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SENATE COMMUNITY & REGIONAL AFFAIRS

2001-2002

8672

358



Councilman Scott Kawasaki
Fairbanks City Council
2008 Carr Avenue
Fairbanks, Alaska 99709-4211

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E-mail: scott_kawasaki@hotmail.com

February 21, 2001

The Honorable Lesil McGuire, Chairman
Special Committee on Economic Development, Trade and Tourism
State Capitol Room 418
Juneau, Alaska 99801

Dear Representative McGuire:

I would like to voice my support for House Bill 36 relating to Enterprise Communities and Empowerment Zones sponsored by Representative Joe Hayes.

As a Councilman from the City of Fairbanks and a 20-year resident of the area, I have seen boom and stagnation, development and depression. The city is currently in a state of slow growth and I would entertain any feasible legislative support to allow us to encourage growth at the community and municipal level. I believe HB 36 can do this for us.

The principles of HB 36 are simple: give cities and municipalities more local control to govern their own tax structure and offer the incentives for growth and business development.

For instance, there are specific areas in the South Fairbanks business district that are impoverished, but have a great potential for future growth and industrial development. The area in South Fairbanks has all of the necessary utilities, large tracts of land with good soils and police and fire coverage, yet remains undeveloped. The ability to offer tax credits or exemptions from property taxes for this particular area could greatly promote growth.

I would encourage the passage of House Bill 36 from this committee.

Respectfully,

Councilman Scott J Kawasaki
City of Fairbanks

Proudly serving the citizens of the Golden Heart City

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February 4, 2002

Representative Joe Hayes
State Capitol, Room 422
Juneau, Alaska 99801

Dear Representative Hayes:

We have reviewed CSHB 36 (CRA), your proposed legislation relating to the creation of enterprise zones, and we wish to convey our support for the legislation. It appears that the legislation could enhance the economic development opportunities in many Alaska communities.

Enterprise zones provide incentives for business development in impoverished areas. A statewide program could expand the authority for local communities to govern their own tax structure and to provide economic development incentives tailored to best suit the individual needs of their communities. A statewide program could facilitate access to federal economic development funds for communities through the Community Development Block Grant program. Enterprise zone designation could also allow communities to fulfill requirements needed for participation in the Empowerment Zones/Enterprise Communities federal program.

We appreciate your efforts in developing HB 36 as a means for fostering further economic development in Alaska.

Sincerely,

Pamela La Bolle
President

GREATER * FAIRBANKS CHAMBER OF COMMERCE

250 Cushman St., Suite 2D, Fairbanks, AK 99701-4665
phone: (907) 452-1105, fax: (907) 456-6968

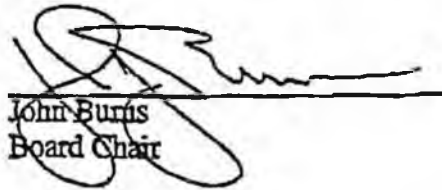
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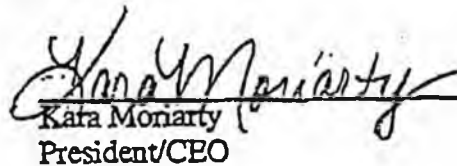
NOW THEREFORE BE IT RESOLVED that the Greater Fairbanks Chamber of Commerce supports the creation of a Statewide Enterprise Zone program.

BE IT FURTHER RESOLVED that the Greater Fairbanks Chamber of Commerce supports the passage of legislation that would provide such a program.

BE IT FURTHER RESOLVED that this resolution be distributed to:
Governor Tony Knowles
Interior Delegation
Mayor Rhonda Boyles, Fairbanks North Star Borough
Mayor Steve Thompson, City of Fairbanks
Commissioner Deborah Sedwick, Department of Community and Economic Development
Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young

PASSED in Fairbanks, Alaska this 5th day of November, 2001 by the Greater Fairbanks Chamber of Commerce Board of Directors.


John Burns
Board Chair


Kara Moriarty
President/CEO





217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel (907)586-1325, Fax (907)-463-5480

February 21, 2001

Representative Joe Hayes
Alaska State House
State Capitol
Juneau, AK 99811

Dear Representative Hayes:

We are writing in support of HB 36, relating to the creation of enterprise zones. We believe passage of this legislation expands the list of tools available to the state and municipalities that could be used to facilitate urban renewal and encourage economic development in depressed areas of the state. As long as the formation of the enterprise zones remains a local option to be determined by the local community, we would encourage its passage.

We appreciate your taking a proactive role in offering an option to help communities find solutions to improve economic development. It is one of the top concerns of our membership.

If we can assist you further with this or any other municipal issue, please call on me.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Kevin Ritchie', with a long horizontal line extending to the right.

Kevin Ritchie
Executive Director

Cc: Land Use, Resources & Economic Development Committee

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB312
 () Publish Date: _____

Revision Date/Time (Note if corrected): _____ Dept. Affected: Revenue
 Title: Enterprise Zones BRU: Revenue Operations
 Component: Tax Division
 Sponsor: Senate State Affairs
 Requester: Community and Regional Affairs Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	***	***	***	***	***	***
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation, which is meant to promote economic development through the use of so-called "enterprise zones," would grant income tax credits to businesses that construct/operate new business facilities in an enterprise zone. The Department cannot estimate the cost to the state of the tax credits because it has no way of estimating how many businesses might participate in the program. The program would grant taxpayers a credit of 15% of the qualifying investment and a \$500 credit for each new employee at the facility. Under that formula, for example, a \$2 million investment employing 25 workers would be eligible for up to a \$312,500 tax credit its first full year.

It should be noted that taxpayers, under this legislation, would not be allowed to carry over any unused tax credits for subsequent years, and therefore might not be able to fully use the credits granted by this bill. Also, only C Corporations pay corporate income tax in Alaska, and any S Corporations, partnerships, limited liability companies or sole proprietorships would be excluded from the tax credit provisions of this legislation.

Prepared by: Larry Persily, Deputy Commissioner Phone 465-5469
 Division: Department of Revenue Date/Time 4/29/02 7:14 PM
 Approved by: Larry Persily, Deputy Commissioner Date 4/29/2002
 Agency: Department of Revenue

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. SB312

ANALYSIS CONTINUATION

Section 1 amends AS 44.33 to add new sections pertaining to enterprise zones. The governor may designate up to four zones each year from a list provided by the Department of Community and Economic Development. A designation is effective for 20 years. A borough, unified municipality or city if the city is not within a borough may apply to have a qualifying geographical area designated as an enterprise zone, and a municipality may not have more than three zones at the same time. The municipality may offer certain incentives within the zones.

Section 2 amends AS 44.33 to add new sections that provide that the Department of Community and Economic Development will prioritize the list of applications submitted to the governor according to the degree of economic distress, potential for economic development and neighborhood stabilization, and feasibility of local incentives. The Department of Community and Economic Development may also recommend incentives within the enterprise zones including reductions in state permit or user fees, credits on or exemptions from state income taxes, and sales or leases of state realty to private persons.

Section 3 amends AS 29.45.050 to provide that a municipality may exempt property from the local property tax, or provide a credit against the property tax, for property located within an enterprise zone.

Section 4 amends AS 43.20.021(d) to provide that enterprise zone tax credits are not reduced by that section.

Section 5 amends AS 43.20 to add new sections providing for an enterprise zone investment tax credit against the corporation net income tax. The credit amount is 15% of the investment, which is the purchase price or the net rental rate paid, in such items as land, factories, mills, warehouses, other buildings, machinery, equipment, and other tangible personal property, all of which are used exclusively within an enterprise zone. The credit is reduced by 1/12th for each month in the tax year in which the taxpayer did not operate the facility for that entire month. The part of the credit disallowed is not available as a credit in any subsequent tax year. If the investment replaces another facility of the taxpayer or a related person, the credit is reduced by the average annual investment in the former facility for the three preceding tax years.

A \$500 credit is provided for each new employee who works in the enterprise zone. This credit is only available in the first full income tax year (generally the tax year succeeding the tax year in which the investment was made) after the establishment of a new business facility.

Based upon our interpretation of the bill, it is further assumed that:

1. The total credits available in the tax year are limited to the amount of the Alaska income tax liability; the credit not being in the nature of a refundable credit;
2. Any unused credit is lost if not used within the tax year in which it is generated; there is no carryforward;
3. Self-constructed property by a taxpayer in an enterprise zone, since such property is neither purchased nor rented, does not qualify as an investment for which the credit would apply;
4. Property purchased in the tax year and first used outside the enterprise zone before being brought into and used exclusively in the enterprise zone, or property first used in the enterprise zone and subsequently removed, would qualify for the credit but the credit would be reduced by 1/12 for each month the property was not used exclusively within the enterprise zone;
5. The taxpayer makes the determination whether an investment "replaces" existing property (in which the credit is reduced) or is in addition to or otherwise does not replace existing property (in which the credit is not reduced);
6. With respect to transactions between related persons, the amount of the investment from which the credit will be computed is the stated sale price or the rental paid without regard to fair market value (the related party provision in the bill applies only to the situation where an investment replaces existing property and then it only calls for a reduction based upon the average annual investment for the 3 years prior to the related party transaction); and,
7. An individual is not controlled by a wholly owned corporation taxpayer and therefore the related person rules will not apply to the individual and the wholly owned corporate taxpayer.

Section 7 amends the uncodified law by adding a new section to provide that the corporation income tax provisions become effective for tax years beginning on or after January 1, 2003.

SB

314

22-LS1534\C
Kurtz
3/25/02

CS FOR SENATE BILL NO. 314(CRA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECCND SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the taxation of mobile telecommunications services by
2 municipalities; and providing for an effective date."

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

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 PURPOSE; FINDINGS; INTENT. The United States Congress has enacted the
7 Mobile Telecommunications Sourcing Act, 4 U.S.C. 116 - 126 (P.L. 106-252), for the
8 purpose of establishing uniform nationwide sourcing rules for state and local taxation of
9 mobile telecommunications services. The legislature of the State of Alaska desires to adopt
10 implementing legislation governing taxation in the state. The legislature recognizes that the
11 federal act is intended to provide a clarification of sourcing rules that is revenue-neutral
12 among the states. A construction of this Act should reflect the legislature's intention to give
13 effect to the federal act.

14 * **Sec. 2.** AS 29.10.200 is amended by adding a new paragraph to read:

1 (52) AS 29.45.750 (taxation of mobile telecommunications).

2 * Sec. 3. AS 29.45.650(a) is amended to read:

3 (a) Except as provided in AS 04.21.010(c), AS 29.45.750, and in (f) and (h) of
4 this section, a borough may levy and collect a sales tax on sales, rents, and on services
5 provided in the borough. The sales tax may apply to any or all of these sources.
6 Exemptions may be granted by ordinance.

7 * Sec. 4. AS 29.45.650(a) is amended to read:

8 (a) Except as provided in AS 04.21.010(c) [AS 29.45.750,] and in (f) and (h)
9 of this section, a borough may levy and collect a sales tax on sales, rents, and on
10 services provided in the borough. The sales tax may apply to any or all of these
11 sources. Exemptions may be granted by ordinance.

12 * Sec. 5. AS 29.45 is amended by adding a new section to read:

13 **Article 5A. Mobile Telecommunications Sourcing Act.**

14 **Sec. 29.45.750. Mobile Telecommunications Sourcing Act.** (a) The
15 provisions of 4 U.S.C. 116 - 126 (Mobile Telecommunications Sourcing Act) are
16 incorporated in this chapter by reference and have effect as though fully set out in this
17 chapter.

18 (b) A municipality that levies and collects a sales tax on mobile
19 telecommunications services shall do so in accordance with the provisions of 4 U.S.C.
20 116 - 126 (Mobile Telecommunications Sourcing Act).

21 (c) The procedures and remedies for correcting a tax, charge, fee, or
22 assignment of place of primary use or taxing jurisdiction are as follows:

23 (1) if a customer believes that an amount of tax, charge, or fee or an
24 assignment of place of primary use or taxing jurisdiction included on a billing is
25 erroneous, the customer shall notify the home service provider; the customer shall
26 notify the home service provider of the street address for the customer's place of
27 primary use, the account name and number for which the customer seeks a correction,
28 a description of the error asserted by the customer, and any other information that the
29 home service provider reasonably requires to process the request;

30 (2) within 60 days after receiving a notice under this section, the home
31 service provider shall review the records and the electronic database or enhanced zip

1 code used according to 4 U.S.C. 116 - 126 to determine the customer's taxing
2 jurisdiction; if this review shows that the amount of tax, charge, or fee or assignment
3 of place of primary use or taxing jurisdiction is in error, the home service provider
4 shall correct the error and refund or credit the amount of tax, charge, or fee
5 erroneously collected from the customer for a period of up to two years; if this review
6 shows that the amount of tax, charge, or fee or assignment of place of primary use or
7 taxing jurisdiction is correct, the home service provider shall provide a written
8 explanation to the customer;

9 (3) the procedures in this subsection are the first course of remedy
10 available to a customer seeking correction of assignment of place of primary use or
11 taxing jurisdiction or a refund of or other compensation for taxes, charges, and fees
12 erroneously collected by the home service provider.

13 (d) For purposes of this section, if a customer does not have a street address,
14 the home service provider may accept from the customer as the customer's place of
15 primary use an address that is not a street address if the address gives effect to the
16 intent of 4 U.S.C. 116 - 126 (Mobile Telecommunications Sourcing Act).

17 * Sec. 6. AS 29.10.200(62) and AS 29.45.750 are repealed.

18 * Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 APPLICABILITY. This Act applies to charges on customer bills issued on or after
21 August 1, 2002.

22 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to
23 read:

24 PROVISIONS NOT SEVERABLE. Notwithstanding AS 01.10.030, the provisions of
25 this Act are not severable.

26 * Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

28 CONTINGENT EFFECT. Sections 4 and 6 of this Act take effect only if a court of
29 competent jurisdiction whose decisions are binding in this state enters a final judgment on the
30 merits that is based on federal law, is no longer subject to appeal or petition for certiorari, and
31 substantially limits or impairs the essential elements of 4 U.S.C. 116 - 126.

1 * **Sec. 10.** Except as provided in sec. 11 of this Act, this Act takes effect August 1, 2002.

2 * **Sec. 11.** If secs. 4 and 6 of this Act take effect, they take effect on the day after the last

3 day on which the judgment described in sec. 9 of this Act could have been appealed.

Alaska State Legislature

SENATOR
BEN STEVENS
716 WEST 4TH AVENUE
ANCHORAGE, AK
99501-2133
(907) 269-0200
FAX (907) 269-0204



Session:
STATE CAPITOL
JUNEAU, AK
99801-1182
(907) 465-4993
FAX (907) 465-3872

Senate District Jf

Sponsor Statement
Senate Bill 314

Mobile Telecommunications Tax

State and local governments tax mobile telecommunications services in a variety of ways. Due to the mobility of wireless equipment, determining which state and local taxes apply to a wireless call is complicated. The process of determining where a transaction is taxable is commonly referred to as "sourcing." There are several methods of sourcing wireless calls, including using the location of the originating cell site, the billing address or the switch that processes the call. However, the different sourcing methods can give rise to multiple claims on the same tax revenue.

In order to create a more uniform system for taxing wireless telecommunications, in July 2000, Congress enacted the federal Mobile Telecommunications Sourcing Act. The new federal law requires that all charges for mobile telecommunications services must be sourced to the customer's "primary place of use." The federal law defines "primary place of use" as either the residential or primary business street address of the customer within the licensed service area of the provider.

States now have until August 1, 2002 to conform their laws applicable to the taxation of wireless telecommunications to the provisions of federal law. States that fail to act by that time are preempted from imposing taxes on most calls made outside of the state where the customer's primary use occurs (so-called "roaming").

The Mobile Telecommunications Sourcing Act does not impact the rate of taxes or fees that states and localities impose on wireless calls or the types of calls that are subject to such taxes. It only determines which jurisdiction has the authority to tax a wireless call. Each jurisdiction with legal taxing authority will continue to determine whether to tax such calls and at what rate.

SB 314 prevents multiple taxation, achieves administrative simplicity, costs savings in the billing process, and avoids expensive audit litigation exposure when multiple state claim jurisdiction to tax the same call.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 26, 2002

SUBJECT: Taxation of Mobile Telecommunications Services,
SB 314 (Work Order No. 22-LS1534\A)

TO: Senator Ben Stevens
Attn: Deborah Grundmann

FROM: Kathryn L. Kurtz *KK*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Describes the purpose of the act as implementing the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 116 - 126 (P.L. 106-252).

Section 2. Adds new statutory sections added by section 5 of the bill to the list of limitations on the powers of home rule municipalities.

Section 3. Clarifies that the new statutory sections added by section 5 of the bill limit the power of a municipality to levy and collect sales taxes.

