

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10501 SENATE COMMUNITY & REGIONAL AFFAIRS 346

copy of the petition and supporting materials in a digital format approved by the department, unless the department waives this requirement because such would impose a hardship on the petitioner.

(c) The petition must include a supporting brief that provides a detailed explanation of how the proposal satisfies all [A SUPPORTING BRIEF MUST ADDRESS] relevant constitutional, statutory, and regulatory standards applicable to the proposed action [, AND INCLUDE A DETAILED EXPLANATION OF HOW THE STANDARDS APPLY TO THE PROPOSED ACTION]. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const.

[ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040

AS 29.05.060

AS 29.06.040

AS 29.06.090

AS 29.06.100

AS 29.06.450

AS 29.06.460

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110 is amended by adding a new section to read:

**3 AAC 110.425 LEGISLATIVE REVIEW ANNEXATION PETITIONS. (a)**

Before a petition for annexation by the legislative review process may be submitted to the department under 3 AAC 110.420, the prospective petitioner shall prepare a complete draft of

the annexation petition and a summary of the draft; the prospective petitioner shall also conduct a public hearing on the annexation proposal.

(b) The draft petition required under (a) of this section shall be prepared using forms provided by the department under 3 AAC 110.420. The summary required under (a) of this section shall include a map of the territory proposed for annexation, synopsis of the views of the prospective petitioner regarding the application of applicable annexation standards to the proposed annexation, summary of the reasonably anticipated effects of annexation, and an abstract of the transition plan required under 3 AAC 110.900.

(c) The draft petition and summary shall be made available to the public on or before the first publication or posting of the notice of the hearing required under (e) of this section. The prospective petitioners shall make one copy of the draft petition available for public review at one or more convenient locations in or near the territory proposed for annexation for every 500 individuals reasonably estimated to reside in the territory proposed for annexation; except that the petitioner shall not be required to provide more than 5 copies of the petition for public review regardless of the population of the territory proposed for annexation. The summary of the annexation proposal shall be made available by the prospective petitioner for distribution to the public without charge at one or more convenient locations in or near the territory proposed for annexation.

(d) The hearing required under (a) of this section shall address appropriate annexation standards and their application to the annexation proposal, legislative review annexation procedures, the reasonably anticipated effects of the proposed annexation, and the

proposed transition plan required under 3 AAC 110.900. The hearing shall be held at a convenient location in or near the territory proposed for annexation. The hearing shall allow a period for comment on the proposal from members of the public. If the prospective petitioner is a municipal government, the governing body shall conduct the hearing.

(e) Public notice of the hearing required under (a) of this section shall be given by the prospective petitioner in the manner provided for a hearing of the Local Boundary Commission under 3 AAC 110.550. The department shall specify the wording of the public notice of the hearing. Evidence of compliance with the public notice requirements for the hearing, a written summary or transcript of the hearing, and an audio recording of the hearing shall be provided to the department when the petition is filed with the department.

(f) The chairperson of the commission will, in the chairperson's discretion, waive any or all of the requirements under (a)-(e) of this section if the territory proposed for annexation is uninhabited or sparsely inhabited, and if the chairperson determines that persons or entities within or proximate to the territory proposed for annexation have had adequate opportunity to be informed about the scope, benefits, and detriments of the proposed annexation. (Eff. / / , Register )

Authority: Art. X, sec. 12, Ak Const.

AS 29.06.040

AS 44.33.812

3 AAC 110.430 is amended to read:

**3 AAC 110.430 CONSOLIDATION OF PETITIONS.** If two or more petitions pending action by the commission affect all or some [CONTIGUOUS TERRITORY OR

ANY] portion of the same territory, the chairperson of the commission will, in the chairperson's discretion, consolidate the informational session, [DEPARTMENT, REPORT, COMMISSION, MEETING, HEARING,] briefing schedule, department reports, commission hearing, decisional meeting, or other procedure under this chapter for one or more of those petitions. The commission will, in its discretion, consider relevant information from concurrent or conflicting petitions during the process of rendering its decision on any one petition. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const.

[ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040

AS 29.05.060

AS 29.06.040

AS 29.06.090

AS 29.06.100

AS 29.06.450

AS 29.06.470

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.440 is amended to read:

**3 AAC 110.440 TECHNICAL REVIEW OF PETITION.** (a) The department shall review the petition and supporting materials [, EXHIBITS, AND BRIEF] to determine whether they include a plausible budget, complete and proper transition plan, and other required information. When [THE REQUIRED INFORMATION HAS BEEN SUBMITTED AND, WHEN] applicable, the department shall also determine whether the petition contains the legally required number of valid signatures. The technical review of

the petition shall be completed by the department within 45 days of the receipt of the petition, except that the chairperson of the commission, for good cause, may grant the department additional time to complete its technical review.

(b) The petitioner is primarily responsible for supplying all supplemental information and documents reasonably necessary for the technical review process, including information identifying who is registered to vote, who resides in a territory, and the number of persons who voted in the territory during the last election.

(c) If the department determines that the petition or supporting materials are [BRIEF IS] deficient in form or content, it shall consult with the chairperson of the commission. With the concurrence of the commission chairperson, the department shall return the defective petition or supporting materials [BRIEF WILL BE RETURNED] to the petitioner for correction or completion. The department, with the concurrence of the commission chairperson, shall determine whether the deficiencies in the petition are significant enough to require new authorization for the filing of the corrected or completed petition. The technical review of any corrections or materials needed to complete the petition shall be concluded by the department within 30 days of the receipt of such materials, except that the chairperson of the commission, for good cause, may grant the department additional time to complete its technical review of the supplemental materials. If the department determines that the petition and brief are in substantial compliance with applicable provisions of AS 29.04, AS 29.05, AS 29.06, and

this chapter, the petitioner will be notified that the petition and brief have been accepted for filing and the department will file the petition.

**(d) A determination by the department under (c) of this section that a petition is deficient in form and content or that new authorization will be required for the filing of a corrected or completed petition may be appealed by the petitioner to the commission.**

(Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const.

[ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040

AS 29.05.070

AS 29.06.040

AS 29.06.110

AS 29.06.480

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.450 is amended to read:

**3 AAC 110.450 NOTICE OF PETITION.** (a) No later than 45 days after receipt of the department's written notice of acceptance of the petition for filing, the petitioner shall

(1) publish [A] public notice of the filing of the petition **in a display ad format of no less than six inches long by two columns wide** at least once each week for three consecutive weeks in **one or more** newspapers of general circulation designated by the department; **if the department determines that there is no newspaper of general circulation in the territory that is published at least once a week, the department will**

require the petitioner to provide notice through other means designed to reach the public in lieu of publishing the notice in the manner outlined in this subsection [THAT ARE PRINTED IN A DISPLAY AD FORMAT OF NO LESS THAN SIX INCHES LONG AND TWO COLUMNS WIDE];

(2) post public [A] notice of the filing of the petition in at least three [PUBLIC AND] prominent locations in or near [WITHIN] the territory proposed for change and other locations designated by the department that remain posted through the deadline set by the commission chairperson for the filing of responsive briefs; [FOR AT LEAST 14 CONSECUTIVE DAYS; AND]

(3) hand-deliver or mail, postage prepaid, public notice of the filing of the petition [A COPY OF THE NOTICE PROPOSED IN ACCORDANCE WITH (2) OF THIS SUBSECTION], correctly addressed to the municipalities having jurisdictional boundaries within an area extending up to 20 miles beyond the boundaries of the territory proposed for change, and to other persons and entities designated by the department; and

(4) submit a request for a public service announcement of the filing of the petition to at least one radio or television station serving the area of the proposed change and request that it be announced for the following 14 days.

(b) The department will specify the wording of the public notices and public service announcement required in (a) of this section. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040

AS 29.05.100

AS 29.06.040

AS 29.06.130

AS 29.06.500

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.460 is amended to read:

**3 AAC 110.460 SERVICE OF PETITION.** (a) No later than 25 days after receipt of the department's notice of acceptance of the petition for filing, the petitioner shall hand-deliver or mail, postage prepaid, one complete set of petition documents to every municipality within an area extending 20 miles beyond the boundaries of the territory proposed for change, and to other persons and entities designated by the department. Copies of the petition, including maps and other exhibits, must conform to the original in color, size, and other distinguishing characteristics.

(b) From the first date of publication of notice of the filing of the petition under 3 AAC 110.450(a)(1), through the last date on which the petition may be subject to action by the commission, including that which might result from proceedings ordered by a court of competent jurisdiction, [AVAILABLE FOR RECONSIDERATION OF THE FINAL DECISION UNDER 3 AAC 110.580] the petitioner shall make a full set of petition documents, including public notices, responsive briefs, [AND] reply brief [BRIEFS], and department reports, available for review by the public at a central and convenient location

such as a municipal office [CITY HALL] or public library. The petition documents must be available for review during normal working hours, and the petitioner shall accommodate specific requests for public review of the petition documents at reasonable times in the evening and on weekend days. All published and posted notices of filing of a petition must identify the specific location of the petition documents and the hours when the documents can be reviewed. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

- AS 29.04.040 AS 29.05.100 AS 29.06.040
- AS 29.06.130 AS 29.06.500 AS 44.33.812
- AS 44.33.814 AS 44.33.816 AS 44.33.818
- AS 44.33.820 AS 44.33.822 AS 44.33.826
- AS 44.33.828

3 AAC 110.470 is amended to read:

**3 AAC 110.470 PROOF OF NOTICE AND SERVICE.** No later than 50 days after receipt of the department's written notice of acceptance of the petition for filing, the petitioner shall deliver to the department five additional [SIX] complete sets of petition documents and [,] a sworn affidavit that the notice, posting, service, deposit, and publishing requirements of 3 AAC 110.450 - 3 AAC 110.460 have been satisfied. Copies of the petition, including maps and other exhibits, must [MAPS AND OTHER EXHIBITS SUBMITTED WITH COPIES OF THE PETITION SHALL] conform to the original in color,

size, and other distinguishing characteristics. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const.

[ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040

AS 29.05.100

AS 29.06.040

AS 29.06.130

AS 29.06.500

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.480 is amended to read:

**3 AAC 110.480 RESPONSIVE BRIEFS AND WRITTEN COMMENTS.**

(a) Any interested person, [OR] entity, or group of persons with the capacity to sue or be sued may file with the department an original and five complete copies of a responsive brief containing facts and analyses favorable or adverse to the [ORIGINAL] petition. The department will, in its discretion, waive the requirement for the respondent to provide five copies of the responsive brief if such would impose a hardship on the respondent. If the respondent is a group of persons, the group shall designate one person to represent the group. Copies of the responsive briefs, including maps and other exhibits, must conform to the original in color, size, and other distinguishing characteristics. The respondent shall provide the department with a copy of the responsive brief in a digital format approved by the department, unless the

department waives this requirement because such would impose a hardship on the respondent.

(b) The responsive brief and companion exhibits, must be filed with a sworn affidavit by the respondent that, to the best of the respondent's knowledge, information, and belief, formed after reasonable inquiry, the responsive brief and exhibits are founded in fact and are not submitted to harass or to cause unnecessary delay or needless expense in the cost of processing the petition.

(c) A responsive brief must be received by the department in a timely manner in accordance with 3 AAC 110.640. A responsive brief must be accompanied by a sworn affidavit of service of two copies of the brief on the petitioner by regular mail, postage prepaid, or by hand-delivery.

(d) Any interested person or entity may file with the department written comments supporting or opposing the petition. The correspondent shall provide a copy of the written comments to the petitioner by hand delivery, e-mail, facsimile, or postage-prepaid mail on the same date the comments were submitted to the department. If the written comments, including attachments, exceed 20 pages or if they include colored materials or materials larger than 11-inches by 17-inches, the correspondent shall provide an additional five complete sets of the written comments to the department. Copies of the written comments, including attachments, must conform to the original in color, size, and other distinguishing characteristics. The department will, in its discretion, waive the requirement for the correspondent to provide five copies of the

written comments if such would impose a hardship on the correspondent. Written comments must be received by the department in a timely manner in accordance with 3

AAC 110.640. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

- |                     |              |              |
|---------------------|--------------|--------------|
| <u>AS 29.04.040</u> | AS 29.05.080 | AS 29.05.100 |
| AS 29.06.040        | AS 29.06.110 | AS 29.06.130 |
| AS 29.06.480        | AS 29.06.500 | AS 44.33.812 |
| AS 44.33.814        | AS 44.33.816 | AS 44 33.818 |
| AS 44.33.820        | AS 44.33.822 | AS 44.33.826 |
| AS 44.33.828        |              |              |

3 AAC 110.490 is amended to read:

**3 AAC 110.490 REPLY BRIEF.** The petitioner may file an original and five copies of a single [ONE] reply brief in response to all responsive briefs and written comments filed timely under 3 AAC 110.480. The petitioner shall provide the department with a copy of the reply brief in a digital format approved by the department, unless the department waives this requirement because such would impose a hardship on the petitioner. The reply brief must be received by the department in a timely manner in compliance with 3 AAC 110.640. The reply brief must be accompanied by a sworn affidavit of service of the brief on all respondents by regular mail, postage prepaid, or by hand-delivery. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

<u>AS 29.04.040</u>	AS 29.05.080	AS 29.05.100
AS 29.06.040	AS 29.06.110	AS 29.06.130
AS 29.06.480	AS 29.06.500	AS 44.33.812
AS 44.33.814	AS 44.33.816	AS 44.33.818
AS 44.33.820	AS 44.33.822	AS 44.33.826
AS 44.33.828		

3 AAC 110.500 is amended to read:

**3 AAC 110.500 LIMITATIONS ON ADVOCACY.** (a) Unless otherwise ordered by the chairperson of the commission, for good cause shown, no document, letter, or brief will be accepted for filing and consideration by the department or the commission except in accordance with the procedures, timeframes, hearings, and meetings specified in 3 AAC 110.400 - 3 AAC 110.660.

