

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5196 SCRA SB 50

The Honorable Stephen McAlpine
February 19, 1987
Page Three

Since incorporation elections have always been conducted in "the conventional fashion", we have no data to support our concerns over the possible effects of voting by mail. However, we offer the following as their basis.

A. Voting by "uninformed" voters

Incorporation elections invariably involve issues which are among the most complex and significant facing a community or region. In addition to deciding the proposition on incorporation, voters select the entire governing body of the municipality. Except in extremely unusual circumstances, this is the only time when the entire governing body is elected simultaneously. Typically, each year only one-third of the seats on a municipal governing body will be vacated. Further, the incorporation election may also deal with complex propositions such as the authority to levy taxes.

Since these elections are so significant and complex, they require a substantial effort on the part of voters to examine all aspects of the issues and the qualifications of the candidates. Those registered voters who have not studied the issues and candidates, probably make up a large percentage of the individuals who do not vote at conventional elections.

To the extent that elections by mail would increase the number of "uninformed" voters who participate in the election, we speculate that most of those individuals would vote against change (i.e. against incorporation).

B. Voting by "qualified non-resident" voters

We acknowledge that under the eyes of the law a qualified voter must reside in the election district in which he seeks to vote for at least 30 days prior to the election. As such, technically there can be no "qualified non-resident" voters. The fact remains, however, that there are often large numbers of individuals who are qualified to vote at a particular place but who have not lived there for substantial periods of time. Reasons for this circumstance no doubt vary. Hopefully, in most cases these individuals are bona fide residents.

As you are aware, there is a possibility that an election for the incorporation of Big Lake may be conducted this summer. We understand that more than thirty percent of the individuals who currently appear on the Big Lake precinct voter registration list have mailing addresses other than Big Lake. Some are located as far away as Falls Church, Virginia and Salt Lake City, Utah.

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In a conventional election, voting would be limited to those qualified voters who were physically present at the polling place or who had received absentee ballots. It is unlikely that an individual from Falls Church, Virginia will travel to Big Lake to vote on a proposition for municipal incorporation.

While such an individual would presumably qualify to vote by absentee ballot, he/she may not even be aware of the election since he/she is apparently not living in the community. We acknowledge that state law permits qualified voters to request an absentee ballot for each state election held within a particular calendar year for which the voter is eligible to vote. We speculate, however, that few would have made such requests in time to vote on municipal incorporation elections. This speculation is based upon the presumption that most requests for absentee ballots are received in the fall, prior to state primary or general elections. Most of the municipal incorporation elections are held in the spring and early summer. Seventy-five percent of the municipal incorporations held this decade have been held by August.

With an election by mail every individual on the official registration list prepared under AS 15.07.125 would receive a ballot. As we expect in the case of "uninformed" voters residing within the community, we anticipate that "qualified non-resident" voters would vote against change.

II. POTENTIAL FOR ABUSE OF VOTING PRIVILEGES THROUGH ELECTIONEERING AND FRAUD

Our second concern relates to the potential abuse of voting privileges. State law currently prohibits "political persuasion near election polls" (AS 15.15.170). In a conventional state election voters appear at a polling place which is carefully monitored by election judges and/or other officials. Further, poll watchers and others have the opportunity to monitor the election and to challenge ballots.

If voting is conducted by mail, this level of public review is substantially diminished. Certainly, there is no way to ensure against inappropriate "political persuasion" at the time individuals cast their ballots by mail. Further, while we are aware that the safeguards for elections by mail are identical to those for absentee ballots [AS 15.20.081(d)-(e)], we fear that these procedures do not offer the protection provided by conventionally conducted elections.

To the extent that it may represent a problem in the prospective incorporation election in Big Lake, you should be

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aware of current allegations of fraud. Allegations have been made that the signatures of individuals whose names appear on the Big Lake precinct voter registration list, but who have been absent from the community for many months, have been forged to a petition opposing the incorporation. Further, it appears that many of the signatures on the petition were penned in the same handwriting.

Summary

While the concerns expressed in this letter apply generally to all municipal incorporation elections, we are presently most concerned about the prospective election in Big Lake. We understand that the Division of Elections intends to conduct the prospective Big Lake incorporation election by mail. Because of our concerns, we urge you to consider a policy of conducting this and any other municipal incorporation election in the conventional fashion.

With respect to Big Lake, if the intention of the state is to conduct the incorporation election by mail in an effort to save money, we assume you have been advised that qualified election judges in the community have volunteered to donate their time for such an election. Thus, in the case of Big Lake, a conventional election would likely be less costly than an election by mail.

We hope that you will carefully consider the issues and concerns raised in this letter. We look forward to your response.

Sincerely,

Robert Eder, Chairperson
Alaska Local Boundary Commission

cc: The Honorable Steve Cowper, Governor, State of Alaska
David Hoffman, Commissioner, Department of Community
And Regional Affairs
Sandi Stout, Director, Division of Elections
Marty Rutherford, Director, Department of Community
And Regional Affairs
Dale Hennings, Petitioners' Representative, Big Lake

February 19, 1987

DRAFT

The Honorable George W. Carte'
Mayor, City of Palmer
231 West Evergreen Avenue
Palmer, Alaska 99645

Dear Mayor Carte':

On January 26, the Local Boundary Commission met with Mr. Soulak, Palmer City Manager, to discuss pending and potential future annexations by the City of Palmer. We appreciated the opportunity to discuss these matters with a representative of the city.

During the course of the meeting, it was noted that the City of Palmer has 34 petitions for annexation since 1972. We understand most of these annexations were undertaken to accommodate individuals desiring to be annexed in order to receive utility service from the city. Nonetheless, as we have advised other municipalities, "piecemeal" annexations can be burdensome to individuals and agencies. In this case, such parties may include the City of Palmer, the Matanuska-Susitna Borough, state agencies (particularly the Department of Community and Regional Affairs), the Local Boundary Commission, the U.S. Department of Justice and most importantly, the affected residents. The difficulties caused by such actions typically include:

1. onerous administrative efforts dealing with all aspects of municipal boundary changes (e.g. preparation and processing of petitions; processing decisions by the Commission, revising municipal records such as tax accounts and zoning maps, submission of Federal Voting Rights Act preclearance material, et cetera);
2. impediments to long-term planning by the affected local governments; and
3. difficulty in the delivery of services.

We acknowledge that the preparation of a long-term annexation plan may be difficult and even controversial. Nevertheless, we feel that it is vital for the city and the borough to work together to develop a plan addressing long-term service delivery by the city in a more comprehensive fashion. Development of such a plan should also entail an examination of the legitimacy of the several "non-jurisdictional enclaves" (e.g. Palmer cemetery) which presently exist within the boundaries of the City of Palmer.

The Honorable George W. Carte'
February 19, 1987
Page Two

DRAFT

We wish to make it clear that our intent is not to discourage the city from seeking legitimate extensions of its boundaries, but rather to encourage careful and more comprehensive implementation of such proposals. I hope that you find these comments helpful.

Sincerely,

Robert Eder
Chairman

cc: Local Boundary Commission Members
The Honorable Dorothy Jones, Mayor, Matanuska-Susitna Borough
Vern Roberts, Acting Manager, Matanuska-Susitna Borough
Dave Soulak, Palmer City Manager
Dan Bockhorst, Programs Supervisor, LBC/Grants

MEMORANDUM

State of Alaska

Community and Regional Affairs

TO: Local Boundary Commission

DATE: February 6, 1987

FILE NO.: 0395L/DB/1

THRU:

TELEPHONE NO.: 561-8586

SUBJECT: Materials for
2/19-20/87 Meetings

FROM:

DB
Dan Bockhorst
Supervisor
LBC/CAS Components

RECEIVED

FEB 10 1987

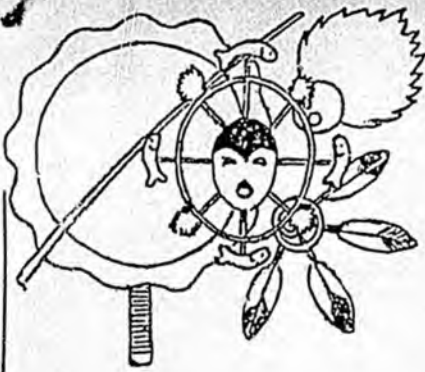
MRAD
DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS

Attached for your information and/or review are the following materials:

1. Public notice of the 2/19-20/meetings
2. Draft agenda for meeting of 2/19/87
3. Briefs in A lachak v. LBC, specifically:
 - 9/10/86 brief by Robert Anderson (Appellant)
 - 12/2/86 brief by Marjorie Odland, (State)
 - 1/5/87 reply brief by Robert Anderson
 - transcript of Tyonek v. Slawson, et al
4. Copy of HB 65 (same as SB 50) "An Act relating to dissolution of a municipality."
5. Memorandum from me with attachments concerning elections by mail (attachments as follows):
 - AS 15.20.800
 - Summary of Ch. 85, SLA 1986
 - draft letter opposing municipal incorporations elections by mail
6. Copy of LBC Report to the First Session of the Fifteenth Legislature
7. Copy of draft letter regarding compensation for the Commission
8. Draft letter to City of Palmer re annexations
9. Draft minutes
 - August 28, 1986
 - October 10, 1986

Also enclosed for your information is a memorandum of 1/12/87 from Randall P. Burns, Department of Law, concerning the Executive Branch Ethics Act (attachments as follows):

- AS 39.52.010 - 39.52.960
- Ethics - A Handbook for Members of Boards and Commissions
- Ethics Disclosure Form - Notification of Potential Violation
- Ethics Disclosure Form - Notification of Grants, Contracts, Leases and Loans
- Ethics Disclosure Form - Notification of Gift



Toksook Bay Traditional Council

Senator John Binkley
Senate Finance Committee
Pouch V
Juneau, Alaska 99811

October 20, 1987

Dear Mr. Binkley,

Thank you for sending me the copy of the SB 50 which you have introduced to make things easier for dissolving the City type form of government.

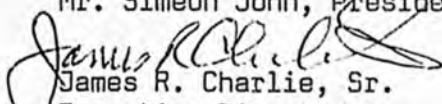
I do not have the copy of the original bill on dissolution of the municipalities but in looking over the SB 50, I find that there is a need to identify other forms of government operating in most of our communities and that is the Traditional Council, formed traditionally by the Native communities.

We are suggesting that the traditional form of government be included under Sec. 29.06.520. SUCCESSION adding the wording: "OR NATIVE COUNCIL OPERATING UNDER THE TRADITIONAL FORM OF GOVERNMENT" and also under same section under subsection (b), the wording should also be added to the last paragraph: " OR A TRADITIONALLY FORMED LOCAL GOVERNMENT."

We are suggesting the additional wording since most of the villages that are not organized under 25 U.S.C. 476 will be forced to become IRA Councils under this law and since there are more Traditional Councils than IRA Councils, the additional wording is necessary in order to make things easier for small rural villages in which you represent in your district.

We hope that it is not too late to submit the requested entries and we count on you for your help and support.