Section 4. Removes the language added in section 3 according to the terms of the contingent repeal in section 6, if a court enters a judgment that substantially limits or impairs the effect of the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 116 - 126.

Section 5. Adds a new article relating to the taxation of mobile telecommunications services, based on the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 116 - 126.

Sec. 29.45.750 creates a presumption that all mobile communications services are provided by the company ("home service provider") that bills for them; and provides that only the municipality (or municipalities, in the case of a city within a borough) where the customer lives or has their principal place of business may tax those services.

Sec. 29.45.780. Provides a process for customers to correct errors by the service provider relating to taxes on mobile telecommunications services on the customer's bill. Requires the customer to notify the home service provider of the problem in writing. Gives the home service provider 60 days to review its records, and either correct the error or provide a written explanation. Specifies that these procedures are the "first course of remedy" available to the customer.

Sec. 29.45.790. Defines terms.

Section 6. Repeals AS 29.45.750 - 29.45.790, the new sections added by the bill, if a court enters a judgment that substantially limits or impairs the effect of the federal Mobile Telecommunications Sourcing Act.

Section 7. Provides that the bill only applies to customer bills issued on or after August 1, 2002.

Section 8. Provides that the provisions of the act are not severable, so that if any provision of the act is invalidated, the whole act is invalidated.

Section 9. Makes section 4 of the bill, restoring AS 29.45.650(a) to the way it reads now, effective only if a court enters a judgment that substantially limits or impairs the effect of the federal Mobile Telecommunications Sourcing Act.

Section 10. Provides an effective date of July 1, 2002 for all but sections 4 and 5 of the bill.

Section 11. Provides that sections 4 and 6 of the bill, if they take effect, take effect on the day after the last day a judgment substantially limiting or impairing the federal Mobile Telecommunications Sourcing Act could have been appealed.

KLK:med
02-214.med

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services
Department of Education & Early Development
State of Alaska

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Sec. 29.45.750 creates a presumption that all mobile communications services are provided by the company ("home service provider") that bills for them; and provides that only the municipality (or municipalities, in the case of a city within a borough) where the customer lives or has their principal place of business may tax those services.

Sec. 29.45.755 anticipates construction of a statewide database by a "designated database provider," an entity representing all municipalities in the state, assigning each street address in the state to a municipality. It requires the designated database provider to provide notice of the availability of the data base. It provides that a municipality must "hold harmless" a home service provider that, because of an error in the database, fails to collect taxes due to the municipality.

Under Sec. 29.45.760, if no statewide database is provided, a municipality must "hold harmless" a home service provider that fails to collect taxes due to the municipality as a result of assigning a street address to the wrong municipality, if the home service provider used an enhanced zip code to assign the address to a municipality. Where an enhanced zip code overlaps more than one taxing jurisdiction of the same level, the home service provider may designate one jurisdiction as the taxing jurisdiction for that enhanced zip code. Creates a rebuttable presumption that a home service provider has exercised due diligence if it expends reasonable resources, maintains reasonable internal controls, and uses all reasonably obtainable usable data in developing a database of addresses and corresponding taxing jurisdictions.

Under Sec. 29.45.765, if a municipality determines that an address does not meet the definition of place of primary use, with the consent of all affected taxing jurisdictions and after giving the customer notice and an opportunity to be heard, the municipality may notify the home service provider to change the place of primary use. If a municipality finds that an assignment of an address to a taxing jurisdiction is incorrect, it may notify the home service provider to change the taxing jurisdiction after obtaining the consent of all affected taxing jurisdictions and giving the home service provider the opportunity to demonstrate that the assignment is correct.

Sec. 29.45.770 gives the home service provider the responsibility for determining a customer's primary place of use. Permits the home service provider to rely on the address provided by the customer. Prohibits a municipality from holding a home service provider liable for additional taxes based on a different determination of the place of primary use for taxes that are customarily passed on to the customer as a separate itemized charge. Permits the home service provider to use the address used by the provider for tax purposes under a contract in effect on August, 2002 for the remaining term of that contract for determining to which municipality to remit taxes.

Sec. 29.45.775. States that the bill does not affect any existing law permitting municipalities to collect taxes from customers who do not provide their place of primary use. Permits municipalities to tax otherwise nontaxable mobile telecommunications services if they are aggregated with taxable charges by a home service provider, unless the home service provider can distinguish the nontaxable charges. Prohibits a customer from relying on the nontaxability of charges for mobile telecommunications unless the customer's home service provider states the charges separately from taxable charges or provides verifiable data from its books identifying the nontaxable charges.

Sec. 29.45.780. Provides a process for customers to correct errors by the service provider relating to taxes on mobile telecommunications services on the customer's bill. Requires the customer to notify the home service provider of the problem in writing. Gives the home service provider 60 days to review its records, and either correct the error or provide a written explanation. Specifies that these procedures are the "first course of remedy" available to the customer.

Sec. 29.45.790. Defines terms.

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Section 11. Provides that sections 4 and 6 of the bill, if they take effect, take effect on the day after the last day a judgment substantially limiting or impairing the federal Mobile Telecommunications Sourcing Act could have been appealed.

KLK:med
02-214.med

Statement in Support of LB 947 – Nebraska Conformity to the Federal Mobile Telecommunications Sourcing Act

Scott Mackey
Kimbell, Sherman & Ellis
Montpelier, VT
802/229-4900
Mackey@kse50.com

(On behalf of AllTel, AT&T Wireless Services, Cingular Wireless, Nextel, Sprint, Verizon Wireless, VoiceStream, and Western Wireless)

Mr. Chairman and members of the Revenue Committee – thank you for the opportunity to testify in favor of LB947, legislation that would conform the Nebraska statutes governing taxes and fees on wireless services to the provisions of PL 106-252, the mobile telecommunications sourcing act.

The companies listed above strongly support this legislation and commend you for your efforts to develop it and bring it before the committee.

Background and Intent of the Federal Legislation

Several members of the wireless telecommunications industry approached state and local officials in 1998 regarding a joint effort to clarify how mobile telecommunications calls involving multiple jurisdictions should be assigned or “sourced” for tax purposes. The industry – along with the major organizations of state and local elected officials and appointed tax officials – met over two years to craft the federal Mobile Telecommunications Sourcing Act. Congress passed the legislation and President Clinton signed the bill into law in July 2000.

Sourcing involves determining which jurisdiction will have the right to tax a telephone call that originates and terminates in different taxing jurisdictions. In the case of mobile telecommunications, the customer might live in one jurisdiction, have her bill sent to a second jurisdiction, make a call in a third jurisdiction, complete the call in a fourth jurisdiction and have the call terminate in a fifth jurisdiction. Without clear, national rules for determining what jurisdiction is permitted to tax the call, the possibility exists that the same call could be subject to taxation in multiple jurisdictions – or that a call might escape taxation all together.

The federal legislation was a “win-win” for both industry and government. Industry supported the MTSA to prevent multiple taxation; to achieve administrative simplicity and cost savings in the billing process; to avoid expensive audit and litigation exposure when multiple states claim jurisdiction to tax the same call; and to avoid class action lawsuits from customers who claim that companies are improperly collecting taxes even when they are merely complying with state laws. Government supported the

SB 314
MOBILE TELECOMMUNICATIONS TAX
March 27, 2002

Senate CRA

Federal Legislation

legislation to prevent "nowhere taxation" and to bring administrative simplicity and cost savings to tax administration.

States now have until August 1, 2002 to conform their laws applicable to the taxation of wireless telecommunications to the provisions in the federal law. States that fail to act by that time are preempted from imposing taxes on most calls made outside of the state where the customer's primary use occurs (so-called "roaming").

Key Provisions and Concepts

The MTSA does not impact the rate of taxes or fees that states and localities choose to impose on wireless calls, or the types of calls that are subject to such taxes. It only determines which jurisdiction has the authority to tax a wireless call. Each jurisdiction with legal taxing authority will continue to determine whether to tax such calls and at what rate.

Currently, the Supreme Court decision in *Goldberg v. Sweet* governs the question of which jurisdiction has authority to tax interstate calls (both wireless and wireline). Under the Goldberg rule, a jurisdiction could impose a tax on a call if the call either originated or terminated in the jurisdiction and the call was charged to a "service address" in that jurisdiction.

Because of the mobile nature of wireless telecommunications, it was becoming more difficult to determine whether wireless calls met the two-out-of-three "Goldberg" rule of origination or termination plus service address, calling into question states' ability to tax such calls. Furthermore, as customers increasingly select single rate, fixed-usage plans, the industry's determination of which jurisdiction has authority to tax the calls becomes more complicated. With the growing popularity of the single rate plans, there was a decreasing need to track individual calls for billing purposes. Tracking individual calls solely for tax purposes unnecessarily wastes company resources.

The MTSA solves both of these problems. It creates the concept that the customer has a "place of primary use," which is the jurisdiction with the right to tax wireless calls, even if the call neither originates nor terminates in that jurisdiction. Thus, the federal law allows states and localities to tax calls that they could not have taxed under the "Goldberg" rule and precludes their ability to tax other calls that they have historically taxed.

For example, a resident of Lincoln that contracts for wireless telecommunications service for personal use would designate Lincoln as his place of primary use. If that person traveled to Topeka and placed a call from Topeka to Wichita during the trip, the state of Nebraska and the city of Lincoln would have the authority to tax that call even though it did not originate or terminate in Nebraska.

Conversely, if a Kansas resident traveled to Nebraska and placed a call within Nebraska, that call will no longer be taxable in Nebraska. Only the state of Kansas and any authorized local governments at the location of the customer's place of primary use will be able to tax that call.

The federal law was designed to be revenue neutral to the states, and we expect this to be the case in Nebraska. The revenues that the state will lose from no longer being able to tax "roaming calls" made by non-residents making calls in their states will be offset by the revenues gained from being able to tax calls that their residents make while "roaming" in other states. There may be some minimal changes in the revenue allocations among local jurisdictions, but local government organizations that participated in the development of the MTSA considered these revenue shifts to be minimal.

Attached to this testimony is a section-by-section explanation of how the provisions of LB 947 conform to the federal act; a copy of the federal law; and a map showing the status of conformity legislation in other states.

Mr. Chairman, let me reiterate the industry's appreciation for your efforts on this legislation. We strongly support its passage and look forward to assisting you in any way we can. Thank you again for the opportunity to testify.

Specific Provisions of LB947 that Conform to the Federal Act (Section by Section)

This legislation incorporates the provisions of the federal act in the three key areas: place of primary use; determination of taxability, tax rates, and hold harmless; and bundling.

Section 1

Place of Primary Use. Under the MTSA, calls that are taxable under particular tax statutes will be "sourced" to the "place of primary use" even if they originate and terminate outside of the boundaries of the place of primary use. The place of primary use is the residential or business street address of the customer.

Section 1, subsection (1) of the bill provides that taxable charges for mobile telecommunications service are subject to taxation in the jurisdictions encompassing the customer's place of primary use. It also clarifies that, per federal law, calls made in Nebraska by customers with a place of primary use outside of Nebraska are not subject to taxation.

Determination of Taxability, Tax Rates, and Hold Harmless. Under the MTSA, tax rates and the assignment of customer addresses to taxing jurisdictions will be based upon the nine digit zip+4 address of the place of primary use, unless the state or another designated provider develops an electronic database that can assign tax information and customer addresses to the appropriate taxing jurisdictions. The Federation of Tax Administrators and the Multi-State Tax Commission are authorized to develop a nationwide standard numeric format for such a database.

Section 1, Subsection (2) of LB 947 gives the Tax Commissioner the authority to provide companies with a database that meets the standards established by federal law, but does not require the Commissioner to provide such database. It also provides, consistent with federal law, that a home service provider that uses a database or zip+4 to assign tax rates and jurisdictions is held harmless from errors caused by reliance on such database, provided that the company meets all applicable requirements in the federal law.

Bundling. The MTSA provides that bundled offerings of taxable and non-taxable services will be deemed taxable unless the wireless company provides information to the state from its books and records that supports the non-taxability of certain components in the bundle. Section 1, subsection (3) contains this bundling provision from the federal act.

Definitions. Section 1, subsection (4) of LB 947 defines the terms "customer," "home service provider," "mobile telecommunications service," and "place of primary use." These definitions are copied from the federal act. This subsection also defines which state and local taxes and fees are subject to the sourcing provisions of the bill.

Section 2

Nonseverability Clause. The federal act expands state taxing authority to include calls that have no "nexus" in Nebraska. Therefore, if the courts invalidate the federal law, LB 947 would continue to impermissibly tax such calls. This section states that if the federal law is struck down, the provisions of LB 947 would no longer apply.

Section 3

Base Clarification. To keep the new sourcing rules revenue neutral, Congress grants states the authority to tax calls by customers with a place of primary use in that state, even if the call does not originate or terminate in the taxing state. This section allows Nebraska to avail itself of this authority by defining taxable intrastate mobile calls as any that originate and terminate in the same state.

Section 4

Statute reference.

Section 5

Gross receipts definition. Same as section 3 above, this section conforms the definition of gross receipts to the federal provisions allowing Nebraska to tax calls that do not originate and terminate in Nebraska.

Section 6

Local option tax act. This provision conforms the local option tax sourcing to the provisions of the federal act.

Section 7

Statute Reference.



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Economic Development and Commerce Policy Studies
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November 29, 2000

Implementing the Mobile Telecommunications Sourcing Act

On July 28, 2000, President Clinton signed The Mobile Telecommunications Sourcing Act (P.L. 106-252) into law. This legislation changes how state and local transactional taxes, such as the sales and use tax, are imposed on wireless telecommunications services. Enactment of the new law will require changes to some state statutes, as well as other decisions that are described below. This brief will provide information about state law changes that should be considered and administrative steps that should be taken to implement the law effectively. The law does not change a state's sovereignty over its tax base, but by changing the way in which transactions are sourced for tax purposes, the new law bars states from collecting revenue on some calls that are currently taxable and expands state authority to collect revenue on calls currently not permitted to be taxed under state law. Therefore, states need to act expeditiously to amend their statutes to implement the changes required by the act.

The new law is the direct result of a collaborative effort between state and local government organizations (National Governors Association, National Conference of State Legislatures, Federation of Tax Administrators, Multistate Tax Commission, and National League of Cities) and the wireless telecommunications industry to simplify the taxation of wireless telecommunications services. State and local governments are committed to working with the private sector by adapting their statutes and regulations to the changing economy and technology in a constructive manner to enhance economic development, while simultaneously working to preserve state and local control over their revenue bases.

Background

Many state tax laws applicable to the sale of telecommunications services were written to conform to the Supreme Court's decision in *Goldberg v. Sweet*. In this ruling, the Court stated that for states to have jurisdiction to impose taxes on interstate telecommunications, the call must either originate or terminate in a given state and the service address to which the call is charged must also be in that state. The complexity of applying the Goldberg method to wireless telecommunications arises from the inherent difficulty in identifying the precise location from which a call is placed. For example, if a caller who resides in California happens to be driving through Virginia and places a call to someone in Oklahoma, and during the call passes over a bridge into Maryland, what state or states have jurisdiction to impose a tax on such a call? This becomes more difficult when you consider the multiple local jurisdictions through which the caller may pass while making the call—each of which may impose a different type of tax regime on telecommunications services. The movement of wireless plans away from per call billing toward plans that offer buckets of minutes in return for a monthly flat rate for complicates matters even further.

The Mobile Telecommunications Sourcing Act specifically changes this method of sourcing wireless services. By working together, state and local government associations and the wireless industry developed a uniform method for sourcing wireless telecommunications services to the appropriate taxing jurisdictions. It is important to note that change only relates to how transactions will be sourced and does not change a state's sovereignty over its tax base in determining whether it chooses to tax or not tax

particular transactions. The goal was to craft a solution that achieved the desired administrative simplification but was substantially revenue neutral to state and local governments. The new method, which assumes that all wireless calls are sourced to the subscribers' residential or business address, whichever is the place of primary use, resolves many of the administrative complexities of the current system, is largely revenue neutral, and maintains state and local governments' ability to tax such services.

Implementing the Mobile Telecommunications Sourcing Act

States will have to take several steps to implement the Mobile Telecommunications Sourcing Act, including amending their statutes to conform to the provisions of the Act and, if they desire, developing a statewide database that will enable wireless providers to assign their subscribers' place of primary use (PPU) to the appropriate taxing jurisdictions. States may also want to consider including a fail-safe provision in the event the new federal statute is deemed unconstitutional.

Conform State Tax Law to Provisions In the Wireless Act

States that follow the Goldberg method will need to amend their tax laws to adopt provisions in Section 117 of the new federal law that specify how wireless telecommunications services are to be sourced for tax purposes. Furthermore, the act contains a series of provisions that need to be incorporated into state statutes including: definitions (§124), provisions for determining the "place of primary use" (§122), and safe-harbor provisions for wireless providers that use a state-provided database or exercise due diligence in using an enhanced zip-code format (§120). The legislation also provides guidelines states and local governments must follow to notify wireless providers about changes in applicable tax rates and changes in the boundaries of local tax jurisdictions (§121). An alternative to directly incorporating these provisions in state statute would be to incorporate them by reference to the Mobile Telecommunications Sourcing Act, Public Law 106-252 (2000).