(b) A member of the commission is prohibited from ex parte contact and communication with any person except the staff of the commission, concerning a matter pending before the commission that has been filed as a petition, from the date the petition was first submitted to the department through the last date on which the petition may be subject to action by the commission, including that which might result from proceedings ordered by a court of competent jurisdiction [AVAILABLE FOR THE

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COMMISSION'S RECONSIDERATION]. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

<u>AS 29.04.040</u>	AS 29.05.080	AS 29.05.100
AS 29.06.040	AS 29.06.110	AS 29.06.130
AS 29.06.480	AS 29.06.500	AS 44.33.812
AS 44.33.814	AS 44.33.816	AS 44.33.818
AS 44.33.820	AS 44.33.822	AS 44.33.826
AS 44.33.828		

3 AAC 110.510 is amended to read:

**3 AAC 110.510 INFORMATIONAL SESSIONS.** (a) If the department determines that persons or entities within or proximate to the area of the [AFFECTED BY A] proposed change have not had [AN] adequate opportunity to be informed about the scope, benefits, and detriments of the proposed change, the department will, in its discretion, require the petitioner to conduct informational sessions and to submit a recording, transcription, or summary of those sessions to the department.

(b) The department will not proceed with the processing of the petition until the petitioner has certified, by sworn affidavit, that the informational session requirements of this section have been met. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040

AS 29.05.080

AS 29.05.100

AS 29.06.040

AS 29.06.110

AS 29.06.130

AS 29.06.480

AS 29.06.500

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.520 is amended to read:

**3 AAC 110.520 DEPARTMENTAL PUBLIC MEETINGS.** (a) During its investigation and analysis of a petition for incorporation, the department will convene at least one public meeting in the territory proposed for incorporation. During its investigation and analysis of a petition for a change other than incorporation, the department will, in its discretion, convene at least one public meeting in or near the territory proposed for change.

(b) Notice of the date, time, and place of the public meeting under (a) of this section must be mailed, postage prepaid, to the petitioner and to all respondents at least 15 days before the public meeting [MEETINGS]. The notice will be published by the department at least once each week, for two consecutive weeks, immediately preceding the date of the meeting, in a newspaper of general circulation selected by the department to reach the people and entities within or proximate to the area of the proposed change [IN THE AFFECTED TERRITORY]. If the department determines that there is no newspaper of general circulation in the territory that is published at least once a week, the

department will provide notice through other means designed to reach the public in lieu of publishing the notice in the manner outlined in this subsection. The petitioner shall post [THE SAME] notice of the meeting in at least three [PUBLIC AND] prominent locations readily accessible to the public in or near the territory proposed for change, and at the same location where the petition documents are available for review, for at least 14 days immediately preceding the date of the meeting. On or before the date of the public meeting, the petitioner shall submit to the department a sworn affidavit certifying that the posting requirements of this subsection have been met.

(c) Staff assigned to the commission will preside at the public meeting. Written materials submitted at the public meeting will, in the discretion of the presiding staff person, be accepted with due regard to prior public notice and opportunity to submit written briefs. Except in extraordinary circumstances, the petitioner and the respondents will not be permitted to submit further written materials at the meeting. The public meeting will be recorded [,] and summarized in the report with [AND] recommendations of the department [,] prepared under 3 AAC 110.530.

(d) The department will, in its discretion, postpone the time or relocate the place of the public meeting by conspicuously posting notice of the postponement or relocation at the original time and location of the public meeting, if the meeting is relocated within the same community or territory, and is rescheduled no more than 72 hours after the originally scheduled time. (Eff. 7/31/92, Register 123; am / / Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

<u>AS 29.04.040</u>	AS 29.05.080	AS 29.06.040
AS 29.06.090	AS 29.06.110	AS 29.06.480
AS 29.06.490	AS 44.33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

3 AAC 110.530 is amended to read:

**3 AAC 110.530 DEPARTMENTAL REPORT.** (a) The department will investigate and analyze a petition filed with the department under this chapter, and will submit to the commission a written report of its findings and recommendations regarding the petition.

(b) The department will mail to the petitioner and respondents its preliminary report with [A PROPOSED DRAFT OF ITS REPORT AND] recommendations before submitting its final report with [AND] recommendations to the commission. Within 24 hours of receipt of the preliminary [DRAFT] report with [AND] recommendations, the petitioner shall place a copy of the report with the petition documents available for review.

(c) The petitioner, respondents, and other interested persons may submit, to the department, written comments pertaining directly to the preliminary [DRAFT] report with [AND] recommendations. The written comments must be received by the department in a timely manner in accordance with 3 AAC 110.640.

(d) The final written report with [AND] recommendations of the department will include due consideration of written comments addressing the preliminary [DRAFT] report with [AND] recommendations. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

- AS 29.04.040 AS 29.05.080 AS 29.06.040
- AS 29.06.110 AS 29.06.490 AS 44.33.812
- AS 44.33.814 AS 44.33.816 AS 44.33.818
- AS 44.33.820 AS 44.33.822 AS 44.33.826
- AS 44.33.828

3 AAC 110.540 is amended to read:

**3 AAC 110.540 AMENDMENTS AND WITHDRAWAL.** (a) A petition [PETITIONER] may be amended [AMEND] or withdrawn [WITHDRAW THE ORIGINAL PETITION] at any time before the first mailing, publishing, or posting of notice of the commission's hearing on the petition under 3 AAC 110.550. The original and five copies of the amendment or withdrawal must be filed with the department. The petitioner shall provide the department with a copy of the amended petition and supporting materials in a digital format approved by the department, unless the department waives this requirement because such would impose a hardship on the petitioner. If the original petition was initiated by voters [IF THE SIGNATURES OF VOTERS WERE REQUIRED BY AS 29.05 OR AS 29.06 IN THE ORIGINAL PETITION],

(1) the amended [AMENDING] petition must contain the dated signatures of the same number of voters [IN THE MANNER] required by AS 29.04, AS 29.05, AS 29.06, or this chapter for the original petition, and must include the dated signatures of at least a majority of the same voters who signed the original petition; and

(2) a statement withdrawing a petition must contain the dated signatures of at least 30 percent of the voters residing in the area of the proposed change, and must include at least a majority of the same voters who signed the original petition.

(b) A petitioner shall serve the amended [AMENDING] petition on each person and entity designated by the department, and by 3 AAC 110.400 - 3 AAC 110.660 to receive the original petition, and on the respondents to the original petition. A petitioner shall place a copy of the amended [AMENDING] petition with the original petition documents, post the public notice of the amended [AMENDING] petition, and submit a sworn affidavit of service and notice in the same manner required for the original petition.

(c) The chairperson of the commission will, in the chairperson's discretion, determine whether the amendment is significant enough to warrant an informational session, opportunity for further responsive briefing, an additional public meeting by the department, or a repeat of any other step or process specified in 3 AAC 110.400 - 3 AAC 110.660. Additional informational sessions, meetings, briefings, or other step or process will be conducted in accordance with the procedures specified in 3 AAC 110.400 - 3 AAC 110.660 for the processing of the original petition, except that the timing may be shortened in the chairperson's discretion.

(d) A petitioner may not amend or withdraw the original petition after the first mailing, publishing, or posting of notice of the commission's hearing on the petition, except upon a clear showing to the commission that the public interest of the state and of the persons and entities within or proximate to the area of [POPULATION AFFECTED BY] the proposed change is best served by allowing the proposed amendment or withdrawal. [A PETITION FOR AMENDMENT OR WITHDRAWAL ALLOWED UNDER THIS SUBSECTION, MUST INCLUDE THE SAME SIGNATURE REQUIREMENTS SPECIFIED IN (A) OF THIS SECTION. UNLESS MODIFIED BY AN ORDER OF THE CHAIRPERSON OF THE COMMISSION, THE PROCEDURES OF 3 AAC 110.400 - 3 AAC 110.660 FOR THE PROCESSING OF AN ORIGINAL PETITION APPLY TO AN AMENDING PETITION OR STATEMENT OF WITHDRAWAL.] (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const.

[ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040

AS 29.05.060

AS 29.06.040

AS 29.06.090

AS 29.06.100

AS 29.06.450

AS 29.06.460

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.550 is amended to read:

**3 AAC 110.550 COMMISSION PUBLIC HEARING.** (a) The commission will convene one or more public hearings at convenient locations in or near the territory of the proposed change as required under AS 29.04, AS 29.05, AS 29.06, AS 44.33.810 - 44.33.828, and this chapter.

(b) Notice of the date, time, place, and subject of the hearing will be

(1) mailed, postage prepaid, by the department to the petitioner and to all respondents;

(2) published by the department at least three times, with the first date of publishing occurring at least 30 days before the date of the hearing, in a display ad format no less than three [SIX] inches long by two columns wide, in one or more newspapers of general circulation selected by the department to reach the people in the territory; if the department determines that there is no newspaper of general circulation in the territory that is published at least once a week, the department will provide notice through other means designed to reach the public in lieu of publishing the notice in the manner outlined in this subsection; and

(3) posted by the petitioner in at least three [PUBLIC AND] prominent locations readily accessible to the public in the area in which the hearing is to be held, and where the petition documents are available for review, for at least 21 days preceding the date of the hearing.

(c) The department will submit a request for a public service announcement of the hearing notice required under this section to at least one radio or television station serving the

area of the proposed change and request that it be announced [AS FREQUENTLY AS POSSIBLE] during the 21 days preceding the date of the hearing.

(d) The commission will, in its discretion, postpone the time or relocate the place of the hearing by conspicuously posting notice of the postponement or relocation at the original time and location of the public hearing, if the hearing is relocated within the same community or territory and is rescheduled no more than 72 hours after the originally scheduled time.

(e) At least 14 days prior to the hearing, the petitioner and each respondent shall submit to the department a list of witnesses that each respective party intends to call to provide sworn testimony. The list must include the name and qualifications of each witness, the subjects about which each witness will testify, and the estimated time anticipated for the testimony of each witness. On the same date that the petitioner submits its witness list to the department, the petitioner shall provide a copy of its witness list to each respondent by hand delivery or postage prepaid mail. On the same date that a respondent submits its witness list to the department, the respondent shall provide a copy of its witness list to the petitioner and all other respondents by hand delivery or postage prepaid mail. (Eff. 7/31/92, Register: 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const.

[ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040

AS 29.05.090

AS 29.06.040

AS 29.06.120

AS 29.06.490

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.560 is amended to read:

**3 AAC 110.560 COMMISSION HEARING PROCEDURES.** (a) The chairperson of the commission will preside at the hearing, and will regulate the time and the content of testimony to exclude irrelevant or repetitious testimony. The hearing must be recorded and the recording [TAPES] preserved by the department. Two members of the commission constitute a quorum for purposes of a hearing under this section.

(b) A hearing will, in the commission's discretion, include

(1) a report with recommendations from the department;

(2) an opening statement by the petitioner, not to exceed 10 minutes [IN LENGTH];

(3) an opening statement by a respondent who filed a brief under 3 AAC 110.480, not to exceed 10 minutes [A PERIOD OF PUBLIC COMMENT BY INTERESTED PERSONS, NOT TO EXCEED FIVE MINUTES FOR EACH PERSON];

(4) sworn testimony of witnesses with expertise in matters relevant to the proposed change called by the petitioner;

(5) sworn testimony of witnesses with expertise in matters relevant to the proposed change called by the respondent [RESPONDENTS];

(6) sworn responsive testimony of witnesses with expertise in matters relevant to the proposed change called by the petitioner;

(7) a period of public comment by interested persons, not to exceed three minutes for each person:

(8) [(7)] a closing statement by the petitioner, not to exceed 10 minutes [IN LENGTH];

(9) [(8)] a closing statement by the respondent [RESPONDENTS WHO TESTIFIED UNDER (5) OF THIS SUBSECTION], not to exceed 10 minutes [IN LENGTH FOR EACH RESPONDENT]; and

(10) [(9)] a reply by the petitioner, not to exceed five minutes [IN LENGTH].

(c) If there is more than one respondent, the commission chairperson will, at least 14 days prior to the hearing, establish time limits on the opening and closing statements for each respondent.

(d) [(C)] A member of the commission may question a person appearing for public comment or as a sworn witness. The commission will, in its discretion, call additional witnesses.

(e) [(D)] A brief or document may not be filed at the time of the public hearing unless the commission determines that good cause exists for that evidence not being presented in a timely manner for written response by the petitioner or respondents, and for consideration in the report with [AND] recommendations of the department.

(f) [(E)] The commission will, in its discretion, amend the order of proceedings and change allotted times for presentations if amendment of the agenda will promote efficiency

without detracting from the commission's ability to make an informed decision. (Eff.

7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040

AS 29.05.090

AS 29.06.040

AS 29.06.120

AS 29.06.490

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.570 is amended to read:

**3 AAC 110.570 DECISIONAL MEETING.** (a) Within 90 days after the last commission hearing on a proposed change, the commission will convene a decisional meeting to examine the written briefs, exhibits, comments, and testimony, and to reach a decision regarding the proposed change. No new evidence, testimony, or briefing will be received during the decisional meeting, however, the chairperson may ask the department or [BY] some other person for a point of information or clarification.

(b) Three members of the commission constitute a quorum for the conduct of business at a decisional meeting.

(c) If the commission determines that a proposed change should be altered to meet the standards contained [ESTABLISHED] in the Alaska Constitution, AS 29.04, AS 29.05, AS 29.06, or this chapter, the commission will, in its discretion, alter the proposed change and

accept the petition as altered. If the commission determines that a [PETITIONER MUST SATISFY A] certain requirement must be satisfied before the proposed change can take effect, the commission will include that precondition in its decision. A motion to amend, impose conditions, or approve a proposed change requires at least three votes by commission members to constitute approval.

(d) If the commission determines that a proposed change fails to meet the standards contained [ESTABLISHED] in the Alaska Constitution, AS 29.04, AS 29.05, AS 29.06, or this chapter, the commission shall [MUST] reject the proposed change. If a motion to grant a proposed change receives fewer than three votes by commission members, the proposed change is rejected [BY A MAJORITY VOTE OF THE PRESENTLY APPOINTED MEMBERSHIP. IF THE COMMISSION DETERMINES THAT A PROPOSED CHANGE MEETS THE STANDARDS ESTABLISHED CONTAINED IN THE ALASKA CONSTITUTION, AS 29.05, AS 29.06, OR THIS CHAPTER, OR CAN BE ALTERED TO MEET THOSE STANDARDS, THE COMMISSION MUST ACCEPT THE PROPOSED OR ALTERED CHANGE BY A MAJORITY VOTE OF THE PRESENTLY APPOINTED MEMBERSHIP].

(e) The commission shall [MUST] keep written minutes of all decisional meetings. All votes taken by the commission must be entered in the minutes. The approved minutes are a public record.

