

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002

8672

10175 HOUSE COMMUNITY & REGIONAL AFFAIRS

*Cordova Harbor*

Prince William Sound

Cordova officials have expressed continued interest in consideration of establishing a Prince William Sound borough. On October 17, 2000, LBC staff met in Anchorage with the City of Cordova Planning Director to discuss the status of the City's efforts to consider borough government for the Prince William Sound region. The City considers a borough encompassing Prince William Sound and the Copper River Basin extending just north of Paxson to comprise an ideal territory. The City has expressed continued interest in promoting legislative reform of procedures for borough annexation and incorporation.

Skagway

At the request of the City of Skagway, in December 1999, LBC staff reviewed and commented on a draft petition for incorporation of a first class Skagway borough

and dissolution of the City of Skagway. The boundaries of the territory proposed for incorporation conform to the existing boundaries of the City of Skagway, which encompass a total of 466 square miles, and a population of 825 year-round residents.

At that time, staff raised policy issues and provided extensive comments on

technical matters. Policy issues centered on concerns that the proposal to convert the City of Skagway to a borough government ignored the distinctions between a city government and a borough government. It was also indicated that the proposal would do nothing to further local government, yet it would diminish flexibility with respect to borough boundaries in that region and also cause the State to incur considerable expense.

DCED policy concerns notwithstanding, the Skagway City Clerk reported in April that signatures were being gathered on the petition. Since Alaska Statutes require that the petition be signed by a number of voters equal to 15% of the number who voted in the last State general election in the territory proposed for incorporation (separately inside and outside home rule and first class cities). In this case, the City Clerk indicated that 44 signatures would be required.

On November 13, 2000, the Skagway City Manager indicated that the petition would be filed soon.

Nome area

In August, a city official advised LBC staff that the Nome City Council had renewed interest in forming a unified municipality encompassing the City of Nome and limited surrounding territory. DCED has advised the City of Nome and others interested in the proposal about the agency's concern that the borough boundaries favored by Nome officials may be too constrained. In November 2000, the Nome City Manager indicated that officials of the City of Nome continue to have interest in forming a unified municipality. At his request, staff provided information about standards and procedures for incorporation of a unified municipality form of borough government.

Copper River Basin

In December 2000, residents of the Copper River Basin informed LBC staff of their interest in pursuing borough incorporation of the area served by the Copper River School District. At their request, they were provided with incorporation petition forms and information regarding borough incorporation procedures.

Glacier Bay Area

In October, 2000, staff from DCED's Southeast office conferred with officials of the City of Hoonah about their interest in forming a Glacier Bay Borough.

Borough Annexation

No petitions for annexation of territory to organized boroughs were filed during 2000. However, interest in annexation of territory to organized boroughs was expressed by residents or elected officials of two areas.

- Dillingham area to the Lake and Peninsula Borough
- Northern Matanuska-Susitna Borough to the Denali Borough



Dillingham area to the Lake and Peninsula Borough

In 1997, the City of Dillingham submitted a petition for annexation of an estimated 25,000 square miles of land and additional offshore waters to the Lake and Peninsula Borough. The area proposed for annexation generally conformed to the boundaries of the Southwest Region School District. The 1997 petition was never accepted for filing by the State for a number of reasons. These included interest by State policy makers in exploring alternatives to the particular annexation proposal. They also included an expressed intent by the City of Dillingham to confirm that other communities in the Southwest Region REAA supported the annexation proposal.

Accordingly, on March 10, 2000, DCED released a 40-page document titled *Chronicle of Developments Concerning Borough Government in the Bristol Bay Region and Update of Revenue Projections Concerning Prospect of Annexation of the Dillingham-Nushagak-Togiak Bay Region to the Lake and Peninsula Borough*. That document:

- chronicled the history of borough evolution in the Bristol Bay region, including the 1997 annexation proposal from the City of Dillingham;
- examined revenue projections in the City of Dillingham's 1997 petition and also examined revenue projections made in a 1993 study of the feasibility of forming a Southwest Region borough;

- compared revenue projections in the 1997 petition with more contemporary figures. The 1997 petition estimated revenues of \$2,967,882 for six particular components. The more contemporary estimates for those same six components total \$2,004,082. The latter figure is \$963,800 (32.5%) less than the projections in the 1997 petition; and
- compared revenue projections in the 1993 Southwest Region borough study with more contemporary figures. For the six specific components listed, the 1993 study estimated revenues of \$677,287 (based on a low-price scenario for commercial fisheries). Contemporary estimates for the same six components totaled \$1,067,487. The latter figure is \$390,200 (57.6%) more than the projections in the 1993 study.

In October, 2000, the City of Dillingham conducted an advisory vote at which voters withdrew the annexation petition by a 4-3 margin. At the November 2, 2000, Dillingham City Council meeting, the Council adopted a resolution withdrawing the petition.

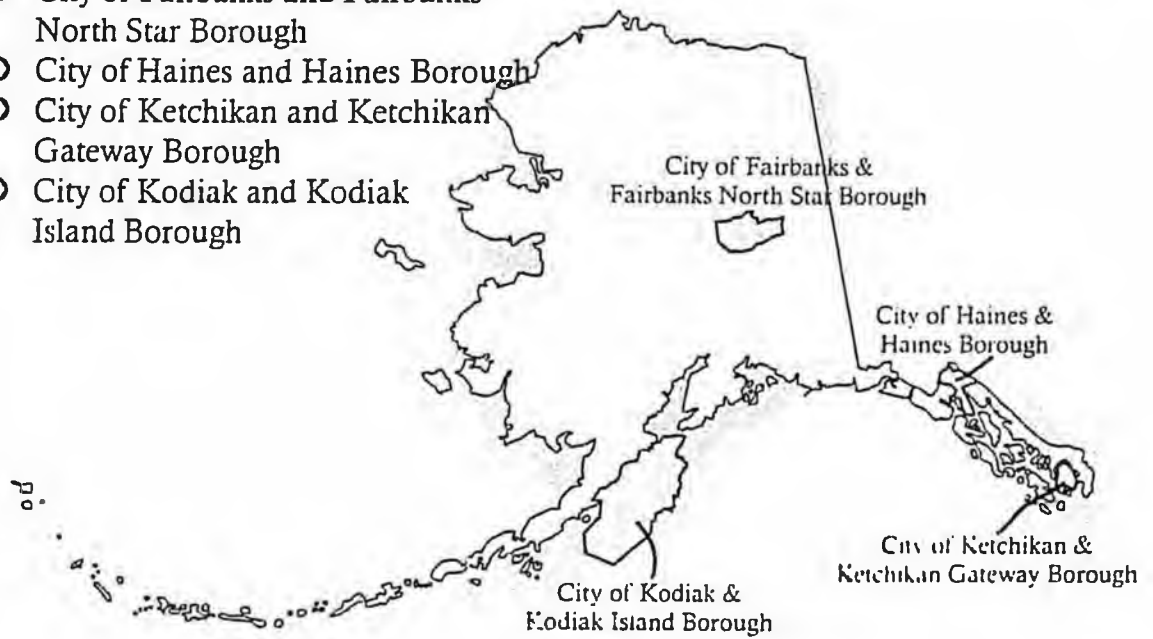
Denali Borough

In November 2000, the Mayor of the Denali Borough indicated that the Borough anticipates that it will file a petition for annexation of certain territory presently within the northern part of the adjoining Matanuska-Susitna Borough. On December 31, 1997, the Local Boundary Commission rejected a similar petition by the Denali Borough on a 3-2 vote.

City and Borough Consolidation

Activities relating to consolidation of cities and boroughs occurred in the following areas during 2000:

- City of Fairbanks and Fairbanks North Star Borough
- City of Haines and Haines Borough
- City of Ketchikan and Ketchikan Gateway Borough
- City of Kodiak and Kodiak Island Borough



City of Fairbanks and the Fairbanks North Star Borough

On May 17, 2000, DCED accepted the petition for Consolidation of the City of Fairbanks and the Fairbanks North Star Borough (FNSB) for filing. The petition was initiated by 1,416 voters of the City of Fairbanks and 2,626 voters of the remainder of the Fairbanks North Star Borough.

LBC staff conferred with the Chairman of the Commission and the Attorney General's Office prior to the acceptance of the petition for filing.

