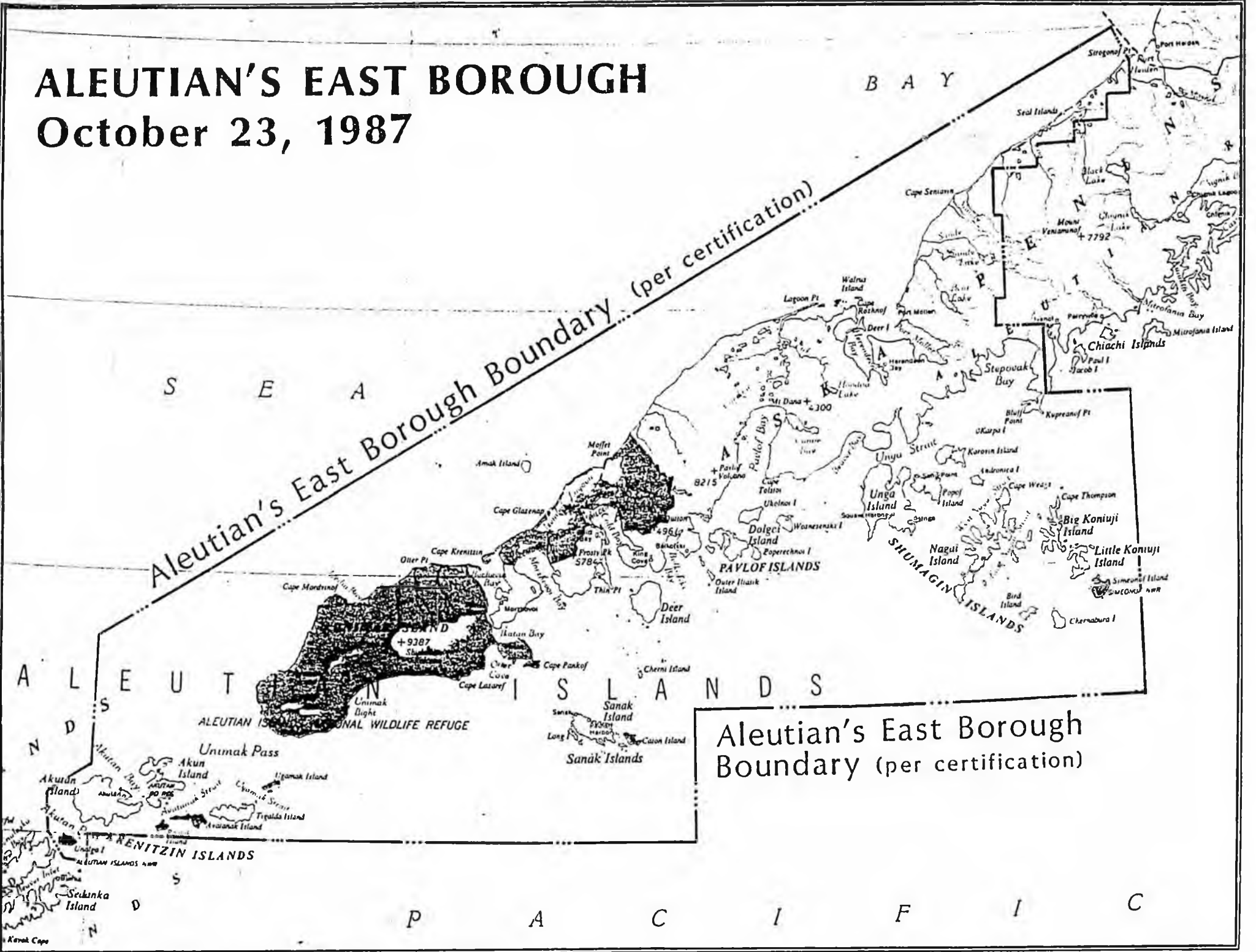
Attached you will find back up material relating to this measure, and Michael Thill of my staff will be available to discuss this issue with either yourself or your staff.

Thank you.

ALEUTIAN'S EAST BOROUGH

October 23, 1987

Aleutian's East Borough Boundary (per certification)



Aleutian's East Borough Boundary (per certification)

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

- P.O. BOX B
JUNEAU, ALASKA 99811-2100
PHONE: (907) 465-4700
- 949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

January 12, 1988

POSITION PAPER

RE: Senate Bill 321

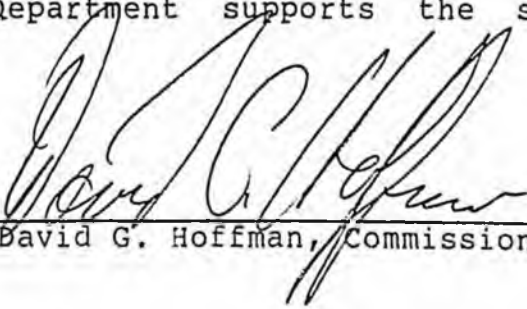
SPONSOR: Zharoff

Program Effects of Bill

The Organization Grant Fund is established in the Department of Community and Regional Affairs under AS 29.05.200. AS 29.05.190 provides that a newly incorporated borough is entitled to receive an organizational grant of \$300,000 for its first year of existence, of \$200,000 for its second year, and of \$100,000 for its third year of existence. On October 6, 1987, the residents of the Aleutians East Borough voted in favor of borough formation. The election was certified on October 23, 1987. This bill would appropriate money to the Organization Grant Fund for the payment of an organization grant to the Aleutians East Borough.

Comments

While a request for this funding will be made in the Governor's supplemental budget request, the borough is in need of these organizational funds. The Department supports the speedy passage of this appropriation.



David G. Hoffman, Commissioner

AGENCY: DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS
 CATEGORY: DEVELOPMENT

PROGRAM: COMMUNITY ASSISTANCE GRANTS
 SUB-PROGRAM: ORGANIZATIONAL GRANTS

LEG. FIN.