(f) Within 30 days after the date of its decision, the commission will file as a public record a written statement explaining all major considerations leading to the decision. A copy

of the statement will be mailed to the petitioner, [TO ALL] respondents, and [TO] other interested persons requesting a copy.

(g) A decision by the commission is final on the day that the written statement of decision is mailed, postage prepaid, to the petitioner and the respondents. The department will execute and file a sworn affidavit of mailing as a part of the public record of the proceedings. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

- AS 29.04.040 AS 29.05.100 AS 29.06.040
- AS 29.06.130 AS 29.06.500 AS 44.33.812
- AS 44.33.814 AS 44.33.816 AS 44.33.818
- AS 44.33.820 AS 44.33.822 AS 44.33.826
- AS 44.33.828

3 AAC 110.580 is amended to read:

**3 AAC 110.580 RECONSIDERATION.** (a) Within 20 days after a decision of the commission is final under 3 AAC 110.570(g), a person or entity may file an original and five copies of a request for reconsideration of that decision, describing in detail the facts and analyses that support the request for reconsideration [(1) A PERSON MAY FILE A REQUEST FOR RECONSIDERATION OF THAT DECISION, DESCRIBING IN DETAIL THE FACTS AND ANALYSES THAT SUPPORT THE REQUEST FOR RECONSIDERATION; OR

(2) THE COMMISSION WILL, IN ITS DISCRETION, ORDER RECONSIDERATION OF ALL OR PART OF ITS DECISION ON ITS OWN MOTION].

(b) A person or entity filing a request for reconsideration shall provide the department with a copy of the request for reconsideration and supporting materials in a digital format approved by the department, unless the department waives this requirement because such would impose a hardship on the person or entity requesting reconsideration. A request for reconsideration must be accompanied by a sworn affidavit of service of the request for reconsideration on the petitioner and all respondents by regular mail, postage prepaid, or by hand-delivery. The affidavit must also state that the request for reconsideration was formed after reasonable inquiry, is founded in fact, and is not submitted to harass or to cause unnecessary delay or needless expense in the cost of processing the petition.

(c) If the request for reconsideration is filed by a group or organization, the request must identify a representative of the group or organization.

(d) The commission will, in its discretion, reconsider a decision if

(1) there was a substantial procedural error in the original proceeding;

(2) the original vote was based on fraud or misrepresentation;

(3) the Commission failed to address a material issue of fact or a controlling principle of law; or

(4) new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.

(e) [B] If the commission has not acted [TAKEN NO ACTION] on a request for reconsideration within 30 days after the decision became final under 3 AAC 110.570(g), the request is automatically denied. If the commission grants a request for reconsideration within 30 days after the final decision under 3 AAC 110.570 (g), a petitioner or respondent supporting or opposing the reconsideration is allotted 10 days from the date the request for reconsideration is granted to file an original and five copies of a responsive brief describing in detail the facts and analyses that support or oppose the request for reconsideration. The petitioner or respondent shall provide the department with a copy of the responsive brief in a digital format approved by the department, unless the department waives this requirement because such would impose a hardship on the petitioner.

(f) The commission will, in its discretion, order reconsideration of all or part of its decision on its own motion as long as the proposed change at issue remains within the jurisdiction of the commission.

(g) Only the provisions of this section, not AS 44.62.540, govern reconsideration by the commission. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

<u>AS 29.04.040</u>	AS 29.05 100	AS 29.06.040
AS 29.06.130	AS 29.06.500	AS 44.33.812
AS 44.33.814	AS 44.33.816	AS 44.33.818
AS 44.33.820	AS 44.33.822	AS 44.33.826
AS 44.33.828		

3 AAC 110.590 is amended to read:

**3 AAC 110.590 CERTAIN LOCAL ACTION ANNEXATIONS [LOCAL ACTION BOUNDARY CHANGES].** (a) Except as otherwise provided in this section, if a petition is filed with the department under a local action [OR LOCAL OPTION] method provided for in AS 29.06.040(c)(2) or (3) [AS 29.06,] for [DISSOLUTION] annexation of adjacent municipally owned property or adjacent property by unanimous consent of voters and property owners [, DETACHMENT, MERGER, OR CONSOLIDATION,] only the following procedures specified in 3 AAC 110.400 - 3 AAC 110.660 are required:

- (1) filing a petition under 3 AAC 110.420;
- (2) technical review of the petition under 3 AAC 110.440;
- (3) notice and service of the petition under 3 AAC 110.450 - 3 AAC 110.470;
- (4) responsive briefs and comments under 3 AAC 110.480, except that the

commission chairperson will, in the chairperson's discretion, limit the time allowed under 3 AAC 110.640 for the filing of responsive briefs and comments to 14 days from the date of first publication of the notice of filing of the petition;

(5) reply brief under 3 AAC 110.490, except that the commission chairperson will, in the chairperson's discretion, limit the time allowed under 3 AAC 110.640 for the filing of a reply brief to 7 days from the date that the petitioner received the responsive brief.

(6) [(4)] departmental report under 3 AAC 110.530, except that the department shall issue only one report concerning the local action annexation proposal at least 21 days prior to the public hearing under 3 AAC 110.550, interested persons may submit written comments to the department on its report up to 7 days prior to the public hearing;

(7) [(5)] commission's public hearing under 3 AAC 110.550, except that the hearing will, in the discretion of the commission, be conducted by teleconference;

(8) [(6)] decisional meeting under 3 AAC 110.570; and

(9) reconsideration under 3 AAC 110.580.

(b) The commission will, in its discretion, expand local action [OR LOCAL OPTION] procedures to include other requirements of 3 AAC 110.400 - 3 AAC 110.660, such as [ADDITIONAL NOTICE AND SERVICE,] briefing, informational sessions, [AND] public meetings and hearings, and reconsideration if the commission determines that the best interests of the state are enhanced by such [EXPANDED PUBLIC PARTICIPATION].

(c) The chairperson of the commission will, in the chairperson's [ITS] discretion, relax, reduce, or eliminate the notice and service requirements of 3 AAC 110.450 - 3 AAC 110.470 if the chairperson [COMMISSION] determines that a shortened or less expensive method of public notice is reasonably designed to reach all interested persons.

[(D) THE COMMISSION, IN ITS DISCRETION, WILL NOT REQUIRE THE COMMISSION PUBLIC HEARING UNDER 3 AAC 110.550 , AND WILL MODIFY THE DEPARTMENTAL REPORT REQUIREMENT UNDER 3 AAC 110.530 , FOR A

PETITION PROPOSING ANNEXATION OF ADJACENT MUNICIPALLY OWNED PROPERTY, OR FOR A PETITION PROPOSING ANNEXATION OF ADJACENT PROPERTY BY UNANIMOUS CONSENT OF VOTERS AND PROPERTY OWNERS.]

(d) [(E)] If the commission determines that the balanced best interests of the locality and the state are enhanced by statewide participation, the commission will, in its discretion, convert a local action [OR LOCAL OPTION] petition to a legislative review petition. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.06.040

AS 29.06.090

AS 29.06.450

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.600 is amended to read:

**3 AAC 110.600 LOCAL ACTION/LOCAL OPTION ELECTIONS.** (a) In accordance with AS 29.04, AS 29.05, and AS 29.06, the commission will notify the director of elections of its acceptance of a local action or local option petition proposing city reclassification under AS 29.04, municipal incorporation under AS 29.05, and municipal dissolution, merger, or consolidation under AS 29.06. The director of elections will conduct and certify the elections in accordance with AS 15 and AS 29.04 - AS 29.06 [AS 29.05 - AS 29.06].

(b) If AS 29.06 requires a municipal [LOCAL] election for a proposed annexation or detachment, the commission will notify the clerk of the [AFFECTED] municipality proposed for change of the commission's acceptance of a local option petition. The election must be administered by the [AFFECTED] municipality proposed for change at its own cost, and in the manner prescribed by its municipal election code, except that the commission will, in its discretion, specify the wording of the ballot measure and broaden the election notice requirements.

(c) Pursuant to AS 29.06.040(c) and AS 44.33.812(a)(2), the commission may approve a petition for annexation subject only to approval by a majority of the combined voters who vote on the question within the area proposed for annexation and the annexing municipality. If the territory proposed for annexation is uninhabited, the commission may approve a petition for annexation of that territory subject only to approval by a majority of the voters who vote on the question within the annexing municipality.

(Eff. 7/31/92, Register 123: am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

<u>AS 29.04.040</u>	AS 29.05.110	AS 29.05.120
AS 29.06.040	AS 29.06.140	AS 29.06.510
AS 44.33.812	AS 44.33.814	AS 44.33.816
AS 44.33.818	AS 44.33.820	AS 44.33.822
AS 44.33.826	AS 44.33.828	

3 AAC 110.610 is amended to read:

**3 AAC 110.610 LEGISLATIVE REVIEW.** (a) The commission may determine during the course of proceedings that a legislative review petition should be amended and considered as a local action or local option petition, if the commission determines that the balanced best interests of the locality and the state are enhanced by local participation.

(b) If [THE COMMISSION DETERMINES THAT] a decision of the commission [AS] requires legislative review, the commission will present a recommendation for the decision [THE PETITION] to the legislature during the first 10 days of a [THE NEXT] regular session in accordance with art. X, sec. 12, Constitution of the State of Alaska.

(Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

<u>AS 29.06.040</u>	AS 29.06.090	AS 29.06.450
AS 44.33.812	AS 44.33.814	AS 44.33.816
AS 44.33.818	AS 44.33.820	AS 44.33.822
AS 44.33.826	AS 44.33.828	

3 AAC 110.620 is amended to read:

**3 AAC 110.620 JUDICIAL REVIEW.** A final decision of the commission made under AS 29.04, AS 29.05, AS 29.06, or this chapter may be appealed to the superior court in

accordance with the Administrative Procedure Act (AS 44 62). (Eff. 7/31/92, Register 123;  
am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

<u>AS 29.04.040</u>	AS 29.05.100	AS 29.06.040
AS 29.06.130	AS 29.06.500	AS 44.33.812
AS 44.33.814	AS 44.33.816	AS 44.33.818
AS 44.33.820	AS 44.33.822	AS 44.33.826
AS 44.33.828		

3 AAC 110.630 is amended to read:

**3 AAC 110.630 EFFECTIVE DATE AND CERTIFICATION.** (a) Except as provided in (b) or (c) of this section, a final decision of the commission is effective when

(1) notification of compliance with 42 U.S.C. 1973c (Voting Rights Act of 1965) is received from the United States Department of Justice;

(2) certification of the legally required voter approval of the commission's final decision is received from the director of the division of elections or the appropriate municipal official; and

(3) 45 days have passed since presentation of the commission's final decision on a legislative review petition was made to the legislature and the legislature has not disapproved the decision.

(b) The effective date of a merger or consolidation is the date set by the director of the division of elections for the election of officials of the remaining or new municipality, if the provisions of (a) of this section have also been satisfied.

(c) The commission will, in its discretion, defer the effective date of a city reclassification under AS 29.04, municipal incorporation under AS 29.05, and municipal annexation, detachment, merger, consolidation, or dissolution under AS 29.06 for a period of no more than two years.

(d) [(C)] When the requirements in (a) of this section have been met, the department will issue a certificate describing the effective change. The department will hand-deliver or mail, postage prepaid, a copy of the certificate to the municipality that has been changed [ALL MUNICIPALITIES AFFECTED BY THE CHANGE], and will file a copy of the certificate in each recording district of all territory within the municipality that has been changed [AFFECTED BY THE CHANGE]. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

<u>AS 29.04.040</u>	AS 29.05.120	AS 29.06.040
AS 29.06.140	AS 29.06.510	AS 44.33.812
AS 44.33.814	AS 44.33.816	AS 44.33.818
AS 44.33.820	AS 44.33.822	AS 44.33.826
AS 44.33.828		

3 AAC 110.640 is amended to read:

**3 AAC 110.640 SCHEDULING.** (a) The chairperson of the commission will set or amend the [ISSUE AN ORDER SETTING OR AMENDING A FORMAL] schedule for action on a petition.

(b) Except as provided by 3 AAC 110.590 for certain local action annexations, a [A] schedule under (a) of this section will allow at least

(1) 49 days from the date of initial publication or posting of notice of the filing of a petition, whichever occurs first, for receipt by the department of a responsive brief or written comments concerning the petition;

(2) 14 days from the date of service of a responsive brief on the petitioner for the receipt by the department of a reply brief from the petitioner;

(3) 28 days from the date of mailing of a departmental preliminary [DRAFT] report with [AND] recommendation to the petitioner for receipt of written summary comments to the department;

(4) 21 days between the date of mailing of a final report with [AND] recommendation by the department to the petitioner and the commission hearing on the petition.

(c) The commission will, in its discretion, postpone proceedings on a petition that has been accepted for filing to allow [FOR THE PURPOSE OF ALLOWING] concurrent consideration and action on another [EXISTING OR ANTICIPATED] petition that pertains [WILL PERTAIN] to some or all of the same territory and that has either been accepted

for filing or is anticipated to be filed. The commission may postpone the proceedings for an anticipated [ . A ] competing petition only if the anticipated competing petition is [MUST BE] received by the department no later than 90 days after the date of the first publication [POSTING] of notice of the earlier petition under 3 AAC 110.450 [3 AAC 110.410]. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

<u>AS 29.04.040</u>	AS 29.05.080	AS 29.05.090
AS 29.06.040	AS 29.06.090	AS 29.06.110
AS 29.06.120	AS 29.06.480	AS 29.06.490
AS 44.33.812	AS 44.33.814	AS 44.33.816
AS 44.33.818	AS 44.33.820	AS 44.33.822
AS 44.33.826	AS 44.33.828	

3 AAC 110.650 is amended to read:

**3 AAC 110.650 RESUBMITTALS AND REVERSALS.** Except upon a special showing to the commission of significantly changed conditions, a petition will not be accepted for filing that

(1) is substantially similar to a petition denied by the commission, rejected by the legislature, or rejected by the voters during the immediately preceding 24 months; or

(2) requests a substantial reversal of a decision of the commission that first became effective during the immediately preceding 24 months.