The Chairman of the Commission set August 1, 2000 as the deadline for receipt of responsive briefs in the matter. LBC staff made arrangements for notice of filing of the petition and for service of

the petition. On June 6, the Mayor of the Fairbanks North Star Borough submitted a request for the extension of the deadline for filing responsive briefs and written comments regarding the proposal to consolidate the City and the Borough. The request sought to extend the August 1 deadline to December 15, 2000. The Borough maintained that informed comment on the consolidation proposal could not be made until voters acted on the initiative to limit the property taxing powers of municipalities to 10 mills.

In response, the Petitioners' Representative wrote a two-page letter to the LBC Chairman objecting to the proposed delay in the deadline for filing responsive briefs.

The FNSB, City, and the Interior Taxpayers Association, Inc. (ITA), filed responsive briefs in opposition to the proposal prior to the August 1, 2000

deadline. Letters in opposition to the proposal were also received prior to the deadline from Bonnie Williams and James Moody.

In December, 2000, DCED issued its preliminary report and recommendation regarding the petition.

City of Haines and the Haines Borough

In November 1998, voters in Haines rejected a proposal to consolidate the two governments as a home rule borough by three votes.

The Haines Borough Assembly and the Haines City Council conducted a joint meeting on November 23, 1999. Local officials reportedly agreed that consolidation or unification of the two municipalities should occur. Community meetings were conducted to facilitate public discussion of the issue.

In January 2000, the Mayor of the City of Haines requested and was provided materials relating to the standards and procedures for consolidation. He indicated that he requested the materials in response to growing support for a renewed effort to consolidate local governments in Haines.

On July 20, 2000, officials of the City of Haines and the Haines Borough met to discuss consolidation. According to the *Chilkat Valley News*, officials of both municipalities hoped that a new consolidation proposal would be filed soon enough to permit placing the question of consolidation before Haines voters in October 2001.

In November 2000, LBC staff provided the Haines City Administrator with consolidation petition forms. The City submitted its petition in December 2000.

City of Ketchikan and the Ketchikan Gateway Borough

The City of Ketchikan has continued its previously reported efforts to develop a petition for consolidation of the City of Ketchikan with the Ketchikan Gateway Borough.

On May 8, 2000, LBC staff received a petition from the City of Ketchikan for the consolidation of the City of Ketchikan and the Ketchikan Gateway Borough. On May 31, DCED accepted the petition for filing. The petition proposes:

- dissolution of the existing City of Ketchikan, a home rule city;
- dissolution of the existing Ketchikan Gateway Borough, a second class borough;
- incorporation of a new home rule borough named the 'Municipality of Ketchikan';
- creation of the 4.4 square mile Ketchikan Service Area;
- creation of a new 0.41 square mile Shoreline Service Area (the existing Shoreline Service Area will be abolished following its annexation into the City of Ketchikan on January 1, 2001); and
- creation of the Greater Ketchikan EMS Service Area encompassing the Ketchikan Service Area; the Shoreline Service Area; South Tongass Volunteer Fire Department Service Area; the City of Saxman; and adjoining areas.

Chairman Waring set September 1, 2000 as the deadline for filing responsive briefs and comments regarding the petition. LBC staff arranged for notice of the filing of the petition and service of the petition.

City of Kodiak and the Kodiak Island Borough

Officials of the Kodiak Island Borough advised him that certain residents of that Borough had expressed renewed interest in consolidating the City of Kodiak and the Kodiak Island Borough. The City and Borough governments explored consolidation in the 1980s, but never pursued the matter by submission of a petition.

Borough Detachment

No petitions for detachment of territory from organized boroughs were filed during 2000. However, interest has been expressed in petitioning for detachment of territory from three organized boroughs.

- Fairbanks North Star Borough
- Matanuska-Susitna Borough
- Kenai Peninsula Borough



Fairbanks North Star Borough

In 1999, a Fairbanks attorney indicated that he was working with Two Rivers residents regarding detachment of the Two Rivers Voting Precinct from the Fairbanks North Star Borough. The area reportedly includes 300 students, a total population of about 1,500, and an assessed value of about \$46 million.

In January, 2000, forms for detachment of territory from an organized borough were provided to the Petitioners' Representative. In February 2000, efforts to draft the detachment petition were reportedly underway.

Matanuska-Susitna Borough

As noted in the discussion of annexation to organized boroughs, in November 2000, the Mayor of the Denali Borough indicated that the Denali Borough anticipated filing a petition for annexation of certain territory presently within the northern part of the adjoining Matanuska-Susitna Borough.

Kenai Peninsula Borough

In March 2000, a Cooper Landing resident inquired about the standards and procedures governing detachment of that community from the Kenai Peninsula Borough and formation of a separate borough.

Litigation Involving the Local Boundary Commission

During 2000, there were no new or on-going court challenges concerning actions taken by the Local Boundary Commission.

Chapter 3

Policy Issues and Concerns

The Local Boundary Commission wishes to bring the following policy issues, concerns and developments to the attention of the Legislature:

- Substantial disincentives for borough incorporation and annexation are impeding the development of local government in Alaska. The Commission will submit a separate proposal to address impediments to development of borough government.
- There is growing ambiguity over the authority of newly formed or altered municipal governments to levy property taxes during the initial assessment year after the change. There is also a need to provide municipalities with extraterritorial authority to levy taxes in areas detached from those municipalities to pay costs associated with detachment. Further, State law should be amended to recognize that actions that come before the Local Boundary Commission may result in changes to service areas of organized boroughs and the unorganized borough.
- The Small Community Housing Mortgage Loan program is having adverse impacts on some municipal boundary proposals. Disincentives for borough incorporation and annexation are promoting interest in single - community boroughs.
- Despite a constitutional requirement for such, there is a lack of common interests within the unorganized borough.
- During the past year, the Commission devoted considerable effort to revision of its regulations in Title 3 of the Alaska Administrative Code. The Commission will conduct one or more public hearings on the proposed changes to the regulations during 2001.

Substantial Disincentives Hindering Beneficial Borough Incorporation and Annexation are Impeding the Development of Local Government in Alaska

As it has done since the 1980s, the Local Boundary Commission continues to urge the Legislature to examine and address the substantial disincentives for borough incorporation and annexation.¹⁶ The Legislature and the Commission have complementary duties relating to this issue. Specifically, the Legislature has the constitutional duty to prescribe procedures and standards for borough formation (Art. X, Sec. 3). The Commission has the statutory duty to make studies of local government boundary problems (AS 44.33.812[a][1]).

The authors of the local government article of Alaska's Constitution envisioned that organized boroughs would be established wherever citizens were ready for and capable of assuming the responsibilities of local government.¹⁷ The founders recognized that the Legislature would have widely divergent alternatives available to carry out its duty to prescribe methods for borough formation. Delegates preferred a voluntary, rather than compulsory, approach to borough incorporation. However, they recognized that, to be successful, a voluntary approach must be coupled with adequate inducements to establish boroughs.¹⁸ The views of the delegates are represented in the following statement on the point by Delegate Maynard D. Londborg:

We felt that it could be handled in different ways, but I will mention two: one is to have some state agency that would survey the whole thing and say now is the time you have to incorporate; there is no way you can get out of it; you have to organize. I believe the method that Mr. Rivers brought out would be the more desirable, by having skilled men that would study this matter and set it up so that it would come in the form of an inducement so that they can see that they are going to benefit, definitely benefit by organizing, by getting into the picture of local government.¹⁹

In 1961, the legislature enacted the initial laws implementing procedures for the formation of organized boroughs.

With minor exceptions, those laws remain in place today. The option chosen by the 1961 Legislature was to adopt the voluntary approach to borough formation.

While the constitutional convention delegates understood that a voluntary approach to borough formation would be successful only if it were coupled with adequate incentives, sufficient inducements were not forthcoming. Legislators recognized from the very beginning that adequate incentives had not been provided to encourage people to form boroughs. Jay Hammond, who was a member of the State House of Representatives at the time of the adoption of the Borough Act of 1961, stated subsequently:²⁰

Attractive enough on paper, in practice, the organized borough concept had little appeal to most communities.

¹⁶ The Commission stresses that its concern over the lack of incentives to form boroughs does not apply to the same degree to communities interested in forming single community borough governments. Concerns on the part of the Commission regarding prospective single community borough incorporation proposals are addressed separately in this chapter.

¹⁷ Borough Government in Alaska, Thomas A. Morehouse and Victor Fischer, page 39 (1971).