Sincerely,
TOKSOOK BAY TRADITIONAL COUNCIL
Mr. Simeon John, President


James R. Charlie, Sr.
Executive Director

cc: Committees on: Community & Regional Affairs ✓
Judiciary
Finance

1 IN THE SENATE

BY BINKLEY

2

SENATE BILL NO. 50

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to dissolution of a municipality."

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

8 * Section 1. AS 29.06.470(a) is amended to read:

9 (a) Except as provided in (b) of this section, voters of a
10 municipality may petition for dissolution when the municipality is
11 free of debt, or, if in debt, each of its creditors is satisfied with
12 a method of repayment and

13 (1) it no longer meets the minimum standards prescribed for
14 incorporation by AS 29.05, or former AS 29.18.030 if it is a third
15 class borough; [OR]

16 (2) the municipality ceases to use each of its mandatory
17 powers; or

18 (3) dissolution is approved in an advisory election held on
19 the question by the municipality proposed to be dissolved.

20 * Sec. 2. AS 29.06.520 is repealed and reenacted to read:

21 Sec. 29.06.520. SUCCESSION. (a) The Local Boundary Commission
22 shall provide for the distribution of assets and liabilities of a
23 municipality upon its dissolution. Assets and liabilities may be
24 distributed to the state, another municipality, a nonprofit corpora-
25 tion formed under the laws of the state, ~~a~~ a Native council organized
26 under 25 U.S.C. 476. OR NATIVE COUNCIL OPERATING UNDER TRADITIONAL FORM
27 OF GOVERNMENT.

28 (b) In determining how to distribute the assets of a municipali-
29 ty upon its dissolution, the Local Boundary Commission shall consider
the manner in which the assets will be best used to continue to

1 provide services to the area of the dissolved municipality. Prefer-
2 ence in the distribution of the assets shall be given to the state,
3 another municipality, a nonprofit corporation, OR A TRADITIONALLY FORMED
LOCAL GOVERNMENT.

SENATE AMENDMENT ##/

BY: Halford

TO: SB 50 SENATE BILL NO. _____
TO: Fin cs HOUSE BILL NO. _____

*Page 2, line 4
add*

* Sec. 5. AS 29.06.520 is amended to read:

SUCCESSION. The government succeeding to a dissolved municipality succeeds to all its rights, powers, duties, assets, and liabilities. No part of a dissolved municipality's rights, powers, duties, or assets may be granted or delegated to any entity other than a municipality incorporated under this Title.

- ① Technical reading wouldn't allow state
- ② Bar grants - non-profit to receive grants

(TURN IN ORIGINAL AMENDMENT TO SENATE SECRETARY'S OFFICE. THE AMENDMENT WILL BE NUMBERED, COPIED AND DISTRIBUTED.)

SENATE BILL NO. 50 by Senator Binkley, entitled:

"An Act relating to dissolution of a municipality."

was read the first time and referred to the Community and Regional Affairs Committee, the Judiciary Committee and the Finance Committee.

The Community and Regional Affairs Committee considered SENATE BILL NO. 50 (An Act relating to dissolution of a municipality) and recommended it be replaced with

CS FOR SENATE BILL NO. 50 (C&RA)

and a majority do pass. The report was signed by Senator Sturgulewski, Chairman and concurred in by Senators Szymanski and Zharoff. Senator Halford signed "do not pass".

Zero fiscal note published today from Department of Community and Regional Affairs.

SENATE BILL NO. 50 was referred to the Judiciary Committee.

The Judiciary Committee considered SENATE BILL NO. 50 (dissolution of a municipality) and a majority of the committee recommended adoption of the Community and Regional Affairs Committee Substitute and do pass with the following amendment:

Page 2, line 2: insert a new Section 3 to read:

* Sec. 3. AS 29.06.510(a) is amended to read:

(a) The Local Boundary Commission shall immediately notify the director of elections of its acceptance of a dissolution petition. Within 30 days after notification, the director of elections shall order an election in the municipality to determine whether the voters desire dissolution. The election must be held at least 30 and not more than 90 days after the election order (unless such timing would cause the election to be held between May 1 and November 1.) (If the director of elections receives notification (after April 1, but before October 1, the election) shall be held within 60 days after November 1.) A person who is a voter of the municipality may vote

in the dissolution election.

Renumber existing section accordingly.

The report was signed by Senator Keritula, Chairman and concurred in by Senators Josephson and Sturgulewski.

The committee adopted:

Legislative Intent
CSSB 50 (C&RA)

Existing laws apparently will not permit the dissolution of a city government in a community unless that community suffers drastic reductions in its population and/or economy. The legislature recognizes that there are other circumstances under which the dissolution of a city government may be warranted. Such circumstances include those where:

1. the residents of a community have abandoned their city government;

SB 50 SENATE JOURNAL - PAGE 814- 1 4/ 3/87

2. alternative entities exist through which essential services* may be delivered in the absence of city government; and

3. dissolution would not be adverse to the interests of the community served by the city, the region in which the city is located, and the state, i.e., dissolving primarily to void a viable tax base.

It may be considered to be in the best interest of the state, under the provisions of Section 2 of this Act, for any city to be dissolved where such circumstances exist.

* Definition of "essential services": Basic municipal services providing for the health, safety, and welfare of the residents, such as police and fire protection services and maintenance of public facilities, i.e., water and sewer systems; washeterias; community buildings, etc.

SENATE BILL NO. 50 was referred to the Finance Committee.

SB 50 SENATE JOURNAL - PAGE 847- 1 4/ 7/87

The Finance Committee considered SENATE BILL NO. 50 (dissolution of a municipality) and a majority of the committee recommended it be replaced with

CS FOR SENATE BILL NO. 50 (FIN)

and do pass. The report was signed by Senator Binkley, Co-chairman and concurred in by Senators Zharoff, Duncan,

Hensley and Uehling.

Letter of Intent
CSSB 50 (FIN)

Existing laws apparently do not permit the dissolution of a city government unless that community suffers drastic reductions in its population or economy. The legislature recognizes that there are other circumstances under which the dissolution of a city government may be warranted. Such circumstances include those where:

1. the residents of a community have abandoned their city government;
2. alternative entities exist through which essential services* may be delivered in the absence of city government; and
3. dissolution would not be adverse to the interests of the region in which the city is located and the state (e.g., dissolving primarily to avoid a viable tax base, returning education function to the state).

It may be considered to be in the best interest of the state, under the provisions of Section 2 of this Act, for any city to be dissolved where such circumstances exist.

* Definition of "essential services": Basic municipal services provided for the health, safety, and welfare of the residents, such as police and fire protection services and maintenance of public facilities, e.g., water and waste disposal systems, community buildings, etc.

SENATE BILL NO. 50 was referred to the Rules Committee.

SB 50 SENATE JOURNAL - PAGE 896- 4 4/10/87

The Rules Committee considered SENATE BILL NO. 50 (dissolution of a municipality) and recommended calendar April 13. The report was signed by Senator Eliason, Chairman and concurred in by Senators Hensley, Binkley and Bennett.

SENATE BILL NO. 50 will be on the April 13 calendar.

SB 50 SENATE JOURNAL - PAGE 906- 2 4/10/87

At the request of the Rules Committee, SENATE BILL NO. 50 (dissolution of a municipality) was taken from the April 13 proposed calendar and returned to the Rules Committee.

SB 50 SENATE JOURNAL - PAGE 1170- 2 5/ 4/87

The Rules Committee considered SENATE BILL NO. 50 (dissolution of a municipality) and a majority of the committee recommended calendar May 4. The report was signed by Senator Eliason, Chairman and Senators Faiks, Bennett and Hensley.

SENATE BILL NO. 50 is on the calendar.

SB 50

SENATE JOURNAL - PAGE 1172- 2 5/ 4/67

Senator Halford moved and asked unanimous consent that SENATE BILL NO. 50 (dissolution of a municipality) be held until the May 5 calendar. Without objection, it was so ordered and SENATE BILL NO. 50 will be on the May 5 calendar.

Senator Johne Binkley

Alaska State Senate
P.O. Box V • Juneau, Alaska 99811 • (907) 465-4985



Finance Committee
Co-Chairman

M E M O R A N D U M

May 4, 1987

TO: ALL SENATORS

FROM: SENATOR JOHN E BINKLEY *Johne*

Subj: CSSB 50(Fin): "An Act relating to the dissolution of a municipality."

Residents and local elected officials of several small cities in Alaska have expressed an interest or desire in dissolving their municipal government. State laws provide standards and procedures for dissolution. However, existing regulations do not specifically address voluntary dissolution of active municipalities.

Existing regulations only pertain to dissolution of a community which effectively ceases to function as a governmental entity. State statutes require that, in order to dissolve, a municipal government must be free of debt and must cease to exercise its mandatory powers or it must be determined to no longer meet the standards of incorporation. Administrative regulations require that all three standards must be met in order for a municipal government to dissolve.

In 1984, residents of the City of Akiachak initiated a petition for the dissolution of their city. The matter was brought before the Alaska Local Boundary Commission twice (once upon reconsideration) in 1985. The Commission denied the petition principally because it found that Akiachak failed to meet two of the standards of dissolution of a municipality: (1) the community did not fall below the minimum standards for incorporation; and (2) the city must cease for two or more consecutive years to exercise virtually any of its municipal powers. The Commission determined that the City of Akiachak continued to function in certain respects (e.g., administration of grants). Akiachak has appealed the Commission's decision to the State Superior Court.

Senate Members

May 4, 1987

Page 2

Section 1 of this bill amends the standards by which the Local Boundary Commission is petitioned by requiring a petition signed by a number of voters of the municipality greater than 50 percent of the number of votes cast in the previous general election in that community.

Section 2 of this bill provides provides that the Local Boundary Commission determines whether the municipality meets the standards for dissolution and the dissolution is "in the best interest of the state."

Section 3 amends Sec. 29.06.510 pertaining to dissolution elections. The dissolution election could not be held between May 1 and November 1. This amendment serves two purposes: (1) given the high standard for the dissolution election (a majority of the number of registered voters in the municipality), it often would not be possible to obtain a turnout large enough to satisfy the election requirements because of conflicts with summer employment such as cannery, fire fighting, and construction, and subsistence activities in rural Alaska; and (2) the dissolution election would not interfere with the regular municipal election; that is, the dissolution issue would be resolved long before the subsequent municipal election.

Section 4 of this bill establishes standards for the election process for dissolution by requiring approval by a number of voters greater than 50 percent of the number of people registered to vote in that municipality.

The assets of the dissolved municipality are to be distributed either to another municipality or to the state. If the assets are to remain within the community, the state would enter into contracts regarding the use of the assets with any person or organization, including a nonprofit corporation formed under the laws of the state or a Native council (JRA or traditional) formed under 25 U.S.C. 476. The contracting entity would be required, under existing state regulations, to waive sovereign immunity (if applicable) and be accountable for the use and maintenance of the assets, with a provision in the contract that: (1) the assets be used for a specified purpose; (2) the assets be used to provide services to residents without regard to race, color, creed, religion, or national origin; and (3) the contracting entity is liable for claims arising out of the use or management of the assets.