(Eff. 7/31/92, Register 123; am / / , Register)

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

<u>AS 29.04.040</u>	AS 29.05.100	AS 29.06.040
AS 29.06.090	AS 29.06.130	AS 29.06.450
AS 29.06.500	AS 44.33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

3 AAC 110.660 is amended to read:

**3 AAC 110.660 PURPOSE OF PROCEDURAL REGULATIONS;  
RELAXATION OR SUSPENSION OF PROCEDURAL REGULATION.** 3 AAC  
110.400 - 3 AAC 110.660 are procedural regulations designed to facilitate the business of the  
commission, and are to [SHALL] be construed to secure the reasonable, speedy, and  
inexpensive determination of every action and proceeding. Unless a requirement is strictly  
provided for in the Alaska Constitution, AS 29, or AS 44.33.810 - 44.33.849, the commission  
will, in its discretion, relax or suspend a procedural regulation if the commission determines  
that a strict adherence to the regulation would work injustice, [OR] result in a substantially  
uninformed decision, or would not serve relevant constitutional principles and the broad  
public interest. (Eff. 7/31/92, Register 123; am / / , Register)

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

<u>AS 29.04.040</u>	AS 29.05.100	AS 29.06.040
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AS 29.06.090

AS 29.06.450

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

### ARTICLE 13 - GENERAL PROVISIONS

3 AAC 110.900 is amended to read:

**3 AAC 110.900 TRANSITION.** (a) A petition for incorporation, annexation, merger, or consolidation must include a practical plan that [IN WHICH THE MUNICIPAL GOVERNMENT] demonstrates the capacity of the municipal government [ITS INTENT AND CAPABILITY] to extend essential city or essential borough services into the territory proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for city reclassification under AS 29.04, or municipal detachment or dissolution under AS 29.06, must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after city reclassification, detachment, or dissolution.

(b) All petitions [A PETITION FOR A PROPOSED ACTION BY THE COMMISSION] must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, and [OR] other appropriate entity located in the

territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough [OR] service area, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.

(c) All petitions [A PETITION FOR PROPOSED ACTION BY THE COMMISSION] must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough [OR] service area wholly or partially included in the area proposed for [AFFECTED BY] the change, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur [OCCURS] without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.

(d) Before approving a proposed change, the commission will, in its discretion, require that all [AFFECTED] boroughs, cities, unorganized borough service areas, or other entities wholly or partially within the area of the proposed change execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

<u>AS 29.04.040</u>	AS 29.05.130	AS 29.05.140
AS 29.06.040	AS 29.06.090	AS 29.06.150
AS 29.06.160	AS 44.33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

3 AAC 110.910 is amended to read:

**3 AAC 110.910 STATEMENT OF NON-DISCRIMINATION.** A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin. (Eff. 7/31/92, Register 123; am / / , Register)

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 44.33.812	AS 44.33.814	AS 44.33.816
AS 44.33.818	AS 44.33.820	AS 44.33.822
AS 44.33.826	AS 44.33.828	

3 AAC 110.920 is amended to read:

**3 AAC 110.920 DETERMINATION OF COMMUNITY.** (a) In determining whether a population comprises a community [OR SOCIAL UNIT], the commission will, in its discretion, consider relevant factors, including whether [THE PEOPLE]

**(1) the settlement is inhabited by at least twenty-five individuals:**

**(2)** [(1)] **the inhabitants** reside permanently in a close geographical proximity that allows frequent personal contacts and **comprise** [HAS] a population density that is characteristic of neighborhood living;

**(3)** [(2)] **the inhabitants** residing permanently at a location are a discrete and identifiable **social** unit [,] as indicated by such factors as school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a population does not constitute a community [OR SOCIAL UNIT] if

(1) public access to or the right to reside at [,] the location of the population is restricted;

(2) the population is [CONTIGUOUS OR CLOSELY] adjacent to a community [OR SOCIAL UNIT] and is dependent upon that community [OR SOCIAL UNIT] for its existence; or

(3) the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: **Art. X, sec. 12, Ak Const.** [ALASKA CONST., ART. X, SEC. 12]

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.990 is amended to read:

**3 AAC 110.990 DEFINITIONS.** Unless the context indicates otherwise, in this chapter

(1) "best interests of the state" means the broad policy benefit to the public statewide; the concept is applied by the Local Boundary Commission on a case-by-case basis; a determination of the best interests of the state is substantially guided by the applicable provisions of the Alaska Constitution, Alaska Statutes, and Alaska Administrative Code to reflect the exigencies of any petition as is necessary to develop appropriate local government boundaries which, in turn, serve the balanced interests of citizens in the area proposed for change, affected local governments, and other public interests which the Local Boundary Commission, in its discretion, considers to be relevant;

(2) [(1)] "borough" means a general law borough, a home rule borough, or a unified municipality;

(3) [(2)] "commission" means the Local Boundary Commission;

(4) [(3)] "commissioner" means the commissioner of the Department of Community and Economic Development;

(5) [(4)] a "community" is a social unit comprised of 25 or more permanent residents as determined under 3 AAC 110.920;

(6) [(5)] "contiguous" means territories and properties that are adjacent, adjoining, and touching each other;

(7) [(6)] "department" means the Department of Community and Economic Development;

(8) [(7)] "essential borough services" means those mandatory and discretionary powers [ACTIVITIES] and facilities that are determined by the commission to be reasonably necessary to the territory and that cannot be provided more efficiently and more effectively either through some other agency or political subdivision of the state, or by the creation or modification of some other political subdivision of the state; "essential borough services" may include

(A) assessing and collecting taxes;

(B) providing primary and secondary education;

(C) planning, platting, and land use regulation; and

(D) other services that the commission considers reasonably necessary

to meet the borough governmental needs of the territory;

(9) [(8)] "essential city services" means those mandatory and discretionary powers [LEGAL ACTIVITIES] and facilities that are determined by the commission to be reasonably necessary to the community and that cannot be provided more efficiently and more effectively either through some other agency or political subdivision of the state, or by the creation or modification of some other political subdivision of the state; "essential city services" may include

(A) levying taxes:

(B) [(A)] assessing, [LEVYING,] and collecting taxes for a city in an unorganized borough:

(C) [(B)] providing primary and secondary education in first class and home rule cities in an unorganized borough;

(D) [(C)] public safety protection;

(E) [(D)] planning, platting, and land use regulation; and

(F) other services that the commission considers reasonably necessary to meet the local governmental needs of the community;

(10) [(9)] "mandatory power" means an authorized act, duty, or obligation required by law to be performed or fulfilled by a municipality in the course of its fiduciary obligations to citizens and taxpayers; "mandatory power" may include

(A) assessing, levying, and collecting taxes;

(B) providing education, public safety, public health, and sanitation services;

(C) planning, platting, and land use regulation;

(D) conducting elections; and

(E) other acts, duties, or obligations required by law to meet the local governmental needs of the community;

(11) "model borough boundaries" mean those boundaries adopted by the commission on file with the Local Boundary Commission Staff, Dept. of Community and Economic Development, 550 W. 7th Ave., Suite 1770, Anchorage, AK 99501-3510.

(12) [(10)] "permanent resident [RESIDENCE]" means a person who has maintained a principal domicile in the territory proposed for change under this chapter for at least 30 days immediately preceding the date of acceptance of a petition by the department, and who shows no intent to remove that principal domicile from the territory at any time during the pendency of a petition before the commission;

(13) [(11)] "political subdivision" means a borough or [, UNIFIED MUNICIPALITY,] city [, REGIONAL EDUCATIONAL ATTENDANCE AREA, OR COASTAL RESOURCE SERVICE AREA] organized and operated under state law;

(14) [(12)] "property owner" means a legal person holding a vested fee simple interest in the surface [OR SUBSURFACE] estate of any real property including submerged lands; lienholders, mortgagees, deed of trust beneficiaries, remaindermen, lessees, and holders of unvested interests in land are not "property owners" for purposes of this chapter.

(15) "witnesses with expertise in matters relevant to the proposed change" means persons who are specialists in relevant subjects such as municipal finance, municipal law, public safety, public works, public utilities, and municipal planning; or persons who are long-standing members of the community or region that are directly familiar with social, cultural, economic, geographic, and other

Register \_\_\_\_\_, \_\_\_\_\_ 200\_\_

COMMUNITY AND ECON. DEV.

characteristics of the community or region. (Eff. 7/31/92, Register 123; am / / , Register

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Authority: Art. X, sec. 12, Ak Const.

[ALASKA CONST., ART. X, SEC. 12]

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

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## PUBLIC TESTIMONY

- CCAA

- INDIVIDUAL

LETTERS, POMS,  
EMAIL

## ***Citizens Concerned About Annexation***

PO Box 1715 HOMER, AK 99603

Never before in the history of Alaska has this broad a legislative review annexation been attempted. The legislature should only approve it if it's really necessary for better government. This process has not been a sterling example of good government, and we believe it is time to consider changing the way annexations are handled in Alaska.

- I. The City has excluded the public from any meaningful dialog on annexation and has hidden any documents that might cast doubt on the veracity of the petition. Page 2.
- II. The City's basic premise is wrong. The City claims we are using city services and not paying for them, when in fact our sales tax contributions pay for those non-fee-based services that we actually use 3 or 4 times over. Page 5.
- III. People have a right to vote on issues that will have a major impact on their lives. There are several related voting issues that have arisen in this annexation. Page 7.
- IV. The LBC was wrong to find all 14 standards were met when there were many that the City had not shown they met. On some standards they accepted the City's statements without proof, on others they abused their discretion. Page 9.
- V. CCAA is prepared to pursue the legal issues in court, but we ask you to veto so we will not have to spend thousands of dollars on legal fees that could be better spent in the local economy, nor drag out this battle for three years or more. Page 17.
- VI. The entire process has been flawed from the beginning, made worse by the LBC's bias in favor of the City. Page 20.

For all of these reasons we believe this annexation should be vetoed. We are not opposed to annexation of people who wish to be annexed, but are adamantly opposed to an annexation that completely tramples on the basic rights and freedoms that are the birthright of every American. The Alaska Constitution clearly says you may veto an annexation for any reason, the following pages should give you plenty of reasons. This legislative review annexation may have been legal, but it wasn't right. We are asking you to do what is right and veto Homer's annexation. Help restore our faith in government.

The City brought up the subject of annexation in 1998. After a major public outcry and finding the numbers didn't pan out they quietly dropped the idea. But it didn't go away, it just went underground. In late 1999 a resolution to ask the City Manager to come up with a work plan and time line was approved with little notice in the wee hours of the morning after a long grueling City Council meeting to deal with the budget. It was not mentioned in the press.

No one suspected a thing until a "secret" memo was leaked, a memo from the City Manager to the department heads assigning them specific tasks for the work plan, and asking them to "support annexation". (Requests for the department head memos written in response, from which the petition was allegedly drafted, were denied by a claim of "privilege", see below.) Instead of a "work plan and time line", the City suddenly had a complete petition to annex, all ready to send to the LBC. No public meetings, no public input, no public discussion of any sort. Not even with the city's own residents.

They had planned to release this petition on a Friday and vote on it the following Monday, but public outcry forced an earlier release, by one week. Had they succeeded it would have been in the hands of the LBC before anyone knew about it! CCAA had to file an injunction to try to slow things down, just to make sure the word got out before the vote. We lost the suit but gained the needed publicity, and an extra week.

The LBC was sufficiently concerned with the lack of public notice or hearing to write new regulations to require a public hearing, with 30 days notice, prior to submitting a petition for a legislative review annexation. With a start this bad, this annexation should never have made it this far.

Then there is the difficulty we have had getting information from the City about this annexation. An initial request for all documents concerning annexation resulted in the release of only three documents -- two that had been specifically named and the Resolution that approved the petition. So a more specific request was submitted, a 67 item list, many of which were denied. Most significantly, anything that might support (or not) the cost estimates in the Petition were denied by the city manager claiming the "deliberative process privilege".

We appealed to the City Council but they backed the city manager, so we filed an appeal in court. It took months just to get a list of the documents being withheld, 25 department head memos that Mr. Drathman says he relied on when drafting the Petition. They are now in the hands of the Alaska Supreme Court and we will probably not get a decision until next Fall. Meanwhile, we are required by the City to make any records requests through our attorney. This slowed the process down enough to prevent us from getting some requested information in time to use it when commenting on the Preliminary Report.

This sort of background information should not be withheld. We have no way of checking the validity of the cost estimates of annexation without this material. The DCED and LBC accepted the City's estimates on the assumption that the department heads were experienced and would do a good job on the estimates. However, there is no proof that the numbers in the Petition match the ones the department heads came up with. In fact, there is quite a bit of circumstantial evidence that they do not. This was pointed out to the DCED and LBC, and they were provided with all the relevant documentation, yet they dismissed it all as a mere "difference of opinion"!!

Clearly the City did not want us to know what they were up to, or what they had been up to. They also did not care to know what we thought about the whole mess. They claim to have had over fifty-five meetings and forums in which we were given opportunity to express our wishes about annexation. This claim might be technically accurate, if they are including every City Council meeting they've held in the last two years. However, the way in which these meetings were conducted and the manner in which we were treated left us totally without voice before the Homer City Administration. They allowed us to speak but did not listen and never engaged in a dialog.

One entire set of annexation forums was conducted by different city councilmen in turn. It is difficult to determine the purpose of these forums, because we were told that if we expressed opposition to the city's plans the meetings would be adjourned. As a result, after the first meeting, attendance was poor except for city employees.

Attendance at City Council meetings in which annexation issues were on the agenda was quite good. We who opposed annexation were given opportunity to speak. There

was never one time when the response to what we said was more than, "Thank you. Next?" However, there were times when we were gaveled and threatened with expulsion if we spoke with too much conviction or passion. There were instances of the police showing up after particularly emotional speech, not a very friendly move on the City's part.

One entire worksession was devoted to a discussion between the councilmen about which areas they would be willing to have the LBC deny them. I do not think any testimony was heard at this meeting.

In this entire debacle, there was only one time when Councilman Kranich made an unsuccessful attempt to "buck the tide" of his fellow councilmen by calling for a reconsideration of his vote. He also introduced a resolution for an advisory vote within the city on annexation, after a citizen initiative for the same was shot down by City Hall, but with some discrete arm-twisting he was coerced into withdrawing it.

Perhaps there actually were fifty-five meetings or forums in which they talked about annexation, and in many of those we were permitted an opportunity for limited testimony. However, in *not one single one* were we listened to or responded to except in a negative way. There has *never* been any useful dialogue between the city and the annex area about the merits of annexation.