States with statutes that do not conform to the Goldberg decision should, nevertheless, review the new federal law and consider the adoption of conforming legislation—both to ensure the protection of state revenues and to avoid potential liability.

Anticipating the likelihood, however remote, that the act may be found unconstitutional, states may want to include a reverter clause in their conforming statute. Should the act be rendered inoperative by a court decision, the clause could re-implement prospectively the laws in effect at the time the Mobile Telecommunications Sourcing Act was enacted. This provision may also have the effect of limiting future challenges to act.

Creation of Statewide Database

The act gives states the option of providing telecommunications providers with a statewide database that can assign every address in the state to its appropriate taxing jurisdiction. Should a state elect to do so, the act then specifies that the database must be provided in a format approved by the American National Standards Institute's Accredited Standards Committee X12. Furthermore, the database must use a nationwide standard numeric code approved by the Federation of Tax Administrators and the Multistate Tax Commission.

States should consider developing a statewide database for several reasons. First, it will simplify the audit procedures for state tax departments, since wireless providers are given a safe harbor for using the state-provided database. Second, and maybe more importantly, this database can be designed to be used in conjunction with the Streamlined Sales Tax Project, whose implementation will also require the development of a statewide database to electronically source retail transactions.¹¹ Combining the efforts of the Streamlined Sales Tax Project with the option provided in the Mobile Telecommunications Sourcing Act will greatly improve the administration of state and local sales and use tax nationwide.

Summary of Provisions

Sourcing Rules

To simplify the process by which these taxes are imposed, the new law contains a uniform method of sourcing wireless phone calls by sourcing all calls to the customer's PPU. The legislation defines PPU as "the street address representative of where the customer's use of the mobile telecommunications service

primary occurs. This address must be either the residential street address or the primary business street address of the customer and must be within the licensed service area of the provider."

The sourcing provisions are contained in Section 117 of the act and specify that "all charges for mobile telecommunications services that are deemed to be provided by the customer's home service provider are authorized to be subjected to tax, charge, or fee by the taxing jurisdictions whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunication services originate, terminate, or pass through, and no other taxing jurisdiction may impose taxes, charges or fees on charges for such mobile telecommunications services." State statutes may need to be amended to reflect that the act precludes the collection of taxes with respect to some calls that are currently taxable, but would expand state authority to collect taxes on other calls currently not permitted to be taxed under state law.

These provisions differ from current practice in two distinct ways. First, the subscriber's wireless service will be sourced as a whole to the subscriber's PPU, so it is no longer necessary to source each call on an individual basis to different jurisdictions. Second, all services are sourced to the subscriber's place of primary use, as opposed to sourcing each call to its "point of use" commonly used for other taxable transactions. The PPU is now deemed to be the "point of use" for all services. The intent of the legislation is to provide a uniform method for the sourcing of all wireless services. The legislation is not intended to alter the tax base by mandating the taxation of all charges for wireless services under existing state and local tax statutes.

The provision limiting jurisdiction to impose a tax on wireless telecommunication services to those jurisdictions whose boundaries encompass the place of primary use is specifically intended to eliminate the possibility of double taxation of a particular wireless phone call that spans multiple tax jurisdictions. In addition, the act requires the PPU to be either the customer's residential address or business address to prevent the use of fraudulent or misleading addresses solely to avoid paying wireless telecommunications taxes.

Electronic Database and Hold Harmless Provisions

The legislation provides a mechanism for assigning customer PPUs to the appropriate taxing jurisdictions. First, states have the option of supplying wireless providers with an electronic database that matches each street address with its appropriate taxing jurisdiction. The legislation outlines the technical standards a state-provided database must meet and the duties of the state and wireless providers when there are database changes. If the state fails to supply the provider with a database, the wireless provider can employ an enhanced zip code system (the nine-digit zip code) to assign addresses to appropriate taxing jurisdictions. If a wireless provider uses one of these two designated methods for assigning addresses, the provider will be held harmless for any taxes that might otherwise be due as the result of an erroneous assignment, provided the provider exercises "due diligence" in assigning jurisdictions. Due diligence is defined to require vendors to "expend resources, maintain internal controls, and employ all obtainable data pertaining to changes such as municipal annexations and changes in tax rates."¹¹ However, wireless providers that do not use either system to assign addresses would be liable for any uncollected taxes due to misassignment of addresses.

Applicable Taxes

The legislation only applies to state and local transactional taxes on the sale of wireless telecommunications services and is not intended to apply to taxes imposed on net income, capital stock, net worth or property value. However, the legislation does not provide authority to a taxing jurisdiction to impose a tax, charge or fee the laws of such jurisdiction do not authorize. For example, a taxing jurisdiction that permits the taxation of only intrastate telecommunications services would not be authorized to tax a subscriber's interstate telecommunications services merely because of this legislation. In addition, the legislation specifically excludes prepaid calling services and air-to-ground services from its sourcing provisions.

Bundling

Bundling refers to the process of combining a variety of services together for one monthly price (eg., 100 minutes of calling coupled with no roaming charges, Web access and e-mail services). Increasingly popular with subscribers, bundling will at times, combine taxable and nontaxable elements. This could happen in states where long-distance wireless calls, which are nontaxable, are bundled with local wireless

calls, which are subject to tax. Under provisions in the act, nontaxable elements may be subject to tax if bundled for sale with taxable elements unless the wireless provider can identify the nontaxable service elements from its own books and records.

Effective Date

The bill takes effect immediately but applies to customers' bills issued after the first day of the first month beginning more than two years after the date of enactment (i.e., August 1, 2002). This provision will give states and local governments time to develop standardized databases, amend the applicable state laws to conform to the provisions of the act, and enable industry to adjust their billing systems.

Constitutional Considerations

The interstate nature of a large portion of wireless telecommunications services raises commerce clause and due process considerations. In *Goldberg v. Sweet*,¹¹ the U.S. Supreme Court specified the criteria states can use to impose transactional taxes on interstate telecommunications. The Court stated that jurisdiction to impose such taxes rested with the state or states from which the telecommunications originated or in which the telecommunications terminated, provided that state also was the state of the service address (address of the equipment to which the telecommunications was charged) or the billing address. Therefore, it is clear the sourcing provisions in the Act would not meet the Goldberg test under certain circumstances—for example, where the wireless subscriber places a call from State A to State B and neither state is the subscriber's PPU.

To satisfy due process concerns, a case could be made that the contractual relationship between the subscriber and wireless provider is strongly linked to the subscriber's PPU, since that is also the state in which the contractual relationship is established.¹² Furthermore, rather than imposing a transactional tax on each individual phone call, the act allows for the taxation of the service (the right to make wireless calls via the provider's wireless network) that occurs at the customer's PPU. Commerce clause considerations are also satisfied since Congress clearly has authority to legislate on matters of interstate commerce.¹³ Even activity that takes place entirely intrastate can be considered interstate commerce, as evidenced by the Supreme Court's ruling that a local real estate tax violated the commerce clause in *Camps Newfound/Owatonna, Inc. v. Town of Harrison, Maine* (117 S.Ct. 1590 (1997)). Nonetheless, anticipating the possibility that such challenges could be possible, the legislation provides that the entire law becomes null and void should a court find any portion of the legislation unconstitutional.¹⁴

¹ 488 U.S. 252, 263 (1989).

¹¹ As of this writing, two options are being considered for use in the Streamlined Sales Tax Project. One option would use an address-based database that, through the use of GIS, would pinpoint the exact location of a street address and accurately assign that address to the appropriate tax jurisdictions. The second option is the use of an enhanced zip code (9 digit) that would be used to assign addresses to tax jurisdictions. Should the project decide upon the latter, governors and legislators can expect to hear complaints from their state's wireless providers about having to use a separate database solely for wireless services and that they are being held to a higher standard of compliance than other businesses in the state.

¹² § 124(8).

¹³ It should be noted that licensed service areas do not necessarily conform with state boundaries and frequently cross state lines.

¹⁴ § 117(b).

¹⁵ § 120(a).

¹⁶ *Supra* note 1.

¹⁷ For example, see Walter Hellerstein, *State Taxation of Electronic Commerce*, 52 *Tax L. Rev.* 425 (1997).

¹⁸ *Prudential Ins. Co. v. Benjamin*, 328 U.S. 408, 434 (1946)

* § 125 of the act states "If a court of competent jurisdiction enters a final judgment on the merits that—

(1) is based on federal law;

(2) is no longer subject to appeal; and

(3) substantially limits or impairs the essential elements of sections 116 through 126 of this title, then sections 116 through 126 of this title are invalid and have no legal effect as of the date of entry of such judgment.

S B

3 2 3

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 323
 () Publish Date: _____
 Dept. Affected: Natural Resources
 BRU: Minerals, Land & Water Dev
 Component: Land Sales & Muni. Ent.
 Component Number: 2456

Revision Date/Time (Note if correction): _____
 Title: MANDATORY INCORPORATION
OF BOROUGHES
 Sponsor: Sen. WILKEN
 Requester: (S) CRA

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	12.5			28.5	56.9	56.9
Travel				1.0	2.0	2.0
Contractual	0.5			1.0	2.0	4.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	13.0	0.0	0.0	30.5	60.9	62.9

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	13.0			30.5	60.9	62.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	13.0	0.0	0.0	30.5	60.9	62.9

Estimate of any current year (FY2002) cost: none
 Check this box (X) if funding for this bill is included in the Governor's FY2003 budget proposal:

POSITIONS

Full-time				1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This legislation would result in formation of six new boroughs. Under AS 29.65.030, new municipalities are granted a municipal land entitlement that is 10% of the vacant, unappropriated, unreserved state land within their boundaries.
 DNR's FY 03 costs are staff time required to prepare estimates of municipal entitlements that would be used in the borough incorporation proposals that DCED is required to do in Section 3 of the bill. FY 06 and 07 costs are for staff to determine the exact acreage for municipal entitlement certifications. (Cont.)

Prepared by: Bob Loeffler Phone 269-8600
 Division: Mining, Land and Water Date/Time 26-Feb-02
 Approved by: Pat Pourchot Date 26-Feb-02
 Agency: Natural Resources

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Senate Bill 323 Mandatory Borough Act of 2002

The Mandatory Borough Act of 2002 recognizes that there are six regions in Alaska that meet most, if not all, the standards for borough incorporation, and sets in motion a procedure to create six new boroughs by January 1, 2005. The identified areas have the financial capability and stable populations needed to provide a local government with the power to plan, support local schools, and levy and collect taxes.

Senate Bill 323 allows the residents in the identified six locations to initiate borough incorporation proposals, hold extensive public hearings, and work closely with the Local Boundary Commission to determine the desired borough structure until the January 1, 2005 deadline. However, if a borough is not incorporated within each of the six regions by the stated timeframe, the following areas will be incorporated as second class boroughs:

Copper River Basin Region
Glacier Bay Region
Prince of Wales Island Region
Prince William Sound Region
Upper Tanana Basin Region
Wrangell/Petersburg Region

Through the formation of these six boroughs, local residents, many for the first time, will be able to financially support their neighborhood schools. In addition, several school districts will be consolidated to enhance efficiencies and economies of scale. Alaska's K-12 public education system will benefit from the additional financial help and thus Alaska's students will benefit.

The best government is the government closest to the people. Senate Bill 323 continues what the framers of the Alaska State Constitution commenced over forty years ago, and by forming these six boroughs, it provides a way for local area residents to help with their children's education.

I respectfully request your consideration and support for this legislation.

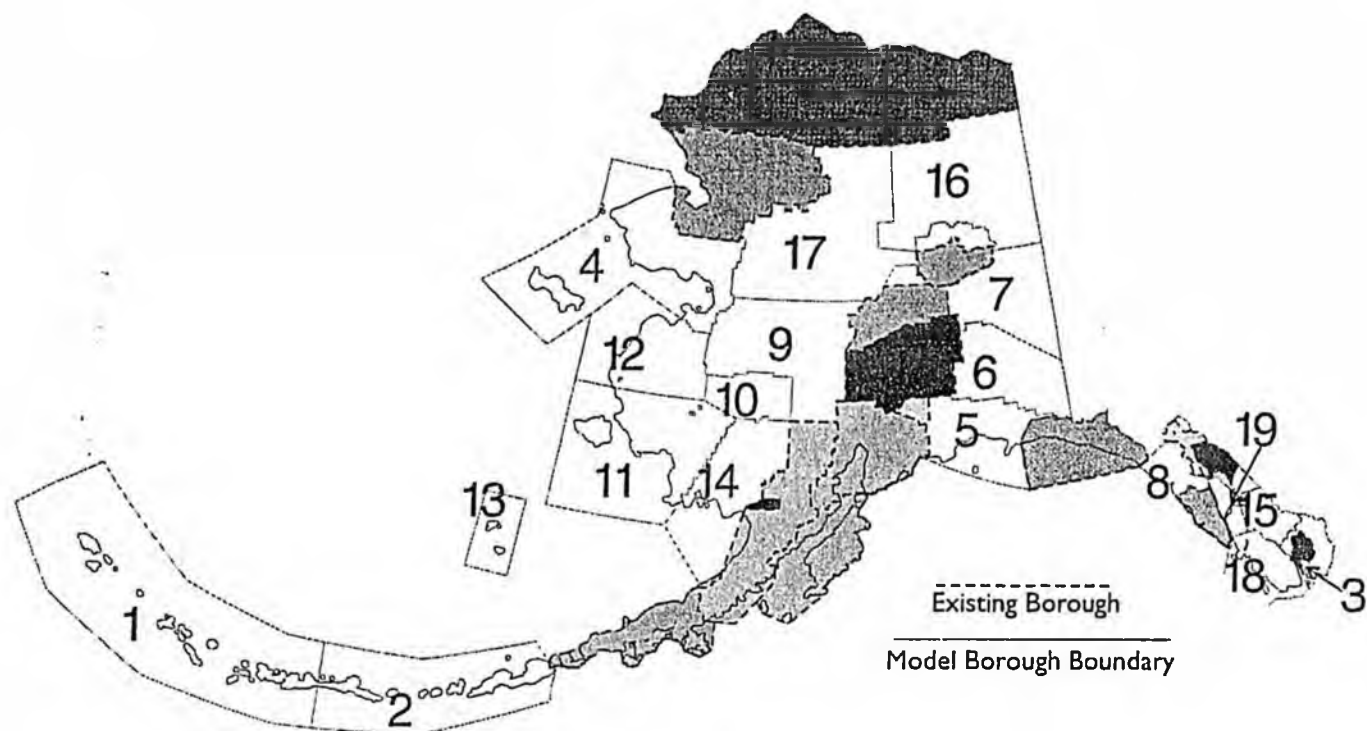
A handwritten signature in black ink, appearing to read "Gary Wilken".