The Senate Finance Committee passed CSSB 50(Fin) with a letter of intent.

Original sponsor: Binkley

1 IN THE SENATE BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 50 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 BILL

6 For an Act entitled: "An Act relating to dissolution of a municipality."

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

8 * Section 1. AS 29.06.470(a) is amended to read:

9 (a) Except as provided in (b) of this section, voters of a
10 municipality may petition for dissolution when the municipality is
11 free of debt, or, if in debt, each of its creditors is satisfied with
12 a method of repayment and

13 (1) the municipality [IT] no longer meets the minimum
14 standards prescribed for incorporation by AS 29.05, or former AS 29.-
15 18.030 if it is a third class borough; [OR]

16 (2) the municipality ceases to use each of its mandatory
17 powers; or

18 (3) dissolution is requested by petition on a form provided
19 by the department signed by a number of voters of the municipality
20 proposed to be dissolved greater than 50 percent of the number of
21 votes cast in the last general election in that municipality.

22 * Sec. 2. AS 29.06.500(a) is amended to read:

23 (a) If the Local Boundary Commission determines that a munic-
24 ipality fails to meet the standards for dissolution, it shall reject
25 the petition. If the commission determines that the municipality
26 meets the standards under AS 29.06.470(a)(1) or (2), it shall accept
27 the petition. If the commission determines that the municipality
28 meets the standards under AS 29.06.470(a)(3) and that dissolution of
29 the municipality is in the best interest of the state, it shall accept

1 the petition.

2 * Sec. 3. AS 29.06.510(a) is amended to read:

3 (a) The Local Boundary Commission shall immediately notify the
4 director of elections of its acceptance of a dissolution petition.
5 Within 30 days after notification, the director of elections shall
6 order an election in the municipality to determine whether the voters
7 desire dissolution. The election must be held at least 30 and not
8 more than 90 days after the election order unless such timing would
9 cause the election to be held between May 1 and November 1. If the
10 director of elections receives notification after April 1, but before
11 October 1, the election shall be held within 60 days after November 1.
12 A person who is a voter of the municipality may vote in the dissolu-
13 tion election.

14 * Sec. 4. AS 29.06.510(c) is amended to read:

15 (c) The director of elections shall certify the election re-
16 sults. If dissolution is approved by a number of voters greater than
17 50 percent of the number of people registered to vote in the munici-
18 pality, the director of elections shall declare that the municipality
19 is dissolved effective on the date of certification.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

LOCAL BOUNDARY COMMISSION

949 EAST 36TH AVENUE, SUITE 404
ANCHORAGE, ALASKA 99508
PHONE: (907) 561-8586

February 27, 1987

The Honorable Henry Springer, Chairman
House Committee on Community &
Regional Affairs
Pouch V
Juneau, AK 99811

Dear Representative Springer:

The Alaska Local Boundary Commission convened last evening to formally consider the version of draft CS HB 65 which was discussed during the February 20, meeting of your committee. I am pleased to inform you that the Local Boundary Commission considers the draft revision to be a significant improvement to the original bill. All five members of the commission voted unanimously to strongly support the legislation embodied in the draft CS HB 65.

While the Local Boundary Commission unanimously supports the draft CS HB 65, we do feel that there are two changes that might be made that would strengthen the bill. These are the inclusion of a "best interest" standard and the prohibition of conducting dissolution elections by mail. The suggested additions are explained below.

BEST INTEREST STANDARD

The Commission believes that amending the proposed AS 29.06.470(a)(3) to add a requirement that "dissolution is determined by the Local Boundary Commission to be in the best interests of the state, the region and the territory served by the municipality proposed to be dissolved" would strengthen the bill. This additional standard would apply in those instances where dissolution has been requested by a majority of the registered voters.

The reason the Commission desires this addition is simple. The Alaska Constitution and state laws have, since statehood, uniformly recognized the need and importance of a state commission to deal with the creation of municipal governments, modifications of municipal government boundaries and the dissolution of municipal governments. The language of the draft CS HB 65 currently does not ensure a deliberative role for the state in dissolution proceedings.

The Honorable Henry Spinger
February 27, 1987
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Without language such as that suggested by the Local Boundary Commission, no safeguards exist against wholesale dissolution of municipalities. Conceivably, any and every current and future municipal government could easily meet the standards set out in the draft CS HB 65. While the Commission does not suggest that a significant number of the 159 municipalities in the state would seek to dissolve if this bill became law, we do feel it would enhance the bill to include a reasonable safeguard.

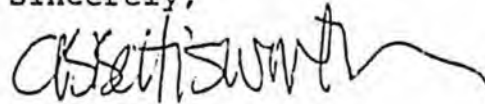
We suggest that situations will arise which will require discretionary application and deliberation of state level concerns. Thus, it seems prudent to include provision of language which would allow the commission to serve this legitimate role. We feel a "best interest" standard does just this.

ELECTIONS BY MAIL

The commission would also like to see the inclusion of statutory provisions to preclude the conduct of municipal dissolution elections by mail under AS 15.20.800. While it may be appropriate to conduct certain state elections by mail, the Commission opposes elections by mail either for municipal incorporation or dissolution. Our objections to conducting such elections by mail are numerous and have been conveyed to the Division of Elections. In general, we find that the significance of such elections and public preference warrant conducting municipal incorporation and dissolution elections in the conventional manner.

Thank you for this opportunity to comment on the proposed CS HB 65. We feel that the draft CS HB 65 will permit the Local Boundary Commission to respond fully to the current issues relating to dissolution. However, we do feel that our two suggestions will further improve the bill. Please feel free to contact the Local Boundary Commission should you require clarification of any points.

Sincerely,



For

Robert O. Eder, Chairman
Local Boundary Commission

The Honorable Henry Spinger
February 27, 1987
Page Three

cc: The Honorable Arliss Sturgulewski
Chair, Senate C&RA
The Honorable John Binkley
sponsor SB 50
The Honorable Lyman Hoffman
sponsor HB 65
C.B. Bettisworth, Member, LBC
Bert Greist, Member, LBC
Dave Hanson, Member, LBC
Jo Anderson, Member, LBC
David G. Hoffman, Commissioner, DCRA
Marty Rutherford, Director, MRAD/DCRA

CSSB 50(FIN)

LEGISLATIVE INTENT

Existing laws apparently do not permit the dissolution of a city government unless that community suffers drastic reductions in its population or economy. The legislature recognizes that there are other circumstances under which the dissolution of a city government may be warranted. Such circumstances include those where:

1. the residents of community have abandoned their city government;
2. alternative entities exist through which essential services* may be delivered in the absence of city government; and
3. dissolution would not be adverse to the interests of the region in which the city is located and the state (e.g., dissolving primarily to avoid a viable tax base, returning education function to the state).

It may be considered to be in the best interest of the state, under the provisions of Section 2 of this Act, for any city to be dissolved where such circumstances exist.

* Definition of "essential services": Basic municipal services provided for the health, safety, and welfare of the residents, such as police and fire protection services and maintenance of public facilities, e.g., water and waste disposal systems, community buildings, etc.

MEMORANDUM

State of Alaska

TO: Local Boundary
Commission Members

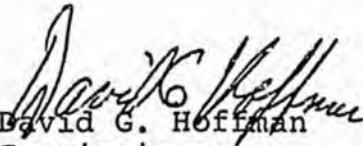
DATE: February 18, 1987

FILE NO.:

THRU:

TELEPHONE NO.: 465-4700

FROM:


David G. Hoffman
Commissioner
Department of Community
and Regional Affairs

SUBJECT: Potential Focus of
Local Boundary
Commission in the
new Administration

One of the primary goals of the Cowper Administration is to help make local government work better, especially in the smaller, rural communities of the state. During his State of the State message, the Governor said:

Over the past few years life has changed a great deal for all of us in Alaska. But no where has the change been felt as deeply as in rural Alaska . . . I believe the villages are fundamentally different culturally and historically from urban Alaska and that we must make an effort to create new forms of government that are appropriate to rural Alaska. Such forms of village government must be democratically managed and consistent with the Alaska Constitution, but they must also be consistent with the realities of village life.

On numerous occasions the Governor has stated that when he first began traveling throughout rural Alaska in 1968, he saw a form of government that seemed to be very integrated into village life. People then felt as if they "owned" their local governments, and they operated them with very little cash. In these times of fiscal crisis where there is a feeling in some communities that local people no longer "own" their local governments, it is important for the state to reexamine local government.

The movement by several communities, primarily in the Yukon-Kuskokwim Delta Area, to dissolve their state-chartered municipal governments is a symptom of discontent with the current form of local government. I have traveled to Bethel, Kasigluk, and Nome since I was appointed Commissioner to gain new insights into how people felt about their local governments. I will be traveling to Barrow, Kotzebue, and Dillingham next week to attempt to gain further insights. It is my hope that the Department of Community and Regional Affairs can assist local people in developing more effective local governments within the context of the Alaska Constitution.

The Local Boundary Commission (LBC) is squarely in the middle of the issue of the dissolution of municipal governments. I would hope that under the new Administration the LBC could take the lead role in helping to solve problems relating to the dissolution of municipal governments. I also hope that the LBC could serve as my primary advisory group in helping me deal with issues relating to local government generally.

The LBC is in a unique position to be a problem solver for several reasons. These reasons include:

- ° The Commission is composed of private citizens who have an independent and objective perspective on governance issues as a result of the fact that they are not government employees.
- ° The Commission has been dealing with local government problems in the past and can provide continuity between administrations with regards to policy relating to local governments.
- ° The Commission has substantial statutory decision making authority with regards to local government issues.

Specific issues that I would like to discuss with you on the 19th include the following:

1. Development of a specific workplan by staff under which the LBC would deal with local government issues;
2. Explore the possibility of getting consulting money to the Commission for an independent study of issues relating to the dissolution of cities;
3. The development of new forms of local government; and
4. The status of the suit filed by Akiachak against the Boundary Commission and ways in which that suit and the underlying dispute might be resolved.

I am sorry that bad weather prevented me from meeting all Commission members on January 21. I look forward to spending a considerable amount of time talking with the Commission members on the 19th, and I hope that we can work together to help focus the role of the Boundary Commission under the new administration. I look forward to providing the staff support and assistance that will allow the Commission to assume an aggressive role as a problem solver with regards to the issues we are now facing.

DGH/gmw

- (1) Dissolution - what would happen at larger communities
- (2) Dist of assets - LRA's - council
- (3) Grants - more to non-profit's

E. Smith
Healey
A. G's

Original sponsor: Binkley

1 IN THE SENATE BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 50 (C&RA)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL.