¹⁸ Ibid; page 61; also, Alaska's Constitutional Convention, Victor Fischer, page 120 (1975)

¹⁹ Proceedings of the Alaska Constitutional Convention, Alaska State Legislature, Legislative Council, page 2651.

²⁰ Tales of Alaska's Bush Rat Governor, Jay Hammond, page 149 (1994).

21 Borough Government in Alaska, page 73.

After all, why should they tax themselves to pay for services received from the state, gratis?

22 Metropolitan Experiment in Alaska, page 93.

Understandably, during the early years of statehood there were no organized boroughs in Alaska.

Thomas Morehouse and Victor Fischer wrote of the Borough Act of 1961:²¹

23 Before the bill was passed, it was amended to exclude the Haines-Skagway area from the mandate to incorporate.

... the 1961 Borough Act was predicated on the assumption that local desire to establish borough government would supply the force toward incorporation, despite the findings of previous Boundary Commission hearings that there was little enthusiasm in the state for the unknown and untried form of local government. There were also pockets of intense local opposition, particularly in areas outside independent school districts.

24 Areawide Local Government in the State of Alaska, Ronald Cease, pages 71-72 (1964).

By 1963, only one tiny organized borough had formed (Bristol Bay Borough). When the 1963 Legislature convened, Representative John Rader considered the issue of borough government to be the "greatest unresolved political problem of the State":²²

My experience as the Anchorage City Attorney and the State Attorney General led me to believe that the greatest unresolved political problem of the State was the matter of boroughs. As near as I could see, no reasonable solutions were being propounded. A great opportunity to create something of value could be lost. A state of the size, population density, and distribution of Alaska makes State administration of local problems impossible. Anyone who had ever worked in Alaska on the local level or on the State level could see the frustrations of honest attempts repeatedly failing because of the simple fact that there was no governmental structure upon which to hand necessary governmental functions. I therefore decided to do what I could.

25 *Ibid.*, page 47.

To address the pressing issue, Representative Rader introduced a bill that mandated incorporation of boroughs encompassing Ketchikan, Sitka, Juneau, Kodiak Island, Kenai Peninsula, Anchorage, Matanuska-Susitna valleys, Haines-Skagway, and Fairbanks.²³ In promoting his bill, Representative Rader stressed:²⁴

We must make local government and, in this instance, boroughs, financially desirable and generally give communities additional incentives to govern themselves. Apparently, the desire for self-government as a principle has not been strong enough in most areas of the state to cause the incorporation of boroughs under the present law. Too frequently, Alaskans have found that when they form a local unit of government (either a city, public utility district or school district) that they continue to pay the same amount of state taxes and also pay local taxes to provide services which the state previously supplied free of charge. Not only is there little incentive for local government under these conditions, but there is an actual penalty placed upon the citizens who assume responsibility for local problems by organizing local government.²⁵

While the 1963 Mandatory Borough Act did not provide much in the way of incentives to form boroughs voluntarily, it did promise that organized boroughs would not be penalized because of incorporation. Specifically, Section 1 of the Act provided:

Declaration of Intent. It is the intention of the legislature to provide for maximum local self government with a minimum number of local government units and tax-levying jurisdictions, and to provide for the orderly transition of special service districts into constitutional forms of government. The incorporation of organized boroughs by this Act does not necessarily relieve the state of present service burdens. No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation Session Laws of Alaska, 1963, Chapter 52.

Organized boroughs are mandated to carry out the State's constitutional duty for public education within their boundaries. They are also required to pay a significant portion of the State's cost of education, while regional educational attendance areas are not. Thus, contrary to the express intent of the 1963 Mandatory Borough Act, organized boroughs are being deprived of State services, revenues, or assistance and are being penalized because of incorporation.

For example, in the current fiscal year alone, organized boroughs are required by AS 14.17.410 to contribute more than \$135 million to support education.²⁶ Attempts by local governments to achieve a judicial remedy of perceived tax inequities inherent in AS 14.17.410 have been unsuccessful. In one recent case the court concluded that freedom from disparate taxation lies at the low end of the continuum of interests protected by the equal protection clause.²⁷ In that same case, Justices Matthews and Rabinowitz stated that any remedy of the perceived inequities must be pursued through the legislature rather than the courts.

... the legislature can decide whether and how much to tax property in REAAs free from legally maintainable claims brought by taxpayers in other taxing jurisdictions that its decision is wrong. Here, as with State spending decisions, any available remedy must be pursued through majoritarian processes rather than through the courts.²⁸

A summary of the disincentives for borough incorporation and annexation that exist in the current law follows:

- X Areas of the unorganized borough outside of home rule and first class cities have no obligation to financially support their schools. Borough formation results in the imposition in those areas of the requirement for local contributions in support of schools (4 mill equivalent or 45% of basic need, whichever is less).
- X Borough formation would bring about consolidation of school districts in the unorganized borough, an effect that is commonly perceived as a loss of local control regarding schools. Under the present circumstance, the delivery of education services in the unorganized borough is fractionalized. Although the unorganized borough accounts for less than 14% of the state's population, 70% of Alaska's school districts exist in the unorganized borough.
- X In some cases, borough formation carries the prospect of substantial education funding reductions in the form of eliminated supplementary funding floors under AS 14.17.490, reduced area cost differentials, and other factors.

26 In addition to required local contributions, organized boroughs have budgeted more than \$100 million in discretionary contributions for their schools.

27 Alaska-Susitna Borough School District v. State, 931 P.2d 391, 398 (Alaska 1997).

28 *Ibid.*, 406.

29 Boroughs that have formed voluntarily typically enjoy abundant natural resources or other attributes that make borough government particularly attractive for those regions. Many of the eight boroughs formed under the 1963 Mandatory Borough Act lack comparable resources. The eight boroughs that formed voluntarily are the Bristol Bay Borough, Haines Borough, North Slope Borough, Northwest Arctic Borough, Aleutians East Borough, Lake and Peninsula Borough, Denali Borough, and Yakutat Borough.

- X Borough formation or annexation would mean the loss of eligibility on the part of REAAs and cities in the unorganized borough for National Forest Receipts.
- X The extension of borough government would result in the loss of eligibility on the part of cities for federal payments in lieu of taxes (PL 94-565, as amended by PL 104-333).
- X Borough formation or annexation would cause the loss of eligibility for State Revenue Sharing by unincorporated communities and volunteer fire departments in the unorganized borough.
- X Extension of borough government would bring about the loss of eligibility for State capital matching grants by unincorporated communities in the unorganized borough.
- X Borough formation or annexation would mean a 50% reduction of the entitlement of cities within the unorganized borough to fisheries business tax refunds from the State.
- X The extension of borough government requires areawide planning, platting, and land use regulation. Such is commonly perceived by cities currently exercising those powers as a loss of local control (although boroughs may delegate the powers to cities within the borough).
- X In some cases, borough formation carries with it the prospect of significant funding reductions from the State for coastal zone management.

Perhaps no statistic is more illustrative of the disincentives for borough government than the fact that only 4% of Alaskans live in boroughs that were voluntarily formed.²⁹ In contrast, 83% of Alaskans live in organized boroughs that were formed under the 1963 mandate from the Legislature. The remaining 13% of Alaskans live in the unorganized borough.

It is noteworthy that the Commission's concerns are shared by at least one of the larger and more sophisticated local governments in the unorganized borough. In December 1999, the Council of the City of Cordova adopted Resolution Number 1299-83 urging "*the executive and legislative branches of the government of the State of Alaska to review and amend the borough formation process.*" Cordova City officials have drafted a paper outlining a concept to promote borough formation in those parts of the unorganized borough that have the capacity to assume the responsibility for local government.

The Local Boundary Commission has developed a separate proposal to address impediments to borough government incorporation and annexation for consideration by the Legislature.

Ambiguities in the Law Concerning Municipal Incorporation, Boundary Changes, Dissolution, and Reclassification

State statutes are ambiguous with respect to certain fundamental issues common to the broad range of matters that come before the Local Boundary Commission. These concern:

- municipal authority to levy property taxes during an initial period following incorporation, boundary change, dissolution, and reclassification; and
- the effects of incorporation, boundary changes, and dissolution on service areas in organized boroughs and the unorganized borough.

Regarding the issue of property taxes, there is ambiguity whether a municipal government that incorporates or changes its boundaries after January 1 of a particular year is prohibited by AS 29.45.110(a) and AS 29.45.120(a) from levying and collecting property taxes in the area of change during that calendar year.