* * * FY89 GOVERNOR (DMB NOTES) * * *

DETAIL DESCRIPTION OF VETOS, TRANSFERS, INCREMENTS, & DECREMENTS

CHANGES FROM FY88 AUTHORIZED TO FY89 GOVERNOR

REF#	DESCRIPTION	AGENCY / GOVERNOR				LINE ITEM IMPACT									
		PFT	PPT	TOTAL	GEN FUND	OTHER	100	200	300	400	500	600	700	800	
2220 DELETE ONE-TIME ITEMS															
AGY:	0.0	0.0	-100.0	-100.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-100.0	0.0
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3010 GRANT TO ALEUTIAN'S EAST BOROUGH															
AGY:	0.0	0.0	200.0	200.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	200.0	0.0
GOV:	0.0	0.0	200.0	200.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	200.0	0.0

* * * PROGRAM DESCRIPTION & PRIOR YEAR INFORMATION * * *

FY88 INTENT: IT IS THE INTENT OF THE LEGISLATURE THAT THE DEPARTMENT REQUEST A SUPPLEMENTAL APPROPRIATION SHOULD ANY NEW CITY AND/OR BOROUGHS FORM DURING FISCAL YEAR 1988.

AGENCY RESPONSE: ONLY ONE MUNICIPAL GOVERNMENT, THE ALEUTIANS EAST BOROUGH, HAS FORMED TO DATE DURING FY88. THE BOROUGH WAS INCORPORATED ON OCTOBER 23, 1987. THAT BOROUGH IS ENTITLED TO \$300,000 IN ORGANIZATIONAL GRANT FUNDS FOR THIS FISCAL YEAR, \$200,000 THE SECOND YEAR, AND \$100,000 THE THIRD YEAR. ON OCTOBER 30, 1987, COMMISSIONER HOFFMAN REQUESTED THAT GOVERNOR COWPER INCLUDE \$300,000 FOR THIS GRANT IN THE GOVERNOR'S SUPPLEMENTAL BUDGET REQUEST FOR FY88. THE COMMUNITY OF ATKA PETITIONED TO INCORPORATE AS A SECOND CLASS CITY. PURSUANT TO AS 29.05.180, AN INCORPORATING COMMUNITY IS ENTITLED TO A \$50,000 ORGANIZATIONAL GRANT IN THE FISCAL YEAR IT IS FORMED, AND \$25,000 THE FOLLOWING YEAR.

08-18-01-07-00 (21-72-3-06-05-00)

STATE OF ALASKA -- COMPONENT BUDGET SUMMARY

SALSFRHA 15:48 12/29/87

AGENCY: DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS
 CATEGORY: DEVELOPMENT

PROGRAM: COMMUNITY ASSISTANCE GRANTS
 SUB-PROGRAM: ORGANIZATIONAL GRANTS

LEG. FIN.

----- F I S C A L Y E A R 1 9 8 9 -----

EXPENDITURES & FUNDING	(01) FY87 ACT	(19) FY88 CC	(03) COL 03	(04) COL 04	(02) FY88 ATH	(06) COL 06	(20) FY89 AGY	(08) FY89 GOV	(09) HOUSE	(10) SENATE	(11) C. C.	(12) BILLS	(13) LEG.REC.
01 PERS. SERV.													
02 TRAVEL													
03 CONTRACTUAL													
04 COMMODITIES													
05 EQUIPMENT													
06 LANDS/BLDGS													
07 GRANTS, CLMS	200.0	100.0			100.0		200.0	200.0					
08 MISC.													
** TOTAL EXPEND	200.0	100.0			100.0		200.0	200.0					
09 I-A TRANSFER													
1004 GEN FUND	200.0	100.0			100.0		200.0	200.0					
15 FULL TIME													
16 PART TIME													
17 TEMPORARY													
18 STAFF MONTHS													

1 DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS (CONT.)

2 **FY 88 INTENT**

3	ALLOCATIONS	APPROPRIATION ITEMS	APPROPRIATION GENERAL FUND	APPROPRIATION OTHER FUNDS	FUND SOURCES
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1 DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS (CONT.)

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CERTIFICATE

I, DAVID G. HOFFMAN, COMMISSIONER OF THE ALASKA DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS, HEREBY CERTIFY THAT THE ALEUTIANS EAST BOROUGH HAS BEEN DULY INCORPORATED UNDER THE LAWS OF THE STATE OF ALASKA AS DESCRIBED HEREIN EFFECTIVE THE 23rd DAY OF OCTOBER, 1987.

CLASS. The Aleutians East Borough is incorporated as a borough of the second class.

COMPOSITION, APPORTIONMENT AND FORM OF REPRESENTATION OF THE BOROUGH ASSEMBLY. The borough assembly is composed of seven members elected from districts by voters of each district. District 1, encompassing Sand Point, is apportioned three seats on the assembly. District 2, encompassing King Cove, is apportioned two seats on the assembly. District 3, encompassing Cold Bay, is apportioned one seat on the assembly. District 4, encompassing Akutan, False Pass, Port Moller and Nelson Lagoon, is apportioned one seat on the assembly. The composition, apportionment and form of representation shall continue in the fashion described until it is changed in accordance with local, state and federal law.

POWERS. The Aleutians East Borough may exercise all powers and must perform all duties which state law provides generally for municipal governments and specifically for boroughs of the second class. In addition, having received approval from the voters on October 6, 1987, the borough may levy a sales and use tax not to exceed two percent on sales and/or importation of raw fish within the boundaries of the borough.

JURISDICTIONAL BOUNDARIES. The jurisdictional boundaries of the Aleutians East Borough are as follows:

All of that territory along the Alaska Peninsula and the Aleutian Chain lying:

- 1) west of a line beginning at the point of intersection of 57° 00' North Latitude and the extension of a line due north from the NW corner T38S, R60W, Seward Meridian (SM); thence due south to the NW corner T40S, R60W, SM; thence west to the NW corner T40S, R61W, SM; thence south to the SW corner T40S, R61W, SM; thence west to the NW corner T41S, R63W, SM; thence south to the NW corner T42S, R63W, SM; thence west to the NW corner T42S, R65W, SM; thence south to the NW corner T43S, R65W, SM; thence west to the NW corner T43S, R67W, SM; thence south to the SW corner T44S, R67W, SM; thence east to the NW corner T45S, R67W, SM; thence south along the line separating R67W and R68W, SM to the SW corner of T48S, R67W, SM; thence west to the NW corner of T49S, R68W, SM; thence south to the NE corner of T50S, R69W, SM; thence east to the NE corner of T50S, R67W, SM; thence south along the line separating R66W and R67W, SM, to the

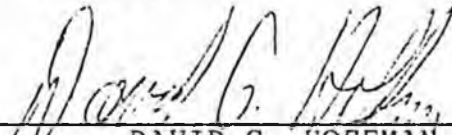
00' West Longitude; thence southerly along
159° 00' West Longitude to 54° 00' North
Latitude; and

2) east of a line mid-channel through Unalga
Pass, extending northerly mid-line between
Unalga and Unalaska Islands and extending
southerly mid-line between Unalga and Sedanka
Islands;

With respect to the water areas, the boundaries of the
Aleutians East Borough extend to the limits of the
State's jurisdiction under AS 44.03.010. The territory
described above contains 15,405 square miles, more or
less, all in the Third Judicial District, State of Alaska.