6 For an Act entitled: "An Act relating to dissolution of a municipality."

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

8 * Section 1. AS 29.06.470(a) is amended to read:

9 (a) Except as provided in (b) of this section, voters of a
10 municipality may petition for dissolution when the municipality is
11 free of debt, or, if in debt, each of its creditors is satisfied with
12 a method of repayment and

13 (1) the municipality [IT] no longer meets the minimum
14 standards prescribed for incorporation by AS 29.05, or former AS 29.-
15 18.030 if it is a third class borough; [OR]

16 (2) the municipality ceases to use each of its mandatory
17 powers; or

18 ~~(3) dissolution is requested by petition on a form provided~~
19 ~~by the department signed by a number of voters on the municipality~~
20 ~~proposed to be dissolved greater than 50 percent of the number of~~
21 ~~votes cast in the last general election in that municipality.~~

22 * Sec. 2. AS 29.06.500(a) is amended to read:

23 (a) If the Local Boundary Commission determines that a munic-
24 ipality fails to meet the standards for dissolution, it shall reject
25 the petition. If the commission determines that the municipality
26 meets the standards under AS 29.06.470(a)(1) or (2), it shall accept
27 the petition. ~~If the commission determines that the municipality~~
28 ~~meets the standards under AS 29.06.470(a)(3) and that dissolution of~~
29 ~~the municipality is in the best interest of the state, it shall accept~~

1 ~~the petition.~~

2 * Sec. 3. AS 29.06.510(c) is amended to read:

*was election
required.*

3 (c) The director of elections shall certify the election re-
4 sults. If dissolution is approved ~~by a number of voters greater than~~
5 ~~50 percent of the number of people registered to vote in the municipi-~~
6 ~~pality,~~ the director of elections shall declare that the municipality
7 is dissolved effective on the date of certification.

Hold until after mtg w/ L.B.C. See H. schedule
5-01638
Referred: Community & Regional Affairs,
Judiciary and Finance *date*

(1) call attention to Sen. Ben Kluy's memorial
(2) " " " Dept of LRA.
(3) " " " A.G.

1 IN THE SENATE

BY BINKLEY

2 SENATE BILL NO. 50

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

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15 class borough; [OR]

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17 powers; or

18 (3) dissolution is approved in an advisory election held on
19 the question by the municipality proposed to be dissolved.

20 * Sec. 2. AS 29.06.520 is repealed and reenacted to read:

21 Sec. 29.06.520. SUCCESSION. (a) The Local Boundary Commission
22 shall provide for the distribution of assets and liabilities of a
23 municipality upon its dissolution. Assets and liabilities may be
24 distributed to the state, another municipality, a nonprofit corpora-
25 tion formed under the laws of the state, or a Native council organized
26 under 25 U.S.C. 476.

27 (b) In determining how to distribute the assets of a municipali-
28 ty upon its dissolution, the Local Boundary Commission shall consider
29 the manner in which the assets will be best used to continue to

neither under
constitution
as far to
population

1 provide services to the area of the dissolved municipality. Prefer-
2 ence in the distribution of the assets shall be given to the state,
3 another municipality or a nonprofit corporation.

SENATE AMENDMENT

BY: _____

TO: _____ CS for SENATE BILL NO. 50 (C+RA)

SECTION 4 TO: _____ HOUSE BILL NO. _____

Sec 29.06.51(a) Election is amended to read:

(a) The Local Boundary Commission shall immediately notify the director of elections of its acceptance of a dissolution petition. Within 30 days after notification, the director of elections shall order an election in the municipality to determine whether the voters desire dissolution.

The election must be held at least 30 and not more than 90 days after the election order unless such timing would cause the election to be held between May 1 and November 1. If

SENATE AMENDMENT

BY: _____

TO: _____ SENATE BILL NO. _____

TO: _____ HOUSE BILL NO. _____

the director of elections receives
notification after April 1, but before
October 1, the election shall be
held within 60 days after November

1. A person who is a voter
of the municipality may vote in
the dissolution election.

(TURN IN ORIGINAL AMENDMENT TO SENATE SECRETARY'S OFFICE.
THE AMENDMENT WILL BE NUMBERED, COPIED AND DISTRIBUTED.)

SENATE AMENDMENT

BY: _____

TO: _____ CS for SENATE BILL NO. 50 (C+RA)

TO: _____ HOUSE BILL NO. _____

SECTION 4

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TO: _____ SENATE BILL NO. _____

TO: _____ HOUSE BILL NO. _____

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THE AMENDMENT WILL BE NUMBERED, COPIED AND DISTRIBUTED.)

Original sponsor: Binkley

1 IN THE SENATE

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

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24 ipality fails to meet the standards for dissolution, it shall reject
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27 the petition. If the commission determines that the municipality
28 meets the standards under AS 29.06.470(a)(3) and that dissolution of
29 the municipality is in the best interest of the state, it shall accept

1 the petition.

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3 (c) The director of elections shall certify the election re-
4 sults. If dissolution is approved by a number of voters greater than
5 50 percent of the number of people registered to vote in the municipi-
6 pality, the director of elections shall declare that the municipality
7 is dissolved effective on the date of certification.
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SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 2/12/87 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: JUDICIARY
FINANCE

**FISCAL NOTE(S) ATTACHED yes **
IN ACCORDANCE WITH AS 24.08/035
(see below)

1/19/87

DATE TURNED INTO OFFICE

3/11/87

Mr. President:

COMMUNITY & REGIONAL AFFAIRS Committee considered SB 50

relating to dissolution of a municipality,

and recommended:

replace with CS SB 50 (C+RA)

same title
 new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted and attached

** Committee attached or adopted fiscal note(s)
 zero fiscal impact

MEMBERS SIGNING DO PASS

[Signature]
[Signature]
[Signature]

OTHER RECOMMENDATIONS

Rick Helford DO NOT PASS

Arlos Sturgulowski
Chairman signature and recommendation

Do Pass

Committee Backup Attached

STATE OF ALASKA

STEVE COWPER, GOVERNOR

LOCAL BOUNDARY COMMISSION

949 EAST 36TH AVENUE, SUITE 404
ANCHORAGE, ALASKA 99508
PHONE: (907) 561-8586

February 27, 1987

The Honorable Henry Springer, Chairman
House Committee on Community &
Regional Affairs
Pouch V
Juneau, AK 99811

Dear Representative Springer:

The Alaska Local Boundary Commission convened last evening to formally consider the version of draft CS HB 65 which was discussed during the February 20, meeting of your committee. I am pleased to inform you that the Local Boundary Commission considers the draft revision to be a significant improvement to the original bill. All five members of the commission voted unanimously to strongly support the legislation embodied in the draft CS HB 65.

While the Local Boundary Commission unanimously supports the draft CS HB 65, we do feel that there are two changes that might be made that would strengthen the bill. These are the inclusion of a "best interest" standard and the prohibition of conducting dissolution elections by mail. The suggested additions are explained below.

BEST INTEREST STANDARD

The Commission believes that amending the proposed AS 29.06.470(a)(3) to add a requirement that "dissolution is determined by the Local Boundary Commission to be in the best interests of the state, ~~the region and the territory served by the municipality proposed to be dissolved~~" would strengthen the bill. This additional standard would apply in those instances where dissolution has been requested by a majority of the registered voters.

The reason the Commission desires this addition is simple. The Alaska Constitution and state laws have, since statehood, uniformly recognized the need and importance of a state commission to deal with the creation of municipal governments, modifications of municipal government boundaries and the dissolution of municipal governments. The language of the draft CS HB 65 currently does not ensure a deliberative role for the state in dissolution proceedings.

The Honorable Henry Spinger
February 27, 1987
Page Two

Without language such as that suggested by the Local Boundary Commission, no safeguards exist against wholesale dissolution of municipalities. Conceivably, any and every current and future municipal government could easily meet the standards set out in the draft CS HB 65. While the Commission does not suggest that a significant number of the 159 municipalities in the state would seek to dissolve if this bill became law, we do feel it would enhance the bill to include a reasonable safeguard.

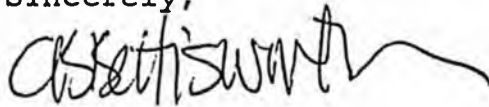
We suggest that situations will arise which will require discretionary application and deliberation of state level concerns. Thus, it seems prudent to include provision of language which would allow the commission to serve this legitimate role. We feel a "best interest" standard does just this.

ELECTIONS BY MAIL

The commission would also like to see the inclusion of statutory provisions to preclude the conduct of municipal dissolution elections by mail under AS 15.20.800. While it may be appropriate to conduct certain state elections by mail, the Commission opposes elections by mail either for municipal incorporation or dissolution. Our objections to conducting such elections by mail are numerous and have been conveyed to the Division of Elections. In general, we find that the significance of such elections and public preference warrant conducting municipal incorporation and dissolution elections in the conventional manner.

Thank you for this opportunity to comment on the proposed CS HB 65. We feel that the draft CS HB 65 will permit the Local Boundary Commission to respond fully to the current issues relating to dissolution. However, we do feel that our two suggestions will further improve the bill. Please feel free to contact the Local Boundary Commission should you require clarification of any points.

Sincerely,



For

Robert O. Eder, Chairman
Local Boundary Commission

The Honorable Henry Spinger
February 27, 1987
Page Three

cc: The Honorable Arliss Sturgulewski
Chair, Senate C&RA
The Honorable Johne Binkley
sponsor SB 50
The Honorable Lyman Hoffman
sponsor HB 65
C.B. Bettisworth, Member, LBC
Bert Greist, Member, LBC
Dave Hanson, Member, LBC
Jo Anderson, Member, LBC
David G. Hoffman, Commissioner, DCRA
Marty Rutherford, Director, MRAD/DCRA

Alaska State Legislature

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



P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4961

Senate Community and Regional Affairs Committee

TO: Senate C&RA Members

March 10, 1987

FROM: Senate C&RA Staff 

RE: CSSB 50 (C&RA) - Dissolution of a municipality

At the last hearing on this bill a number of concerns were raised. This CS addresses those concerns.

An attempt has been made to have the process mirror the incorporation process. Citizens wishing to dissolve a municipality could file a petition with the Local Boundary Commission (LBC).

If the the petition was signed by a number of voters of the municipality greater than 50 percent of the votes cast within the municipality at the last general election and if the LBC determined that the dissolution was in the state's best interest, it would accept the petition.

If the LBC accepted the petition, the director of elections would then conduct an election on the question and if dissolution was approved by a majority of the registered voters in the municipality, the dissolution would take effect.

The section of the original bill that dealt with succession has been deleted. Existing law would remain and assets could be handled through existing contracting procedures as suggested by the Department of Law.

Existing law is attached.

Sec. 29.06.460. Petition. (a) Voters of a municipality may file a dissolution petition with the department in the form prescribed by the department. The petition must be signed by a number of voters equal to at least 25 percent of the number of votes cast in the last regular election in that municipality.