This issue, as it relates to annexation, was addressed by the State Attorney General's office at the request of the Senate Finance Committee eleven years ago.³⁰ The Attorney General's office concluded that as long as the local government in question had time to add the property in question to its tax rolls, it had the authority (and probably the duty) to levy and collect the tax.

30 Memorandum from Assistant Attorney General Marjorie L. Odland, March 1, 1989, file number 663-89-0387.

However, the question of whether AS 29.45.110(a) and AS 29.45.120(a) prohibit the levy of taxes during the initial year if jurisdiction is not established by January 1, appears to have become more uncertain as a result of a recent opinion of the Alaska Supreme Court. In the case at issue, the Court interpreted AS 29.45.110(a), AS 29.45.120(a), AS 29.45.240(a), and AS 29.45.300 collectively to mean that "The tax 'accrues' in full each year on January 1."³¹

31 Kenai Peninsula Borough v Arndt, 958 P.2d 1101, 1104 (Alaska 1998).

Another issue that warrants clarification concerns the authority of a municipality to levy taxes in an area that has been detached from the municipality. Although a municipal detachment rarely occurs, when it does happen it can require complex provisions to mitigate adverse financial impacts on the municipality from which the territory was detached. To ensure that those provisions can be properly implemented, clear statutory authority is warranted for the municipality to levy taxes extraterritorially on the detached area.

Regarding the last issue, the Commission notes that the law is also unclear concerning effects of incorporation, boundary changes, and dissolution on service areas in organized boroughs and the unorganized borough. For example, a challenge was made in a recent proceeding regarding the assumption that territory detached from an organized borough would be automatically "annexed" to the adjoining existing regional educational service area of the unorganized borough.

32 AS 44.33.812(a)(4) states that the *"Local Boundary Commission shall develop standards and procedures for the extension of services and ordinances of incorporated cities into contiguous areas for limited purposes upon majority approval of the voters of the contiguous area to be annexed and prepare transition schedules and prorated tax mill levies as well as standards for participation by voters of these contiguous areas in the affairs of the incorporated cities furnishing services."*

33 The Commission has adopted regulations (3 AAC 110.900) that require transition plans in all proceedings that come before the Commission. While that regulation ostensibly covers matters involving taxation and service areas, absent express authority from the legislature concerning the issues raised above, it has not remedied the ambiguities to the satisfaction of many parties.

The Commission urges the Legislature to eliminate the ambiguities noted above to avoid needless litigation and unintended adverse consequences for affected municipalities. Elimination of the ambiguities in current law serves the public interest by promoting taxpayer equity, financially sound local governments, and unambiguous boundaries of political subdivisions and instrumentalities of the State.

The Commission's authority to approve incorporations, boundary changes, and city reclassifications implies a general authority to empower local governments to levy taxes. The Legislature has already granted specific authority for the Commission to deal with the property taxation issues relating to step annexations to cities (see AS 44.33.812[a][4]).³² As a matter of policy, there is no reason why similar specific authority should not be expressly extended to all actions that come before the Commission. The same is true for the issue of service areas.

The Commission stresses that every proposal that comes before it is unique and demands flexibility. Although the Commission is not committed to any particular language, one way to resolve the issues raised here is to enact a clear grant of authority for the Commission to make determinations concerning property taxation and service areas in the course of its proceedings. This could be done by a statutory requirement for petitioners to present transition plans as a part of their petitions. Transition plans should be prepared in consultation with affected local governments and State instrumentalities (e.g., regional educational attendance areas). As provided under current law for other elements of a petition, the transition plans should be subject to amendment by the Commission following a public hearing on the proposal.³³

The Commission emphasizes that there are suitable checks and balances on the authority of the Commission. Actions that come before the Commission are: (1) initiated by all property owners and residents of the affected area, (2) subject to approval by the voters of the affected area, or (3) subject to tacit approval by the Legislature.

The Commission offers the following draft language for consideration as a means to implement the proposed change. The Commission has invited others with a fundamental interest in this matter to review and comment on this issue. These include the Alaska Municipal League, the Alaska Municipal Attorneys' Association, and the Alaska Association of Assessing Officers.

The draft language offered by the Commission would provide for the enactment of a new section as AS 44.33.830 to read as follows:

AS 44.33.830. Transition Plan. (a) A petition for change involving incorporation, annexation, detachment, merger, consolidation, dissolution, or city reclassification shall include a transition plan. The transition plan shall set out a practical proposal to implement the proposed change through the assumption, transfer, or surrender of relevant powers, duties, assets, and liabilities of affected cities, organized boroughs, and service areas of the unorganized borough. The transition plan may:

(1) provide for the assessment, levy, and collection of property taxes by a city or organized borough on a prorated basis in the area of change for the remainder of the tax year following the change, notwithstanding AS 29.45.110(a) and AS 29.45.120(a);

(2) provide for the assessment, levy, and collection of property taxes and other taxes on an extraterritorial basis in an area detached from a city or organized borough to pay a prorated share of municipal debts and other costs apportioned to the area in question as a condition for detachment;

(3) provide for the alteration or abolition of service areas of organized boroughs or the unorganized borough as a consequence of the transfer of powers, notwithstanding AS 14.08.031, AS 16.10.380, AS 29.03.020, AS 29.35.450, and AS 46.40.120;

(4) provide for other measures reasonably necessary to implement the proposed change.

(b) The transition plan shall be prepared in consultation with officials of all affected cities, organized boroughs, and service areas of the unorganized borough. If such officials decline reasonable opportunities for consultation, the transition plan may be included in the petition without such consultation.

(c) The local boundary commission may amend the transition plan following a public hearing on the petition.

(d) A transition plan included in a petition approved by the local boundary commission takes effect only after any requisite approval of the petition under AS 29.04, AS 29.05, AS 29.06, or AS 44.33. A transition plan included in a petition that takes effect has the force and effect of law.

Small Community Housing Mortgage Loan Program Adversely Impacts Certain Municipal Boundary Proposals

The Local Boundary Commission is increasingly aware that provisions in State law concerning AHFC's Small Communities Housing Assistance program (AS 18.56.400 - 18.56.600) are affecting the outcome of certain important municipal boundary proposals. For example, in 1998, opponents of the proposal for consolidation of the City of Haines and the Haines Borough published advertisements stating, in part:

... all Borough residents inside and outside the City will lose their eligibility for rural financing if we consolidate, because our combined population will exceed 1600. This means paying up to 1% more in interest on housing loans after consolidation.

Because of these and many more reasons please vote no on consolidation November 3rd.

The 1998 proposition for consolidation of local governments in Haines was defeated by just three votes. Considering the close vote and the substantial concern over the loss of eligibility to participate in the housing loan program, it is reasonable to conclude that the Haines consolidation would have been approved if the impacts on the housing loan program had been neutralized.

In October 1999, voters in Kodiak overwhelmingly rejected a proposal to annex 19.5 square miles to the City of Kodiak. City officials expressed the belief that restrictions in AHFC's Small Communities Housing Assistance program contributed to the heavy opposition to annexation. Had the area in question been annexed, homeowners would have forfeited their eligibility to receive new loans under the Small Communities Housing Assistance program.

A proposal is presently pending before the Commission for consolidation of the City of Ketchikan and the Ketchikan Gateway Borough. As was the case in Haines, consolidation of local governments in Ketchikan would result in the loss of eligibility for new Small Communities Housing Assistance program loans throughout the consolidated borough. If the Commission approves the Ketchikan consolidation proposal, the disparity created by the AHFC Small Communities Housing Assistance program may once again play a role in determining the outcome of that proposal.

Moreover, officials of the City of Haines have just filed a new petition for consolidation of the City of Haines and the Haines Borough.

As it has done in prior years, the Commission encourages the Legislature to explore ways to maintain the Small Communities Housing Assistance program, but eliminate the unintended adverse impacts on legitimate municipal boundary changes.

The Commission met in a work session with AHFC staff on June 27, 2000 regarding possible changes to AHFC Rural Mortgage Program to address concerns of the LBC regarding effects of that program on proposals for municipal boundary changes.