All these meetings and they still have no plan for how they will deal with annexation, if it actually goes through. The much ballyhooed forums were an attempt to get our input into how to handle the implementation, that's not what we wanted to discuss. The gist of what did come out of these forums was "we don't know" and "we'll figure it out later". What a way to run a city!

Then to top it all off they threatened to shut off the bulk water sales. Fortunately there was one Council member, Rick Ladd, who had enough spark of a conscience to feel shutting off people's water was going too far, and insisted the City Code they were rewriting still had to require a reason before shutting off bulk water sales.

This annexation should be denied to insure that Homer does not get rewarded for behaving badly, and to discourage other cities from acting in this manner. Allowing municipalities to trample on the state's citizens is not in the state's interest.

The City's basic premise is false. We are not using services without paying for them. The City of Homer claimed in their Petition that the following services are being provided to outlying areas, without being paid for: Fire and EMS, police, sewer (including septic refuse disposal), water (including bulk water sales), library, recreational, animal control, port and harbor, voter services, non-profit support.

- Fire and EMS are the only ones we actually wanted. These had been provided by a non-profit volunteer fire dept until 1991, when the city took it over, with an agreement to continue providing coverage outside the city. Several past attempts at forming a borough fire service area had been squashed by the city well before they could be put to a vote or even brought to the attention of the people. A fresh start on forming a fire and EMS service area was launched just before the Homer annexation petition was filed. The result is KESA, which is paying the city for services provided while working to enhance the level of service provided to the entire area. The city, instead of being happy with this arrangement, is questioning the legality of its forming.
- Police services are provided through the Alaska State Troopers. The city provides assistance to the Troopers and claims this as a provision of service, while failing to mention that the Troopers assist them in return. Dispatch services are paid for by the State and Borough.
- Sewer is provided to a few lots outside the city limits, this does not justify annexing a huge area, or even the reduced 4.58 square miles. The city does not accept septic refuse, all such is trucked up the road. Both water and sewer are paid for by the users.
- Water, again, is provided to a few properties just outside city limits, this was a contract arrangement in exchange for a right-of-way for the city's main line. Water is sold in bulk quantities to commercial resellers, the location of these businesses' customers does not justify annexation.
- Animal control was provided only to the extent of accepting animals from outside the city at the shelter for a "donation", and they have ceased doing this. Actual animal control patrols were never provided.
- The Port and Harbor is supported by user fees. The city may own it, but it was a recent gift from the State. The service is provided only at the Port and Harbor, not outside Homer. The City claims harbor users live outside the City, which they do, including many in Anchorage and other parts of Alaska.
- Voter support is not provided to non-residents. The city used to cooperate with the Borough but no longer does. This was peanuts anyway.
- That leaves the library (which does charge a fee for library cards), recreation, and non-profit support. The city has also claimed to provide economic development, so we can throw this in too. These few services are amply provided for through what we pay in sales taxes, which were originally intended to cover these services, along with fire and police. (see next page for explanation)

Our sales tax dollars also pay for city road improvements, the city sewer plant, and city water and sewer improvements, through dedicated taxes. They do not give us credit for this. Instead of using services we do not pay for, we are in fact subsidizing the city residents, and this hostile annexation is the thanks we get!

The truth about Homer's sales taxes:

In 2000 the City collected \$3,457,312 in sales taxes (figure from Financial Report). Vern Johnson, CPA and past auditor of the City, estimated 61.28% of this revenue came from non-residents. (exhibit 64 with CCAA's Responsive Brief) I don't know where he came up with this and made my own estimates based on population figures in the Preliminary Report. The DCED estimated a population of 9000 for what they called the school service area. Homer is reported to be a commercial hub for 12000 people. These estimates were 56-67%. I used a conservative 50% for sales tax contribution and 70% for service use in the chart below, although even the Library only claims 55% of use is by nonresidents (from the entire Kachemak Bay area and beyond). I excluded Fire and EMS because KESA pays for these services.

City sales tax collection for 2000	3,457,312	X	50%	=	
Amount paid in by non-residents					1,728,656

Services the City claims we use, that we actually may use  
(all figures from 2001 city budget)

Library	304,319	
Airport terminal (expense minus revenue)	44,458	
Non-profits	100,920	
Parks and rec, and cemetery	307,059	
Recreation center	60,040	
Economic Development	<u>31,800</u>	
Total costs	848,596	
X 70% =		594,017

Net profit to city from nonresident sales tax contribution	1,134,639
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The LBC brushed this aside because tourists pay some of the taxes. According to the Kenai Peninsula Borough's Year End Report, the visitor industry generates \$426,646 in city sales tax revenue. If you subtract that from the net profit above there is still \$707,993, so we are still subsidizing the city.

What upsets everyone the most about this annexation is the lack of a vote. There is no need of this forced annexation anymore. It was devised in the early days of the state when there was little local government and fast growth. Things are more settled now, we are not lacking local government in the organized boroughs. There is no need to deprive people of a real voice in their destiny. The creation of Kachemak Emergency Services Area proves that we will indeed vote to tax ourselves when we want the services the taxes will pay for. We will vote for annexation when we are ready for it, meanwhile, there is no crisis that needs to be dealt with, we have basic services. It is time to seriously consider changing the way local government changes are handled in this state.

There are several other issues that have arisen in this annexation that are voting related. One is the new statute (last year's HB 13) that requires a vote before the boundaries of a service area can be changed, AS 29.35.450(c). Homer's annexation is by the Legislative Review Method, which means there is no vote. The LBC has dealt with this conflict by stating that as a matter of law, this statute does not apply to Legislative Review annexations. Our interpretation is that an annexation cannot be done by Legislative Review if it affects one or more service areas covered by AS 29.35.450(c).

There are several legal opinions floating around regarding the LBC's claim that AS 29.35.450(c) does not apply to Legislative Review annexations, but none answer the basic question of whether borough service areas are units of local government. This is an important question and perhaps one the courts will have to answer. The LBC's stance is based on a claim that they have jurisdiction over changes to service area boundaries, but do they? Only if service areas are units of local government! If they are, all service area boundary changes would have to be submitted to the LBC for approval or denial. If they are not, the LBC does not have jurisdiction. The state constitution says that boroughs can set up service areas, so it would seem to be unconstitutional to have them be local governments. The only way to resolve this without creating a tangled mess is to not allow Legislative Review annexations when service areas would be affected.

Complicating this issue is the City's claim that the forming of KESA was illegal. The state constitution says a new service area cannot be formed if the service can be provided by annexation to a city, incorporation as a city, or by another existing service area. The last two are not possibilities here, it is annexation that the City claims should

have prevented the formation of KESA. However, annexation could not provide the service, because the area served is at least four times larger than the proposed original area, and even most of that was not approved by the LBC. A new service area was the only way to go. The City also claims that KESA was formed solely to thwart annexation, but that is also not true. The City made it very clear that they wanted to be paid for the services they were providing, and we felt that was only fair, so we did what needed to be done and formed a service area to do so. KESA is paying the City a king's ransom for the service they were providing for "free" (ignoring our sales tax contributions), 35% of the City's fire department budget even though only 22% of calls are outside of City limits. The City proved to be extremely difficult to negotiate with, they seemed to prefer that KESA fail than that they actually get what they said they wanted, to be paid for services rendered.

Somewhere in all this the Millers Landing area was inadvertently left out of KESA. They were intended to be included in KESA from the get-go, and the Borough has just voted to correct that error. The City fought that tooth and nail as well. Perhaps they have been a bit less than truthful about what they really want?

The other issue is truncation of terms of elected officials. This annexation will bring nearly 900 people into a city of under 4000. There is concern that the new residents will not have elected representation unless new elections are held for all elected offices (City Council and Mayor). The LBC may have the authority to require this as a condition of annexation, but is reluctant to exercise such authority "in the absence of a statute or regulation" addressing truncation of terms. They concluded that the scale of this annexation was not large enough to warrant truncation, yet the Kenai Peninsula Borough requires truncation of terms for Assembly members if their districts change by 10% or more. The proposed population change for the City is 22%! Considering that one of the reasons people do not want to become part of the City of Homer is their distaste for the current crop of elected officials, certainly they deserve a chance to vote in a new council, especially since they are being deprived of a vote on the annexation itself.

The Legislature can protect our right to vote, and defend HB 13, by vetoing this annexation.

The LBC bases their decision on fourteen standards that have their origin in regulations that they draft. We showed repeatedly that this annexation did not meet the standards, yet they found that they did, without logical reasons given. By failing to require the City of Homer to prove its claims in all fourteen standards the LBC failed to follow their own guidelines and failed to follow the laws under which they are required to operate. If *any one* of these standards is unmet, the LBC *must* deny the city's petition. Our attempts to show evidence of this failure to the LBC were brushed aside as a mere "difference of opinion". A synopsis of this failure is given below. More detailed evidence is available upon request.

Some standards might only be resolvable by litigation:

**Standard #2.** *"The territory does not overlap the boundaries of another local government"* is true only if borough service areas are not units of local government, yet elsewhere the LBC claims service areas are local governments. Whether service areas are local governments is a legal question that needs to be resolved, especially because of its effect on AS 29.35.450(c).

Some standards are very subjective:

**Standard #1.** *"The territory is compatible in character with the City of Homer."* Obviously, we deliberately chose to live outside the city to enjoy a more rural lifestyle. This is more important to some than to others, but many testified that their rural lifestyle is *very* important to them. However, how does one judge "compatibility"? It is certain, though, that any compatibility we once enjoyed has been seriously diminished as a result of this hostile annexation.

**Standards #13 and #14** deal with annexation *meeting the best interests* of the state, the territory to be annexed, Kachemak City, the Kenai Peninsula Borough, and the City of Homer. Certainly the additional revenue brought to the City of Homer by annexation will swell its coffers and increase its ability to indebt itself, yet they are also taking on additional responsibility, it is not clear this is in their interest. Taking bites out of Borough Service Areas is not in the Borough's best interest. Just how tearing a community apart is in the best interests of the State is not explained. Certainly it is *not* in the best interests of those to be annexed, and they *are* one of the groups Standard #13 specifically lists. It boggles the mind how a handful of strangers can waltz in and determine what is in our best interest, do they presume we are too dumb to know? Standards #13 and #14 are clearly unmet.

Some standards were clearly not met, but the LBC said they were:

**Standard #7:** *"together, the City of Homer and the territory have the human and financial resources to provide essential city services on an efficient, cost-effective level"* is the standard leading to the documents lawsuit. The city, instead of revealing the information leading to their conclusions, invokes a questionable "executive privilege" and hides this information. This behavior should raise a red flag to you. When the hidden costs are combined with a serious error in the revenue estimates that the DCED and LBC failed to correct, despite it being pointed out three times to them, there is no way this standard is met.

**Standard #8:** "*The City of Homer has provided a practical plan for the extension of services into the territory*" is clearly unmet. In testimony before the LBC, Borough Attorney Colette Thompson testified that the City of Homer had made no plan for the transfer of responsibilities from the borough to the city. Councilman Ray Kranich commented in a council meeting that he expected it would take at least two years to plan how to serve the area. The LBC found the city met this standard because they demonstrated they had "thought about the future", yet 3 AAC 110.900 clearly says they must submit a practical plan. Obviously, merely saying, "We'll do the planning in the future" does not meet this standard.

**Standard #11:** "*the City of Homer is best able to provide essential city services to the territory*" raises the question, "What are 'essential city services'?" We have definitely shown that the services city residents consider "essential" are very different from what we consider "essential". They consider water and sewer from the city "essential" and many city residents feel strongly that for the city to undertake the serving of additional territory before they provide for those already in the city is not right. We foreigners do not consider city water and sewer a service we want or need and have so testified repeatedly. Yet City Councilman Rick Ladd dares to accuse us in public testimony of *asking* for free water and sewer from the city! (This is "compatibility"?) Services we do want and need are road maintenance and fire/EMS services, which are very adequately addressed with our borough service areas. Policing, what little we need, is provided by State Police at a fraction of the cost of city protection. The City of Homer is not better able to provide us with the services *we* consider essential. The LBC's decision that the city was best able was based on proximity not on financial health. There was no basis for their assuming the City could provide these services more efficiently and cost effectively than the Borough or State. It is difficult and expensive to provide city services to rural areas.

**Standard #12:** "*a reasonable need for city government exists in the territory proposed for annexation*" is obviously not true. If we needed city government, obviously we would be the petitioners, for either annexation or incorporation. The city has totally failed to show in what way *we* need city government. Their petition is based solely on how badly *they* need *our* money.

Remember, if *any one* of these standards is unmet, the petition *should have been denied* by the LBC.

For more discussion of these standards, see the "Comments on the LBC's Decisional Statement", attached.

Comments on the LBC's Decisional Statement on Homer's Annexation  
by Abigail Fuller, on behalf of Citizens Concerned About Annexation

On page 9, very first paragraph, the Commission refers to voluminous evidence and finds it sufficient for them to reach a decision, yet they do not have the memos, without which the city's Petition is mere speculation. They also ignored nearly all of the evidence provided by anyone opposing annexation when making their decision.

Towards the bottom of the same page they refer to sales taxes. The city's estimate of taxable sales is NOT 80% of reported sales for the territory, as there ARE NO reported sales figures for the territory. The only available reported sales figures are for the entire 99603 zip code, excluding Homer and Seldovia, which is considerably larger than the territory. Homer arrived at their figures by subtracting the businesses that are outside the territory and could reasonably be assumed to not have reportable sales occurring inside the territory. (Homer was allowed access to records showing the reported taxable sales for each business.) Then they reduced that figure 20% to allow for other sales not being within the territory. The difficulty with determining taxable sales figures occurs because sales are taxed at the point of sale, and for some sales that is not the same as the place of business. Utilities for example are taxed at the point of delivery, such as a residence, not the location of the home office. So an exact figure can not be computed without examining in detail each business' own records. The Borough finance department told me the only way to know how much sales tax would be generated by annexation was to do it and see how much was collected, after the fact. They also felt Homer's estimate was reasonable. There is no justification for the DCED's arbitrary increase of the sales tax revenue estimate, which was based on a misunderstanding of assessment methods. The statement that the real figure was approximately \$17.6 million is false, and this error runs through the whole decision.