These boundaries shall remain as described until changed in
accordance with law.

SIGNED THIS 23rd DAY OF OCTOBER, 1987

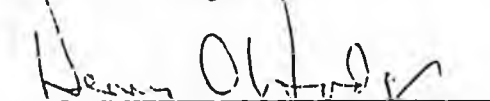


DAVID G. HOFFMAN

ACKNOWLEDGMENT

STATE OF ALASKA)
) SS.
)

This is to certify that on the 23 day of October,
1987, before me, the undersigned, a Notary Public, duly
commissioned and sworn as such, personally came
David G. Hoffman, to me known to be the Commissioner of the
Alaska Department of Community & Regional Affairs, who signed
this foregoing Certificate of Incorporation of the Aleutians
East Borough.



Notary Public

My commission expires: 12/9/1987

IN THE MATTER OF THE PETITION)
FOR INCORPORATION OF THE)
ALEUTIANS EAST BOROUGH)

SUMMARY OF PROPOSED ACTION

A petition to incorporate the eastern Aleutians region as a second class borough was submitted to the Alaska Department of Community and Regional Affairs (the department) on May 7, 1987.

The area requested for incorporation by the petitioners comprises approximately 27,022 square miles, containing approximately 8,768 square miles of land and 18,254 square miles of water. It includes the territory from Strogonof Point and Stepovak Bay on the Alaska Peninsula to and including Akutan Island. The area's permanent population is centered in the communities of Akutan, Cold Bay, False Pass, King Cove, Nelson Lagoon, Port Moller and Sand Point.

The proposed borough is located principally within the Aleutian Regional Educational Attendance Area (REAA), the Aleutians East Coastal Resource Service Area (CRSA), and the Aleut Corporation Region. However, relatively small portions of the territory extend into the Lake and Peninsula REAA, the Bristol Bay CRSA and the Bristol Bay Native Corporation Region.

Much of the area appears to be beyond the jurisdiction of the state and, as a consequence, beyond the jurisdiction of the proposed borough. It is commonly understood that provisions contained in Alaska Statutes, Section 44.03.010 generally limit the jurisdiction of the state and its subdivisions to an area three geographical (nautical) miles (18,228 feet) seaward of the land. The area proposed for incorporation lying within three geographic miles of the mainland is estimated to be approximately 15,206 square miles, comprised of 8,768 square miles of land and 6,438 square miles of water.

Subsequent to the submission of the petition, the representatives of the petitioners requested in writing that consideration be given to extending the western boundary of the proposed borough to include Unalga Island and the Baby Islands. This additional land and surrounding waters comprise approximately 199 square miles.

Following the receipt of additional materials from the petitioners on May 15, 1987, the petition was determined by the department to be acceptable in terms of form and content. The department's draft report and recommendation to the Local Boundary Commission (LBC or the commission) was issued on May 26, 1987. More than 60 copies of the report or its executive summary were printed and provided to individuals or organizations who had expressed interest in the proposed action. All who received copies were asked to contact the department no later than June 12, 1987 with comments.

Duly noticed public informational meetings were conducted by department staff in Anchorage on June 9, in Sand Point on June 11, and in King Cove and Cold Bay on June 12. At the meetings, staff solicited comments from interested parties regarding the proposed borough incorporation and provided information regarding the incorporation process and standards for borough incorporation.

On June 26, 1987 the LBC convened a public hearing in Cold Bay which was teleconferenced to Sand Point, King Cove and Valdez.

Testimony was received by the commission regarding the proposed incorporation. In order to provide additional opportunity for consideration of comments, the LBC allowed additional written comments to be submitted for the record through noon of July 2, 1987.

A decisional session was held July 8, 1987. All four of the presently appointed members of the commission attended and participated in the decisional session. These consisted of Robert Eder (Chairman), David Hanson, Jo Anderson and C.B. Bettisworth. The seat on the commission appointed from the Second Judicial District of the State of Alaska is presently vacant.

Based upon the oral testimony and written materials submitted in regard to this matter, the commission makes the findings of fact and conclusions of law set out below. Written materials specifically included the following:

- 5/07/87 Petition for incorporation and initial brief; petitioners' supplemental briefs of 5/15/87, 6/12/87, 6/26/87, 7/2/87 (re: Strogonof Point) and 7/2/87 (re: Stepovak Bay);
- Resolution 87-41 of the City of Unalaska.
- 5/28/87 telegram from Trefon Angasan, Secretary, Alaska Peninsula Corporation;
- 6/2/87 letter from Karen Van Wingerden, Secretary - Treasurer, Bay View Corporation;
- 6/3/87 letter from Donald Nielsen, Senior Vice President of the Bristol Bay Native Corporation;
- 6/5/87 letter from Trefon Angasan;
- 6/9/87 letter from Pamela Christensen, City Clerk, City of Port Heiden City Council;
- 6/9/87 comments submitted at the department's informational meeting by Trefon Angasan;
- 6/9/87 statement presented at the department's informational meeting by the Bristol Bay Native Corporation;
- 6/9/87 letter from Samuel J. Fortier, Attorney representing the Bay View Corporation;
- 6/9/87 letter from Samuel J. Fortier, Attorney representing the Oceanside Corporation;
- 6/10/87 letter from John Hedland, Attorney representing Lake and Peninsula REAA;
- 6/10/87 letter from Tom Hawkins, Director, Division of Lands, Alaska Department of Natural Resources;
- 6/11/87 letter from Alice Ruby Chairperson, Bristol Bay CRSA Board;
- 6/12/87 Petitioners' supplemental brief;
- 6/16/87 Department Report and Recommendation;
- 6/22/87 letter from John Hedland;
- 6/23/87 letter from Debra Dushkin, Sand Point resident;
- 6/23/87 letter from Dick Jacobson, President of Shumagin Village Corporation;
- 6/23/87 letter from Jack Foster, Mayor, City of Sand Point;
- 6/24/87 letter from Reeve Aleutian Airways, Inc.;
- 6/24/87 memorandum from Nelda Warkentin; department planning supervisor;
- 6/24/87 letter (to Dan Bockhorst) from Julia Bockman, Attorney representing Bristol Bay Native Corporation;
- 6/24/87 letter (to Local Boundary Commission) from Julia Bockman;
- 6/25/87 letter from Wayne Lewis, Acting Land Director, The Aleut Corporation;