Interest in Single Community Boroughs

Interest in forming single community borough governments remains strong. It appears that two circumstances may be the principal basis for such interest. The first is the lack of incentives to form boroughs encompassing natural regions as outlined in the preceding section. The second is concern by local officials of being included in larger, legislatively mandated boroughs. Local officials or private citizens from the following cities have recently expressed interest in forming single-community or relatively small boroughs:

- Wrangell
- Skagway
- Nome

Several other communities in the unorganized borough have also expressed interest in single-community borough government in years past. Those include Petersburg, Hoonah, Unalaska, Valdez, Nenana, Tanana, Cordova, and Pelican. Public sentiments concerning this issue are strong. Consider, for example, the position taken by officials in Kupreanof regarding a prospective Petersburg Borough. The City of Kupreanof has a population of only 24 residents and corporate boundaries contiguous to the corporate boundaries of the City of Petersburg. Students residing in Kupreanof attend public schools within the City of Petersburg. Such close links between the two communities notwithstanding, consideration of boundaries for a prospective Petersburg Borough elicited the following response in the form of Resolution 98-7 adopted by the Kupreanof City Council on September 13, 1998.

Whereas, The City of Kupreanof was established to maintain autonomy over local planning, taxation, and municipal development decisions, and

Whereas, The City of Petersburg intends to include the City of Kupreanof within the Borough of Petersburg boundaries, and;

Whereas, The determination of borough planning authority, taxation, and administration of borough schools will reside outside the City of Kupreanof by virtue of the large voting population of Petersburg;

Therefore, be it resolved, The City of Kupreanof wishes to remain an autonomous municipal authority exclusive of the Borough of Petersburg.

The Commission recognizes that boroughs were intended to be an intermediate form of government - smaller than the state, but larger than a city. The Commission is concerned that single-community boroughs will lead to the Balkanization of Alaska. The prospect of single-community boroughs also raises serious questions whether such would undermine the ability of surrounding communities to ever shoulder the responsibility of borough government in an effective and efficient manner.

Promotion of Maximum Common Interests within Boroughs

As it has done previously, the Commission brings to the attention of the Legislature that the unorganized borough is configured in a manner that does not conform to the requirements of Alaska's constitution. Article X, Section 3 of the Constitution provides that:

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible . . .

In an effort to facilitate implementation of that constitutional mandate, the Local Boundary Commission recommended to the 1960 legislature that the Commission be given a mandate by resolution, directing the Commission to divide the whole of Alaska into boroughs, organized or unorganized, and that such recommendation(s)

be presented to the next Legislature. However, that recommendation was rejected. Instead, in 1961, the Legislature implemented Article X, Section 3 by dividing all of Alaska into a single unorganized borough. For the past four decades, State law has stipulated that the unorganized borough comprises that portion of Alaska not within organized boroughs.

From its inception, the unorganized borough has embraced an area and population with highly diverse interests rather than the maximum common interests required by the constitution. The contemporary contrasts in various parts of the unorganized borough are remarkable. As currently configured, the unorganized borough contains an estimated 374,843 square miles, 57% of the total area of Alaska. It ranges in a non-contiguous manner from the southernmost tip of Alaska to approximately 150 miles above the Arctic Circle. The unorganized borough also extends in a non-contiguous manner from the easternmost point in Alaska (at Hyder) to the westernmost point in Alaska at the tip of the Aleutian Islands. The unorganized borough:

- encompasses portions of each of Alaska's four judicial districts;
- wholly encompasses eleven census areas;
- encompasses all or portions of nine state house election districts;
- wholly encompasses nineteen regional education attendance areas;
- encompasses all or portions of ten of Alaska's twelve regional Native corporations formed under the Alaska Native Claims Settlement Act;
- partially encompasses model borough territory for five existing organized boroughs.

In short, the unorganized borough is comprised of a vast area with widely diverse interests rather than maximum common interests as required by the constitution. This is particularly evident from the fact that the unorganized borough spans so many house election districts, census districts, regional educational attendance areas, regional Native corporations, and model boroughs, each of which is to some extent comprised of an area with common social, cultural, and other characteristics.

Greater compliance with the Common Interests Clause of Article X, Section 3 of Alaska's Constitution could be achieved with respect to the unorganized borough if AS 29.03.010 were amended to divide the single unorganized borough into multiple unorganized boroughs formed along natural regions.

The foundation for such an effort already exists in the form of model borough boundaries established by the Commission between 1989 - 1992. However, just as the formal corporate boundaries of organized boroughs in Alaska are flexible to accommodate changing social, cultural, and economic conditions, the Commission recognizes that the model borough boundaries must also remain flexible. It has been eleven years since efforts were initiated to define model borough boundaries. The Commission has found that in certain instances, social, economic, or other developments might warrant a change to model boundaries. For example, when the model borough boundaries were developed, Adak was a huge naval base with its own regional educa-

tional attendance area. Accordingly, the model borough boundaries identified a separate prospective borough for the area from Adak west. Subsequently, however, the naval base at Adak closed and the Adak regional educational attendance area merged with the Aleutian Region REAA. It seems reasonable to presume today that if the Commission were defining model borough boundaries for the unorganized borough portion of the Aleutian region, those boundaries would encompass all of the territory west of the Aleutians East Borough.

Proposed Changes to the Regulations of Local Boundary Commission

During 2000, the Commission devoted considerable effort to revision of its regulations in Title 3 of the Alaska Administrative Code. The revisions were required since the last comprehensive review of the Commission's regulations occurred ten years ago. Since then, there have been numerous changes in State statutes concerning matters involving the LBC. The changes approved by the Commission also addressed ambiguities in current regulations and streamlined procedures for non-controversial proposals.

Work sessions to address the proposed changes were conducted on April 28, April 30, May 24, and June 27, 2000. On October 30, 2000, the Local Boundary Commission approved the proposed regulation changes.

During 2001, the Commission will publish notice of the proposed revisions to the regulations and will conduct one or more public hearings to solicit public comment regarding the revisions.

Index

A

Adak 7
Aleknagik 22
Allakaket 22, 25

B

Bear Valley 16
Bethel 24

C

Cooper Landing 37
Copper River Basin 31
Cordova 30, 46

D

Delta-Greely 26
Denali Borough 32, 36
Dillingham 32

E

Eagle 22

F

Fairbanks 33
Fairbanks North Star Borough 33, 36

G

Glacier Bay Area 31

H

Haines 25, 34, 45
Haines Borough 34
Heidenview 14
Homer 17
Hoonah 46

K

Karluk 14
Kenai Peninsula Borough 37
Ketchikan 15, 16, 34, 45
Ketchikan Gateway Borough 34
Klawock 19
Kodiak 21, 35, 45
Kodiak Island Borough 35
Kupreanof 23, 46

L

Lake and Peninsula Borough 32

M

Matanuska-Susitna Borough 32, 36
Meadow Lakes 14

N

Naukati Bay 14
Nenana 46
Nightmute 23
Nikiski 13
Nome 31
North Pole 18

P

Palmer 20
Papke's Landing 14
Pelican 46
Petersburg 21, 46
Prince William Sound 30

S

Saxman 35
Scammon Bay 23
Shoreline Service Area 15
Skagway 30
Soldotna 21
Sunshine 14

T

Talkeetna 10
Tanana 46

U

Unalaska 46

V

Valdez 46

W

Wasilla 21, 24
Wrangell 29



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original documents after microfilm reproductions have been made.

William J. Carter

Signature of Camera Operator

10/14/2003

Date

**LOCAL BOUNDARY
COMMISSION 2002 –
HOMER
ANNEXATION
(SEE SENATE
COMMUNITY &
REGIONAL AFFAIRS
COMMITTEE BILL
FILES)**



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original documents after microfilm reproductions have been made.

William J. Carter

Signature of Camera Operator

10/14/2003

Date

LOW
SULPHUR

FUEL

RULE

1/29/02

Alaska Ultra-Low Sulfur Diesel Fuel Transition Plan

1. Rule Development and Health Based Justification

- In December 2000, EPA finalized a rule reducing emissions of particulate matter (PM) and nitrogen oxides (NO_x) from 2007 and newer large trucks and buses.
- To achieve these reductions, manufacturers must install after treatment devices that require use of ultra low sulfur diesel fuel (15 parts per million (ppm) or less sulfur).
- Operators of heavy-duty diesel trucks and buses will have to use ultra-low sulfur diesel or risk engine damage, loss of warranty, and federal penalties.
- Why this rule? There will be improved air quality with use of the new fuel - the new vehicles will have up to a 90% reduction in PM and NO_x emissions.
- Particulate matter may exacerbate asthma, cause lung cancer, or increased mortality.
- Nitrogen oxides are an ozone precursor. Ozone is implicated in respiratory illness.
- Particulate matter and nitrogen oxides contribute to haze formation.