(b) The petition must include

(1) the name of the municipality;

(2) maps, documents, and other information showing that the municipality meets the standards for dissolution. (§ 5 ch 74 SLA 1985)

Sec. 29.06.470. Standards. (a) Except as provided in (b) of this section, voters of a municipality may petition for dissolution when the municipality is free of debt, or, if in debt, each of its creditors is satisfied with a method of repayment and

(1) it no longer meets the minimum standards prescribed for incorporation by AS 29.05, or former AS 29.18.030 if it is a third class borough; or

(2) the municipality ceases to use each of its mandatory powers.

(b) Voters of a city in a borough may petition for dissolution of the city if the borough consents to assume the city's rights, powers, duties, assets, and liabilities. The consent must be ratified by a majority of borough voters voting on the question. (§ 5 ch 74 SLA 1985)

Sec. 29.06.480. Review. (a) The department shall review a dissolution petition for content and signatures, and shall return a deficient petition for correction or completion.

(b) If the petition contains the required information and signatures, the department shall investigate the proposal. (§ 5 ch 74 SLA 1985)

Sec. 29.06.490. Report and hearing. (a) The department shall report its findings to the Local Boundary Commission with its recommendation regarding the dissolution of a municipality.

(b) The Local Boundary Commission shall hold at least one public hearing in the municipality proposed to be dissolved. (§ 5 ch 74 SLA 1985)

Sec. 29.06.500. Decision. (a) If the Local Boundary Commission determines that a municipality fails to meet the standards for dissolution, it shall reject the petition. If the commission determines that the municipality meets the standards, it shall accept the petition.

(b) A Local Boundary Commission decision under this section may be appealed under the Administrative Procedure Act (AS 44.62). (§ 5 ch 74 SLA 1985)

Sec. 29.06.510. Election. (a) The Local Boundary Commission shall immediately notify the director of elections of its acceptance of a dissolution petition. Within 30 days after notification, the director of elections shall order an election in the municipality to determine whether the voters desire dissolution. The election must be held at least 30 and not more than 90 days after the election order. A person who is a voter of the municipality may vote in the dissolution election.

(b) The director of elections shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15). The state shall pay all election costs.

(c) The director of elections shall certify the election results. If dissolution is approved, the director of elections shall declare that the municipality is dissolved effective on the date of certification. (§ 5 ch 74 SLA 1985)

Sec. 29.06.520. Succession. The government succeeding to a dissolved municipality succeeds to all its rights, powers, duties, assets, and liabilities. (§ 5 ch 74 SLA 1985)

Sec. 29.06.530. Application. AS 29.06.450 — 29.06.530 apply to home rule and general law municipalities. (§ 5 ch 74 SLA 1985)

Chapter 08. Classification of Municipalities.

Section

10 — 50. [Repealed]

Secs. 29.08.010 — 29.08.045. Classification of municipalities. [Repealed, § 88 ch 74 SLA 1985, effective January 1, 1986.]

Sec. 29.08.050. Transition. [Repealed, § 44 ch 21 SLA 1985, effective May 10, 1985.]

Chapter 10. Home Rule Municipalities.

Article

1. Charters (§§ 29.10.010 — 29.10.100)
2. Home Rule Limitations (§ 29.10.200)

Effective date of chapter. — Section 90, ch. 74, SLA 1985 provides: "This Act takes effect January 1, 1986."

2.B.

5-0428L ✓

Cook

2/13/87

Original sponsor: Hoffman

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 65 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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14 incorporation by AS 29.05, or former AS 29.18.030 if it is a third
15 class borough; [OR]

16 (2) the municipality ceases to use each of its mandatory
17 powers; or

18 (3) dissolution is requested by petition on a form provided
19 by the department signed by a majority of the ^{members} voters of the municipal-
20 ity proposed to be dissolved. *persons req'd to vote*

21 * Sec. 2. AS 29.06.510(c) is amended to read:

22 (c) The director of elections shall certify the election re-
23 sults. If dissolution is approved by a majority of the ^{persons req'd to vote in} voters of the
24 municipality, the director of elections shall declare that the munic-
25 ipality is dissolved effective on the date of certification.

26 * Sec. 3. AS 29.06.520 is repealed and reenacted to read:

27 Sec. 29.06.520. SUCCESSION. (a) The Local Boundary Commission
28 shall provide for the distribution of assets and liabilities of a
29 municipality upon its dissolution. Assets and liabilities may be

1 distributed to the department or another municipality.

2 (b) In determining how to distribute the assets of a municipali-
3 ty upon its dissolution, the Local Boundary Commission shall consider
4 the manner in which the assets will be best used to continue to pro-
5 vide services to the area of the dissolved municipality. If assets
6 are received by the department under this section, the department
7 shall, to the maximum extent possible, use the assets to provide
8 services to the area of the dissolved municipality. To carry out this
9 subsection, the department may enter into contracts regarding the use
10 of the assets with any person or organization, including a

11 (1) nonprofit corporation; or

12 (2) Native council organized under 25 U.S.C. 476 or
13 traditional village council.

14 (c) A contract may not be executed under (b)(2) of this section
15 unless the council waives immunity from suit for claims arising out of
16 activities relating to the use and management of the assets. A con-
17 tract entered into under (b) of this section must contain provisions
18 holding the contractor accountable for the use and maintenance of the
19 assets, including a provision that the

20 (1) assets be used for a specified public purpose;

21 (2) assets be used to provide services to residents without
22 regard to race, color, creed, religion, or national origin; and

23 (3) contractor is liable for claims arising out of the use
24 or management of the assets.
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29

February 2, 1987

Hon. Lyman Hoffman
Alaska House of Representatives
P.O. Box V
Juneau, AK 99811

Re: House Bill 65 -- dissolution
of a municipality

Dear Representative Hoffman:

Per your request, we have reviewed HB 65 relating to the requirements for dissolution of a municipality under the local option method and providing for the distribution of assets and liabilities of a municipality upon its dissolution.

Section 1. This section is amended by adding a third alternative by which a municipality can qualify its petition to dissolve under the local option method, AS 29.06.470(a). The new subsection, AS 29.06.470(a)(3) reads: "dissolution is approved in an advisory election held on the question by the municipality proposed to be dissolved." The terminology "approved in an advisory election ..." is not defined in this bill. In order for such an election to be useful to the Local Boundary Commission when it considers the adequacy of a municipality's petition for dissolution under AS 29.06.500, we believe that the advisory election alternative in AS 29.06.470(a)(3) should be more definitive.

Section 2. The basic problem in this section arises because it would have public assets of a dissolved municipality distributed to nonpublic entities, i.e., private nonprofit corporations and Native councils organized under the Indian Reorganization Act. Article IX, section 6 of the Alaska Constitution says, "No ... public property shall be transferred, ... except for a public purpose." Article X, section 2 requires all local government power to be vested in cities and boroughs. Both private corporations and IRA councils (whose membership is restricted by federal law to Natives) are not elected by or responsible to the entire electorate. We believe it would be unconstitutional to transfer public assets to private organizations which may not serve as substitute local governments under the Alaska Constitution, and to allow those organizations to make discretionary

Hon. Lyman Hoffman
Alaska House of Representatives
Re: HB 65 -- Dissolution of municipality

February 2, 1987
Page #2

decisions about assets which belong to the entire population of the dissolved municipality.

However, occasionally a local nonprofit or Native council may be in the best position to administer local assets, particularly when it has broad support from the community. In such cases, it may be possible to accomplish almost the same and despite the restrictions noted above, through the device of retaining title to the assets -- and ultimate control -- in the state, but contracting with local organization to administer the assets. Such delegations must be subject to strict controls to insure public access to facilities and state oversight, and truly discretionary governmental authority may not be delegated. But day-to-day operation of the former municipality's assets may be turned over to local private entities. We believe this can be accomplished under present law and does not require amending Title 29.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:
Marjorie L. Odland
Assistant Attorney General

MLO/pjg

cc: Bob Evans
Acting Legislative Liaison
Office of the Governor



Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Senate C&RA Members

Feb 17, 1987

FROM: Senate C&RA Staff

A handwritten signature in dark ink, appearing to be "N. E. C.", written over the "FROM" line.

RE: SB 50 - Dissolution of a municipality

Enclosed in this packet is a memo from Senator Binkley, the bill's sponsor, a position statement and zero fiscal note from DC&RA, a letter to the Attorney General asking several legal questions regarding section 2 and the Attorney General's response.

The AG's opinion points out a constitutional difficulty with section 2 as now written. The DC&RA memo also mentions some proposed changes for section 1.

There will be a public hearing on the bill, but it is not anticipated that action will be taken on the bill today. On Thursday, February 19th, the Local Boundary Commission will be meeting with the committee and there will be an opportunity to discuss dissolution and related issues with the Commission.

It is anticipated that the bill, probably in the form of a proposed committee substitute, will back before the committee next week for action.

Senator Johne Binkley

Alaska State Senate
P.O. Box V • Juneau, Alaska 99811 • (907) 465-4985




Finance Committee
Co-Chairman

M E M O R A N D U M

February 16, 1987

TO: SENATOR ARLISS STURGULEWSKI, CHAIRPERSON
Senate Community and Regional Affairs Committee

FROM: SENATOR JOHNE BINKLEY 

Subj: Senate Bill 50: "An Act relating to the dissolution
of a municipality."

Residents and local elected officials of certain cities in Alaska have expressed an interest or desire in dissolving their municipal government. State laws provide standards and procedures for dissolution. However, the current regulations do not specifically address voluntary dissolution of active municipalities.

Existing regulations only pertain to dissolution of a community which effectively ceases to function as a governmental entity. State statutes require that, in order to dissolve, a municipal government must be free of debt and that it must cease to exercise its mandatory powers or it must be determined to no longer meet the standards of incorporation. The administrative regulations require that all three standards must be met in order for a municipal government to dissolve.

In 1984, residents of the City of Akiachak initiated a petition for the dissolution of their city. The matter was brought before the Alaska Local Boundary Commission twice (once upon reconsideration) in 1985. The Commission denied the petition principally because it found that Akiachak failed to meet two of the standards of dissolution of a municipality: (1) the community did not fall below the minimum standards for incorporation; and (2) the city must cease for two or more consecutive years to exercise virtually any of its municipal powers. The Commission determined that the City of Akiachak continued to function in certain respects (e.g., administration of grants). Akiachak has appealed the Commission's decision to the State Superior Court.

In addition to Akiachak, residents and elected officials of at least nine other cities have expressed varying

Senator Arliss Sturgulewski
February 16, 1987
Page 2

degrees of interest in dissolution. Most of these communities are merely examining the consequences of and procedures for dissolution. However, the city councils of both Atmautluak and Akiachak have taken action which has resulted in de facto dissolution for those communities.

Section 1 of this bill amends the standards by which the Local Boundary Commission is petitioned in dissolution cases by allowing the community to hold an advisory election.

Section 2 of this bill provides statutory guidelines for the distribution of a municipality's assets and liabilities upon its dissolution. The bill provides that assets and liabilities may be distributed to the state, another municipality, a nonprofit corporation, or a Native council.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508
PHONE: (907) 563-1073

February 6, 1987

POSITION PAPER

RE: SB 50 -- "An Act relating to dissolution of a municipality."