- 6/25/87 letter from Lamar Cotten, City Administrator, City of Sand Point;
- Resolution Number 87-15 of the City of Chignik;
- 6/25/87 memorandum from Dan Bockhorst offering comments of Justine Gundersen;
- 6/25/87 memorandum from Dan Bockhorst offering comments of Chuck Martinsen;
- 6/26/87 letter from Sam Fortier, attorney representing Bay View, Incorporated;
- 6/26/87 letter from Sam Fortier, attorney representing Oceanside, Incorporated;
- 6/26/87 letter from Sam Fortier, attorney representing the Alaska Peninsula Corporation;
- 7/1/87 letter from Stephen R. Braund & Associates;
- 7/2/87 letter from Lamar Cotten with attachments;
- 7/2/87 letter from Alaska Federation of Natives, Inc.;
- 7/2/87 letter from Samuel Fortier;
- 7/2/87 letter from Samuel Fortier;
- 7/7/87 letter from James L. Baldwin, Assistant Attorney General, State of Alaska.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. POPULATION OF THE AREA

Section 29.05.031(a)(1) of the Alaska Statutes requires, as a standard for borough incorporation, that the population of the area be interrelated and integrated as to its social, cultural and economic activities, and that it be large and stable enough to support borough government.

According to regulatory standards for incorporation, (19 AAC 10.160(1) and (4)), there must be "at least 1,000 people located within the area" and the area must include "at least two separate communities."

a. Size of the Population

The petition for incorporation indicates that the region's population totals 2,017. The majority of these residents are located in the communities of Sand Point, King Cove, Cold Bay, Akutan, Nelson Lagoon and False Pass. State population estimates and Federal decennial census figures generally support this estimate. No question exists that the population of the area exceeds the required minimum of 1,000 residents. Therefore, the commission finds that the minimum population standard established under provisions of 19 AAC 10.160(4) is met and that the area proposed for incorporation possesses a population large enough to support borough government.

b. Stability of the population

Available census data suggests that the region possesses a relatively stable core group of residents. It appears that there has been a tendency for the population of the region to concentrate in the larger communities in recent years. Therefore, the commission finds that the area proposed for incorporation possesses a population stable enough to support borough government.

c. Number of Existing Communities

Regulations require that there be at least two separate communities within the region proposed for incorporation as a borough [19 AAC 10.160(1)]. The region includes the communities of King Cove and Sand Point (first class cities); Akutan and Cold Bay (second class cities); and Port Moller,

Nelson Lagoon and False Pass, (unincorporated communities). Therefore, the commission finds that the requirement of 19 AAC 10.160(1) is met.

d. Social, Cultural and Economic Characteristics of the Region's Population

The indigenous people of the region share a history and culture. The Russian Orthodox religion is shared by many of the Aleut people residing in the region. Relatively recent events of social and cultural significance include the forced relocation of the Aleut residents of Akutan during World War II, the transition from a primarily subsistence based economy to a primarily cash based economy over the past thirty years and the manifold changes which have occurred as a consequence of the passage of the Alaska Native Claims Settlement Act in 1971. The formation of city governments in four of the communities located within the area proposed for incorporation during the past forty years has also been a cause and an effect of the region's recent social and cultural evolution.

The fact that the area has traditionally been regarded as interrelated as well as socially and culturally integrated is supported by the regional governmental, educational and economic organizations which serve the area proposed for incorporation. For example, all of the permanent communities within the region are within the boundaries of the ANCSA Aleut Corporation, the Aleutians East CRSA and the Aleutian REAA.

Thus, the commission finds that the population of the area proposed for incorporation is interrelated and integrated as to its social, cultural, and economic activities.

e. Social, Cultural and Economic Characteristics of the Users of the Territory East of the Common Eastern Boundary of the Aleutians East CRSA, the Aleutian Region REAA and the Aleut Corporation

The commission received substantial comments objecting to the extension of the boundaries of the proposed borough beyond the common eastern boundary of the Aleutians East CRSA, the Aleutian Region REAA and the Aleut Corporation (hereinafter referred to as the common eastern boundary). Among the reasons stated as objections to the inclusion of the area beyond the common eastern boundary was that ownership, historic cultural ties and current use of the land was predominately linked to residents of the Bristol Bay/upper peninsula region rather than residents of the proposed borough. Such considerations included subsistence activities, native allotments, historic sites, and lands owned by village corporations.

To the extent that the standard for borough incorporation concerning the population of the area also relates to the determination of boundaries of the proposed borough, the commission considered the social, cultural and economic characteristics of the "population" within the proposed borough but beyond the common eastern boundary. Because this area is believed to be uninhabited, "population" was defined to include users of the area.

In acting on this matter, the commission was very deliberate in its intention to avoid establishment of a boundary which would clearly necessitate change in the event of the subsequent incorporation of a borough immediately to the east.

With respect to commercial fishing activities, the commission acknowledged that the offshore waters in the area of concern on the north side of the Alaska Peninsula (along Stroganof Point)

are predominately used by commercial salmon fishermen who reside within the proposed borough. This area, as well as most of the rest of the area within the proposed borough, is part of the Alaska Department of Fish and Game Salmon Management Area M during the predominant commercial harvest of salmon. With the exception of Akutan, all of the communities of the proposed borough are included in Management Area M. Although Akutan lies outside the Management Area, its fishermen generally serve as crews on boats in the area.

Port Heiden, which is also within Salmon Management Area M, was not included in the boundaries proposed by the petitioners. The principal rationale for the exclusion is that residents of Port Heiden have greater cultural and social ties to areas outside the territory proposed for incorporation. As such, the northeastern boundary of the proposed borough conforms approximately to the eastern boundary of the Ilnik Section of Salmon Management Area M [5 AAC 09.200(a)(3)].

The commission also acknowledged that the area on the south side of the Alaska Peninsula (Stepovak Bay) is, for commercial salmon fishing activities, used exclusively by residents of the proposed borough. The southeastern boundary proposed by the petitioners includes all of Stepovak Bay, but excludes the unincorporated communities of Ivanof Bay and Perryville. The rationale here is similar to the rationale concerning the proposed northeastern boundary. Alaska Department of Fish and Game data indicate that Stepovak Bay is fished exclusively by Area M fishermen. Residents of Ivanof Bay and Perryville fish other management areas.