2. Economic/Distribution Impacts

- Fuel will cost more.
- EPA estimates ultra-low sulfur fuel to cost \$0.05 more in the lower-48. Costs to Alaskans –especially rural Alaskans - will likely be higher due to distribution logistics. **Note:** Fuel may have to be imported due to high costs of in-state production. May be difficult to find 15 ppm sulfur diesel meeting arctic grade fuel specifications.
- Tankage systems to separate 15 ppm sulfur diesel from other fuels may be expensive.
- 15 ppm sulfur will have approximately 3% less energy (BTU's) per gallon, leading to a loss of efficiency (this is especially important if used in power generation).
- If this fuel is used universally, costs also will increase for such things as home heating or power generation.
- Use of 15 ppm sulfur diesel in 2006 and older vehicles will cause no impact.

3. Options to Transition to Ultra Low Sulfur Diesel Fuel

- Only 5% of diesel fuel used in Alaska is destined for on-highway vehicles compared to approximately 40% in lower-48.
- Due to unique environmental, geographical and economic costs documented in exemption to previous fuel regulations, EPA approved flexibility for Alaska to develop a transition plan specific to Alaska for the new 15 ppm fuel.

➤ National Plan

- At least 80% of on-highway diesel as 15 PPM sulfur and no more than 20% on-highway diesel as higher sulfur.
- 100% 15 PPM sulfur diesel by 2010.

➤ Market Based Phase-in Plan

- Fuel provided based on market demand – lower percentage of the fuel in the early years (2007, 2008).
- In state refiners may not be able to provide the fuel.
- The percent 15 PPM diesel increases each year.
- Timeline for 100% 15 PPM sulfur diesel may extend past 2010 to 2012.

➤ Buy the Truck – Buy the Fuel Market Based Approach – Rural only (off the contiguous road system)

- Allow community to use uncontrolled (>500 PPM) diesel indefinitely until:
 - A 2007 or later diesel vehicle is imported, and 15 PPM diesel fuel must be imported for that vehicle.
 - Community and community members can decide if:
 - They will buy a 2007 model year diesel vehicle.
 - They will switch all diesel vehicles to the new fuel regardless of model year.
 - The entire community will switch to the new fuel, including power generation.

➤ Mandate for All Fuels

- Require all diesel fuel not destined for aircraft to switch to 15 PPM sulfur diesel.
- This is a regulatory process and may also require legislative action.
- Retailers/Distributors/Refiners responsible for providing fuel.
- Cost impacts - incentives and assistance in changeover costs may have to be considered and may also require legislative action.

4. Status

- We have held 3 workshops in Anchorage between April and July to discuss options.
 - Most participants were from urban Alaska.
 - Consensus was not reached.
 - A little over half chose the national plan or something more stringent.
 - Refineries indicated that they would not refine the ultra low sulfur fuel initially.
- We are currently visiting rural hub communities (e.g., Nome, Kotzebue, Barrow, Kodiak, Dillingham, Bethel, Unalaska/Dutch Harbor)
 - No consensus at this time.

5. Actions Taken or To Be Taken

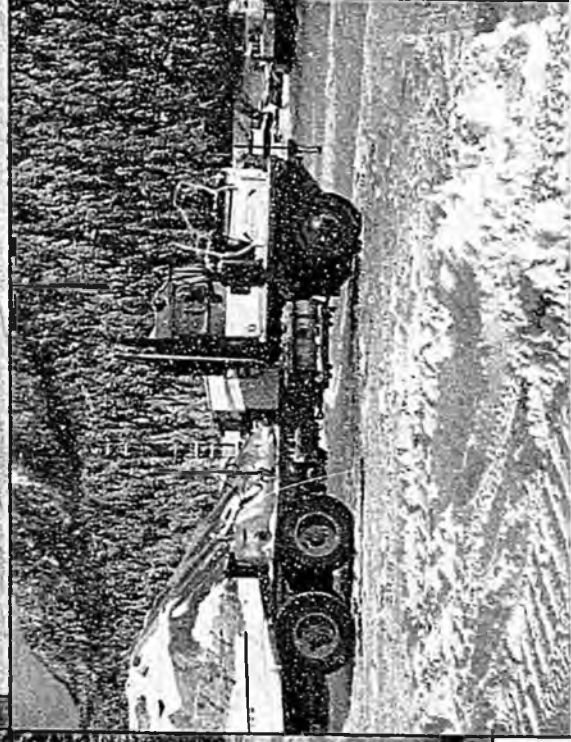
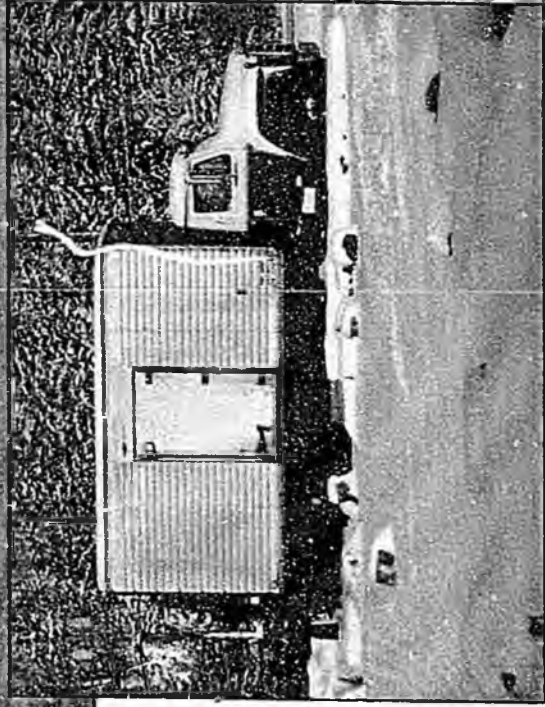
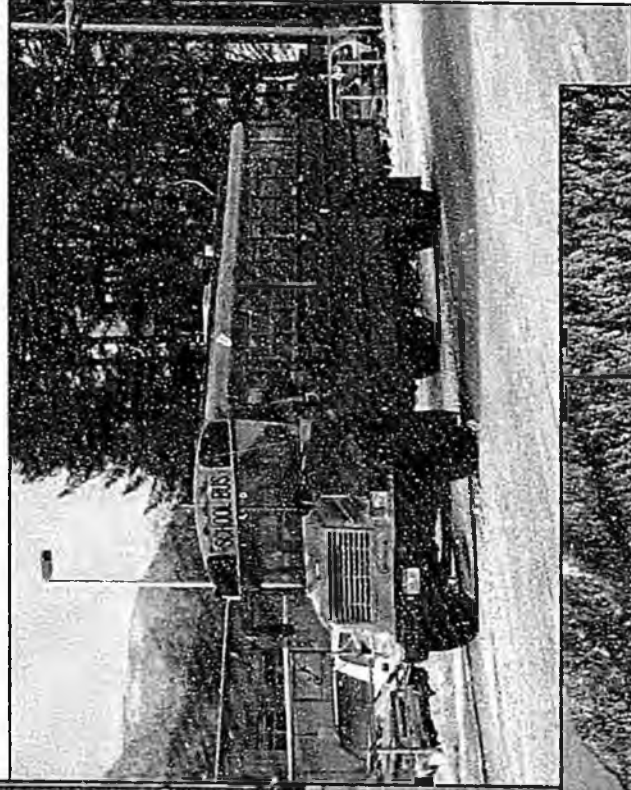
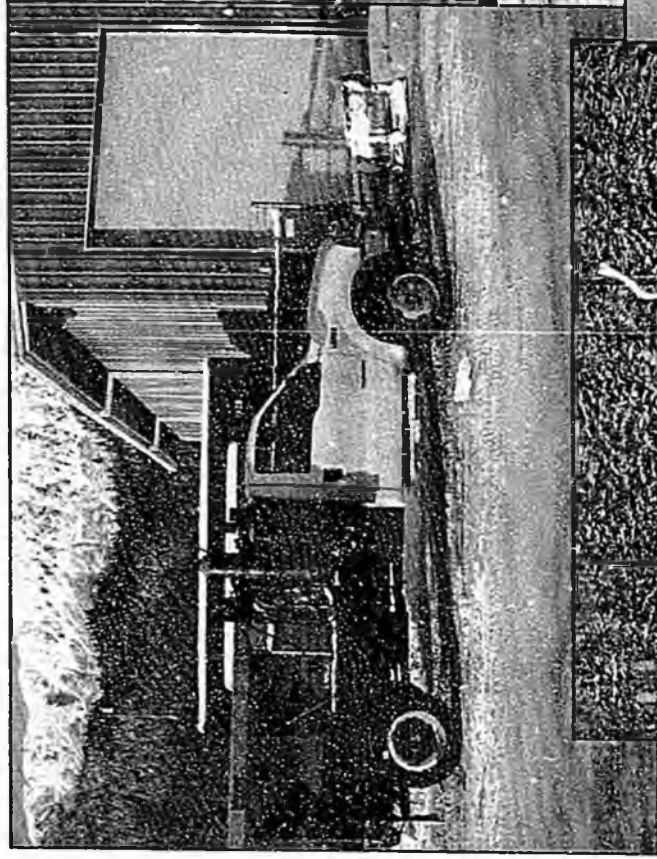
- Develop and finalize a transition plan for Alaska – due April 1, 2002.
- May want to split Urban and Rural in our submission.
- Working with the Alaska Native Health Board (ANHB) and the Institute of Circumpolar Health at UAA to develop a low dose exposure study to particulate matter and subsequent health impacts from diesel fuel use in rural Alaska.