SPONSOR: Senator Binkley

Program Effects of Bill:

Section 1 of the bill amends the standards by which the Local Boundary Commission (LBC) judges a petition allowing a municipality to dissolve by adding an advisory election option.

Section 2 of the bill designates to the Local Boundary Commission (LBC) the responsibility to distribute the assets of a dissolved municipality and sets out some general guidelines for this distribution. The designation of the LBC as the executor of a dissolved municipality's assets and liabilities is a new role for this constitutionally mandated body.

Comments:

The creators of the existing statutes pertaining to municipal dissolution apparently only envisioned the need for dissolving municipal government in those cases in which communities essentially ceased to exist (i.e., became ghost towns). Consequently, the existing statutory dissolution standards do not adequately address the situation in which the residents of a "viable" community, presently incorporated as a municipality, choose to dissolve their municipality and return to an unincorporated status. The existing standards which the LBC uses to judge a dissolution petition are:

1. It (the municipality) is free of debt, or it has satisfied its creditors with a method of repayment; and
2. it no longer meets the minimum standards for incorporation; or
3. it ceases to use its mandatory powers.

Clearly these standards were constructed to apply to the case in which a community's population has moved away and the municipality has ceased to function. With the exception of the debt standard, these standards become quite subjective, ambiguous, and generally strained when applied to the case of a thriving community. It is virtually impossible for a still existing community to satisfy the last two standards.

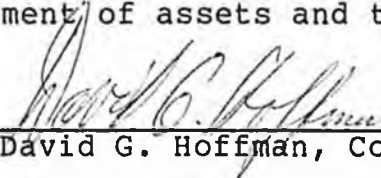
This situation thwarts the will of local residents to determine the type of local organization they will have represent and govern them. The proposed amendment, providing for a local advisory vote as an optional standard for dissolution, creates an objective and easily measured means to determine whether a municipal government should be allowed to dissolve. The Department advocates local control of government to the extent practical and, therefore, supports the purpose and intent of this legislation.

The bill does raise a number of questions concerning the mechanics of implementation. The Department recommends three technical amendments to clarify and strengthen new procedures set out in the bill:

- The Department recommends that the "advisory election" process provided for in this bill be clarified so that it is clear that the election is a municipal election by secret ballot and meets State procedural requirements.
- The Department also recommends the insertion of a requirement that the dissolution advisory vote, and the final vote on the question after LBC approval, be approved by a majority of residents registered to vote (this would require amendment of AS 29.06.510 which pertains to the dissolution election). Dissolution is clearly one of the most critical actions that residents of a municipality can take. It is therefore essential that such an election represent the broadest reasonable measure of community sentiment.
- It is recommended that the bill be amended to clearly state that the LBC shall require, in conjunction with the distribution of municipal assets, that facility use and services provided by such assets be provided equally to all residents and that the trustee of such assets be liable and accountable for the expenditure of public funds.

The Department believes these changes would strengthen the bill by more clearly defining the dissolution process and by making the trustee of local assets more accountable for public funds and services.

The proposed legislation presumes the LBC's ability to "provide for the distribution of assets and liabilities" and "consider the manner in which assets will best be used." However, it is not clear that the LBC has the power to place binding conditions on the assignment of assets and the provision of services.



David G. Hoffman, Commissioner

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

REQUEST: SB 50

Bill Version: SB 0050A
Publish Date: 01/22/87

Revision Date: _____
Title: "An Act relating to dissolution
of a municipality."
Sponsor: Senator Binkley
Requestor: Senate C&RA

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

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: Douglas B. Griffin
Division: Municipal and Regional Assistance

Phone: 465-4750
Date: 02/06/87

Approved by Commissioner: _____
Agency: Community and Regional Affairs

Date: 2-6-87

Distribution (by preparer) :

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



Alaska State Legislature

SENATE

P.O. Box V
State Capitol
Juneau, Alaska 99811

Feb. 11, 1987

Grace Berg Schaible
Department of Law
P.O. Box K
Juneau, Alaska, 99811

Dear Attorney General Schaible:

Senate Bill 50, "An Act relating to the dissolution of a municipality," is currently in the Senate Community and Regional Affairs Committee. A copy of the bill is enclosed.

Section 2 of the bill states, in part, that the Local Boundary Commission (LBC) shall provide for the distribution of assets and liabilities of a municipality upon its dissolution. The bill further states that assets and liabilities may be distributed to the state, another municipality, a nonprofit corporation formed under the laws of the state, or a Native council organized under 25 U.S.C. 476.

Would you please give me your opinion on several question this section has raised?

1 - Are there statutory or constitutional problems with the distribution of public assets to a group which may limit the decision making process on how those assets are used to only members of the group, or to some portion of the population of the former municipality less than all the registered voters?

2 - Are there statutory or constitutional problems with the distribution of public assets to a group which may expand the decision making process on how those assets are used to include members of the group who are not registered voters?

3 - Does the LBC have the power to place binding conditions on the assignment of assets and the provision of services?

4 - Can the state government delegate governmental powers formerly exercised by a dissolved municipality to a entity that is not a political subdivision of the state?

If you have additional comments on the bill I would welcome them. Unfortunately, it was necessary to advance the hearing date on this bill to Tuesday, February 16th. If you could supply your answer by that date or before, it would be most appreciated. Thank you.

Sincerely,



Arliss Sturgulewski,
Chairman,
Community and Regional
Affairs Committee

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 16-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

February 17, 1987

Honorable Arliss Sturgulewski
Chair, Community & Regional
Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: SB 50; dissolution of a municipality

Dear Senator Sturgulewski:

You have requested our opinion on several questions regarding sec. 2 of SB 50. The questions will be answered individually below.

1. Are there statutory or constitutional problems with the distribution of public assets to a group which may limit the decision making process on how those assets are used to only members of the group, or to some portion of the population of the former municipality less than all the registered voters?

The basic constitutional problem in this section arises because it would have public assets of a dissolved municipality distributed to nonpublic entities, i.e., private nonprofit corporations and Native councils organized under the Indian Reorganization Act. Article IX, sec. 6 of the Alaska Constitution says, "No ... public property shall be transferred, ... except for a public purpose." Article X, sec. 2 requires all local government power to be vested in cities and boroughs. Both private corporations and IRA councils (whose membership is restricted by federal law to Natives) are not elected by or responsible to the entire electorate. We believe it would be unconstitutional to transfer public assets to private organizations which may not serve as substitute local governments under the Alaska Constitution, and to allow those organizations to make discretionary decisions about assets which belong to the entire population of the dissolved municipality. The concern here is responsibility to the entire population of the former municipality, not just to registered voters.

However, occasionally a local nonprofit or Native council may be in the best position to administer local assets, par-

Hon. Arliss Sturgulewski, Chair
Community & Regional Affairs Committee
Alaska State Legislature

February 17, 1987
Page #2
Re: SB 50, dissolution

ticularly when it has broad support from the community. In such cases, it may be possible to accomplish almost the same and despite the restrictions noted above, through the device of retaining title to the assets -- and ultimate control -- in the state, but contracting with a local organization to administer assets. Such delegations must be subject to strict controls to insure public access to facilities and state oversight, and truly discretionary governmental authority may not be delegated. But, day-to-day operation of the former municipality's assets may be turned over to a local private entity. We believe this can be accomplished under present law.

2. Are there statutory or constitutional problems with the distribution of public assets to a group which may expand the decision making process on how those assets are used to include members of the group who are not registered voters?

Please see the answer to question 1.

3. Does the Local Boundary Commission (LBC) have the power to place binding conditions on the assignment of assets and the provision of services?

Yes. The powers and duties of the LBC are listed in AS 44.47.567. Furthermore, sec. 2 of SB 50 gives the LBC the specific power needed to provide for the distribution of assets and liabilities upon dissolution of a municipality.

We hope this memorandum adequately addresses your concerns. Please do not hesitate to contact this office if you have further questions.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: *Marjorie L. Odland*
Marjorie L. Odland
Assistant Attorney General

MLO/pjg

cc: Hon. David Hoffman, Commissioner
Department of Community &
Regional Affairs

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 2/12/87 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: JUDICIARY
FINANCE

**FISCAL NOTE(S) ATTACHED yes **
IN ACCORDANCE WITH AS 24.08/035
(see below)

1/19/87

DATE TURNED INTO OFFICE 3/11/87

Mr. President:

COMMUNITY & REGIONAL AFFAIRS Committee considered SB 50
relating to dissolution of a municipality.

and recommended:

replace with CS SB 50 (C+RA) same title
 attached amendment(s) and new title

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted and attached

** Committee attached or adopted fiscal note(s)
 zero fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]
[Signature]
[Signature]

Rick Helford DO NOT PASS

Arless Sturgulewski
Chairman signature and recommendation

Committee Backup Attached

Do Pass

NO. 114

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: ^{CS} SB 50 (C+RA) M&A

Bill Version: CS SB 0050 (M&A)
Publish Date: 02/22/87 5-116 87

Revision Date: _____
Title: "An Act relating to dissolution
of a municipality."
Sponsor: Senator Binkley
Requestor: Senate C&RA

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

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 :

[Empty box for analysis]

Prepared by: Douglas B. Griffin *[Signature]* Phone: 465-4750
Division: Municipal and Regional Assistance Date: 02/06/87
Approved by Commissioner: *[Signature]* Date: 2-6-87
Agency: Community and Regional Affairs

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

CSSB 50 (C&RA)

LEGISLATIVE INTENT

Existing laws apparently will not permit the dissolution of a city government in a community unless that community suffers drastic reductions in its population and/or economy. The legislature recognizes that there are other circumstances under which the dissolution of a city government may be warranted. Such circumstances include those where:

1. the residents of a community have abandoned their city government;
2. alternative entities exist through which essential services* may be delivered in the absence of city government; and
3. dissolution would not be adverse to the interests of the community served by the city, the region in which the city is located, and the state, i.e., dissolving primarily to void a viable tax base.

It may be considered to be in the best interest of the state, under the provisions of Section 2 of this Act, for any city to be dissolved where such circumstances exist.

- * Definition of "essential services": Basic municipal services providing for the health, safety, and welfare of the residents, such as police and fire protection services and maintenance of public facilities, i.e., water and sewer systems; washeterias; community buildings, etc.

§ 29.06.450

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§ 29.06.460

MUNICIPAL GOVERNMENT

§ 29.06.490

NOTES TO DECISIONS

Legislature empowered to construct constitutional scheme for dissolution. — Since Alaska Const., art. X, § 7, says dissolved "in the manner" provided by the legislature, it empowers the legislature to construct any otherwise constitutional scheme for dissolution, rather than requiring the legislature to perform the dis-

solution. *City of Douglas v. City & Borough of Juneau*, Sup. Ct. Op. No. 672 (File No. 1379), 484 P.2d 1040 (1971), decided under former, similar law.

Collateral references. — 56 Am. Jur. 2d, *Municipal Corporations, Counties, and Other Political Subdivisions*, §§ 89-97.