These waters offshore of Strogonof Point and Stepovak Bay are understood to be significant with respect to the financial viability of the proposed Aleutians East Borough. The commission acknowledged, of course, that current formulas for sharing State business fisheries taxes with municipalities could change in the future. However, there appears to be enough resources available to the area from which other forms of municipal revenue may be derived.

The commission also discussed cultural and social uses of this land and water area. Consideration was given to the historic and current use of the land and the impact that borough incorporation would have on current land use. Land ownership and development in the area were also discussed. The importance of linking the offshore area with the uplands was also considered by the commission.

A motion by the commission to amend the boundaries of the proposed borough to delete all of the uplands east of the common eastern boundary was considered by the commission. The reason the motion was considered was the contention that the uplands beyond the common eastern boundary were predominately linked to residents of the Bristol Bay/upper peninsula region rather than residents of the proposed borough. However, because of the importance of the water area to the financial viability of the proposed borough and the importance of linking the water with the uplands, the motion was defeated by a vote of three to one. Commission member Dave Hanson cast the one vote in support of the proposed amendment.

Thus, the commission finds that the social, cultural and economic characteristics of the users of the territory east of the common eastern boundary do not warrant exclusion of this territory from the proposed borough.

f. Social, Cultural and Economic Characteristics of the Users of Unalqa Island and the Baby Islands

The commission understands that the land on the islands is predominately owned by the Akutan Village Corporation and that residents of Akutan use the islands for subsistence purposes. The commission is aware of concerns expressed by the City of Unalaska that residents of Unalaska also use these islands for subsistence purposes. The City of Unalaska also expressed concern that to include these islands and the adjacent waters would place the boundary of the borough within six miles of the boundary of the city.

The commission finds that proximity of the borough's boundary to the boundary of the city which would result from the inclusion of these islands and adjacent waters would not adversely affect the City of Unalaska. The commission further finds that based upon land ownership and land use activities, it is appropriate to include the subject area within the boundaries of the proposed borough.

CONCLUSION OF LAW

Given the above findings of fact, the commission concludes that the population of the area proposed for incorporation, (including on the west, the territory to a line extending southerly mid-line between Unalga and Sedanka Islands) is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government. Thus, the standards set out in law for incorporation of boroughs which relate to population are satisfied.

2. TRANSPORTATION FACILITIES

Section 29.05.031(a)(4) of the Alaska Statutes imposes as a standard for borough incorporation that the land, water and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government.

Regulatory standards for borough incorporation, [19 AAC 10.160(2)] provide that "transportation services (must be) available at least once a week between communities located within the area on a regularly scheduled or charter basis, or communities located within the area which do not have regularly scheduled transportation services (must be) connected by a highway system."

a. Air and Water

According to the Aleutians East Conceptually Approved Coastal Management Plan, (July, 1985) the region depends entirely on air and water transportation. Supplies are shipped to the region via air or marine transport. "Most local fishery resources are shipped to market, though some are air freighted. Despite the dependence on air transport, all the region's air facilities are inadequate except at Cold Bay. Sand Point and King Cove have satisfactory harbor facilities, but they are overcrowded, and expansion is a major priority." In fact it appears that future economic development depends largely on improvement of existing and new transportation facilities.

Reeve Aleutian Airways provides scheduled air service throughout the region. It utilizes both turboprop and jet aircraft and has seasonal schedules. It flies regularly to Sand Point and Cold Bay and contracts with Peninsula Airways in Cold Bay, to provide connecting service to King Cove and False Pass. Additionally, Peninsula Air offers charter service to locations within the region and from points within the region to other areas of the state.

Thus, the commission finds that transportation services are available at least once a week between all communities located within the area on a regularly scheduled or charter basis and that the standard set out in 19 AAC 10.160(2) has been met.

b. Telecommunications

The LBC has determined that telecommunication technology and capability within the region should also be considered in examining this standard. In conducting its hearing on June 26, 1987, the commission had the opportunity to view first hand the telecommunications capability within the region. The commission finds that the current availability of telecommunications within the area proposed for incorporation is such that it enhances the communication and exchange necessary for the development of integrated borough government.

CONCLUSION OF LAW

Given the above findings of fact, the commission concludes that the telecommunications capabilities and the land, water and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government. Thus, the standards set out in law for incorporation of boroughs which relate to transportation are satisfied.

3. ECONOMY

Section 29.05.031(a)(3) of the Alaska Statutes imposes as a standard of borough incorporation that the economy of the area include the human and financial resources capable of providing municipal services. The law provides further that the evaluation of the economy must include land use patterns, property values, total economic base, total personal income, resource and commercial development, and anticipated functions, expenses and income of the proposed borough.

State regulations also require a determination as to whether there are sufficient anticipated revenues to maintain and operate, at a minimum, the mandatory powers of the proposed borough government [19 AAC 10.160(3)] and whether the proposed borough is capable and willing to provide mandatory powers within three months of incorporation [19 AAC 10.170].

a. Land Use Patterns

The major private land owners in the region are the Aleut Regional Corporation and village corporations established through ANCSA. This act provided that the Aleut Regional Corporation receive the subsurface estate of village corporation land. The Aleut Corporation is entitled to some 1,450,763 village subsurface acres. Approximately half of this acreage is in the Aleutians East Region. Entitlements of village corporations based within the proposed Aleutians East Borough total several hundreds of thousands of acres. Village corporations based outside the proposed Aleutians East Borough also have entitlements of several thousands of acres within the proposed borough.

It should be noted here again that the area proposed for incorporation includes seven communities and 2,017 residents. Land ownership and use activities within these seven communities is typical of many rural communities throughout the state.

Thus, the commission finds that the land ownership and land use patterns are comparable to other rural areas of the state which are organized as regional municipalities. The commission also finds that the land use patterns in the area proposed for incorporation reflect a regional unity and these patterns would not diminish the borough's ability to exercise municipal jurisdiction. These lands are found to be in need of and capable of supporting the provision of municipal services.

b. Economic Base

Clearly, the world class fisheries resources in the general vicinity of the region provide the economic foundation of the area. Data compiled by the Institute of Social and Economic Research (ISER, Nabesky, et al. 1983), indicate that the area's economic base is ample enough to support a borough government. This data suggest that in 1980 the fishing industry accounted for nearly 60% of the total full-time equivalent jobs in the region. It is expected that bottomfishing will expand the fishing industry into a year-round enterprise, thereby enhancing and stabilizing the local economy of the region, and hence the economic viability of the proposed borough.