Home of the
University of Alaska

Standards for Borough Incorporation

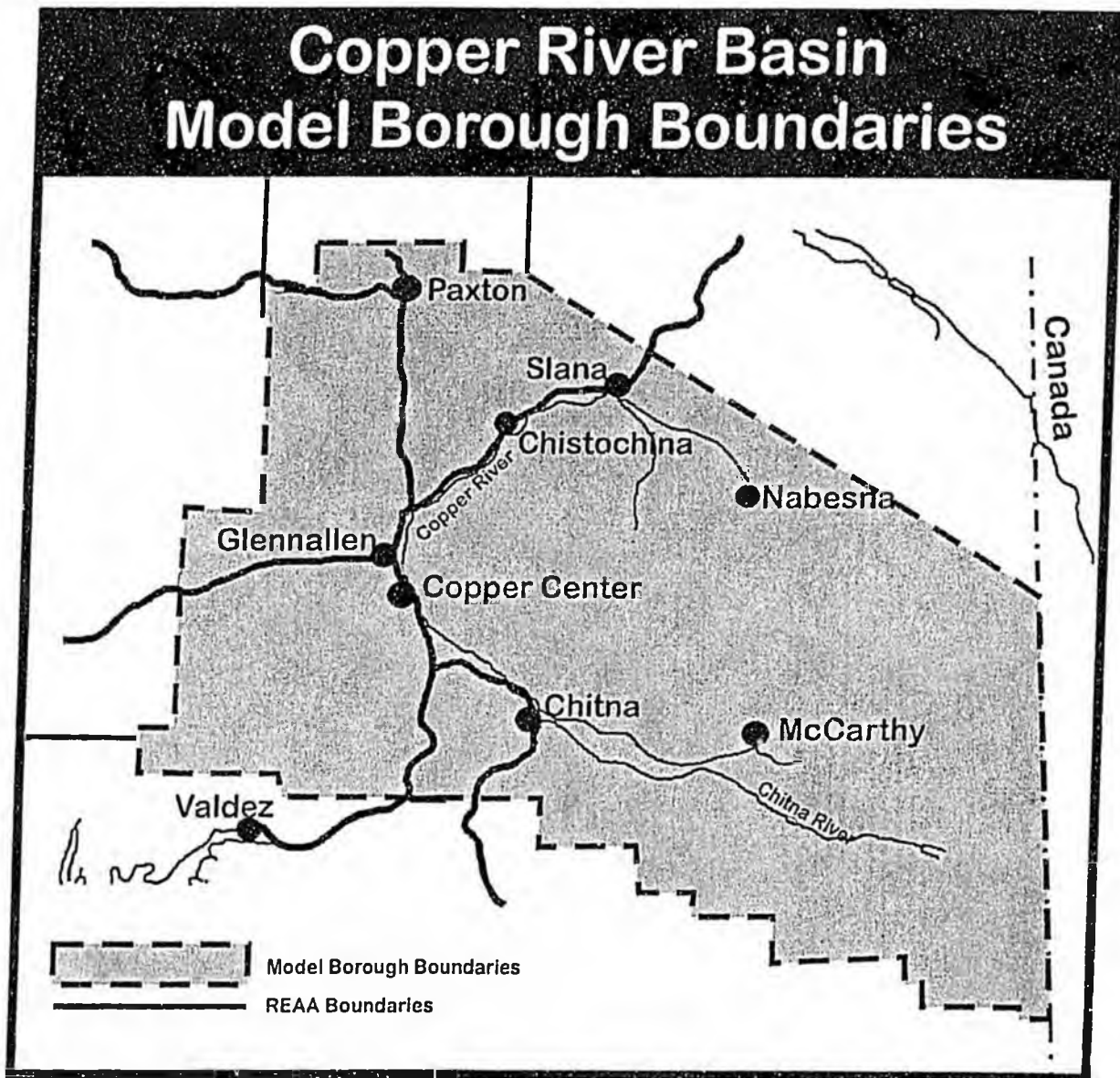
Standard to Meet	Description of Standard	Alaska Law Citation	Upper Tanana	Glacier Bay	Prince of Wales	Prince William Sound	Copper River	Wrangell Petersburg
Adequate Facilities	Each area must have facilities that provide needed communication and integration of government	AS 29.05.031(a)94) 3 AAC 110.045(c)-(d)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Alaska must be divided into boroughs	Each area (organized or unorganized) should have a population and area with common interests.	AS 29.05.100	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Best Interest	Borough incorporation must be in the best interests of the state	AS 29.05.100	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Conform to REAA Boundaries	Boundaries must conform to REAA boundaries unless LBC allows otherwise	3 AAC 110.060(c)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Financial/Human Resources	Each area must have the ability to support and provide government services	AS 29.05.031(a)(3) 3 AAC 110.055	?	?	?	?	?	?
Incorporation is Encouraged	Borough Incorporation is encouraged under Alaska's Constitution	Article X, Section 1	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Interrelated & Integrated	Residents must be socially, culturally, and economically related	AS 20.0503(a)(1) 3 AAC 110.045(a)-(b)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Large/Stable Populations	Each area must should have at least 1,000 permanent residents	AS 20.05.031(a)(3) 3 AAC 110.050	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Larger Boroughs	Our Constitution favors larger boroughs in order to avoid a proliferation of small boroughs	Article X, Section 3	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Model Borough Boundaries	Consideration must be given to boundaries adopted by the Local boundary Commission	3 AAC 110.060(b)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Similar Geography	Boundaries must conform to natural geography and include areas necessary for full services	AS 29.05.031(a)(2) 3 AAC 110.060(a)	?	?	?	?	?	?

Model Borough Boundaries

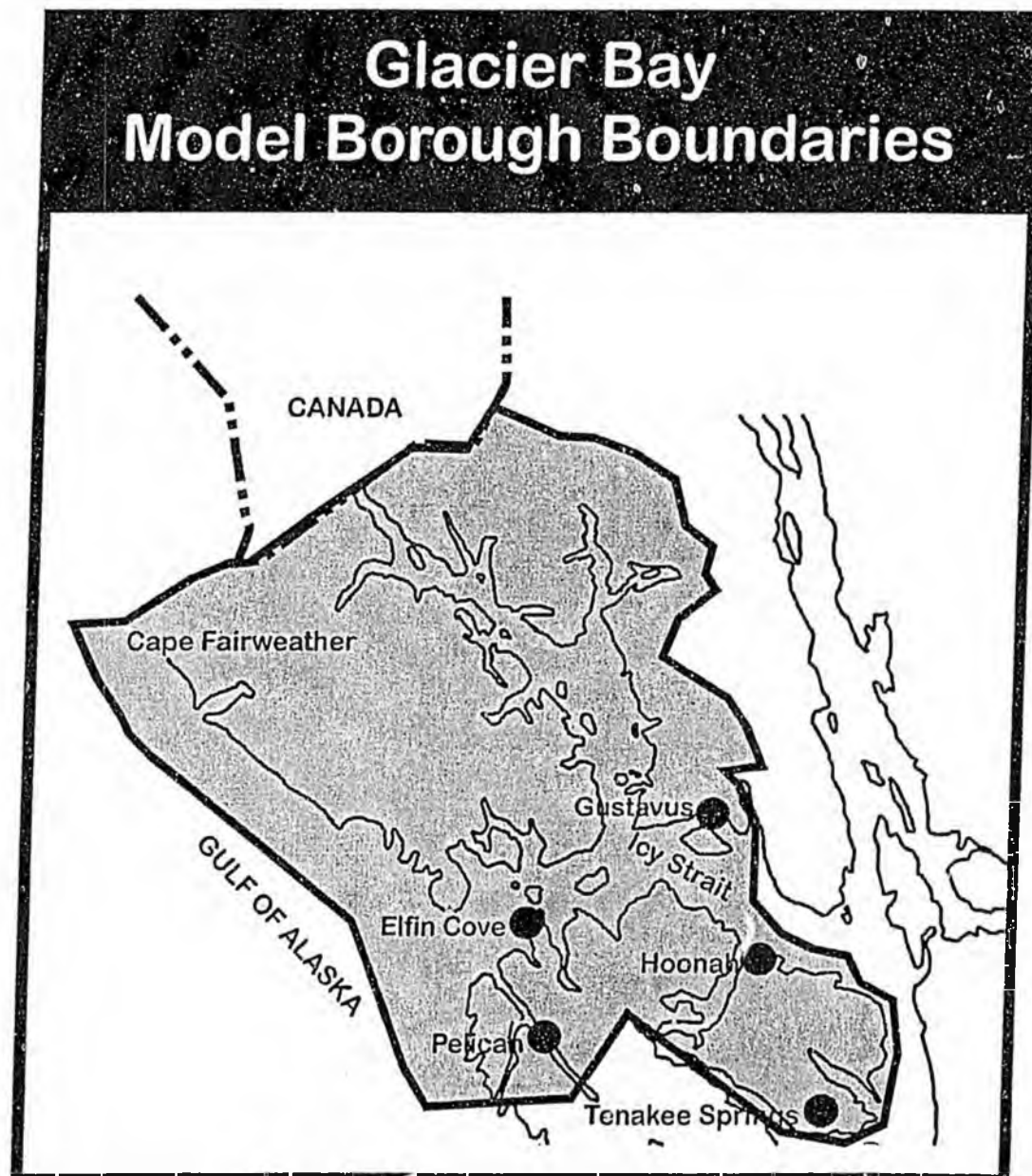


- | | |
|---------------------------|--------------------------------|
| 1. Aleutian - Military | 11. Lower Kuskokwim |
| 2. Aleutians West Region | 12. Lower Yukon |
| 3. Annette Island Reserve | 13. Pribilof Islands |
| 4. Bering Straits | 14. Dillingham-Nushagak-Togiak |
| 5. Prince William Sound | 15. Wrangell/Petersburg |
| 6. Copper River Basin | 16. Yukon Flats |
| 7. Upper Tanana Basin | 17. Yukon-Koyukuk |
| 8. Glacier Bay | 18. Prince of Wales Island |
| 9. Iditarod Region | 19. Chatham |
| 10. Kuspuk | |

Copper River Basin Region. The Commission held a hearing on model boundaries in Glennallen on May 9, 1992. Additional information concerning the model boundaries for the Copper River Basin was provided to the Commission by residents of the region in June. On November 21, 1992, the Commission determined that the Copper Basin model borough boundaries should follow the boundaries of the Copper River REAA. Communities within the area include, Chistochina, Chitna, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, McCarthy, Paxson, Slana, Tazlina and Tonsina. The area encompasses an estimated 20,649 square miles. In 1990, the area had a population of 2,638.

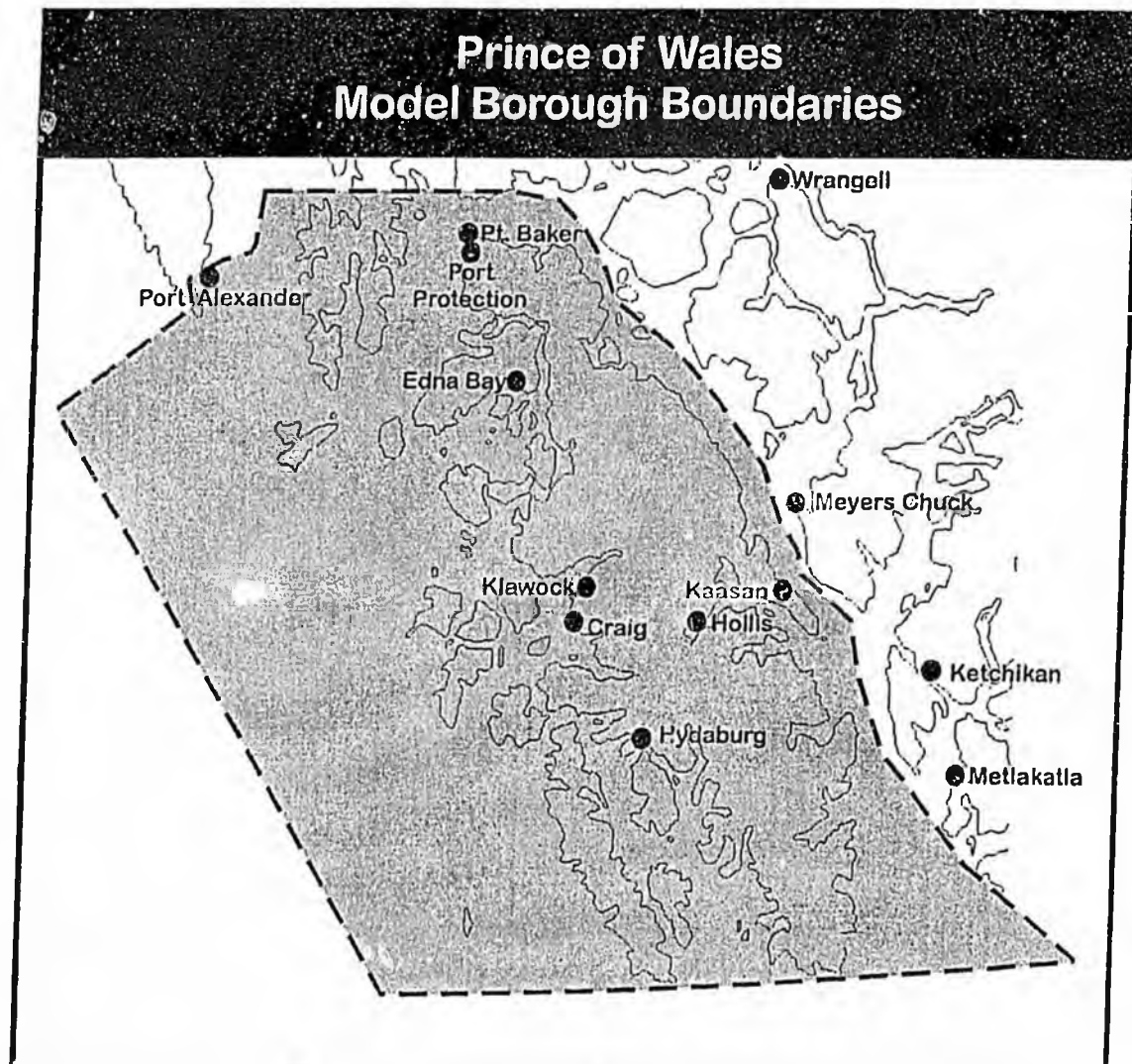


Glacier Bay Region. The Commission conducted hearings on model boundaries for this region in Hoonah, Pelican and Gustavus in January 1992. On May 8, 1992, the Commission defined model borough boundaries for the region extending from Cape Fairweather to Chatham Strait. These model boundaries encompass Glacier Bay and the communities of Elfin Cove, Pelican, Hoonah, Gustavus and Tenakee Springs. In 1990, the region had a population of 1,858.

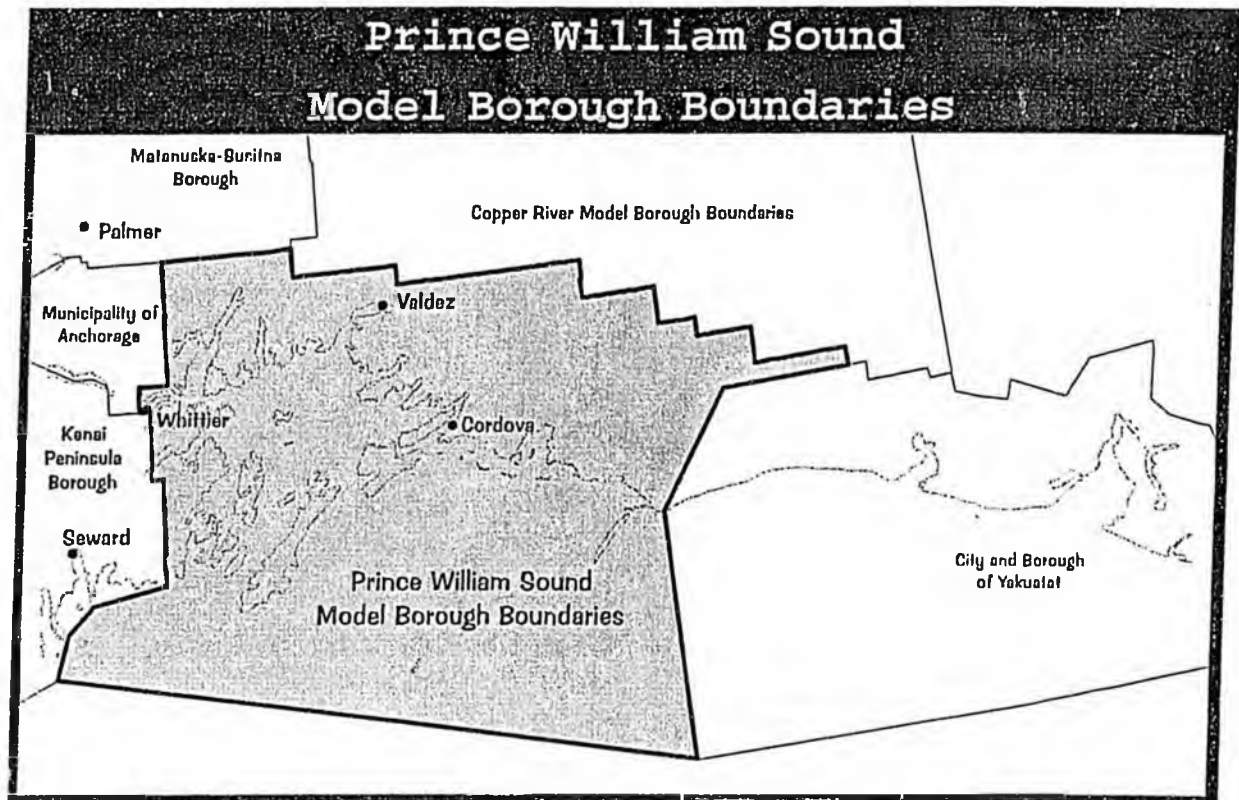


Prince of Wales Island Region. The Commission held its hearing on model borough boundaries for this region in Klawock in September 1991. Additional comments concerning model boundaries for this region were provided to the Commission in November of 1991.