Sec. 29.06.460. Petition. (a) Voters of a municipality may file a dissolution petition with the department in the form prescribed by the department. The petition must be signed by a number of voters equal to at least 25 percent of the number of votes cast in the last regular election in that municipality.

(b) The petition must include

(1) the name of the municipality;

(2) maps, documents, and other information showing that the municipality meets the standards for dissolution. (§ 5 ch 74 SLA 1985)

Sec. 29.06.470. Standards. (a) Except as provided in (b) of this section, voters of a municipality may petition for dissolution when the municipality is free of debt, or, if in debt, each of its creditors is satisfied with a method of repayment and

(1) it no longer meets the minimum standards prescribed for incorporation by AS 29.05, or former AS 29.18.030 if it is a third class borough; or

(2) the municipality ceases to use each of its mandatory powers.

(b) Voters of a city in a borough may petition for dissolution of the city if the borough consents to assume the city's rights, powers, duties, assets, and liabilities. The consent must be ratified by a majority of borough voters voting on the question. (§ 5 ch 74 SLA 1985)

Sec. 29.06.480. Review. (a) The department shall review a dissolution petition for content and signatures, and shall return a deficient petition for correction or completion.

(b) If the petition contains the required information and signatures, the department shall investigate the proposal. (§ 5 ch 74 SLA 1985)

Sec. 29.06.490. Report and hearing. (a) The department shall report its findings to the Local Boundary Commission with its recommendation regarding the dissolution of a municipality.

(b) The Local Boundary Commission shall hold at least one public hearing in the municipality proposed to be dissolved. (§ 5 ch 74 SLA 1985)

A M E N D M E N T

#1

Offered in the SENATE

By Binkley

TO: CSSB 50 (Rules)

Page 1, lines 18 - 19:

Delete "dissolution is requested by petition on a form provided by the department"

Insert "the dissolution petition filed under AS 29.06.460 is"

Original sponsor: Binkley

IN THE SENATE

BY THE RULES COMMITTEE

CS FOR SENATE BILL NO. 50 (Rules)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to dissolution of a municipality."

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

* Section 1. AS 29.06.470(a) is amended to read:

(a). Except as provided in (b) of this section, voters of a municipality may petition for dissolution when the municipality is free of debt, or, if in debt, each of its creditors is satisfied with a method of repayment and

(1) the municipality [IT] no longer meets the minimum standards prescribed for incorporation by AS 29.05, or former AS 29.-18.030 if it is a third class borough; [OR]

(2) the municipality ceases to use each of its mandatory powers; or

(3) dissolution is requested by petition on a form provided by the department signed by a number of voters of the municipality proposed to be dissolved greater than 50 percent of the number of votes cast in the last general election in that municipality.

* Sec. 2. AS 29.06.500(a) is amended to read:

(a) If the Local Boundary Commission determines that a municipality fails to meet the standards for dissolution, it shall reject the petition. If the commission determines that the municipality meets the standards under AS 29.06.470(a)(1) or (2), it shall accept the petition. If the commission determines that the municipality meets the standards under AS 29.06.470(a)(3) and that dissolution of the municipality is in the best interest of the state, it shall accept

§ 29.06.450

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MUNICIPAL GOVERNMENT

§ 29.06.490

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solution. *City of Douglas v. City & Borough of Juneau*, Sup. Ct. Op. No. 672 (File No. 1379), 484 P.2d 1040 (1971), decided under former, similar law.

Collateral references. — 56 Am. Jur. 2d, *Municipal Corporations, Counties, and Other Political Subdivisions*, §§ 89-97.

Sec. 29.06.460. Petition. (a) Voters of a municipality may file a dissolution petition with the department in the form prescribed by the department. The petition must be signed by a number of voters equal to at least 25 percent of the number of votes cast in the last regular election in that municipality.

(b) The petition must include

(1) the name of the municipality;

(2) maps, documents, and other information showing that the municipality meets the standards for dissolution. (§ 5 ch 74 SLA 1985)

Sec. 29.06.470. Standards. (a) Except as provided in (b) of this section, voters of a municipality may petition for dissolution when the municipality is free of debt, or, if in debt, each of its creditors is satisfied with a method of repayment and

(1) it no longer meets the minimum standards prescribed for incorporation by AS 29.05, or former AS 29.18.030 if it is a third class borough; or

(2) the municipality ceases to use each of its mandatory powers.

(b) Voters of a city in a borough may petition for dissolution of the city if the borough consents to assume the city's rights, powers, duties, assets, and liabilities. The consent must be ratified by a majority of borough voters voting on the question. (§ 5 ch 74 SLA 1985)

Sec. 29.06.480. Review. (a) The department shall review a dissolution petition for content and signatures, and shall return a deficient petition for correction or completion.

(b) If the petition contains the required information and signatures, the department shall investigate the proposal. (§ 5 ch 74 SLA 1985)

Sec. 29.06.490. Report and hearing. (a) The department shall report its findings to the Local Boundary Commission with its recommendation regarding the dissolution of a municipality.

(b) The Local Boundary Commission shall hold at least one public hearing in the municipality proposed to be dissolved. (§ 5 ch 74 SLA 1985)

SENATE BILL NO. 50 by Senator Binkley, entitled:

"An Act relating to dissolution of a municipality."

was read the first time and referred to the Community and Regional Affairs Committee, the Judiciary Committee and the Finance Committee.

The Community and Regional Affairs Committee considered SENATE BILL NO. 50 (An Act relating to dissolution of a municipality) and recommended it be replaced with

CS FOR SENATE BILL NO. 50 (C&RA)

and a majority do pass. The report was signed by Senator Sturgulewski, Chairman and concurred in by Senators Szymanski and Zharoff. Senator Halford signed "do not pass".

Zero fiscal note published today from Department of Community and Regional Affairs.

SENATE BILL NO. 50 was referred to the Judiciary Committee.

The Judiciary Committee considered SENATE BILL NO. 50 (dissolution of a municipality) and a majority of the committee recommended adoption of the Community and Regional Affairs Committee Substitute and do pass with the following amendment:

Page 2, line 2: Insert a new Section 3 to read:

* Sec. 3. AS 29.06.510(a) is amended to read:

(a) The Local Boundary Commission shall immediately notify the director of elections of its acceptance of a dissolution petition. Within 30 days after notification, the director of elections shall order an election in the municipality to determine whether the voters desire dissolution. The election must be held at least 30 and not more than 90 days after the election order (unless such timing would cause the) (election to be held between May 1 and November 1.) (If the director of elections receives notification) (after April 1, but before October 1, the election) (shall be held within 60 days after November 1.) A person who is a voter of the municipality may vote

in the dissolution election.

Renumber existing section accordingly.

The report was signed by Senator Kerttula, Chairman and concurred in by Senators Josephson and Sturgulewski.

The committee adopted:

Legislative Intent
CSSB 50 (C&RA)

Existing laws apparently will not permit the dissolution of a city government in a community unless that community suffers drastic reductions in its population and/or economy. The legislature recognizes that there are other circumstances under which the dissolution of a city government may be warranted. Such circumstances include those where:

1. the residents of a community have abandoned their city government;

SB 50 SENATE JOURNAL - PAGE 814- 1 4/ 3/87

2. alternative entities exist through which essential services* may be delivered in the absence of city government; and
3. dissolution would not be adverse to the interests of the community served by the city, the region in which the city is located, and the state, i.e., dissolving primarily to void a viable tax base.

It may be considered to be in the best interest of the state, under the provisions of Section 2 of this Act, for any city to be dissolved where such circumstances exist.

* Definition of "essential services": Basic municipal services providing for the health, safety, and welfare of the residents, such as police and fire protection services and maintenance of public facilities, i.e., water and sewer systems, washaterias, community buildings, etc.

SENATE BILL NO. 50 was referred to the Finance Committee.

SB 50 SENATE JOURNAL - PAGE 847- 1 4/ 7/87

The Finance Committee considered SENATE BILL NO. 50 (dissolution of a municipality) and a majority of the committee recommended it be replaced with

CS FOR SENATE BILL NO. 50 (FIN)

and do pass. The report was signed by Senator Binkley, Co-chairman and concurred in by Senators Zharoff, Duncan,

[REDACTED]

Existing laws apparently do not permit the dissolution of a city government unless that community suffers drastic reductions in its population or economy. The legislature recognizes that there are other circumstances under which the dissolution of a city government may be warranted. Such circumstances include those where:

1. the residents of a community have abandoned their city government?
2. alternative entities exist through which essential services* may be delivered in the absence of city government? and
3. dissolution would not be adverse to the interests of the region in which the city is located and the state (e.g., dissolving primarily to avoid a viable tax base, returning education function to the state).

It may be considered to be in the best interest of the state, under the provisions of Section 2 of this Act, for any city to be dissolved where such circumstances exist.

* Definition of "essential services": Basic municipal services provided for the health, safety, and welfare of the residents, such as police and fire protection services and maintenance of public facilities, e.g., water and waste disposal systems, community buildings, etc.

SENATE BILL NO. 50 was referred to the Rules Committee.

SB 50

SENATE JOURNAL - PAGE 896- 4 4/10/87

The Rules Committee considered SENATE BILL NO. 50 (dissolution of a municipality) and recommended calendar April 13. The report was signed by Senator Eliason, Chairman and concurred in by Senators Hensley, Binkley and Bennett.

SENATE BILL NO. 50 will be on the April 13 calendar.

SB 50

SENATE JOURNAL - PAGE 906- 2 4/10/87

At the request of the Rules Committee, SENATE BILL NO. 50 (dissolution of a municipality) was taken from the April 13 proposed calendar and returned to the Rules Committee.

SB 50

SENATE JOURNAL - PAGE 1170--2 5/ 4/87

The Rules Committee considered SENATE BILL NO. 50 (dissolution of a municipality) and a majority of the committee recommended calendar May 4. The report was signed by Senator Eliason, Chairman and Senators Faiks, Bennett and Hensley.

SENATE BILL NO. 50 is on the calendar.

SB 50

SENATE JOURNAL - PAGE 1172- 2 5/ 4/87

Senator Halford moved and asked unanimous consent that SENATE BILL NO. 50 (dissolution of a municipality) be held until the May 5 calendar. Without objection, it was so ordered and SENATE BILL NO. 50 will be on the May 5 calendar.

SB 50

SENATE JOURNAL - PAGE 1192- 2 5/ 5/87

Senator Halford moved and asked unanimous consent that SENATE BILL NO. 50 (dissolution of a municipality) which was held from May 4 be returned to the Rules Committee. Without objection, SENATE BILL NO. 50 was returned to Rules.



Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Senate C&RA Members

Feb 17, 1987

FROM: Senate C&RA Staff *MEC*

RE: SB 50 - Dissolution of a municipality

Enclosed in this packet is a memo from Senator Binkley, the bill's sponsor, a position statement and zero fiscal note from DC&RA, a letter to the Attorney General asking several legal questions regarding section 2 and the Attorney General's response.