On page 10, middle paragraph, the LBC refers to per capita taxable value of real estate. This is an example of playing with statistics until you get something that proves your point. The 4.58 sq mile area has a lot of high value view property, which causes a statistical distortion. The areas farther from town have less people combined with lower value, which ends up creating a similar per capita figure, but says nothing about the actual level of development or whether the two areas are actually similar.

The next paragraph contains an error, they used the square mile figure for the mill rate difference, the actual number is 5.5.

On page 12, footnote 15 describes political rights as "the power to participate, directly or indirectly, in the establishment or administration of government". This is the crux of our objection to Legislative Review annexations. An annexation involves the establishment of city government over some group of people, without their participation! This one in particular we have been shut out of. We've been allowed to "scream and holler" (the City's words), but not actually participate. Our words have fallen on deaf ears, City and LBC both.

Page 13 shows great concern for enfranchising voters, while ignoring the vote that is of the most concern to these same voters -- a vote on annexation. The LBC cites a 1962 Alaska Supreme Court decision that ruled there was no right to vote under the 14th Amendment. However, that ruling was based on the Appellants failure to list which basic rights (life, liberty, property) were being infringed. In other words, if it were shown which rights were being infringed, the court could rule there was a right to vote. The citation (pg 14) goes on to say that "The subject of expansion of municipal boundaries is legitimately the concern of the state as a whole, and not just that of the local community." This can clearly be read to mean it is not the concern just of the state, but also of the local community. It is the community's concern that has not been included in this annexation. The decision on the Petition (which was written "in house", ie with no public input or even knowledge of what was going on) was made by 5 people on the City Council (with 2 others pushing them), and 4 on the LBC. The community had no say at all! The City actually squashed an initiative attempt by city residents to have an advisory vote on this annexation.

The right to vote issue (pg 14) has also not been to Federal Court, where they may see things differently than the Alaska Supreme Court. A right to vote on annexation would not be merely a "right to veto", it would also be a right to approve, depending on the will of the voters.

The citation to *Kelly v City of Pittsburgh* (pg 14) clearly shows the Legislature has the power and authority to veto a proposed annexation for any reason they chose. It also questions the authority of an administrative agency that is part of the executive branch (the LBC) to make boundary decisions.

On page 15 the LBC tries to establish that a statute the legislature approved last year does not apply to Legislative Review annexations. The stronger argument is that the effect is the other way around -- that AS 29.35.450(c) means that Legislative Review cannot be used for any annexation that would affect a service area (as defined in the statute). If the annexation and the change in the service area had to have voter approval before the annexation could take effect that would avoid the situation the LBC fears would occur.

The *Fairview* case cited clearly says the chief purpose of annexation is to avoid having two governments in one community, but that will not occur here. No matter where the line is drawn, there will still be a city government, and a borough government with the same number of service areas.

On page 17, the LBC considers the issue of truncation of terms for elected city officials. Their argument against is disingenuous, as there is clear precedent that one new resident is not enough to require truncation of terms. The state requirement on redistricting is "significant change" and the Kenai Peninsula Borough, on reapportionment, requires new elections if there is a 10% change. Detachments are not comparable, and are irrelevant. They do not give a reason why they think a 22% increase does not warrant new elections. (The 18.5% figure is based on post-annexation total population, the increase based on current city population is 22%) The LBC says the new residents would have representation, while ignoring that it would not be elected representation. It might be a good idea for a statute regarding this issue, as the last line before section E suggests.

Section G, which starts on page 19, covers the standard concerning whether the City has the human and financial resources to handle annexation. Footnote 31 contains the pertinent regulation, of particular concern are parts 2 and 4. Part 2 concerns expense projections, which we wanted to verify when we requested the information that was denied, particularly the department head memos that are the subject of our Alaska Supreme Court Appeal. Part 4 concerns the feasibility of a 3 yr operating budget, which the City has not even produced!

The hidden memos would show whether or not the cost projections are as reasonable as the LBC assumes they are. In fact the record shows the City's projections for road maintenance were only a third of reasonable! Yet the LBC considers the City's cost projections to be reasonable, ignoring all indications to the contrary. The commissioners do not have the experience to truly judge these figures without evidence: two are from Anchorage, which is so much bigger than Homer that they cannot use their experience to compare to what it might cost Homer to annex; one is from a very small city, same problem from the other end, and the other deals with boroughs. So they cannot judge the reasonableness of the estimates without the memos that the city has refused to release. Why is the City so determined to NOT provide any evidence to back up their cost estimates? Something smells fishy here and it's not the Fish Dock.

The last two paragraphs on page 19 bring in the sales tax error again. In particular, the statement that \$1,539,950 would be a more realistic estimate is incorrect and based solely on the misunderstanding about the sales taxes explained above.

On page 20, they compound this sales tax error into projecting a \$600,000 surplus from annexing the 4.58 sq mile area. My projections make that about \$100,000; if the city's estimate isn't high and if none of the triangle businesses go out of business after annexation. That's not much of a cushion and not enough to reduce city property taxes (which they will never do anyway). Which is the point I was making in my testimony yet all the LBC picked up on is that it still pencils out! It may not if there were accurate numbers available all the way through, the costs were pure guesswork at this stage.

In the fourth paragraph down of page 20, they accept these questionable revenue and expense estimates as a reasonable three year operating budget. They also do not anticipate any changes in the local economy, despite evidence provided to the contrary. There are serious questions about the future of the fishing and tourist industries, which Homer rely's heavily on.

The next paragraph contains the sales tax error again. According to the DCED, 27 out of 40 commercial facilities are within the reduced area, I think it's a little misleading to call that a "vast majority".

The statement about Homer's sales tax revenues contradicts statements elsewhere in the decision that the tax base is eroding due to outside development.

At the bottom of this page, the LBC draws their conclusion based on erroneous revenue data and unproven (and questionable) expense estimates. This alone should be reason to veto this annexation.

Section H, starting on page 21, discusses the City's transition plan. The regulations are listed in the footnote, and are fairly specific. After stating that the City of Homer "is clearly one of the more substantial and sophisticated city governments in Alaska", they forgive them for not providing an actual plan, and accept that they only need to have "given forethought" to providing services. Even that is stretching it. The City's transition plan consists of a five year road maintenance plan, which it had to toss aside in it's Reply Brief when it was pointed out that their plan was nowhere close to what the Borough was spending, and a vague promise to "extend all other city services". The LBC accepts that the City has "expressed its good faith intention" to extend services. Yet throughout this whole ordeal the City has done nothing but demonstrate bad faith! From trying to ship the Petition off to the LBC without public notice to hiding the dept. head memos to refusing to discuss the petition at its "Annexation Forums", there has been no demonstration of good faith.

Parts b and c of the regulations pertaining to transition plans says the City "must include a practical plan" for transfer of responsibilities and assets and debts, etc. from the Borough and service areas to the City. And it must be "prepared in consultation with the officials" of each entity. This was not done. Yet the LBC accepted a polite statement from the KPB attorney that an agreement could be reached, while ignoring that she was telling them it had not been done, as sufficient to meet this standard. If anything will meet the standards, why have them at all? As for the promise of amicably reaching agreement, if the history of negotiations with KESA are any guide, it won't happen. More to the point, there is a clear lack of evidence that this part of the standard has been met.

The next section, starting on page 23, determines whether the territory to be annexed contains all the land and water necessary to provide essential services on an efficient, cost-effective level. Try as I might, I cannot figure out how they construe this to allow annexation of property to protect the City's "viewshed"! Perhaps more importantly, the LBC did not determine whether or not there is enough water in the reservoir to provide for an expanded City, which they should have as the question was brought up along with some evidence indicating there might not be enough water.

They also, on page 25, bring in discussion of services we are alleged to receive from Homer, although I fail to see where it falls under this standard. As usual, the list includes bulk water sales, although these are a commercial transaction that take place within the City. Where the water gets hauled after it is sold is not the City's, nor the LBC's, business or concern. Water and Sewer are provided to a very small fraction of the area. Fire and emergency services are provided through KESA (which was intended to cover Miller's Landing as well). Emergency police services are not provided. The City police and the Troopers assist each other from time to time, this does not constitute emergency police services. Then it goes on to say that citizens in the area use facilities owned by the City, such as the Library, Port and Harbor, and the Airport. The City does not own or operate the Airport (they own the terminal building). It was given the Port and Harbor, which was transferred after the annexation process was started. These are a few examples of the misrepresentation rampant in the City's Petition and Reply Brief.

The last paragraph in this section describes what we believe should have been done prior to this annexation. This one should be vetoed so we can all start over, and plan together for what is best for the area as a whole.

On page 26, fourth paragraph, Sallie and Pete were telling the truth here. The LBC twisted Mike's and Margaret's statements; they were explaining the difference between city community and area community. The LBC does not seem to be able to understand this distinction, even though Mike clearly said "Kachemak Bay community". Just because Homer is a commercial hub does not make everyone who

enters the City a member of the same community! No one would try to claim the Russian Orthodox communities are part of Homer, yet they shop in Homer, use the hospital and Harbor, etc. It is not unusual in this country for people to live in one community and work and shop in another.

On page 27, fifth full paragraph, the LBC assumes that growth has been extending outward from Homer. This is not true and cannot be determined from a map. The area has grown as a whole, as scattered homesteads have been divided up. There was no testimony from residents supporting the LBC's conclusion.

Same page, second paragraph from the bottom, here the LBC admits a greater area community exists, yet tries to claim the annexed area is part of the city core. A decent plat map disputes this claim, and shows that the actual urban core is within the current boundaries.

On page 28, the LBC did not truly compare the City's fiscal ability with the Borough's fiscal ability. They arbitrarily limited consideration of the Borough's finances to the value of property within the KESA area. This ignores the Borough's financial health, and is certainly not a fair comparison for road services, as that service area is much larger!

On page 29, towards the bottom, they give KESA the brush-off, as they do repeatedly. This is how they deal with anything that suggests annexation is not needed! They have not, under this section, considered what really are the "essential city services", as opposed to general services that might well be more efficiently and effectively provided by a service area.

On page 30, under section L, Need for City Government, the LBC does two things objectionable. First they fail to distinguish between city and borough services. Certainly if the borough is providing a service there is no need for a city to come along and provide the same one! Second they give KESA the brush-off again, based solely on their own habit of ignoring service areas that are formed to try and avert an annexation. They ignored evidence that an emergency services area has been sought for some time here, such as the Strategic Fire Planning Group Report (an exhibit with CCAA's Responsive Brief). It is also worth noting that KESA has been in existence for over a year, has been collecting taxes since July, and has acquired equipment. It is not just a vague promise like the City's annexation proposal!

Further down on page 30, the LBC points out that Miller's Landing isn't in KESA. It was supposed to be and this is being remedied. In the last paragraph the LBC suggests the City might stop providing fire and EMS services to this area, but there is no evidence of that.

On page 31 the LBC addresses water issues, assuming that because some people chose to buy bulk water that there is a lack of water that could seriously limit growth. It hasn't yet, or the City wouldn't be so eager to annex! So there is no economic problem from a shortage of water, this is another assumption that has no evidence behind it.

In the third paragraph, they rely on views expressed by the DEC in prior proceedings. This does not constitute evidence in this proceeding, and cannot be used for making a decision. The next paragraph on land use describes only a potentiality, no evidence was ever presented showing any land use conflicts in the area.

The description in the paragraph on emergency services ignores the evidence provided to the LBC with CCAA's comments on the Preliminary Report, the HVFD monthly reports. There is no evidence for their conclusion that population density means their assumptions are correct and that our explanations are wrong! Our statements are based on the facts. The assumption in the last sentence comes from the City's line of bullshit and has no basis in fact whatsoever!

In the last paragraph they are misrepresenting the truth again. The crime rate in Homer (and note that is within the city) did rise slightly -- back to 1998 levels, not a "significant" increase. It shows either 1999 was unusually low or that the decreased staffing level of the Homer Police Department is having a negative effect. Why this relates to Trooper staffing is not explained. If anything it suggests the Homer police cannot handle more territory.

On page 32, fourth paragraph from the bottom, the LBC assumes a need for policing that has not been demonstrated. Crime rates for any of the territory were never provided, beyond an admission that it was very low.

Next paragraph makes a similar unsupported assumption, that residents of the territory generally use city facilities. The city refused to release a list of Harbor users, but based on their own statistics and population, only slightly less than 4% of annex area residents use the Harbor. The Library claims 55% percent of users are from outside the City, but that includes the entire greater area from Ninilchik south and all of East End Rd. No one knows on the parks and rec numbers, but most parks usage is by nearby residents, not people who would have to drive into town first. No mention here of the sales tax contributions of non-residents who shop in Homer, which more than pays for services used.

The section concerning Balanced Best Interests starts on page 33. This section should consider all issues that don't fit under the other standards, otherwise how can a third party determine what's in our best interest? But they have considered only 3 AAC 110.140, which defines when the Legislative Review procedure can be used. However, they didn't actually consider all 6 points, made no determination whether this annexation could indeed be done by Legislative Review, and decided all but the first point without any evidence to back up their determination.

Point one is straightforward, no part of the territory is an enclave. Point two covers health and safety issues, and the LBC determined there is an issue here because of DEC's advice in prior proceedings that health issues might arise without city water and sewer. In other words, there is no evidence of any problem, in this proceeding. (And elsewhere in this decision they admit that Homer won't be providing water and sewer any time soon.) They conclude that "annexation of the 4.58 square miles in question would enable the City of Homer to regulate or control the detrimental effects of existing and potential conditions in those portions of the territory petitioned for annexation." Homer has no such regulations or controls in place, hence there is no evidence to back up this conclusion.

Point three is extension of services or utilities into the territory is necessary in order to serve the city. This is not addressed at all, probably because there is no such necessity.

Continuing on page 34, the LBC refers to continued erosion of the tax base, again without evidence. The tax figures show steady growth for Homer's revenue. They then go on to list services the City claims to provide, yet the list is not accurate. Jail, emergency dispatch, back up to Troopers, are all paid for by the state or borough. Animal control is not provided. Port and harbor is paid for by the users. City road maintenance is not provided outside the city. That leaves fire and EMS, which is now paid for by KESA with the exception of Miller's Landing, an oversight that is being remedied; and economic development, parks, and the Library. These last and any other incidentals are paid for 3-4 times over by our sales tax contributions, with enough surplus to cover emergency services to Miller's Landing for that matter.