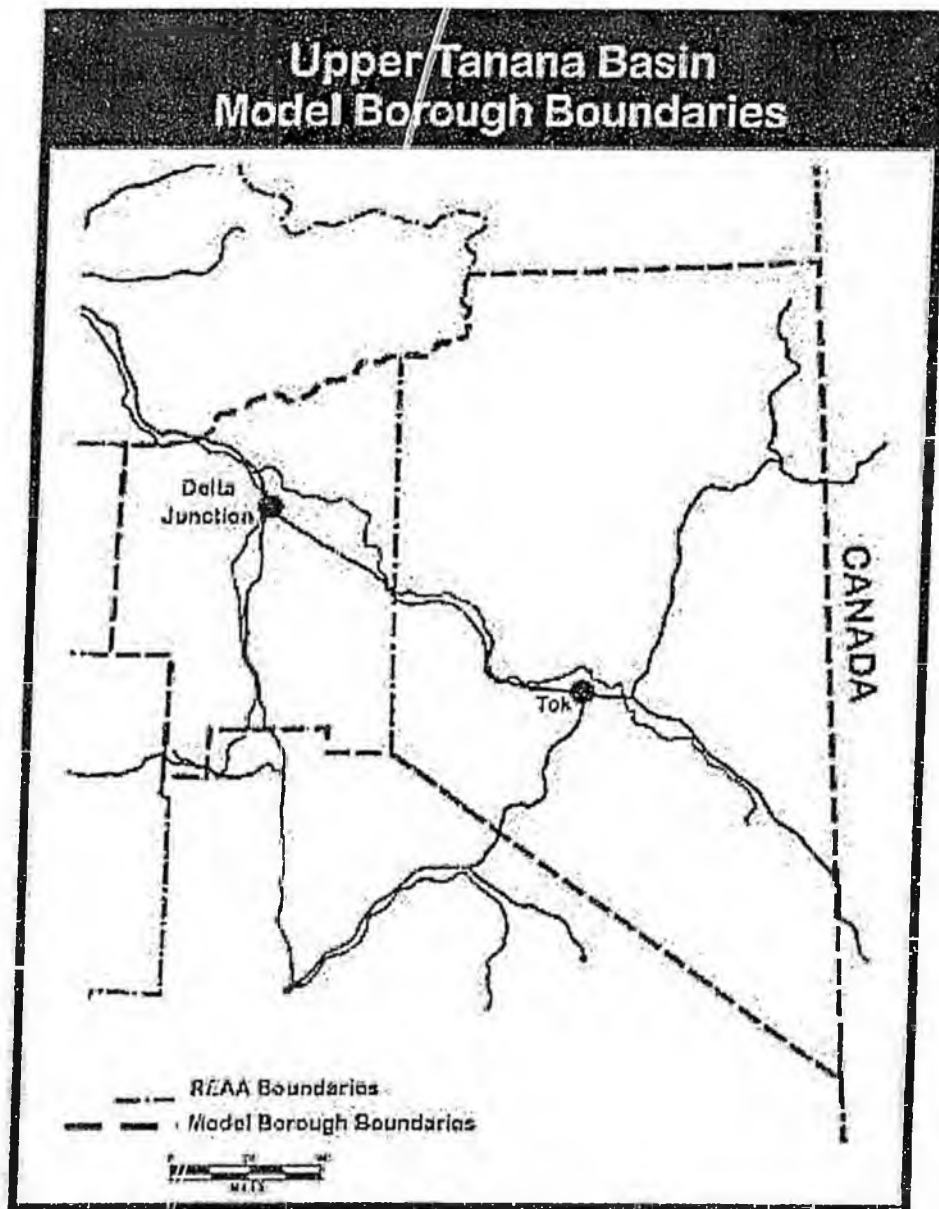
The Commission adopted model boundaries for this region to extend from the southern boundary of the State of Alaska along Clarence Strait and Sumner Strait to an area north of Point Baker (following the Wrangell Ranger District boundary). From there the boundary extends due west across Kuiu Island to the middle of Chatham Strait where it turns south, following the State boundary back to the point of beginning. These model boundaries encompass an estimated 8,200 square miles of land and water. This area is all part of the Southeast Island Regional Educational Attendance Area, and has 4,650+ residents.



Prince William Sound Region. The Commission conducted a public hearing on model borough boundaries for the Prince William Sound region in January 1992. On May 8, 1992, the Commission set model boundaries for the area to conform to the Chugach REAA, including Cordova City School District and the Valdez City School District. The region also includes the City of Whittier and the unincorporated communities of Chenega and Tatitlek. In 1990, the area had a population of 7,189. On March 8, 1997, an estimated 2,878 square miles of land and 8,492 square miles of tide-lands and submerged lands within the original Prince William Sound model borough boundaries were annexed to the City and Borough of Yakutat.

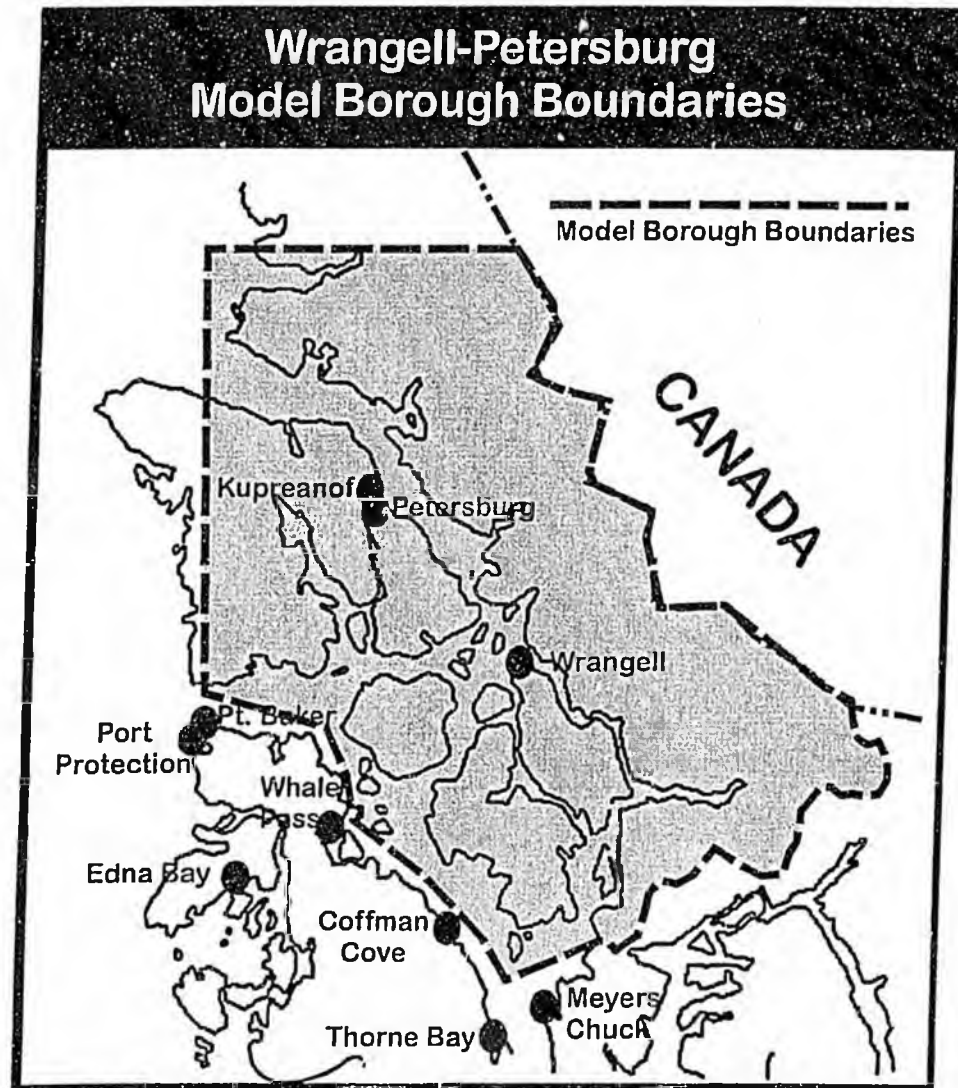


Upper Tanana Basin Region. The Commission conducted hearings on model borough boundaries for the region in Delta Junction on May 8, 1992 and in Tok on May 9 and June 6, 1992. The Commission set model boundaries for the area on November 21, 1992. The Upper Tanana Basin model boundaries were defined to encompass both the Delta Greely and Alaska Gateway REAA areas. In 1990, the area had a population of 6,021. The model borough boundaries encompass an estimated 26,235 square miles. Communities within the region include two second class cities, the City of Delta Junction and the City of Eagle. Unincorporated communities in the area include Boundary, Chicken, Dot Lake, Dry Creek, the Native Village of Eagle, Fort Greely, Healy Lake, Mentasta Lake, Northway, Tanacross, Tetlin and Tok.



Wrangell/Petersburg Region. The Commission conducted hearings on model boundaries for the region in Wrangell and Petersburg in September 1991. After receiving additional comments in November, the Commission defined model borough boundaries for this region to follow the boundary of the Wrangell Ranger District along the Misty Fjords National Monument to Ernest Sound and along Clarence Strait and Sumner Strait to an area north of the community of Point Baker. From there, the model boundary runs due north to Hobart Bay then due east to the Alaska/Canada border. The boundary then turns south following the border to the point of beginning.

These model boundaries include an area of approximately 7,200 square miles of land and water. The 1990 population of the area was estimated to be approximately 6,000. The model boundaries encompass two complete school districts (Petersburg and Wrangell) and portions of two others (Southeast Island REAA and Chatham REAA).

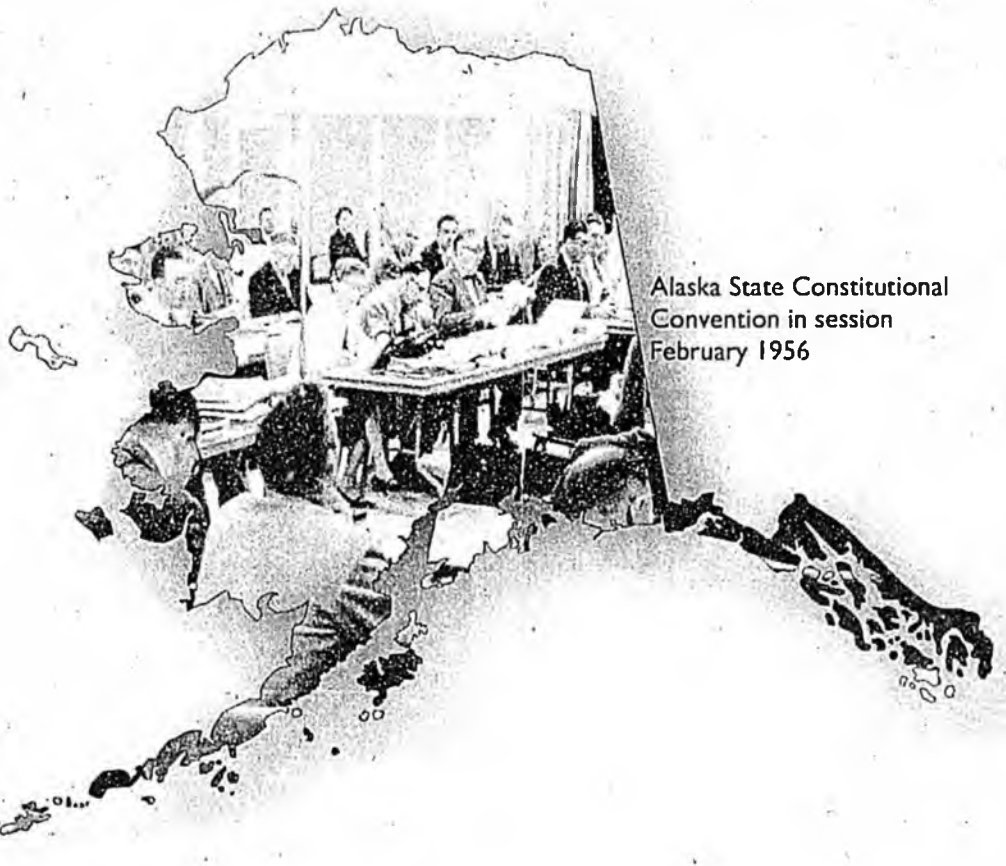




State of Alaska Local Boundary Commission

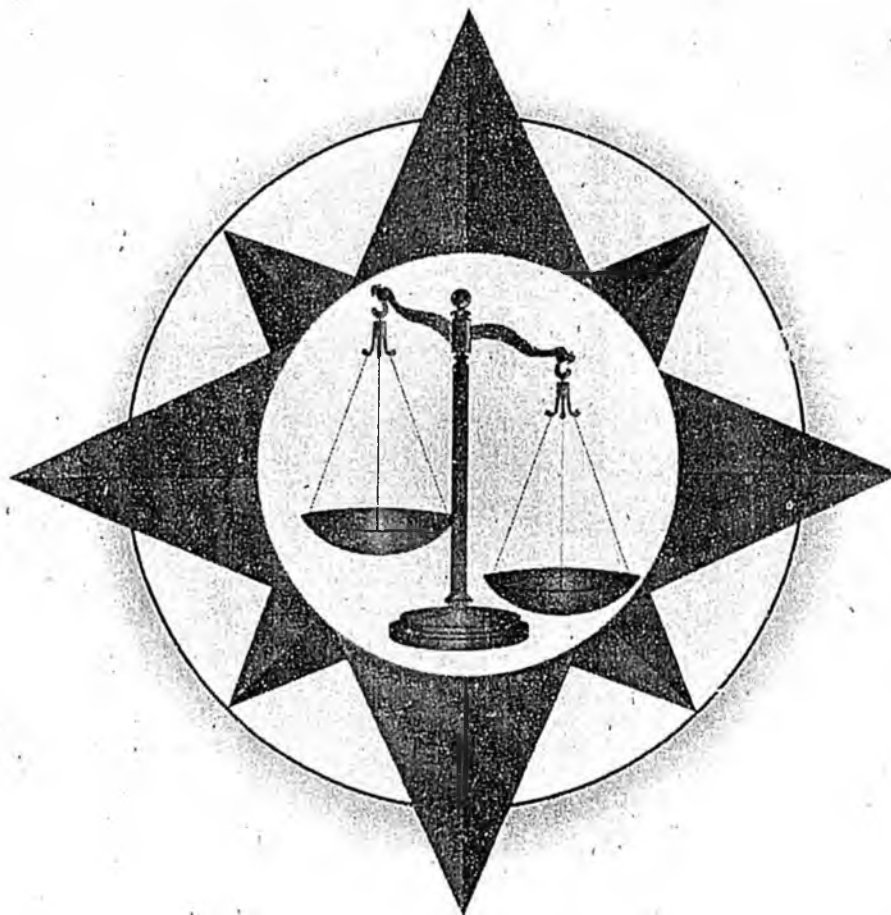
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The Need to Reform State Laws Concerning Borough Incorporation and Annexation



Alaska State Constitutional
Convention in session
February 1956

January 2001



The Local Boundary Commission complies with the Title II of the Americans with Disabilities Act of 1990. Upon request, this report will be made available in large print or other accessible formats. Requests for such should be directed to the Local Boundary Commission staff at 907-269-4560.

This report is also available on the Local Boundary Commission's website at:

[Http://www.dced.state.ak.us/mra/LBC/Mrad_lbc.htm](http://www.dced.state.ak.us/mra/LBC/Mrad_lbc.htm)

Photos of the Constitutional Convention were supplied by the Anchorage Museum of History and Art, Steve McCutcheon, Photographer.

Subject: SB 48 -- correction to Appendix A-3

Date: Fri, 30 Mar 2001 15:47:23 -0900

From: Dan Bockhorst <dan_bockhorst@dced.state.ak.us>

To: Sheila Peterson <Sheila_Peterson@legis.state.ak.us>

Sheila: As we discussed, there is an error in Appendix A-3 of "The Need to Reform State Laws Concerning Borough Incorporation and Annexation". The appendix indicates that the 1998 population of the Nome Census Area was 2,461 when, in fact, it was 9,341. As a consequence of the population error, the 1998 per capita earnings from local employment figure for the Nome Census Area was incorrectly calculated in the Excel spreadsheet to be \$39,433 when it was actually \$10,389.

A question was also raised generally about the source of the 1998 population data used in the report. The population figures are "July 1, 1998 revised" figures from the Department of Labor. With the exception of the figure for the Nome Census Area, the population figures for the other areas reported in Appendix A-3 are correct.

Rachel Baker of the Department of Labor indicated that she could make the 1999 earnings from local employment data available to me in a week or so. As soon as the information is available, I will prepare an updated and corrected substitute for Appendix A-3.

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Introduction

This year marks the 40th anniversary of the enactment of legislation to institute borough government in Alaska. Repeatedly throughout the past 40 years, an array of public interest groups, local government experts, State and local officials, and citizens have pointed out serious shortcomings in the manner in which the borough concept has been implemented.

In response to growing difficulties resulting from those shortcomings, the Local Boundary Commission is proposing remedial legislation. The proposed legislation would:

- eliminate certain disincentives to the incorporation of new boroughs;
- implement incentives for borough incorporation and annexation; and
- facilitate borough incorporation and annexation of unorganized areas that have the resources to support borough government.