Thus, the commission finds that the economy of the area is strong and is considered suitable for the support of municipal government.

c. Property Values

The current estimated combined value of real and personal property within the territory proposed for incorporation is \$124,037,500. Of the total reflected in this estimate, all but \$25,000,000 is in King Cove or Sand Point. Therefore, the estimated \$99,037,500 combined real and personal property valuation within the two first class cities represents a per capita average combined real and personal property tax value of \$68,776.04 in each of those communities. The estimated \$25,000,000 combined real and personal property value within the remainder of the area proposed for incorporation represents an estimated per capita valuation of \$43,327.55.

When compared with per capita real and personal property valuations of existing regional municipalities, the valuation appears approximately equivalent to most. The proposed Aleutians East Borough per capita values for real and personal property valuation is the median for all regional governments in the State of Alaska.

Thus, the commission finds that the property values of the area are considered suitable for and capable of supporting the proposed borough.

d. Personal Income

Federal census data (1980) and estimates provided by the petitioners of 1980 average family (household) income in the area proposed for incorporation are as follows:

COMMUNITY	1980 FEDERAL CENSUS	PETITIONERS' ESTIMATE
Sand Point	\$86,248	\$47,951
King Cove	\$30,924	\$37,533
Cold Bay	\$32,391	\$37,247
False Pass	\$34,226	\$30,396
Akutan	\$ 5,326	\$ 5,833
Nelson Lagoon	\$ 7,082	NA

The federal census data indicate that aggregate income in each of the six communities listed above totaled \$15,954,870 in 1980. The data indicate further that 310 families lived in these communities. Based upon this information, the average family income in the region in 1980 was \$51,467. This compares to a statewide average family income of \$32,688 (1980 federal census). Thus, the commission finds that the personal income of the area residents is considered capable of supporting the proposed borough.

e. Resource and Commercial Development

Nearly all of the resource and commercial development which has occurred in the region has been directly related to harvesting and processing the area's fish. The area appears to have the potential for a more diversified economy based upon extraction of minerals, oil and gas.

Thus, the commission finds that the level of resource and commercial development within the region, when compared with other Alaska boroughs, appears to be adequate to support borough government.

f. Anticipated Functions, Revenues and Expenses

Anticipated functions

Initially, the borough will exercise only the three powers required by law of regional municipalities (education, tax collection and planning).

Projected Revenues

The petition for incorporation projects the following operating revenues for the first year of operation:

State Organizational Grant	\$ 300,000
State Municipal Assistance	17,550
State Revenue Sharing	42,778
State Coastal Management Grant	50,000
State Raw Fish Tax	421,000
Other State Shared Taxes	7,000
Borough Sales Tax (2%)	<u>712,000</u>
 Total	 \$1,550,328

Upon examination, the LBC considers that the revenues estimated in the petition are generally accurate and reasonable. The following notations provide insight to this conclusion.

- o. Organizational Grant: Under existing statutes, (AS 29.05.190) there exists provision for borough organizational grants of \$300,000 for a newly incorporated borough's first full or partial fiscal year, \$200,000 for the borough's second fiscal year and \$100,000 for the borough's third fiscal year. The petitioners have reflected anticipation of this organizational grant funding (\$300,000) in their proposed budget. However, the First Session of the Fifteenth Alaska Legislature did not allocate funding for organizational grants to any boroughs which may incorporate during FY'88. If the borough incorporates, the department will seek a supplemental appropriation to fund this obligation. It does not appear that such funding will be available to the borough immediately upon incorporation.

- ° State Municipal Assistance: Funds under this program are expected to be distributed after June 1, 1988.
- ° State Coastal Management Grant: The petitioners anticipate Coastal Management Program funding. It is likely that FY 88 funds for the region will be transferred to the borough upon assumption of planning powers. The petitioners' estimate of the level of funding is considered to be conservative.
- ° State Revenue Sharing: Program funds will not be distributed to the borough until the fiscal year beginning July 1, 1988.
- ° Fisheries Business Tax Refunds: The estimate of \$421,000 for a full year appears to be conservative. However, initial distribution of funds under this program will not be made to the borough until after July 1, 1988, and then only for the tax revenues collected during calendar year 1987 (likely to be November and December only). Thus, the estimate contained in the budget, as it relates to the initial twelve months, is considered to be overstated.
- ° Other State Shared Taxes: The commission has reviewed this estimate and believes that it is a reasonable estimate for a full twelve month period.
- ° Borough Sales and Use Taxes: The petitioners have estimated revenues from proposed 2% sales and use taxes to total approximately \$712,000. This would exempt all transactions except raw fish. Since commercial fishing in the proposed borough is largely a year-round activity, tax revenues collected under this measure will accrue immediately upon implementation of the taxes. Implementation of the taxes would require voter approval of a referendum granting the power to tax, as well as the adoption of an ordinance by the assembly levying the tax. The petitioners' estimate of tax revenues, assuming the tax is levied, appears to be even more conservative than the petitioners' estimate of business fisheries tax revenues.

In the event a sales and use tax is not levied, the commission notes that the borough could generate revenue equivalent to that projected to be raised by the sales and use tax through a 5.7 mill tax on real and personal property. This calculation is based upon the estimated \$124,037,500 in taxable property within the area proposed for incorporation. The commission recognizes, however, that the administration of a property tax would increase somewhat the anticipated operating expenses of the proposed borough.

The commission notes that transition delays inherent in most of the sources of revenue will cause the borough to rely principally upon the proceeds from its proposed sales and use taxes (if levied) and the Coastal Management Program grant to fund its initial operations.

Projected Expenses

The petition for incorporation projects the following operating expenses for the first year of operation.

Assembly	\$ 179,500
Mayor	293,800
Administration & Finance	150,500
Dept. of Community Affairs	171,900
Dept. of Law	82,500
Dept. of Education	100,000
Capital Improvement/Reserve	<u>574,120</u>

Total \$1,552,320

Here again, the commission believes that the expenses estimated in the petition are generally accurate and reasonable. When comparing the anticipated expenditures of the proposed borough with those of existing boroughs having similar size populations and/or similar geographic locations, the commission considers the Aleutians East Borough budget to be reasonable.

The following is a further examination of the budget offered in the petition.