The AG's opinion points out a constitutional difficulty with section 2 as now written. The DC&RA memo also mentions some proposed changes for section 1.

There will be a public hearing on the bill, but it is not anticipated that action will be taken on the bill today. On Thursday, February 19th, the Local Boundary Commission will be meeting with the committee and there will be an opportunity to discuss dissolution and related issues with the Commission.

It is anticipated that the bill, probably in the form of a proposed committee substitute, will be back before the committee next week for action.

Senator Johne Binkley

Alaska State Senate
P.O. Box V • Juneau, Alaska 99811 • (907) 465-4985



Finance Committee
Co-Chairman

M E M O R A N D U M

February 16, 1987

TO: SENATOR ARLISS STURGULEWSKI, CHAIRPERSON
Senate Community and Regional Affairs Committee

FROM: SENATOR JOHNE BINKLEY

Subj: Senate Bill 50: "An Act relating to the dissolution
of a municipality."

Residents and local elected officials of certain cities in Alaska have expressed an interest or desire in dissolving their municipal government. State laws provide standards and procedures for dissolution. However, the current regulations do not specifically address voluntary dissolution of active municipalities.

Existing regulations only pertain to dissolution of a community which effectively ceases to function as a governmental entity. State statutes require that, in order to dissolve, a municipal government must be free of debt and that it must cease to exercise its mandatory powers or it must be determined to no longer meet the standards of incorporation. The administrative regulations require that all three standards must be met in order for a municipal government to dissolve.

In 1984, residents of the City of Akiachak initiated a petition for the dissolution of their city. The matter was brought before the Alaska Local Boundary Commission twice (once upon reconsideration) in 1985. The Commission denied the petition principally because it found that Akiachak failed to meet two of the standards of dissolution of a municipality: (1) the community did not fall below the minimum standards for incorporation; and (2) the city must cease for two or more consecutive years to exercise virtually any of its municipal powers. The Commission determined that the City of Akiachak continued to function in certain respects (e.g., administration of grants). Akiachak has appealed the Commission's decision to the State Superior Court.

In addition to Akiachak, residents and elected officials of at least nine other cities have expressed varying

Senator Arliss Sturgulewski
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degrees of interest in dissolution. Most of these communities are merely examining the consequences of and procedures for dissolution. However, the city councils of both Atmautluak and Akiachak have taken action which has resulted in de facto dissolution for those communities.

Section 1 of this bill amends the standards by which the Local Boundary Commission is petitioned in dissolution cases by allowing the community to hold an advisory election.

Section 2 of this bill provides statutory guidelines for the distribution of a municipality's assets and liabilities upon its dissolution. The bill provides that assets and liabilities may be distributed to the state, another municipality, a nonprofit corporation, or a Native council.

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508
PHONE: (907) 563-1073

February 6, 1987

POSITION PAPER

RE: SB 50 -- "An Act relating to dissolution of a municipality."

SPONSOR: Senator Binkley

Program Effects of Bill:

Section 1 of the bill amends the standards by which the Local Boundary Commission (LBC) judges a petition allowing a municipality to dissolve by adding an advisory election option.

Section 2 of the bill designates to the Local Boundary Commission (LBC) the responsibility to distribute the assets of a dissolved municipality and sets out some general guidelines for this distribution. The designation of the LBC as the executor of a dissolved municipality's assets and liabilities is a new role for this constitutionally mandated body.

Comments:

The creators of the existing statutes pertaining to municipal dissolution apparently only envisioned the need for dissolving municipal government in those cases in which communities essentially ceased to exist (i.e., became ghost towns). Consequently, the existing statutory dissolution standards do not adequately address the situation in which the residents of a "viable" community, presently incorporated as a municipality, choose to dissolve their municipality and return to an unincorporated status. The existing standards which the LBC uses to judge a dissolution petition are:

1. It (the municipality) is free of debt, or it has satisfied its creditors with a method of repayment; and
2. it no longer meets the minimum standards for incorporation; or
3. it ceases to use its mandatory powers.

Clearly these standards were constructed to apply to the case in which a community's population has moved away and the municipality has ceased to function. With the exception of the debt standard, these standards become quite subjective, ambiguous, and generally strained when applied to the case of a thriving community. It is virtually impossible for a still existing community to satisfy the last two standards.

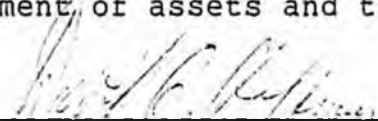
This situation thwarts the will of local residents to determine the type of local organization they will have represent and govern them. The proposed amendment, providing for a local advisory vote as an optional standard for dissolution, creates an objective and easily measured means to determine whether a municipal government should be allowed to dissolve. The Department advocates local control of government to the extent practical and, therefore, supports the purpose and intent of this legislation.

The bill does raise a number of questions concerning the mechanics of implementation. The Department recommends three technical amendments to clarify and strengthen new procedures set out in the bill:

- The Department recommends that the "advisory election" process provided for in this bill be clarified so that it is clear that the election is a municipal election by secret ballot and meets State procedural requirements.
- The Department also recommends the insertion of a requirement that the dissolution advisory vote, and the final vote on the question after LBC approval, be approved by a majority of residents registered to vote (this would require amendment of AS 29.06.510 which pertains to the dissolution election). Dissolution is clearly one of the most critical actions that residents of a municipality can take. It is therefore essential that such an election represent the broadest reasonable measure of community sentiment.
- It is recommended that the bill be amended to clearly state that the LBC shall require, in conjunction with the distribution of municipal assets, that facility use and services provided by such assets be provided equally to all residents and that the trustee of such assets be liable and accountable for the expenditure of public funds.

The Department believes these changes would strengthen the bill by more clearly defining the dissolution process and by making the trustee of local assets more accountable for public funds and services.

The proposed legislation presumes the LBC's ability to "provide for the distribution of assets and liabilities" and "consider the manner in which assets will best be used." However, it is not clear that the LBC has the power to place binding conditions on the assignment of assets and the provision of services.



David G. Hoffman, Commissioner

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: SB 50

Bill Version: SB 0050A
Publish Date: 01/22/87

Revision Date: _____
Title: "An Act relating to dissolution of a municipality."
Sponsor: Senator Binkley
Requestor: Senate C&RA

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

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: Douglas B. Griffin *D.B.G.* Phone: 465-4750
Division: Municipal and Regional Assistance Date: 02/06/87

Approved by Commissioner: [Signature] Date: 2-6-87
Agency: Community and Regional Affairs

Distribution (by preparer):

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- Senate Secretary



Alaska State Legislature

SENATE

P.O. Box V
State Capitol
Juneau, Alaska 99811

Feb. 11, 1987

Grace Berg Schaible
Department of Law
P.O. Box K
Juneau, Alaska, 99811

Dear Attorney General Schaible:

Senate Bill 50, "An Act relating to the dissolution of a municipality," is currently in the Senate Community and Regional Affairs Committee. A copy of the bill is enclosed.

Section 2 of the bill states, in part, that the Local Boundary Commission (LBC) shall provide for the distribution of assets and liabilities of a municipality upon its dissolution. The bill further states that assets and liabilities may be distributed to the state, another municipality, a nonprofit corporation formed under the laws of the state, or a Native council organized under 25 U.S.C. 476.

Would you please give me your opinion on several question this section has raised?

1 - Are there statutory or constitutional problems with the distribution of public assets to a group which may limit the decision making process on how those assets are used to only members of the group, or to some portion of the population of the former municipality less than all the registered voters?

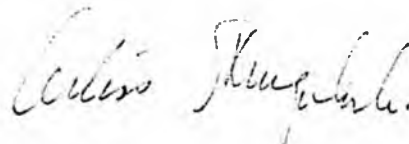
2 - Are there statutory or constitutional problems with the distribution of public assets to a group which may expand the decision making process on how those assets are used to include members of the group who are not registered voters?

3 - Does the LBC have the power to place binding conditions on the assignment of assets and the provision of services?

4 - Can the state government delegate governmental powers formerly exercised by a dissolved municipality to a entity that is not a political subdivision of the state?

If you have additional comments on the bill I would welcome them. Unfortunately, it was necessary to advance the hearing date on this bill to Tuesday, February 16th. If you could supply your answer by that date or before, it would be most appreciated. Thank you.

Sincerely,



Arliss Sturgulewski,
Chairman,
Community and Regional
Affairs Committee

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

February 17, 1987

Honorable Arliss Sturgulewski
Chair, Community & Regional
Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: SB 50; dissolution of a municipality

Dear Senator Sturgulewski:

You have requested our opinion on several questions regarding sec. 2 of SB 50. The questions will be answered individually below.

1. Are there statutory or constitutional problems with the distribution of public assets to a group which may limit the decision making process on how those assets are used to only members of the group, or to some portion of the population of the former municipality less than all the registered voters?

The basic constitutional problem in this section arises because it would have public assets of a dissolved municipality distributed to nonpublic entities, i.e., private nonprofit corporations and Native councils organized under the Indian Reorganization Act. Article IX, sec. 6 of the Alaska Constitution says, "No ... public property shall be transferred, ... except for a public purpose." Article X, sec. 2 requires all local government power to be vested in cities and boroughs. Both private corporations and IRA councils (whose membership is restricted by federal law to Natives) are not elected by or responsible to the entire electorate. We believe it would be unconstitutional to transfer public assets to private organizations which may not serve as substitute local governments under the Alaska Constitution, and to allow those organizations to make discretionary decisions about assets which belong to the entire population of the dissolved municipality. The concern here is responsibility to the entire population of the former municipality, not just to registered voters.

However, occasionally a local nonprofit or Native council may be in the best position to administer local assets, par-

Hon. Arliss Sturgulewski, Chair
Community & Regional Affairs Committee
Alaska State Legislature

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Re: SB 50, dissolution

ticularly when it has broad support from the community. In such cases, it may be possible to accomplish almost the same and despite the restrictions noted above, through the device of retaining title to the assets -- and ultimate control -- in the state, but contracting with a local organization to administer assets. Such delegations must be subject to strict controls to insure public access to facilities and state oversight, and truly discretionary governmental authority may not be delegated. But, day-to-day operation of the former municipality's assets may be turned over to a local private entity. We believe this can be accomplished under present law.

2. Are there statutory or constitutional problems with the distribution of public assets to a group which may expand the decision making process on how those assets are used to include members of the group who are not registered voters?

Please see the answer to question 1.

3. Does the Local Boundary Commission (LBC) have the power to place binding conditions on the assignment of assets and the provision of services?

Yes. The powers and duties of the LBC are listed in AS 44.47.567. Furthermore, sec. 2 of SB 50 gives the LBC the specific power needed to provide for the distribution of assets and liabilities upon dissolution of a municipality.

We hope this memorandum adequately addresses your concerns. Please do not hesitate to contact this office if you have further questions.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: *Marjorie L. Odland*
Marjorie L. Odland
Assistant Attorney General

MLO/pjg

cc: Hon. David Hoffman, Commissioner
Department of Community &
Regional Affairs