The legislation proposed by the Commission will address the following issues:

- **Alaskans Treated Unequally.** Citizens of municipal school districts in Alaska must make substantial financial contributions in support of schools while all others have no such responsibility.
- **No Rational Basis for Unequal Treatment.** There is no legitimate public policy basis for the disparate treatment of Alaskans noted above. While some unorganized regions are poor, others have resources that are superior to areas that long ago accepted local responsibility for schools.
- **Lack of Local Authority to Fund Education.** Regional educational attendance areas (REAs) are instrumentalities of the State of Alaska. REA residents depend on the State for educational services. When funds are needed for new schools, major capital improvements, or increased operational funding, REA residents must look to the State of Alaska, which has exclusive responsibility for such matters.
- **Unorganized Regions Unique to Alaska.** Alaska is the only state that is not organized at the regional level into counties or their equivalent. Alaska is also unique among state governments in the extent to which it assumes responsibility for local services.

- **Unorganized Borough Sustains Inefficient Service Delivery.** Essential services are delivered in the unorganized borough in a highly fragmented manner. This perpetuates inefficient and ineffective governmental operations.
- **State Fiscal Policies Encourage Avoidance of Local Responsibility.** The State continues to shoulder the burden for education and plating services in communities that decline to accept local responsibility, even though many such communities have ample resources. At the same time, the State of Alaska has dramatically reduced financial aid to communities that have assumed local responsibility for services.
- **Unorganized Borough Impedes Development.** The lack of regional government has hindered economic and social development in unorganized areas.
- **Overpowering Borough Disincentives.** The deterrents in State law to form boroughs are so pervasive and so overwhelming that they impede successful incorporation of new borough governments.
- **Procedures Stifle Incorporation.** The process for incorporation of new boroughs actually thwarts local initiative in certain cases. For example, by requiring each of two different classes of voters to initiate incorporation (those within city school districts and those outside city school districts) a relatively small number of voters may block local efforts to incorporate.
- **System Promotes Flawed Boundaries.** Forming boroughs under the current ad hoc and voluntary basis has led to compromises with regard to ideal municipal boundaries. In some cases, boroughs have sought to draw boundaries to maximize their financial and political resources to the detriment of adjacent communities.

The Local Boundary Commission takes the view that timely attention to these matters is warranted. Details about the problems and the Commission's proposed legislative solutions follow.

Background

The Local Boundary Commission is one of five State boards created under Alaska's Constitution. Its duties include reviewing proposals for borough incorporation and annexation. Additionally, the Commission has the responsibility under AS 44.33.812 to make studies of "local government boundary problems." The Commission considers the lack of a strong State policy promoting the extension of borough government to be the most pressing "local government boundary problem" facing Alaska.

"The state has failed to continue the evolution of local government directed by the Constitution."

— Alaska Municipal League

The Commission considers the natural development of government in the unorganized borough to be

stymied. Alaska's Constitution encourages the extension of borough government.¹ Yet, present circumstances have led the Alaska Municipal League to take the position that, "The state has failed to continue the evolution of local government directed by the Constitution."²

The Local Boundary Commission joins others that have previously expressed a preference for voluntary extension of borough government. However, many of those have also taken the position that the State should compel the extension of borough government in regions capable of supporting boroughs if citizens choose not to organize voluntarily. For example, the constitutional convention delegates who wrote the local government provisions of Alaska's Constitution held the view that creation of boroughs should be compulsory, with provision for local initiative.³



Local Government Committee of the Alaska Constitutional Convention, February 1956

¹ *Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d 92, 101 (Alaska 1974).

² Alaska Municipal League, *AML Issue Paper: Municipal Government in Alaska*, (printed from the Alaska Municipal League's Internet site at: <http://www.akmunileague.org/whitepaper.htm>), page 2.

³ Victor Fischer, *Alaska's Constitutional Convention*, 1975, page 119.

Several who have favored voluntary incorporation have also acknowledged that, to be successful, such an approach requires adequate incentives to encourage incorporation. Unfortunately, current law has many provisions that act as disincentives to borough formation and annexation. However, if the disincentives were removed, it is unlikely that the State still could provide sufficient inducements to motivate all of its citizens to incorporate boroughs voluntarily.

Alaska's "Task Force on Governmental Roles", established by the 1991 Legislature to define Federal, State, and local relationships in the delivery of public services, "stopped short of endorsing mandatory borough formation legislation but agreed that continued formation of additional borough governments should be a *primary* state policy goal."⁴ (emphasis added) However, instead of promoting borough formation, State policy has actually continued to regress in that arena since the 1991 Task Force study.⁵

Citizens and local officials in some areas have become frustrated over procedural and policy impediments to borough formation. For example, before any laws had been written concerning borough government in Alaska, residents of Cordova who attended a January 6, 1960 meeting of the Local Boundary Commission at the Cordova High School Auditorium expressed an immediate need for a Prince William Sound borough.

A clear majority recommended that borough boundaries in this area include Prince William Sound, east to the Canadian border, south along the border to Yakutat, then west to Prince William Sound: that this area be unorganized until borough standards are established so that a decision on a "home rule" or so-called "general law" boroughs (sic) can be made. (emphasis added) They felt that although they are probably not ready for "home rule" at this time, there is a real need for organized borough government in this area as soon as possible. (emphasis added)

There is a definite feeling of tie-in with all of Prince William Sound, the "highway communities" and the Copper River Valley when that road is finished. They definitely desire that the fishing areas on the west side of Prince William Sound be included in this area. Yakutat should be included if such is the wish of that community.⁶

Despite the aspiration among Cordova residents for a Prince William Sound Borough in 1960, such a borough, of course, has yet to form. However, current officials of the City of Cordova

⁴ Brad Pierce, Governor's Office of Management and Budget, and the Alaska Municipal League, *Final Report: Task Force on Governmental Roles*, July 10, 1992, page 15.

⁵ The Local Boundary Commission has chronicled an extensive and growing list of borough disincentives in its annual reports to the Legislature since the 1980s. Most recently this issue was addressed on pages 38-41 of the Commission's report to the 2001 Legislature. That report is available on the Internet at: http://www.dced.state.ak.us/mra/LBC/pubs/2000_LBC_Annual_Rpt.pdf

⁶ Local Boundary Commission, *First Report to the Second Session of the First Alaska State Legislature*, February 2, 1960, page 2-4.

"They felt . . . there is a real need for organized borough government in this area as soon as possible." - Local Boundary Commission, commenting on January 6, 1960 meeting with Cordova residents

⁷ Zeine, Ed, Mayor of the City of Cordova, letter to the Chairman of the Local Boundary Commission, December 20, 1999.

⁸ City of Cordova, *Proposal for Reform of State Law Regarding Borough Formation*, December 1999.

⁹ City of Cordova *Resolution 12-99-83*.

¹⁰ See comments by Thomas Morehouse and Victor Fischer in *Borough Government in Alaska*, page 73, former Governor Jay Hammond in *Tales of Alaska's Bush Rat Governor*, page 149; John Rader in *The Metropolitan Experiment in Alaska - A Study of Borough Government*, page 91; Thomas A. Morehouse, et al., *Alaska's Urban and Rural Governments*, page 43; House Research Agency in *A New Mandatory Borough Act: Local Education Costs and Potential Revenues of Newly Created Boroughs*, page 14; and City of Cordova in *Proposal for Reform of State Law Regarding Borough Formation*, December 1999.

¹¹ *Mobil Oil Corporation v. Local Boundary Commission*, *supra*, 98.

continue to recognize the need for a borough government. They cite procedures established under the Borough Act of 1961 as a principal reason for the lack of a Prince William Sound borough. Dissatisfaction with the status quo is evident in the following recent comments from Ed Zeine, Mayor of Cordova:

The City of Cordova and many other smaller Alaska cities have been frustrated in previous attempts to establish borough governments. The current process is cumbersome and self-defeating.⁷

In December of 1999, circumstances led the City of Cordova to propose legislation that is similar to the Commission's current proposal for reform of State law regarding borough incorporation and annexation.⁸ The Cordova City Council adopted a formal resolution providing as follows:

... the City Council of Cordova, Alaska, hereby encourages the executive and legislative branches of the government of the State of Alaska to review and amend the borough formation process, and offers the paper "Proposal for the Reform of State Law Regarding Borough Formation" as a starting point for the process of change.⁹

Several respected Alaskans and institutions have concluded - some as far back as the early 1960s - that it is naive to assume that the voluntary approach to borough formation will succeed except in rare instances.¹⁰ The test of time has clearly proven them to be correct. During the past four decades, boroughs have formed voluntarily in areas that encompass only four percent of Alaskans. In contrast, eighty-three percent of Alaskans live in organized boroughs formed in a matter of a few months under the 1963 Mandatory Borough Act. The remaining thirteen percent live in the unorganized borough. Stated in other terms, ninety-six percent of Alaskans live in regions of the state that have not embraced borough government voluntarily.

Boroughs are adaptable to both rural and urban areas.¹¹ More than one-third of Alaska's organized boroughs encompass areas that are *exclusively* rural (Bristol Bay, North Slope, Northwest Arctic, Aleutians East, Lake & Peninsula, and Yakutat). Another one-third of the boroughs include a number of rural communities (Kodiak Island, Kenai Peninsula, Haines, Ketchikan, Matanuska-Susitna, and Denali).

Eben Hopson, first Mayor of the North Slope Borough, promoted borough formation as a means to advance the social and economic well-being of North Slope residents. Additionally, he saw

the North Slope Borough as a means to preserve and protect the Inupiat culture and language and to establish local control and self-determination.¹²

A report prepared for the Alaska Federation of Natives in 1999 noted that boroughs have the capacity that other organizations lack to address particular needs of Native communities:

In many Native communities, neither tribal government nor (city) status provides the powers or jurisdiction necessary to control land uses and protect subsistence fish and wildlife habitat in the much larger area surrounding the community. Also, developments in the surrounding area are outside the taxing powers of these local governments. One solution to these problems is to create an areawide or regional borough government under state law in order to bring these lands under local governmental jurisdiction. In addition to land use planning and control and tax powers, borough government also can localize control of public education. These are all mandatory powers of borough government.¹³

The Alaska Municipal League takes the following view concerning the suitability of boroughs in predominantly Native areas:

Borough government can be a valuable tool for local self-determination that allows municipal and tribal government/organizations to co-exist successfully while resources are maximized.¹⁴

Several existing boroughs are inhabited predominantly by Natives. These include the Aleutians East Borough, Lake and Peninsula Borough, North Slope Borough, Northwest Arctic Borough, and the City and Borough of Yakutat. Other existing boroughs include significant Native populations. At present, one-third of the villages recognized by the Bureau of Indian Affairs are within organized boroughs.¹⁵

It is unlikely that regions in the unorganized borough – those inhabited predominantly by non-Natives as well as those inhabited predominately by Natives – will form boroughs voluntarily under the present circumstances. In an effort to resolve the conflict between the constitutional goal of “maximum local self-government with a minimum of local government units”, and the near absence of local initiative, the Local Boundary Commission urges reform of State law concerning boroughs. Specifically, the Commission supports procedures wherein the State would take the initiative to extend borough government to those areas that have the human and financial resources needed to support boroughs.

The Commission’s suggested reform proposes roles for both the executive and legislative branches of State government, including the Commission itself, to determine whether regions of the

¹² Thomas Morehouse, et al., *Alaska's Urban and Rural Governments*, 1984, page 144.

¹³ Cornell, Stephen, et al., *The Economic Resource Group, Inc.*; and Victor Fischer and Thomas Morehouse, Institute of Social and Economic Research, University of Alaska, Anchorage. *Achieving Alaska Native Self-Governance: Toward Implementation of the Alaska Natives Commission Report*, May 1999, page 44.

¹⁴ Alaska Municipal League, *supra.*, page 4.

¹⁵ Cornell, et al., *supra.*, Appendix A lists 223 BIA-recognized villages, 72 of which are within organized boroughs.

¹⁶ See Thomas A. Morehouse and Victor Fischer; *Borough Government in Alaska*; 1971, pages 43 - 46.

unorganized borough have adequate human and financial resources to support borough government. The proposed process is patterned after the method established in Alaska's Constitution for review of municipal boundary changes by the Commission and Legislature. That system has been in place since 1959 and has been used extensively throughout both rural and urban parts of Alaska.

Section 1 of this policy paper provides a more detailed discussion of the fundamental public policy issues that compel attention to this matter. Section 2 includes a copy of the remedial legislation proposed by the Local Boundary Commission. Section 3 provides a sectional analysis of the legislation, a timeline to illustrate how the proposed process would be implemented, and a summary of the standards for borough incorporation. Lastly, Section 4 offers background information concerning the Local Boundary Commission.

Section 1.

Discussion of the need for reform.

This section of the policy statement outlines reasons why the Local Boundary Commission advocates the extension of borough government to unorganized regions of Alaska that possess the human and financial resources to operate borough government. Further details on these topics are available from the Commission upon request.

A. Boroughs are Alaska's fundamental political subdivision for delivery of municipal services, yet the State has never established a rational basis for the creation of new boroughs or the expansion of existing boroughs.

Boroughs were conceived as the fundamental political subdivision of the State of Alaska through which municipal services would be delivered.¹⁶ The failure of the policy to establish boroughs through voluntary efforts in the early years of statehood led John Rader – Alaska's first State Attorney General and a former member of the State House of Repre-

"The greatest unresolved political problem of the State was the matter of boroughs." –
John Rader, Alaska's first State Attorney General and former legislator

representatives – to the conclusion in 1963 that “the greatest unresolved political problem of the State was the matter of boroughs.”¹⁷

Given the critical role of borough governments in the delivery of fundamental services, it is remarkable that the State has never developed an ordered process to determine when areas of Alaska should be compelled to organize boroughs if local citizens decline to take initiative. In the Commission’s view, financial capacity and adequacy of human resources are appropriate criteria upon which to base determinations concerning whether boroughs should be required to form in particular regions.

For the past 40 years, with one brief exception, the State has delegated to local citizens decisions as to whether boroughs should be organized. Given the lack of incentives to form boroughs, it is not surprising that few regions have chosen to voluntarily take on the responsibility for borough government.

The exception referred to in the preceding paragraph was, of course, the 1963 Mandatory Borough Act. That act compelled the formation of boroughs encompassing Ketchikan, Sitka, Juneau, Kodiak Island, Kenai Peninsula, Anchorage, Matanuska-Susitna valleys, and Fairbanks.¹⁸ Today, those eight boroughs encompass eighty-three percent of the state’s population. The 1963 Mandatory Borough Act was the product of a bipartisan legislative effort that was supported by Governor Egan. John Rader, author of the 1963 Mandatory Borough Act, characterized the impetus for action as follows:

In striving to form viable units of local self-government, the people of Alaska have used the courts, the executive branch of their Territorial Government, and the local subdivisions themselves. It was only after a series of repeated failures that in 1963 the State legislature finally exercised the authority which had previously been delegated to others.¹⁹

In today’s light, Mr. Rader’s statement is overly broad. The 1963 Mandatory Borough Act was applied only to eight particular regions of Alaska. Although an understanding had reportedly been reached among legislators prior to approval of the 1963 Mandatory Borough Act that there would be subsequent legislation to compel other areas to form boroughs, the exercise of the State’s authority to form boroughs was utilized only in that single instance.²⁰ The State subsequently returned to its prior policy which Mr. Rader characterized as an ineffective delegation of responsibility for formation of boroughs.

¹⁷ Ronald C. Cease and Jerome R. Saroff; eds., *The Metropolitan Experiment in Alaska: A Study of Borough Government, 1968*, page 93.

¹⁸ The bill originally included other areas that were subsequently omitted in order to win passage of the Mandatory Borough Act. Moreover, an area exceeding 11,000 square miles was detached from the Fairbanks North Star Borough shortly after it was formed under the Mandatory Borough Act. The detached area included much of what today comprises the Delta Greely Regional Educational Attendance Area and the Alaska Gateway Regional Educational Attendance Area. Those areas were detached not because they lacked the resources needed to support borough government, but because they lacked sufficient ties to the Fairbanks North Star Borough.

¹⁹ Cease and Saroff, *supra.*, page 81.

²⁰ Clem Tillon, a member of the 1963 State House of Representatives, indicated that the 1963 Mandatory Borough Act was

Footnote continued from previous page

approved by the Legislature with the understanding that other unorganized areas would be compelled to organize by subsequent legislatures. (Personal communication with Local Boundary Commission staff, April 28, 2000).

²¹ Gerald A. McBeath and Thomas A. Morehouse; eds., *Alaska State Government and Politics*, 1987, page 44.