6. Future Impacts

- Sulfur must be reduced in gasoline by 2007.
- EPA is developing sulfur fuel requirements for non-road engines (e.g., road construction equipment, farm tractors, etc.).
- Vehicle and engine manufacturers indicate that light duty diesel cars and trucks will also need the ultra low sulfur fuel by 2006/2007.

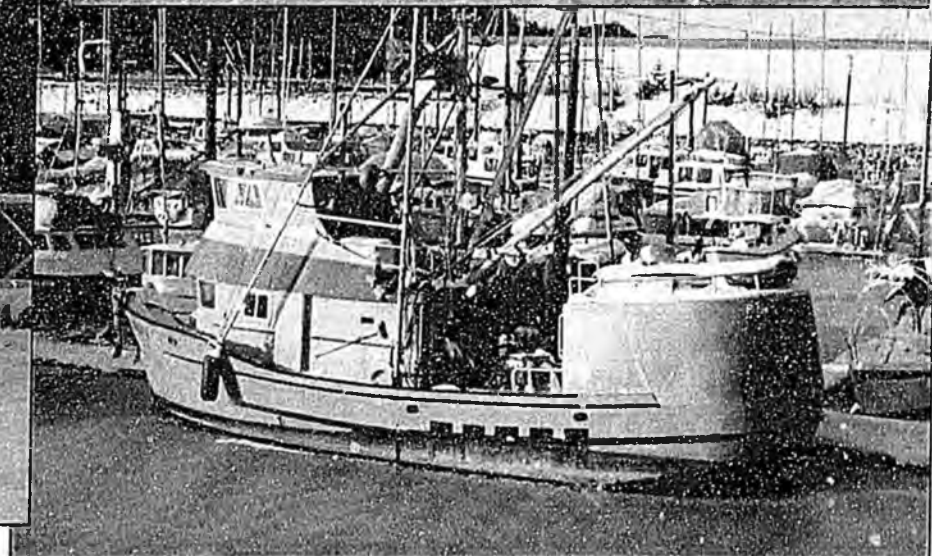
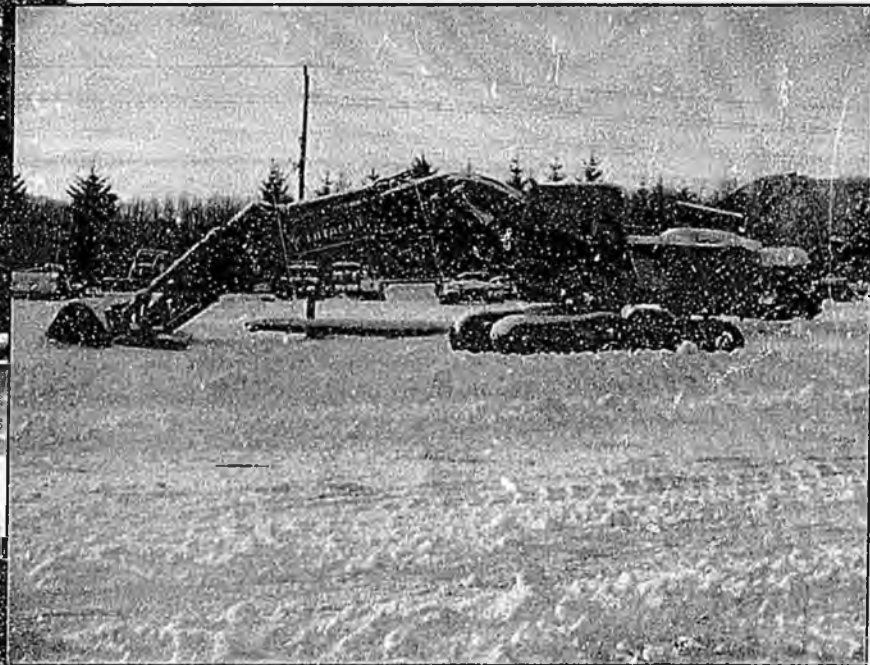
Alaska Ultra-Low Sulfur Diesel Fuel Transition Plan

Types of Vehicles Covered by the Rule



Alaska Ultra-Low Sulfur Diesel Fuel Transition Plan

Types of Vehicles/Equipment NOT Covered by the Rule:



New Diesel Fuel Regulations & Impact on Rural Alaska

January 29, 2002

by Ron King



Alaska Department of Environmental Conservation
410 Willoughby Avenue, Suite 303
Juneau, AK 99801
907-465-5100
ron_king@envircon.state.ak.us

Alaska Ultra-Low Sulfur Diesel Fuel Transition Plan

Why are we here today?

- We need your help
- We want to consult with and get recommendations from you on the best way to transition to ultra-low sulfur diesel fuel in rural Alaska.
- We want to provide information to you on the EPA rule

Alaska Ultra-Low Sulfur Diesel Fuel Transition Plan

Presentation Overview

- History
- Options
- Pros and Cons
- Questions and Answers
- Closing Remarks

Alaska Ultra-Low Sulfur Diesel Fuel Transition Plan

Remember when...

- Cars switched from leaded gas to unleaded gas?

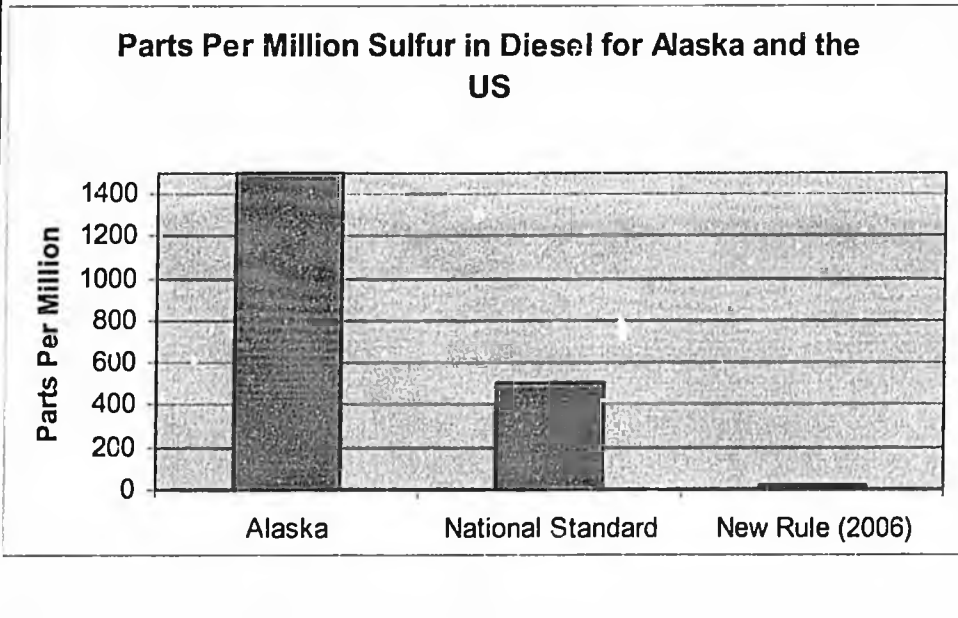
This time Alaska has a choice in how to implement a change!