The LBC ignored the sales tax reality by accepting the City's illogic that there is still a disparity because outsiders do not pay property taxes. But outsiders do not receive all the services that city residents receive. The services (police and road maintenance for example) that city folk receive are not fully paid for by what they pay extra in property taxes. City property taxes do not even fully cover city police, let alone road maintenance, or fire and ems for city calls, etc. We are subsidizing the City with our sales taxes!

The standard supports annexation IF non-residents are using services they are not paying for, not simply because there is an unequal tax burden. The whole discussion of alternatives is not needed, as we are already more than paying our share. The LBC's conclusion is not based on any evidence, in fact is contrary to the evidence.

On page 35 the LBC refers to the possibility of new service areas being created. There is no indication this will happen anytime soon, and if it did any new service area would be formed whether annexation occurs or not. If in the long run enough service areas formed to create a tax burden higher than within the City, then people might be willing to be annexed. There is no harm done by waiting.

Same page, below the quote, the LBC assumes it will be in everyone's interest to empower the City of Homer. This may be true for the City's power structure but it would be detrimental to everyone else, including the Borough. In the last full paragraph the LBC guesses that the area could experience development that was detrimental, again without evidence. There is no indication that future development will be detrimental to the City or the outlying area.

On page 36, a little over half-way down, the LBC is concerned again with our being able to vote within the City but remains totally unconcerned with our being able to vote on whether or not to do so! In the next to last paragraph, they again show concern over new service areas forming (KESA was needed whether annexation occurs or not) or new cities. The greater area will need or not need additional service areas or even cities regardless of whether the boundary gets adjusted as proposed. The LBC does not seem to have looked at the greater picture here, which is what this standard is intended for. The last sentence on the page repeats the fallacy that we are not paying for services we receive.

Under section N, page 37, Best Interests of the State, the state really should consider whether fostering serious animosity within a community, or between a community and outside areas, is really in the state's interest. Even if there are reasons to consider annexation, it does not justify aggressively cramming it down everyone's throat.

The LBC thinks decisions that affect us would be better made in Homer than Soldotna (the Borough seat), yet in fact our government in Soldotna listens to us much better than the government in the city. Someday that may change and that someday might be time to consider annexation. There is no evidence that supports their conclusion, only their own preference for "local". But local governments can be more tyrannical, rather than more responsive; you cannot assume the closer one is always better.

In the last paragraph on this page, they use the requests of 2 property owners to justify the forced annexation of property belonging to over 450 other people! Surely this is not in the state's interest, to trample the rights of hundreds for the benefit of a few.

The Local Boundary Commission's Decision is seriously flawed and should be vetoed.

Brooks W. Chandler, Ak. Bar No. 8310109  
 HICKS, BOYD, CHANDLER & FALCONER, LLP  
 825 West Eighth Avenue, Suite 200  
 Anchorage, Alaska 99501  
 (907) 272-8401  
 Attorneys for appellants

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
 THIRD JUDICIAL DISTRICT AT ANCHORAGE

Kachemak Area Coalition, Inc. d/b/a Citizens Concerned About Annexation	)	
	)	
Appellants,	)	DRAFT
	)	
vs.	)	
	)	
State of Alaska Local Boundary Commission,	)	DRAFT
	)	
Appellee.	)	
<hr/>		
<b>In the matter of the March 20, 2000 Petition By the City of Homer For Annexation of Approximately 25.64 Square Miles</b>	)	DRAFT
	)	
	)	
	)	

STATEMENT OF POINTS ON APPEAL

1. The failure of the Local Boundary Commission ("the Commission") to require Commissioner Tesche to recuse himself despite an apparent conflict of interest is reversible error voiding the decision pursuant to the doctrine set forth in Griswold v. Homer, \_\_\_ P.2d \_\_\_ (1999).

2. The failure of the Commission to require truncation of terms of sitting Homer City Council members violates the constitutional and statutory rights of persons in the

annexed area to vote for their elected representatives, thereby requiring reversal of the Commission.

3. AS 29.35.450( c )required the change to the boundaries of the Kenai Peninsula Borough Kachemak Emergency Service Area to be approved by a majority of the voters of the Kachemak Emergency Service Area. Accordingly, the Commission's decision to recommend that annexation proceed pursuant to the Legislative Review method was incorrect as a matter of law.

4. The Commission's determination that the economy within the annexed area as approved by the Commission includes the human and financial resources necessary to provide essential city services on an efficient, cost-effective level is not supported by substantial evidence in the record.

5. The City of Homer petition did not include the transition plan required by 3 AAC 110.900. The Commission's determination that Homer had satisfied the intent of 3 AAC 110.900 is incorrect as a matter of law and is also not supported by substantial evidence in the record.

6. The failure of the Commission to require Homer to have executed an agreement with the Kenai Peninsula Borough and the Kachemak Emergency Service Area for the assumption of powers, duties, rights, and functions and for the transfer and integration of assets and liabilities was an abuse of discretion.

7. The Commission's determination that Homer could more efficiently and effectively provide essential city services to the area to be annexed than the Kenai Peninsula Borough is not supported by substantial evidence in the record.

8. The Commission's determination that the area approved for annexation exhibited a reasonable need for city government is not supported by substantial evidence in the record.

9. The "balanced best interests" test of 3 AAC 110.140 and the "best interests" standard of AS 29.06.040(a) are unconstitutionally vague because they fail to provide sufficient notice and an opportunity to be heard to those opposing legislative review annexation and because they provide an administrative body with unfettered discretion to decide if legislative review annexation is appropriate.

10. The Commission's determination that legislative review annexation serves the balanced best interests of the state, the territory to be annexed, Kachemak City, the Kenai Peninsula Borough, and the City of Homer, and is in the best interests of the State, is not supported by substantial evidence in the record, and is incorrect as a matter of law.

HICKS, BOYD, CHANDLER &  
FALCONER, LLP

By: \_\_\_\_\_  
Brooks W. Chandler  
State Bar No. 8310109

This process is inherently flawed. The Legislative Review method of annexation was designed to allow Anchorage to annex the neighboring Public Utility Districts. One of the main architects of this dictatorial system was Anchorage's Planning Director, or he at least had been during past attempts to annex these PUDs. If this isn't a conflict of interest I don't know what is. It is not clear whether this soviet style top-down annexation method was truly needed, or just desired by those who like to control things. But even if it was needed then, it is wrong to let us suffer from it now, in a situation where it is not needed.

These planners devised a system that was designed to put the decision in the hands of an objective third party. This does not work well when the third party is far from objective. The LBC has shown a strong bias in favor of the City from day one. Here the City submitted the largest Legislative Review annexation ever attempted, and the LBC only allowed just barely over two months for filing Responsive Briefs. We spent the first month figuring out what the heck we were doing and how the process worked, then the second one trying to extract useful information from the City. We requested more time for preparing responses but were denied. We had about 5 days to actually write responsive briefs, but 14 people did so. And that was spontaneous, not an organized cooperative effort. That and 164 written comments were the most response the LBC has ever had.

The City was then asked, how much time do you need for your Reply Brief (normally about two weeks)? They didn't respond, but took about 3 1/2 months to file. There never was a deadline set, in violation of the regulations, but the LBC accepted it anyway. That Reply Brief had so many inaccurate statements in it that we requested a chance to respond. Again we were denied. The reason both times was because the LBC had a duty to consider the petition in a "timely manner". That was in September, and late the next spring, when there was no sign of the Preliminary Report being done in a timely manner, we requested an opportunity for further briefing. If had been over a year since the start and there was a need for updated information. The LBC has allowed this in other proceedings but we were denied.

Eventually the Preliminary Report came out, over 400 pages worth. Four weeks was allowed for commenting on it, but that was not enough for us to get information from the City to help with our response, due to their requirement (without legal basis) that we make all requests via our attorney. Also the public copies sent to the library were delayed for two weeks, reason unknown, leaving little time for members of the public to digest over 400 pages and comment on it. We requested more time, and were denied.

At the Hearing, there were time limits established for everyone. Things ran smoothly despite the commissioners tendency to nod off, but, after enforcing time limits all the way through, they asked the City if they would need more time for their reply. They didn't, but why was it even offered? No one else was offered more time.

As for the decision itself, that's been covered elsewhere. It is worth noting that the only interest the commissioners displayed was when one person stood up and said "I want my land annexed". Why did they ignore nearly 100 people all saying "don't annex my land?" Because their minds were made up long before the Hearing, making the whole thing a farce. We did not get a fair hearing.

To: Alaska State Legislature  
Community and Regional  
Affair Committee  
Alaska State Senate and  
House of Representatives  
Greetings!

In Juneau  
From: Dr. Vi Jenrel Ph.D.  
Alaskans Opposed  
to Annexation  
P.O. Box 438, Homer, Alaska 99603  
Ph. (907) 235-2281  
Feb. 6, 2002

We are Alaskans Opposed to Annexation.  
I am Vi Jenrel, Ph.D. I am here in Juneau  
to attend the CRA joint session meetings,  
to oppose the secret, no vote of the people,  
no hearings of the people in the areas  
that city of Homer proposed to annex  
the secret annexation petition by city of Homer.

Our attorney, who is opposing the annexation  
petition, by city of Homer, is Attorney Mr.  
Robert C. Erwin, Erwin and Erwin, Suckavage,  
a former Alaska Supreme Court Justice. Please  
see some of the attached filings of opposition  
by Attorney Mr. Erwin, to the LBC. Please read  
Mr. Robert Erwin's 2-page legal opinion, dated Dec. 21,  
2001, written by Mr. Erwin after the mid-Dec. LBC hearing.  
Signatures of opposition attached are only some of  
the names. There are hundreds more of signatures  
informing our Kachemak Emergency Service Area also.

(Continued on page 2)

(Page 1 of 2 pages)

Page 2  
Continued

To: CRA Committee  
Alaska State Legislature  
Joint Session of Senate  
and House

In Juneau

From: Feb. 6, 2005  
Dr. Vi Jenvel, Ph.D.  
and  
Alaskans Opposed  
to Annexation

We respectfully request that  
the Legislators of the joint session of  
the CRA Committee come forth with  
a Resolution to the Legislature to have  
the legislature veto, disapprove, and  
vote down and out the LBC proposal  
of annexation by city of Homer.

Also, my information is that there  
is a previous legal opinion by Tam Cook  
(senator's secretary, Tongersons office)  
from legislative legal affairs, which opinion  
states that the legislature can veto  
for any reason the legislature wants.

The legislature has the authority  
to veto and vote down the secret and  
wrongful annexation petition by city of  
Homer, which was signed by Homer city  
manager, Ronald William Drathman.

We thank you.  
See attached pages.

Respectfully submitted,  
Dr. Vi Jenvel, Ph.D.

Page 2 of 2 Dr. Vi Jenvel, Ph.D.

**KENAI PENINSULA BOROUGH**

144 N. PINKLEY - SOLDOTNA, ALASKA - 99669-7599  
BUSINESS (907) 262-4441 FAX (907)262-1892

DALE BAGLEY  
MAYOR

February 4, 2002

The Honorable John Torgerson  
Alaska State Senator  
State Capitol, Room 427  
Juneau, AK 99801-1182

Dear Senator Torgerson:

Over the past two years the annexation issue has been at the forefront of almost all issues in the Homer area. I have received numerous phone calls, petitions, and letters against this annexation process.

The method that the City of Homer used to annex this area is legal, but there are other methods that Homer could have used that would have required a vote of the effected area. With approximately 900 residents in the proposed area I feel that a vote is essential. I also feel that the Boundary Commission should have recommended that all of Homer's City Council run for election this year, since voters in the annexed area would not be able to vote on all the council members for two more years.

You will hear people say that this is not a Borough issue and that the Borough should stay out of this fight, however, Assembly Member Milli Martin and I have had many of our constituents talk to us about this issue. The Kenai Peninsula Borough is their government, which is why they came to us for help.

At its regular meeting of January 22, 2002, the Kenai Peninsula Borough Assembly failed to pass Resolution 2002-102,

**A RESOLUTION REQUESTING THE STATE LEGISLATURE TO DISAPPROVE BY  
RESOLUTION THE BOUNDARY CHANGE PROPOSED BY THE CITY OF HOMER AND  
RECOMMENDED BY THE LOCAL BOUNDARY COMMISSION**

by a vote of 4 YES, 5 NO.

The Assembly is on record as not wanting to get involved in this annexation battle, however, there is a motion for reconsideration that the assembly will be addressing again on February 5.

I have never seen an issue that is so one-sided, with the majority of people both inside and outside Homer so against the proposed annexation and the method used. Nevertheless, the City of Homer continues to go forward with it. Please restore the faith people have in government and the democratic process by disapproving the Homer Annexation Plan, and please take a hard look at removing the Legislative Review option when so many people are affected.

Sincerely,

Dale Bagley  
Kenai Peninsula Borough Mayor

Alaskans Opposed  
To Annexation

V. J. Ph.D. #235-2281.  
P.O. Box 938,  
Homer, Alaska 99603

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From the Desk of: Robert C. Erwin

Robert C. Erwin  
Kathleen C. Erwin

December 21, 2001

Dan Blockhorst  
State of Alaska, Local Boundary Commission  
Municipal and Regional Assistance Division  
Department of Community and Economic Development  
550 West 7<sup>th</sup> Ave., Suite 1790  
Anchorage, AK 99501

Re: Homer Annexation  
Effect of City Annexation on Borough Service Area under AS 29.35.405(e)  
Our File No.: JERV-03

Dear Mr. Blockhorst:

I have reviewed the plain language of recently passed AS 29.35.450(e) requiring a vote of people when there is an attempt to alter or reduce the size of a properly designated service area for roads, fire protection, or parks and recreation services.

The opinion of the Attorney General's office which takes the position that the specific statutory language requiring a vote of the residents of the service area affected does not apply when the service area is to be annexed to the City of Homer appears questionable from a legal standpoint. The Attorney General's office does not cite any legal authority for the exception claimed, but attempts to argue that the fact a vote was never taken in the past in the area to be annexed to a city indicates that the State does not need to do so now.

This legal conclusion simply ignores the new statute and its purpose to preserve a previously created service area which was constructed in the past to provide needed services. Generally the old service area required the purchase of equipment and possible staff which was supported by taxation of the service area members. The elimination of a substantial number of the members from the service area without a vote and a decision of

Dan Blackhorst  
December 21, 2001  
Page 2

how future services and present debts will be provided and/or paid can provide a substantial hardship.