Victor Fischer, constitutional convention delegate and Secretary to the Convention's Committee on Local Government reflected in 1987 that, "Despite the constitutional convention's emphasis on state leadership in establishing the borough system, governors and legislatures have been reluctant to create boroughs, largely because of frequent local opposition to establishment of another level of government."²¹

"Despite the constitutional convention's emphasis on state leadership in establishing the borough system, governors and legislatures have been reluctant to create boroughs, largely because of frequent local opposition to establishment of another level of government." - Victor Fischer, Constitutional Convention Delegate and Secretary to the Committee on Local Government



As noted earlier, the Commission takes the view that financial capacity is an appropriate criterion for deciding whether regions should organize as boroughs. The Commission recognizes that certain areas of the unorganized borough may have limited fiscal capacities - places where there are few jobs, marginal tax bases, and undeveloped economies. Still, even in certain communities with such characteristics, citizens have taken on local responsibility for the same duties and obligations imposed on organized boroughs by State law. For example, citizens of Galena, Hoonah, Hydaburg, Kake, Nenana, Pelican, St. Mary's, and Tanana all operate first class cities in the unorganized borough that have duties to provide services and to make local contributions in support of education identical to those required of organized boroughs. Yet, more prosperous communities such as Gustavus, Tok, Glennallen, Delta Junction, and Bethel bear no financial responsibility for education. A comparison of economic characteristics of certain of these communities is provided in Table 1 on page 12.

Although not typical of homes either in organized boroughs or the unorganized borough, these homes in Gustavus are outside any municipal tax jurisdiction and are also outside a school district with local financial responsibilities.

Alaska's best little secret...

GUSTAVUS, ALASKA

A Cozy Community at the Mouth of Glacier Bay

<p>PRISTINE 3 STORY SINGLE FAMILY 4 bedroom on 2 acres with meadow, water, and mountain view. Appropriate for family living, and business opportunities. Asking \$450,000</p> 	<p>CUSTOM CHALET Located on 3 acres. Solarium, reading loft, hot tub, and garden. Unique design and interior decoration. Asking \$357,700</p> 
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Regional statistics suggest that there are a number of areas in the unorganized borough that enjoy relatively strong economies. For example:

- Seven of the eleven (64%) census areas in the unorganized borough had per capita personal incomes in 1998 that were greater than that of the Matanuska-Susitna Borough and the Lake and Peninsula Borough. (See Appendix A-1.) The Matanuska-Susitna Borough is Alaska's third most populous municipal government and was one of the eight regions organized under the 1963 Mandatory Borough Act.²²
- 1998 local employment per 1000 residents was higher in three of eleven (27%) census areas of the unorganized borough than it was in eight of the sixteen (50%) of the organized boroughs in Alaska.²³ (See Appendix A-2.)
- Per capita earnings from local employment in Alaska were higher during 1998 in three of the eleven census areas of the unorganized borough than they were in ten of the sixteen (62.5%) organized boroughs in Alaska.²⁴ (See Appendix A-3.)
- June 2000 employment statistics show that more than half of the census areas in the unorganized borough had lower unemployment rates than the Kodiak Island Borough, North Slope Borough, Northwest Arctic Borough, Yakutat Borough, Bristol Bay Borough, and the Lake and Peninsula Borough.²⁵
- Previous borough studies have concluded that many regions of the unorganized borough have the capacity to support organized boroughs.²⁶

As is the case with regard to financial capacity, there are indications that many regions of the unorganized borough have human resources sufficient to operate borough governments. Consider, for example:

- The 1999 population of the unorganized borough was 35% greater than the *combined* 1999 populations of eleven of the sixteen (69%) organized boroughs in Alaska.
- The 1999 population of the unorganized borough was 20% greater than the *combined* populations of seven of the eight organized boroughs formed under the 1963 Mandatory Borough Act at the time of incorporation.

²² U.S. Department of Commerce, Bureau of Economic Analysis, *Personal Income and Per Capita Personal Income by County, 1996-98, Alaska* (printed from the Internet at http://www.bea.doc.gov/beat/regional/rels/scb/sv_ak.htm)

²³ Per capita employment figures were extrapolated from data published by Alaska Department of Labor and Workforce Development (ADLWD). Employment data from 1998 Employment & Earnings Summary Report, ADLWD, February 2000; population data from ADLWD website at <http://www.labor.state.ak.us/research/pop/ca2.htm>

²⁴ *Ibid.*

²⁵ Source: Alaska Department of Labor and Workforce Development. *Labor Force by Region and Census Area*, printed from the Internet at <http://www.labor.state.ak.us/news/news01-06.htm>

²⁶ Alaska Department of Community and Regional Affairs. *Synopsis of Borough Feasibility Studies*

Footnote continued from previous page

Conducted During 1988 and 1989: Copper River Basin, Lower Yukon Region, Delta Greely Region, Northwest Bristol Bay Region, Denali Region, Southwest Region/Dillingham Area, Chatham Region, Yukon-Koyukuk Region, Prince William Sound Region, and Western Aleutians Region, September 1989.

²⁷ 52,702 of the 82,809 residents in the unorganized borough live outside home rule and first class cities (1999 population data from the Alaska Department of Community and Economic Development).

- More than one-third of Alaska's organized borough governments have successfully operated with fewer than 2,500 residents. One borough has fewer than 750 residents.
- Education, the most important service offered by boroughs, has long been under local control in all areas of the unorganized borough through REAs and city school districts. Education is one of just three services required of boroughs.

Conclusion. Significant distinctions exist with regard to the delivery of essential local services for Alaskans in boroughs vis-à-vis Alaskans in unorganized areas. Those distinctions lack an equitable basis in terms of the most fundamental criteria - financial and human capacity. Some unorganized areas appear to have financial and human resources that are superior to such resources in areas that were earlier compelled to form boroughs. These discrepancies run counter to Article I, Section 1 of Alaska's Constitution and to the intent of the framers of Alaska's Constitution regarding the formation of organized boroughs.

The reform proposed by the Local Boundary Commission would establish an equitable basis for deciding, on the merits and according to standards now in law, which areas of Alaska might be included within new or existing organized boroughs.

B. There is a lack of local responsibility for education and platting services in most of the unorganized borough.

Residents of the unorganized borough outside home rule and first class cities have no obligation under State law to support fundamental services such as public education and platting. (See Appendix A-4.) Residents of those areas comprise two-thirds of the population of the unorganized borough. The number of people living in the unorganized borough outside of home rule and first class cities is nearly equivalent to the population of the Matanuska-Susitna Borough, Alaska's third most populous municipal government.²⁷

A 1991 study of Alaska's education foundation funding formula raised fundamental public policy concerns stemming from the absence of local responsibility:

Another serious drawback with full state funding is that it provides no incentive for schools to reduce costs when they can do so without reducing the quality of education. Local taxpayers elect local school boards, mayors, and assembly members who make decisions about school budgets. If local taxpayers pay the same minimum amount for education

regardless of the size of their school district's budget – as is the case with the current Alaska required local effort provisions – there is no incentive for schools to reduce costs.²⁸

“Another serious drawback with full state funding is that it provides no incentive for schools to reduce costs when they can do so without reducing the quality of education.” – Institute of Social and Economic Research, University of Alaska

²⁸ Matthew Berman and Eric Larson, Institute of Social and Economic Research, University of Alaska, *Education Equity and Taxpayer Equity: A Review of the Alaska Public School Foundation Funding Program*, 1991, page 89.

In contrast to residents of regional educational attendance areas, all other Alaskans are legally obliged to provide financial support for local public education. Thus, Alaskans living in the state's sixteen organized boroughs and eighteen of the ninety-six city governments in the unorganized borough have financial responsibility for operation of local schools. (See Appendices A-5 and A-6.) In Fiscal Year 2000, that obligation amounted to approximately \$144 million. The required local contributions of municipal school districts in effect reduce the level of education funding that the State would otherwise be obligated to provide. The State has chosen to bear the burden for fundamental services in two-thirds of the unorganized borough, again, without regard for local fiscal capacity or human resources. Table 1 emphasizes the lack of a rational basis in terms of fiscal capacity for the disparate treatment of Alaskans. Comparisons are made in each of three regions of Alaska between a community that is obligated by State law to provide education and plating services and one that is not.

TABLE 1
COMPARISON OF SELECTED COMMUNITIES IN THREE REGIONS OF THE UNORGANIZED BOROUGH

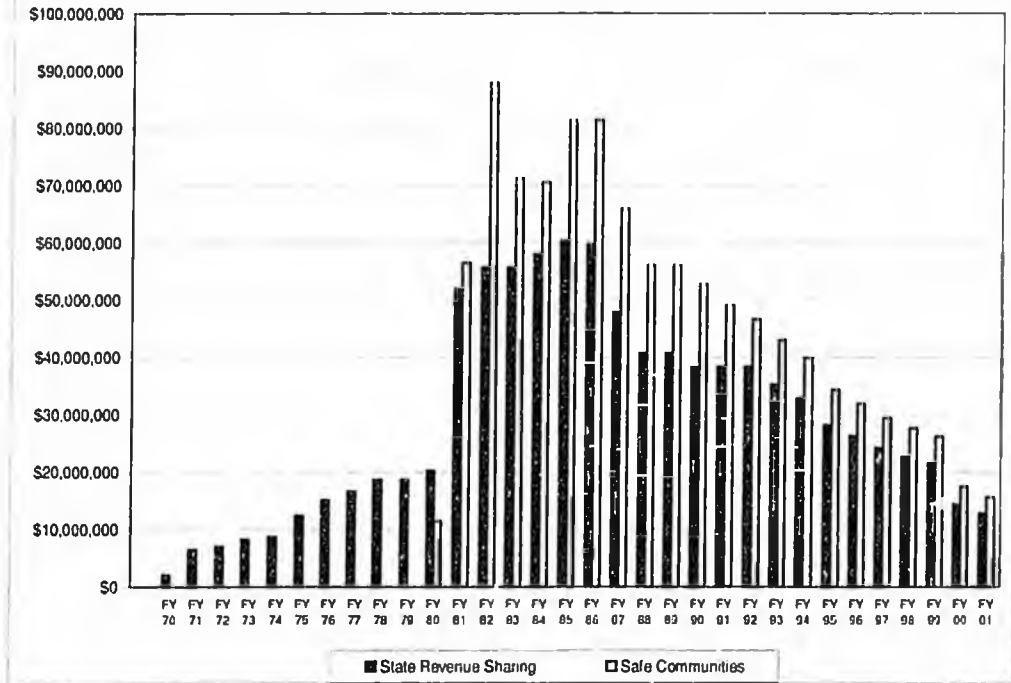
Characteristic	Southeast Alaska		Interior Alaska		Western Alaska	
	Gustavus	Hydaburg	Tok	Tanana	Bethel	St. Mary's
Municipal Status	Unincorporated	First class city	Unincorporated	First class city	Second class city	First class city
Local Responsibility for Schools	No	Yes	No	Yes	No	Yes
1999 Population	377	369	1,235	301	5,741	475
Predominant Population (1990)	96% Caucasian	87% Native American	86% Caucasian	76% Native American	60% Native American	82% Native American
1990 Median Family Income	\$43,750	\$22,639	\$32,039	\$24,375	\$45,203	\$29,583
1990 Employment per 100 Residents	48	27	40	32	43	34
1990 Unemployment	4.6%	21.8%	20.3%	21.8%	9.0%	19.2%

²⁹ Bill Rolfzen, Alaska Department of Community and Economic Development. Note: data for Fiscal Years 1970 - 1979 do not include gross business receipts taxes shared by the State with municipalities. When the gross business receipts tax was repealed, the Municipal Assistance Program was instituted to replace revenues that would otherwise be lost for municipal governments. Thus, the revenues shown in the table for Fiscal Years 1970 - 1979 are underreported.

³⁰ Governor's Office of Management and Budget and the Alaska Municipal League, *supra*, page 15.

The inequity of the current system has been exacerbated by a reduction of more than 80% in general financial aid from the State to all municipalities since the peak level of funding in Fiscal Year 1982. Table 2 depicts general financial aid to local governments in Alaska since the inception of the State revenue sharing program in Fiscal Year 1970.²⁹

Table 2 - Funding History of State Revenue Sharing and Safe Communities Programs



The State could, of course, impose taxes on unorganized areas. In fact, the previously noted 1991 Task Force on Governmental Roles took the position that "the inequity in tax burden between residents of municipalities and residents of the unorganized borough is better addressed via state fiscal policies (taxes, shared revenue programs, education foundation funding and municipal grants) than by imposing areawide government on people who do not want it."³⁰ The Commission notes that there were a number of attempts to levy taxes on unorganized areas following the report of the Task Force. However, every attempt met intense opposition from residents of unorganized areas and none was implemented.

In a 1981 study of service delivery in the unorganized borough by the former Alaska Department of Community and Regional Affairs, Dr. John J. Kirlin characterized the situation as follows:

"... the present system encourages dependence."

-Dr. John J. Kirlin

... the present system encourages dependence. Inhabitants of the unorganized borough are encouraged to be supplicants and clients of service-delivery structures, and largely spectators upon the political life of the

State. They are not citizens effectively participating in the governance of the policy. Moreover, this system is not supportive of native cultures and effectively requires natives to submerge or abandon traditional cultural values in order to participate in the State's politics.³¹

Conclusion. Tension clearly exists between the circumstances described herein and two key provisions in Alaska's Constitution. The first is Article I, Section 1, which provides, in relevant part, "that all persons are equal and are entitled to equal rights, opportunities, and protection under the law; and that *all persons have corresponding obligations to the people and to the State.*" (emphasis added) The second is Article X, Section 6 which provides in relevant part, "The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, *allowing for maximum local participation and responsibility.*" (emphasis added)

The reform proposed by the Local Boundary Commission would extend responsibility for fundamental services to those presently unorganized areas that can afford to assume such responsibility.

C. The lack of organized boroughs has resulted in a highly fragmented structure for the delivery of public services.

Organized boroughs are the keystones for the delivery of efficient and effective municipal services. Organized boroughs deliver fundamental services such as education and platting on an areawide basis. In contrast, education services are delivered in the unorganized borough in a highly fragmented manner through a combination of service areas and cities. Consequently, although the unorganized borough has just thirteen percent of Alaska's population, it encompasses seventy percent of its school districts.

More than one-third of the school districts in the unorganized borough have fewer than 250 students. That figure was established by the State as the minimum threshold fifteen years ago for new school districts.³² Moreover, one-third of the school districts in the unorganized borough required waivers for FY 2000 from the State Board of Education regarding the requirement that at least 65 percent of operating funds must be budgeted for instruction.

³¹ Alaska Department of Community and Regional Affairs. *Problems and Possibilities for Service Delivery and Government in the Alaska Unorganized Borough*, September 1981, page 54.

³² AS 14.12.025.

³³ Alaska Municipal League, *supra*, page 3.

³⁴ Alaska Department of Community and Regional Affairs, *supra*, page 54.

In organized boroughs, citizens tend to streamline municipal government through unification or consolidation. In 1970, half of the people who lived in organized boroughs also lived in city governments. Today, the figure stands at just eighteen percent. Approval of pending proposals for consolidation of local governments in Fairbanks, Ketchikan, and Haines would reduce that figure to less than ten percent.

13% of Alaskans live in the unorganized borough



70% of Alaska School Districts exist in the unorganized borough

In contrast, more than three-quarters of unorganized borough residents live in city governments where no regional municipal structure is available. Here again, with only 13% of the state's population, the unorganized borough has a disproportionately high number (66%) of the city governments in Alaska.

The Alaska Municipal League offered the following characterization of the manner in which services are delivered in the unorganized borough:

Local services are currently provided by the state and a patchwork of over 400 separate municipal governments, non-profit corporations, regional school attendance areas, tribal governments, etc. Current service delivery is neither inexpensive or efficient, due to the lack of coordinated service delivery. Therefore, borough government would not be new and could be less expensive and more efficient than the "system" now in place.³³

In the previously referenced 1981 study of the unorganized borough, Dr. John J. Kirilin characterized the current structure as follows:

To assert that the present situation is a "worst case" scenario is not comforting to those seeking to make this system effective, but it may well be accurate. The label is warranted as much for the incapacity for future development of the present system or for its current dysfunctions. This system has extremely limited capacity to develop and implement policies; it has even less capacity to "learn" (that is, to discern preferable institutions and policies) and to change. Moreover, the very existence of this complex, jury-rigged non-system provides disincentives

"To assert that the present situation is a 'worst case' scenario is not comforting to those seeking to make this system effective, but it may well be accurate." - Dr. John J. Kirilin

to change, including decreases in state and federal funding if incorporation occurs. The present system is also apparently expensive to operate and does not succeed in delivery of needed services to many inhabitants of the unorganized borough. Alternative systems may not be less expensive, but the present situation can hardly be defended as economical.³⁴

In terms of the natural evolution of local governments and the constitutional policy of minimum numbers of local governments, it is noteworthy that the 1991 Task Force on Governmental Roles endorsed the unification and consolidation of cities and organized boroughs "wherever possible to provide for more efficient and cost-effective service delivery."³⁵

Conclusion. The absence of organized boroughs throughout Alaska has led to a proliferation of governmental and quasi-governmental organizations in the unorganized borough. The reform proposed by the Local Boundary Commission would create the foundation to promote greater efficiency and effectiveness in the delivery of services in the area currently encompassing the unorganized borough.