Alaska Ultra-Low Sulfur Diesel Fuel Transition Plan

History: The EPA Rule

- In 2001, EPA established a rule to reduce air pollution from large trucks and buses starting in 2007.
- New emission control equipment is required for model year 2007 diesel trucks.
- In 2006, diesel trucks and buses must start using diesel that has 15 parts per million (ppm) or less sulfur.
- We call this new fuel - ultra-low sulfur diesel.

Alaska Ultra-Low Sulfur Diesel Fuel Transition Plan



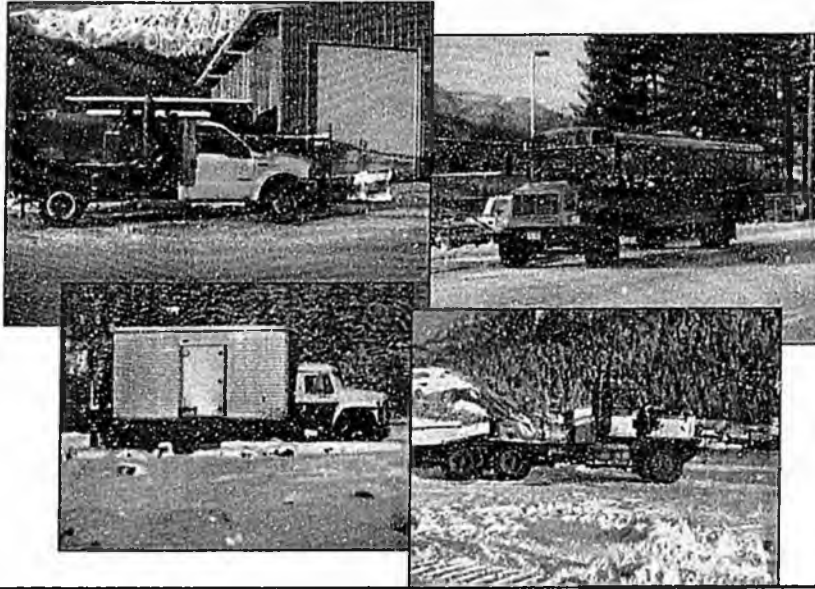
Alaska Ultra-Low Sulfur Diesel Fuel Transition Plan

History: Why is ultra-low sulfur diesel needed?

- New emission control equipment in model year 2007 diesel trucks will reduce air pollution.
- Sulfur is a contaminant found in diesel that can cause damage to these new emission controls.
- Use of ultra-low sulfur diesel is needed for correct operation of the new emission controls.
- Operators of 2007 heavy-duty diesel trucks must use ultra-low sulfur diesel or risk engine damage, loss of warranty, and federal penalties.

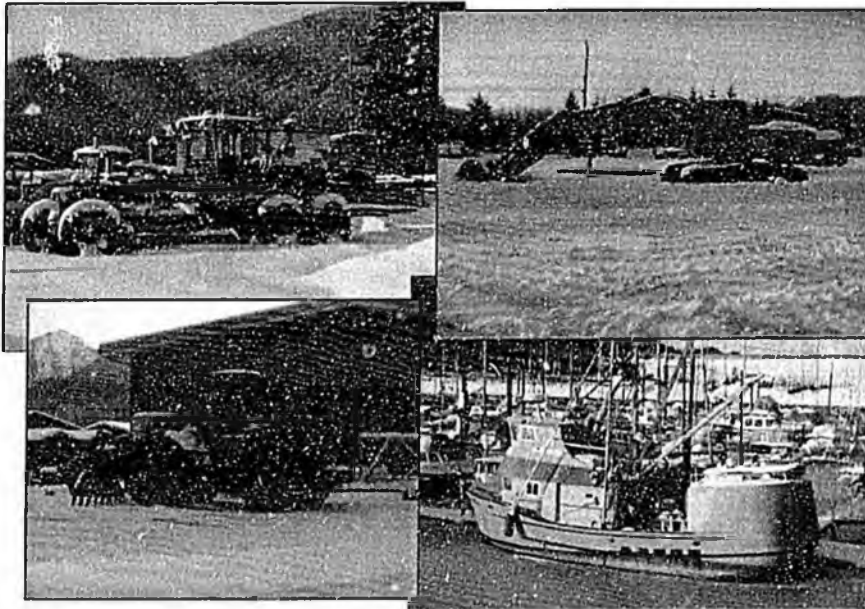
Alaska Ultra-Low Sulfur Diesel Fuel Transition Plan

Types of Vehicles Covered by the Rule



Alaska Ultra-Low Sulfur Diesel Fuel Transition Plan

Types of Vehicles/Equipment NOT Covered by the Rule:



Alaska Ultra-Low Sulfur Diesel Fuel Transition Plan

Options

- National Plan

- Buy the 2007 or later diesel truck :
 - Buy the fuel for that truck
 - Buy the fuel for all the diesel vehicles
 - Buy the fuel for all diesel uses in the community

- Other options?

Alaska Ultra-Low Sulfur Diesel Fuel Transition Plan

Pros and Cons

- Air Quality
- Economic
- Distribution
- Truck Owner

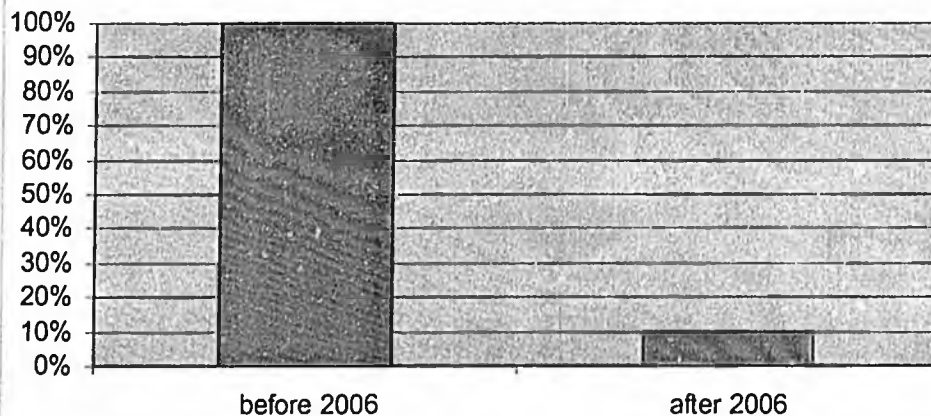
Alaska Ultra-Low Sulfur Diesel Fuel Transition Plan

Air Quality Impacts

- Using the new fuel will reduce air pollution from large trucks and buses.
- Air pollution may trigger asthma attacks, cause lung cancer, respiratory illness, or increased mortality.
- Air pollution can cause hazy skies.

Alaska Ultra-Low Sulfur Diesel Fuel Transition Plan

Percent Pollutant Reduction for Diesel Trucks and Buses



Alaska Ultra-Low Sulfur Diesel Fuel Transition Plan

Economic Impacts

- Ultra-low sulfur fuel may be \$0.10 per gallon more than the current cost of diesel.
- Costs to rural Alaska will likely be higher due to distribution challenges.
- Use of ultra-low sulfur diesel for uses such as home heating or power generation may increase costs to a community.

Alaska Ultra-Low Sulfur Diesel Fuel Transition Plan

Distribution Impacts

- Transportation of fuel to rural Alaska poses unique challenges.
- May be difficult to find ultra-low sulfur diesel meeting arctic grade fuel requirements.
- Dual tank systems for separating ultra-low sulfur diesel from other fuels may be expensive.

Alaska Ultra-Low Sulfur Diesel Fuel Transition Plan

Truck Owner Impacts

- May be difficult to find ultra-low sulfur diesel meeting arctic grade fuel requirements.
- Operators of 2007 heavy-duty diesel trucks must use ultra-low sulfur diesel or risk engine damage, loss of warranty, and federal penalties.
- Use of ultra-low sulfur diesel in 2006 and older vehicles is not expected to cause problems.

Alaska Ultra-Low Sulfur Diesel Fuel Transition Plan

Questions?

Alaska Ultra-Low Sulfur Diesel Fuel Transition Plan

To Provide Comments or Get More Information Contact:

Clint Farr

Alaska Department of Environmental Conservation
Air Non-Point & Mobile Sources Program
410 Willoughby Avenue, Suite 303
Juneau, AK 99801

phone: 907-465-5100

fax: 907-465-5129

email: clint_farr@envircon.state.ak.us