- Department of Education: The petition states that the cost of education will be \$100,000. This reflects the cost of consolidating all or portions of three separate school districts into one district. This transition effort would begin immediately upon incorporation and would be concluded by July, 1988. Exercise of education powers in the sense of directly teaching students is scheduled to begin when the schools in the borough start the school year in the fall of 1988.

The total cost of providing education within the area proposed for borough incorporation is approximately \$3.4 million yearly. Existing state law (AS 14.17.210) provides that:

A regional educational attendance area school which becomes a city or borough district school is considered a regional educational attendance area school for purposes of financial support until the expiration of a complete fiscal year after the date on which the school becomes a city or borough school district . . .

Chapter 91, SLA 1987, requires a local contribution toward education by municipal school districts. However, the burden of providing a significant local contribution toward education would not be assumed by the newly formed Aleutians East Borough until July 1, 1989. Given the projections for and capabilities of generating revenue, the anticipated costs of the local contribution toward education could be readily supported by the borough.

- Legislative, Administrative and Contingency: The petitioners have budgeted \$706,300 to support legislative and administrative functions of the borough. Based upon budgeted expenditures for similar boroughs with similar functions, these estimates appear reasonable.

- Community Capital Improvement/Reserve Account: The petitioners have also budgeted \$574,120 in this account. Since the borough's powers are to be limited to education, planning and tax collection, it is understood that there will be little in the way of expenditures for community capital improvements during the first 12 months of operation. Thus, the petitioners have budgeted a

contingency fund amounting to nearly 60% of other total estimated expenditures.

- ° Department of Community Affairs: This component will provide the planning services of the borough. Activities include the functions presently being exercised by the Aleutians East CRSA, and the Regional Strategy Board. The estimated expenditure of \$171,900 for this category is considered to be reasonable.

Thus, the commission finds that the anticipated functions, revenues and expenses of the proposed Aleutians East Borough are reasonable and adequate to support operation of the proposed borough.

CONCLUSION OF LAW

Given the above findings of fact, the commission concludes that the economy of the area includes the human and financial resources capable of providing municipal services and satisfies the standards for incorporation imposed by law which relate to the economy of the area.

4. SCHEDULE FOR ASSUMPTION OF POWERS

The following provisions of law pertain to the formation of a new borough and the integration of both existing service areas and relevant powers of existing cities into the borough.

AS 29.05.130 provides that "a service area in a newly incorporated municipality shall be integrated into the municipality within two years after the date of incorporation."

AS 29.05.140 provides that "the powers and duties exercised by cities and service areas that are succeeded to by a newly incorporated municipality continue to be exercised by the cities and service areas until the new municipality assumes the powers and functions which may not exceed two years after the date of incorporation."

19 AAC 10.170 provides that "the commission will not approve an incorporation unless the petitioners demonstrate to the satisfaction of the commission that the proposed borough is capable of providing and willing to provide the mandatory powers of an organized borough within three months of incorporation."

The mandatory powers of a second class borough, which are the only powers to be initially assumed by the Aleutians East Borough, consist of areawide education, administration of taxes, and planning.

- ° Education powers: will be assumed upon incorporation. A 1963 opinion of the Alaska Department of Law relating to a former law similar to the existing law providing for ownership of state-operated schools and the transfer of the state to the local school district after incorporation. The opinion provides that transfer of direct administration of schools be made shortly after incorporation, of the next fiscal year and as quickly as possible with continuity of operation and efficient management.

The Aleutians East Borough petition states that "educational responsibilities would be assumed in FY 89." The borough would begin the transition to assume this power immediately upon incorporation. From a practical perspective, it appears to be extremely difficult to effect an orderly transfer of education powers from the REAA to the newly incorporated borough sooner than July 1, 1988. The supplemental brief of the petitioners stated that:

this [transfer] shall entail the transfer of municipal and REAA assets to the Borough. Liabilities, including teachers and administrators contracts will be also assumed at that time (sic). The specific details of this transfer will be the responsibility of the School Board and the Assembly.

- ° Assessment and collection of taxes: The borough will exercise its power to assess and collect taxes upon establishment of an areawide sales tax as provided in AS 29.45.650. The tax proposed in the petition would, if enacted, be imposed only upon sales and importations of raw fish (all other activities would be exempt from taxation). The petitioners have expressed an intention not to promote imposition of a borough property tax. However, in the event the sales tax is not approved by the voters, it would appear necessary for the borough to levy a property tax. As a matter of law, a second class borough possesses the authority to levy a property tax. Thus, the borough could begin immediately to exercise this power if necessary.
- ° Planning, platting and land use regulation: will be exercised on a "regional wide basis" upon incorporation. To the extent possible, exercise of these powers will remain at the local municipal level or involve maximum "advice and guidance" of local residents of unincorporated communities in the region. While these functions are "mandatory areawide" powers of a second class borough, state law permits delegation of the powers of planning, platting and land use regulation to any city within a borough.

Thus, the commission finds that the schedule for transfer of education responsibilities, and the initiation and/or transfer of the powers of taxation and planning, platting and land use regulation is reasonable.

CONCLUSION OF LAW

Given the above finding of fact, the commission concludes that the schedule for transfer of education responsibilities and the initiation and/or transfer of the powers of taxation and planning, platting and land use regulation substantially satisfies the requirements of AS 29.05.130, AS 29.05.140, and 19 AAC 10.170.

5. BOUNDARIES

Section 29.05.031(a)(2) of the Alaska Statutes imposes as a standard for incorporation of a borough that the boundaries of the proposed borough conform generally to the natural geography and include all areas necessary for full development of municipal services.

In addition to this specific statutory provision, the other standards for borough incorporation set out in AS 29.05.031,

particularly the standard relating to the population of the area, influence the determination of boundaries.

Objective criterion relevant to the determination of the boundaries is also provided in 19 AAC 10.160(5). Specifically:

The area should include, at a minimum, one entire REAA unless the commission determines that a smaller area can otherwise meet borough government standards for incorporation.

a. Size relative to other boroughs

The territory within the proposed Aleutians East Borough boundaries exceeds that within the boundaries of 10 of the existing 12 regional municipal governments. The only Alaska regional municipal governments larger than the approximately 27,022 square miles reflected by the petitioners' legal description would be the North Slope Borough and the Northwest Arctic Borough. However, the proposed borough's jurisdiction with respect to offshore areas is limited by the state's offshore jurisdiction (AS 44.03.010). Therefore, the actual boundaries of the proposed borough include 15,405 square miles (including Unalga Island and the Baby Islands).

b. Other Established Boundaries

As was noted earlier, the territory which the petitioners propose to incorporate does not conform totally to any existing boundaries, including the Aleutian Region Educational Attendance Area, the Aleut Regional Corporation, and the Aleutians East Coastal Resource Service Area.