Each enactment of the Alaska Legislature is presumed to be constitutional and it will not be set aside unless the provisions show a substantial and plain violation of Alaska Constitutional law. See, *Siber v. Alaska State Bond Committee*, 414 P.2d 546, 557 (Alaska 1966); *Sheldon Jackson College v. State*, 599 P.2d 127, 130 (Alaska 1979).

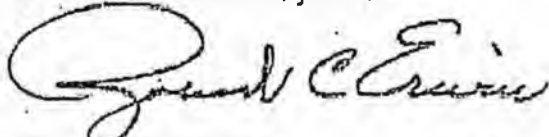
The claim that the Executive Branch of the State government is not bound by a statute passed by the Alaska Legislature is clearly incorrect. The statute is valid until declared invalid by the Court.

Such a statute is valid under the Constitutional Doctrine of separation of government power. The doctrine of separation of powers is implicit in the Alaska Constitution and the purpose of the doctrine is to preclude the exercise of arbitrary power by any one branch of government. *State v. Fairbanks North Star Borough*, 736 P.2d 1140, 1142 (Alaska 1987). This doctrine also requires the court to construe a properly passed statute to avoid constitutional infirmity where possible. *State v. Fairbanks North Star Borough*, at 1142.

Here there is no clear constitutional violation affecting a properly passed statute of the Alaska Legislature which was signed into law by the Governor. Thus, there is no legal basis to ignore its provisions which are to protect existing service areas from destruction without a vote of those people who helped create them in the first place.

Very truly yours,

ERWIN & ERWIN, LLC



Robert C. Erwin  
Attorneys for Vi Jerrel, Doris Cabana and  
Alaskans Opposed to Annexation

RCE:la  
cc: Vi Jerrel  
Doris Cabana

# MEMORANDUM

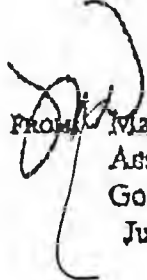
## State of Alaska Department of Law

To: The Honorable Deborah Sedwick  
Commissioner  
Department of Community &  
Economic Development

DATE: December 12, 2001

FILE NO.: 663-02-0091

TELEPHONE NO.: 465-3600

From:  Marjorie Vandor  
Assistant Attorney General  
Governmental Affairs Section -  
Juneau

SUBJECT: Effect of city annexation on  
borough service area under  
AS 29.35.450(c)

We have reviewed your November 7, 2001 opinion request for the Local Boundary Commission (LBC) which addresses whether the requirements of the recently amended statute, AS 29.35.450(c), apply to a service area of a borough that is to be included in the territory proposed to be annexed to a city located within that borough. The Local Boundary Commission will soon be dealing with a petition to annex territory to the City of Homer, a first class city in the Kenai Peninsula Borough that raises these issues. The Homer annexation petition is a legislative review annexation petition under Art. X, sec. 12 of the Alaska Constitution and AS 29.06.040(a) and (b), not an annexation by local action petition under AS 29.06.040(c).

In the opinion request, you specifically analyze the history of annexations by legislative approval in Alaska, the application of the constitutional requirements to annexations and the LBC's discretion afforded thereby, court cases applicable to annexations, as well as the legislative history of the recently amended service area statute, AS 29.35.450. Based upon your review of these sources, it is your belief that the requirements of AS 29.35.450(c) are not applicable to city annexations, particularly legislative review annexations. We concur with your opinion.

*Homer* Due to time constraints, this office will not issue its own legal opinion on this matter. We believe the analysis and conclusion of your November 7, 2001 memorandum, is the correct legal conclusion.

If questions arise during your deliberations on the Homer annexation petition that the LBC would like us to address, they are welcome to call me.

cc: Dan Bockhorst, LBC Staff

STATE OF ALASKA  
LOCAL BOUNDARY COMMISSION

In the Matter of the March 20, 2000 Petition )  
By the City of Homer for Annexation of )  
Approximately 25.64 square miles )  
\_\_\_\_\_)

PETITION FOR RECONSIDERATION

COMES NOW, Alaskans Opposed to Annexation, Doris Cabana and Vi Jerrel, by and through their counsel of record, Erwin & Erwin, LLC, and timely petitions the Local Boundary Commission for reconsideration of the Decision of the Commission dated December 26, 2001 with regard to the Annexation to the City of Homer.

The Local Boundary Commission has ignored the effect of AS 29.35.450(e) which was validly enacted by the Alaska Legislature and in effect at the time the decision on Homer Annexation was made on December 26, 2001.

Alaska Statute 29.35.450(e) requires a vote of the people effected in eliminating a substantial portion of a borough service area established for roads, fire protection, parks or recreational services. "It is presumed that whenever the Legislature enacts a provision, it has in mind previous statutes relating to the same subject matter, and all should be construed together." *Hafling v. Inland Boatman's Union of Pacific*, 585 P.2d 870, 877 (Alaska 1978).

Further, there is no problem with the language of the statute which appears to fall within the "plain meaning" rule or its progeny which does require interpretation. *See*, dissent Justice Rabinowitz, *Matter of City of Nome, Alaska*, 78 P.2d 363, 368 n. 3 (Alaska 1989).

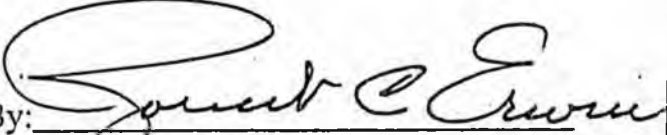
When you couple these rules of statutory construction with the legal doctrine that each enactment of the Alaska Legislature is presumed to be constitutional, (*see, Suber v. Alaska State Bond Committee*, 414 P.2d 546, 557 (Alaska 1966); *Sheldon Jackson College v. State of Alaska*, 599 P.2d 127, 130 (Alaska 1979), it appears to be a legal error to ignore the requirements of the statute. The Legislature is clearly aware of the requirements of annexation and the obvious fact that service areas are likely to be destroyed by annexation to a local government unit. The Legislature specifically intended to deal with the problem of destruction of service areas and what the remainder thereof can do when its taxing base is to be changed. Can any service area survive without such consideration?

This annexation process has been ongoing for almost 18 months with the first public hearings taking place in Homer on December 14 and 15, 2001, some two weeks before the final report was issued on December 26, 2001. Certainly the future vote of the service area to be destroyed cannot either change the legal power of the Boundary Commission or the power of the Legislature to consider its proposal; but it will permit

the orderly transfer of functions for roads and EMTs to permit the realignment of the financial burden to those who remain in the service area and need the service.

ERWIN & ERWIN, LLC  
Attorneys for Vi Jerrel, Doris Cabana and  
Alaskans Opposed to Annexation

DATED: 1-14-02

By:   
Robert C. Erwin  
ABA # 6101004

CERTIFICATE OF SERVICE

I hereby certify that on the 14<sup>th</sup> day of January 2002, I caused a true and correct copy of the foregoing to be mailed via U.S. mail on the following:

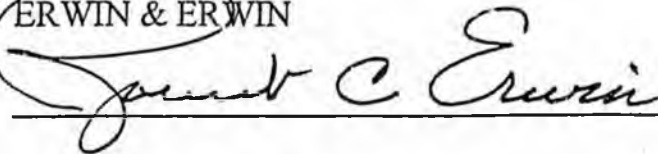
Brooks Chandler  
Hicks, Boyd, Chandler & Falconer  
825 W. 8<sup>th</sup> Avenue, Suite 200  
Anchorage, AK 99501

Perkins Coie, LLP  
Attorneys for City of Homer  
1029 W. 3<sup>rd</sup> Avenue, Suite 300  
Anchorage, AK 99501

and by hand delivery to:

Dan Blockhorst  
State of Alaska, Local Boundary Commission  
Municipal and Regional Assistance Division  
Department of Community and Economic Development  
550 West 7<sup>th</sup> Ave., Suite 1790

ERWIN & ERWIN

  
\_\_\_\_\_

STATE OF ALASKA  
LOCAL BOUNDARY COMMISSION

In Re: Opposition to Homer Annexation )  
\_\_\_\_\_ )

**RESPONSE OF ALASKAN'S OPPOSED TO ANNEXATION TO PRELIMINARY REPORT  
REGARDING CITY OF HOMER'S PROPOSAL FOR ANNEXATION**

Alaskan's Opposed to Annexation strongly agree that the proposal for annexation by the City of Homer should be sharply limited in size to those areas where there is a realistic hope that the property owners in the area to be annexed will get services from the City of Homer. The preliminary report demonstrates how the geographic contours of the Homer area have a profound effect on the delivery of services such as sewer and water which should be carefully weighed in reaching the final decision on the annexation issue.

I. RECOMMENDATION NO. 1. Area to be annexed.

The preliminary report recommends annexation of adjoining areas to Homer where there is some commercial development. There are primarily the areas of Miller's Landing and the Sterling Highway area starting at Mile 165.7. Clearly, these areas would provide taxable property, however, there is little attempt to establish how the homeowner's would benefit from or would actually obtain services from the City of Homer.

In Re: Opposition to Homer Annexation  
RESPONSE OF ALASKAN'S OPPOSED TO ANNEXATION TO PRELIMINARY REPORT REGARDING CITY OF  
HOMER'S PROPOSAL FOR ANNEXATION

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The Sterling Highway area recommended to be annexed has in fact little private land and primarily consists of Borough land, University land, State land and Native land, all of which is not taxable, (*see*, attached Exhibit A) and is subject to control and use inconsistent with the control sought by the City of Homer.

Further, in the Sterling Highway area there is no proposal for the extension of sewer and water at any time in the next five years. (*See*, Exhibit B, Homer capital improvement program 2000 – 2005.) The area presently receives its road maintenance and policing from the State of Alaska and the Kenai Peninsula Borough. There is no plan to change this process and to meet the requirements of 3 AAC 110.990(8) which defines essential City Services necessary to support annexation.

The Miller's Landing area is more difficult to analyze because it provides a concentration of commercial business which is the greatest in the area outside the City of Katchemack and the City of Homer. This area probably will be the first priority for any city services which the City of Homer can provide. They would have the basic political clout to demand such services with a tax base to support any demands. Further, it is more geographically accessible than the Sterling Highway area for sewer, water and other city services because the elevation above the City of Homer is substantially less than the Sterling Highway area even though the property owners would be charged at least 50% of the cost of sewer and water services. (The problem again is the capital

*Read*  
expenditures and annual costs to maintain services. The City of Homer has seriously underestimated the costs of such services and overestimated their ability to provide such services.

*Read*  
Section 17 of the City of Homer's annexation petition states that they plan to provide the following services to the new territory upon annexation:

- water and sewer services as quickly as residents and funding permit;
- bulk sales of potable water to commercial water carriers will continue;
- processing of septic waste from the area will continue;
- enhanced fire and emergency medical services;
- police;
- dispatch services [911, fire, AST, police];
- jail;
- animal control support and animal shelter;
- continued support assistance for the State Trooper post;
- library services;
- City parks;
- recreational services through City facilities and City funded community schools program;
- improved road maintenance;

Road

land use planning services;

City Clerk services including voter services and information support services;

grant management; and

general government services.

The total projected increased cost to the City of Homer's operating expenses for all these services is projected at \$414,463.00 annually plus another \$1,089,600.00 in capital expenses to perform such services. Alaskan's Opposed to Annexation have extensively questioned the cost projections by the City of Homer in its initial filing dated June 5, 2000.

Clearly, such a plan provides its emphasis "on providing the services as quickly as funding permits." Such an open ended promise is no promise at all. The services will be provided when Homer gets around to it. The annexation residents get what services they now have and they get to pay substantial additional tax on their property to get them and a "promise" for new services sometime in the future when they can be afforded.

II. RECOMMENDATION NO. 2. Truncation of terms of City officials.

No objection.

III. RECOMMENDATION NO. 3. Differential property taxation.

No objection.

IV. RECOMMENDATION NO. 4. Consent of City of Homer.

No objection.

V. CONCLUSION.

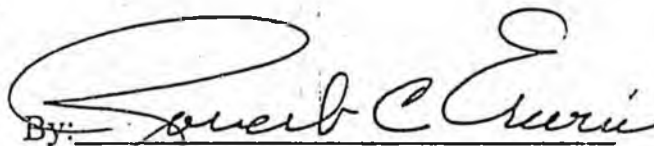
It is suggested that the City of Homer be ordered to amend its petition for annexation to show the reduced area and to present a plan for the implementation of services to that area so reasonable comments can be focused on that area.

The huge size of the initial area requested and the obvious problems of providing services to such an area have prevented those who question the annexation to focus on the proposed smaller area now suggested. Basic fairness would appear to require the Local Boundary Commission to order further proceedings if the Commission agrees

with the preliminary analysis.

ERWIN & ERWIN, LLC  
Attorneys for Vi Jerrel, Doris Cabana and  
Alaskans Opposed to Annexation

DATED: 11-5-01

By: 

Robert C. Erwin  
ABA # 6101004

In Re: Opposition to Homer Annexation  
RESPONSE OF ALASKANS OPPOSED TO ANNEXATION TO PRELIMINARY REPORT REGARDING CITY OF  
HOMER'S PROPOSAL FOR ANNEXATION

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STATE OF ALASKA  
LOCAL BOUNDARY COMMISSION

In Re: Opposition to Homer Annexation )  
\_\_\_\_\_ )


REQUEST FOR ADDITIONAL TWO WEEKS TO PERMIT COMMENTS ON PRELIMINARY  
REPORT

Alaskan's Opposed to Annexation requests the Local Boundary Commission extend the time for filing response to the Preliminary Report herein by two weeks from November 5, 2001 in order to permit comment from the Homer area.

Copies of the preliminary report were sent to the City of Homer for placement in the Homer Library (around October 10) to be reviewed by the citizens. However, these copies somehow went astray and additional copies were not available to the citizens of the Homer area for almost two weeks after the preliminary report was originally made available to the City of Homer. Any public hearing in the Homer area should be also scheduled with such a change in mind.

ERWIN & ERWIN, LLC  
Attorneys for Vi Jerrel, Doris Cabana and  
Alaskans Opposed to Annexation

DATED: 11-5-01

By:   
Robert C. Erwin  
ABA # 6101004