It should be noted that of the twelve regional municipal governments which exist in Alaska, four transcend two or more Native Regional Corporations formed under ANCSA. The boundaries of the four regional municipalities were determined prior to the establishment of Native Regional Corporation boundaries under ANCSA. However, once established, municipal boundaries can be modified. In addition to the relationship between existing regional municipalities and ANCSA regional corporations, seven regional educational attendance areas transcend two or more Native regional corporations formed under ANCSA.

The boundaries of the coastal resource service areas and regional educational attendance areas were formed according to a political process established by law. The Alaska Department of Law has noted that the superior provisions of the state constitution and implementing statutes require that these earlier political decisions give way to the commission's judgment concerning the organization of a new municipal government.

State regulations, 19 AAC 10.160(5), clearly provide that conformance with REAA boundaries (and by inference, other boundaries upon which REAAs are based or which are based upon REAAs) is not necessary if the commission determines that another area can otherwise meet borough government standards for incorporation. Thus, there is no requirement or compelling precedent to make borough boundaries conform precisely to other existing boundaries.

Therefore, the commission finds that while the boundaries of such entities should be considered as evidence relating to the population, geography, economy and other factors which form the standards for incorporation of boroughs, these boundaries are

not considered sacrosanct with respect to the determination of the boundaries of the proposed Aleutians East Borough.

c. Area to the East of the Regional Corporation, REAA and CRSA

As was discussed earlier, the area proposed for incorporation by the petitioners includes apparently uninhabited and largely undeveloped areas beyond the eastern boundary common to the Aleut Regional Corporation, the Aleutians REAA and the Aleutian East CRSA. Together these areas comprise approximately 858 square miles. More specifically, the areas are comprised of approximately 211 square miles of land and 647 square miles of water. It is estimated that only approximately one-third of this water area lies within the state's jurisdiction. As was noted in some detail earlier, the commission found that the social, cultural and economic characteristics of the users of the territory east of the common eastern boundary do not warrant exclusion of this territory from the proposed borough.

The petitioners state that it is necessary to include these areas in the proposed borough to ensure that the bays and streams within the region's economic zone fall under the borough's jurisdiction.

The commission notes further that inclusion of this area is of significance to the financial viability of the proposed borough. Evidence presented to the commission shows that the area on the north side of the Peninsula (Ilnik and Three Hills fishing districts) alone accounts for 20% to 30% of the total value of the sockeye salmon harvest of Management Area M. According to Dr. Steve Langdon of the University of Alaska, a nationally recognized expert in anthropology and fisheries resources, this area has historically been a part of the commercial fisheries associated with the Aleutians East Region.

Financial viability of the proposed area for incorporation does not outweigh other standards for incorporation. However, great care was taken by the commission to assure that during these times of uncertain state support for municipalities, the proposed borough could adequately support its functions. Thus, the commission finds that the subject area is necessary for full development of municipal services by the Aleutians East Borough.

d. Natural Geography

The western boundaries include all of Unalga Island and the Baby Islands. The eastern boundaries include Stepovak Bay on the south side of the Peninsula and most of Strogonof Point (to the land terminus of the NW corner T38S, R60W, Seward Meridian) on the north side of the Peninsula. The boundaries follow township and range lines on the land to facilitate describing the boundaries of the proposed borough. To the north and south, the boundaries of the proposed borough are limited to the areas included within the state's jurisdiction.

Thus, the commission finds that the boundaries proposed by the petitioners, with the addition of Unalga Island and the Baby Islands, conform generally to the natural geography.

CONCLUSION OF LAW

Given the above findings of fact, the commission concludes that the boundaries proposed by the petitioners (including Unalga Island and the Baby Islands) conform generally to the natural geography, include all areas necessary for full development of municipal services and support the other standards for borough

incorporation previously discussed. Thus, the standards for incorporation imposed by law which relate to the boundaries of the area are satisfied.

6. TAX REFERENDUM

The petition for incorporation contains clear and unambiguous notice that the proposed second class borough would assume the power to levy an areawide sales and use tax on raw fish in the amount of 2%. The authority to levy the tax requires voter approval (AS 29.45.670). The provisions of AS 29.05.110(c) specifically authorize the simultaneous submittal to the voters of the question of incorporation and the approval of the assumption of areawide powers. Thus, it would appear that a referendum necessary to authorize the borough to levy a sales and use tax could be included on the incorporation ballot.

An interested party appearing before the commission has objected to any simultaneous assumption of the sales and use tax power. The party argues that there must be a strict adherence to the provisions of AS 29.45.670 by first requiring the new assembly to adopt a tax ordinance and then referring it to the voters.

The commission finds that a strict adherence to AS 29.45.670 as suggested by the interested party would exalt form over substance. The cost to the municipality of holding an additional election and the delay occasioned by waiting for the election to be held warrants a procedure which consolidates the electoral process.

The commission further finds that it is in the best interest of the residents of the proposed borough to maximize awareness and understanding of the questions to be asked on the incorporation ballot. The way to accomplish this is to have separate questions on the proposed incorporation of the borough and the authorization to levy the proposed sales and use tax.

CONCLUSION OF LAW

Given the above findings of fact, the commission concludes that it is appropriate to refer to the voters of the proposed borough, as a separate question on the incorporation ballot, the matter of the proposed levy of the 2% sales and use tax on raw fish.

7. APPORTIONMENT

A resident of the territory proposed for incorporation has expressed concern that the apportionment plan set out in the petition for incorporation may be unfair. This individual has indicated a belief that the population of Cold Bay (election district 3) is substantially less than the 250 residents claimed in the petition. Therefore, this individual suggested that a more equitable apportionment plan might result from the consolidation of election districts 3 and 4.

The commission notes that the population estimates included in the petition were obtained from a 1986 memorandum issued by the department relating to the proposed inclusion of Akutan in the Aleutians East CRSA. Further, the population of Cold Bay stated in the petition conforms precisely to the figure certified for Cold Bay by the department for purposes of the current fiscal year State Revenue Sharing program.

While variations of the numbers of residents per elected representative do exist within the proposed election districts,