D. The lack of regional government has hindered social and economic development in unorganized areas.

Most, if not all, organized boroughs successfully engage in economic development activities. Examples include promotion of the visitor industry in Anchorage through bed taxes, development of port facilities at Point Mackenzie by the Matanuska-Susitna Borough, and support for a trans-Alaska natural gas pipeline by the Fairbanks North Star Borough and North Slope Borough.

Boroughs also play a key role in economic development in rural areas. A study conducted last year concerning fisheries in the

"... borough governments in rural Alaska are often the largest employer and serve as the economic engine for the area." - Northern Economics, Inc.

Bristol Bay region stressed that "... borough governments in rural Alaska are often the largest employer

and serve as the economic engine for the area."³⁶ The Lake and Peninsula Borough describes its economic development activities as follows:

The Borough provides a variety of planning functions related to community and economic development. Such functions include grant writing and management, technical assistance on local government and development issues, general assistance in community planning, assistance with planning for and financing capital projects, and general economic development assistance; especially in the areas of fisheries and tourism.

³⁵ Governor's Office of Management and Budget and the Alaska Municipal League. *supra*, page 15.

³⁶ Northern Economics, Inc., in association with KEA Environmental Inc., and HDR Alaska, Inc. *Impacts of the 1997-1998 Bristol Bay Fishing Disasters*, June 1999, page ES-4.

³⁷ Alaska Commission on Rural Governance and Empowerment, *Final Report to the Governor*, June 1999, page 65.

³⁸ *Ibid.*, page 72.

Moreover, boroughs can also be effective advocates in the promotion of public policies that benefit local economies. For example, the Aleutians East Borough operates a Natural Resources Department to provide residents of the Borough with representation before various fishery advisory and management bodies. It also assists in the development and implementation of scientific efforts and regulations regarding commercial fisheries in the region.

Organized boroughs also have the legal capacity to issue bonds to finance economic development projects such as roads, docks, and airports. The Aleutians East Borough has secured an estimated \$100 million for capital improvements since its incorporation in 1987. Local funds raised through the sale of bonds were leveraged to obtain State and Federal funding for a variety of capital projects in the Aleutians East Borough.

Further, organized boroughs can also provide stable and predictable political environments that encourage economic development. For example, the incorporation of the Northwest Arctic Borough was a key to opening the Red Dog zinc mine. Today, the Red Dog mine provides hundreds of jobs to residents of the Northwest Arctic Borough.

In addition to economic development, boroughs can provide the jurisdictional basis for addressing social issues. For example, there is no mechanism to provide for alcohol control on a regional basis in the unorganized borough. However, the law allows voters in organized boroughs to establish areawide alcohol controls.

The Alaska Commission on Rural Governance and Empowerment recognized the existence of "a range of land-based jurisdictional issues involving alcohol and other substance abuse control, economic development, environmental management and local governance innovation" in rural Alaska.³⁷

"The State of Alaska must invest in its future by ensuring that a strong, stable, and accountable unit of State government carries out rural development functions." – Alaska Commission on Rural Governance and Empowerment

The Rural Governance Commission also concluded that, "The State of Alaska must invest in its future by ensuring that a strong, stable, and accountable unit of State government carries out rural development functions."³⁸ While the Local Boundary Com-

mission does not view that statement as an endorsement for borough government, boroughs certainly possess the characteristics listed.

Conclusion. The reform proposed by the Local Boundary Commission would offer important tools for economic development and social reform in areas that today remain unorganized.

E. The current system is inequitable.

The 1961 Legislature mandated that every organized borough must operate a system of public schools. In doing so, the State delegated its constitutional duty for operation of schools within those boroughs to those boroughs.

Two years later, the State mandated that eight specific regions of Alaska form boroughs. The 1963 mandate to form boroughs

"No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation." - 1963

Alaska Legislature and Governor Egan

was tempered with the promise that organized boroughs would continue to receive the same levels of funding as unorganized areas. The 1963 Mandatory Borough Act provided that: "No

area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation."³⁹

However, the commitment for equal funding was short lived. Requirements by the State for local contributions in support of schools on the part of municipal school districts reduced levels of State aid to borough school districts. Initially, the disparate treatment was small in relative terms - single digit reductions in the percentage of State education foundation aid. However, in 1987, following the dramatic reduction in State oil revenues, the State imposed far deeper cuts.⁴⁰ Today, the financial burden of the boroughs' required contribution to local education amounts to \$135 million annually.

The local taxpayer disenchantment that prompted the recently defeated statewide local property tax cap initiative stemmed in part from significant increases in city and borough property taxes to offset previously-noted reductions in State funding for local

³⁹ Section 1, Chapter 52, *Session Laws of Alaska*, 1963.

⁴⁰ A brief history of education funding in Alaska is provided in *Education Equity and Taxpayer Equity: A Review of the Alaska Public School Foundation Funding Program*, Institute of Social and Economic Research, University of Alaska, 1991, pages 26-27 and 75-76.

41 Source: Laura Walters, Research Analyst, Alaska Department of Community and Economic Development.

42 AS 14.11.008 provides that a municipal school district with a full value per ADM (average daily membership of students) ranging from \$1 - \$100,000 must contribute 5%. Municipal districts in the range of \$100,001 - \$200,000 must contribute 10%, those ranging from \$200,001 - \$600,000 must contribute 30%; and those with a full value per ADM in excess of \$600,000 must contribute 35% of the cost.

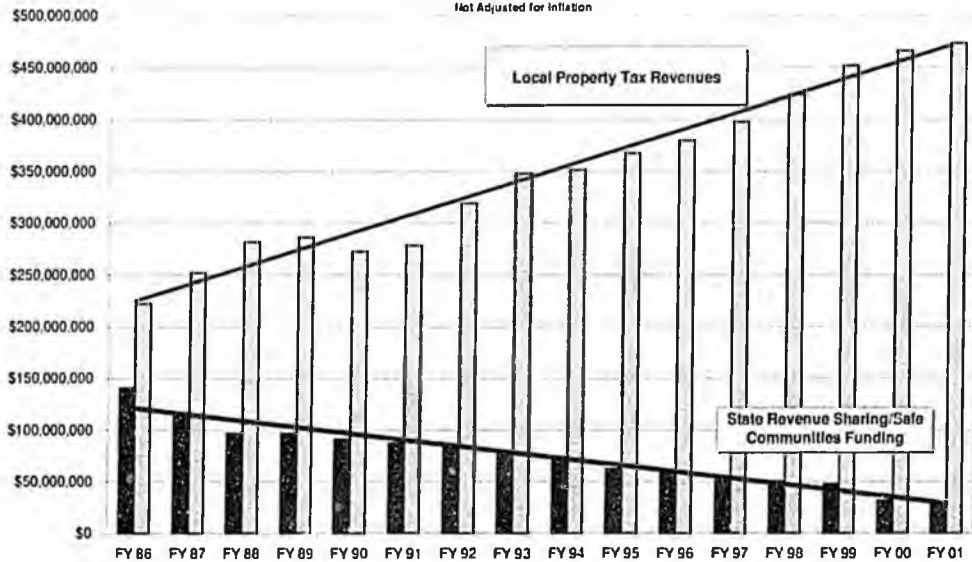
43 Counted among those who are compelled to support fundamental services are residents of organized boroughs, home rule cities in the unorganized borough, and first class cities in the unorganized borough.

governments. Concerns over taxpayer equity also likely played a role. Table 3 below compares increases in property taxes and the reductions in State revenue sharing and safe communities funding since Fiscal Year 1986.⁴¹

Another example of inequity is found in the State's grant programs for construction, rehabilitation, and improvement of schools. Municipal school districts are required to contribute a share of the cost of grant projects ranging from a minimum of five percent to a maximum of thirty-five percent, depending on their fiscal capacity. However, regional educational attendance areas are required to contribute only two percent regardless of the fiscal capacity of the region. Thus, the poorest municipal school districts in Alaska are required to contribute 2½ times the level required from the most prosperous regional educational attendance areas.⁴²

Conclusion. The Commission considers it significant that 85 of

Table 3 - State Revenue Sharing/Safe Communities Funding Versus Local Property Tax Revenues
Not Adjusted for Inflation



every 1,000 Alaskans - more than one in twelve - receives fundamental public services at no cost, *without regard to fiscal capacity*, while all others are compelled to pay for the same services.⁴³ The 1991 Task Force on Governmental Roles noted that, "The inequity in tax burden between residents of first class cities and general law boroughs and those residing in unorganized areas is a perennial area of conflict in Alaska politics."

The reform proposed by the Local Boundary Commission would alleviate the inequity described herein.

Conclusion.

As noted in the introduction, many public interest groups, local government experts, public officials, and citizens have pointed out serious shortcomings over the past 40 years regarding the manner in which the borough concept has been implemented in Alaska. Yet, with the exception of the 1963 Mandatory Borough Act, efforts to implement the constitutional policy promoting formation of boroughs have been generally ineffectual. In fact, since 1963 the State has steadily regressed in terms of promoting the formation of organized boroughs.

On the 40th anniversary of the enactment of legislation intended to implement the borough concept, the Commission urges timely consideration of the reform proposed by the Local Boundary Commission.

Opportunity costs resulting from continuation of the unorganized borough as it is presently configured continue to mount while the capacity of Alaska to support systemic inefficiency in its municipal government framework continues to erode. The Commission urges the Legislature and Governor to take action to resolve this chronic public policy issue.

Section 2. Proposed Legislation

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE – FIRST SESSION

BY

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the determination of full and true value of taxable municipal**
2 **property for purposes of certain programs; and relating to incorporation of**
3 **second class boroughs in the unorganized borough, and to annexation of**
4 **portions of the unorganized borough to boroughs and unified municipalities."**

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

6 ***Section 1. AS 14.17.510(a) is amended to read:**

7 (a) To determine the amount of required local contribution under AS
8 14.17.410(b)(2) and to aid the department and the legislature in planning, the
9 Department of Community and Economic Development, in consultation with
10 the assessor for each district in a city or borough, shall determine the full and
11 true value of the taxable real and personal property in each district in a city or
12 borough. If there is no local assessor or current local assessment for a city or

-1-

New Text Underlined [DELETED TEXT BRACKETED]

1 borough school district, then the Department of Community and Economic
2 Development shall make the determination of full and true value from
3 information available. In making the determination, the Department of
4 Community and Economic Development shall be guided by AS 29.45.110.
5 However, the full and true value of taxable real and personal property in
6 any area detached shall be excluded from the determination of the full and
7 true property value of the municipality from which the property was
8 detached for the two years immediately preceding the effective date of the
9 detachment. In making the determination for a municipality that is a
10 school district or for a city that is within a borough school district, the
11 assessed value of property taxable under AS 43.56 shall be excluded if a
12 municipal tax is not levied under AS 29.45.080 in that school district. The
13 determination of full and true value shall be made by October 1 and sent by
14 certified mail, return receipt requested, on or before that date to the president of
15 the school board in each city or borough school district. Duplicate copies shall
16 be sent to the commissioner. The governing body of a city or borough that is a
17 school district may obtain judicial review of the determination. The superior
18 court may modify the determination of the Department of Community and
19 Economic Development only upon a finding of abuse of discretion or upon a
20 finding that there is no substantial evidence to support the determination.

21 *Sec. 2. AS 44.33 is amended by adding a new section to article 11 to read:

22 **Sec. 44.33.830. Incorporation or annexation of unorganized areas.**
23 (a) In addition to other methods for incorporation and annexation provided by
24 law, an area of the unorganized borough may be incorporated as a second
25 class borough or annexed to an existing borough or unified municipality under
26 (b) – (f) of this section. AS 44.33.814 – 44.33.828 apply to actions taken by
27 the commission under this section.

1 (b) The Department of Community and Economic Development shall
2 determine which areas of the unorganized borough reasonably appear to
3 satisfy standards for borough incorporation or for annexation to an existing
4 borough or unified municipality. By September 30 of each year, the
5 department shall present to the Local Boundary Commission a list of those
6 areas that reasonable appear to satisfy standards for borough incorporation or
7 for annexation to an existing borough or unified municipality, together with
8 the department's analysis supporting its conclusions regarding the
9 incorporation or annexation standards for each of the areas. By November 30
10 of each year, the commission shall select areas from the list provided by the
11 department that the commission determines may warrant incorporation or
12 annexation. By March 31 of the following year, the department shall prepare
13 a petition for borough incorporation or for annexation of each of the areas
14 selected by the commission. The department shall conduct at least one public
15 meeting in each area for the purpose of gathering information needed to
16 prepare the petition. The department shall provide public notice when the
17 petition has been prepared, make copies of the petition available, and provide
18 any interested person with the opportunity to submit written comments on the
19 petition. After considering the comments, the department may amend the
20 petition. The department shall file the original petition or, if amended, the
21 amended petition with the commission.

22 (c) Upon receipt of a petition filed under (b) of this section, the Local
23 Boundary Commission shall hold at least one public hearing in or near the
24 area proposed for incorporation or annexation. Following the hearing, the
25 commission may amend the petition and may impose conditions on the
26 incorporation or annexation. If the commission determines that the
27 incorporation or annexation meets applicable standards under the state
28 constitution as well as those established by law and commission regulation,
29 and is in the best interests of the state, it may accept the petition. Otherwise, it

1 shall reject the petition. Each incorporation or annexation approved by the
2 commission shall be submitted to the legislature under AS 44.33.828 and
3 takes effect as provided in that section.

4 (d) Regulations of the Local Boundary Commission filed under
5 authority of other provisions of law that apply to incorporation and annexation
6 petitions and that deal with the form and content of petitions, public notice of
7 the filing of petitions, service of petitions, opportunity to file responsive
8 briefs, amendment of petitions, notice and conduct of hearings, conduct of
9 decisional sessions, and reconsideration apply to the preparation and
10 consideration of petitions under this section to the extent they may be applied
11 without conflicting with this section. The Local Boundary Commission may
12 adopt regulations providing additional standards and procedures for
13 incorporations or boundary changes under this section and to carry out the
14 purposes of this section.

15 (e) When a proposal for incorporation of an area under this section
16 becomes effective, the Local Boundary Commission shall immediately notify
17 the director of elections. Within 30 days after notification, the director of
18 elections shall order an election in the area for initial borough officials. The
19 election shall be held under AS 29.05.120 not less than 30 nor more than 90
20 days after the date of the election order. The election order must specify the
21 dates during which nomination petitions for election of initial officials may be
22 filed. AS 29.05.130 – 29.05.150, 29.05.190 – 29.05.210, and AS 29.65.030
23 apply to boroughs incorporated under this section.

24 (f) When a proposal under this section for annexation of an area in the
25 unorganized borough becomes effective, the borough or unified municipality
26 to which the area is annexed shall receive an additional general grant land
27 entitlement equal to 10 percent of the maximum total acreage of vacant,

1 unappropriated, unreserved land within the boundaries of the area annexed.
2 Additional general grant land entitlements under this subsection are subject to
3 AS 29.65.030 – 29.65.140 to the extent that those provisions can be made
4 applicable. The borough or unified municipality to which the area is annexed
5 is also entitled to an organization grant under AS 29.05.190, and, for purposes
6 of applying that section, the effective date of the annexation shall be treated as
7 though it were the date of incorporation.

8

Section 3.

Sectional Analysis

Proposed Legislation for an Act Entitled

"An Act relating to the determination of full and true value of taxable municipal property for purposes of certain programs; and relating to incorporation of second class boroughs in the unorganized borough, and to annexation of portions of the unorganized borough to boroughs and unified municipalities."

Overview. The principal purpose of the proposed legislation is to establish a process under which the State of Alaska will systematically initiate proceedings for borough incorporation and annexation in portions of the unorganized borough that have the human and financial resources necessary to support the extension of borough government. Additionally, the proposed legislation would diminish certain deterrents to the extension of borough government, and add incentives for borough incorporation and annexation. It also resolves an inequity in education funding that arises in rare instances where territory is detached from a municipal school district.

Section 1.

Under current law, if an area is detached from an organized borough, home rule city in the unorganized borough, or first class city in the unorganized borough which is subject to the 4-mill equivalent local contribution in support of schools required by AS 14.17.410(b)(2), that contribution will, for two years following detachment, be based on property values that include the detached territory. The proposed legislation would eliminate that inequity.

Provisions in Section one also eliminate a major disincentive to borough formation in certain regions of Alaska. In less developed parts of Alaska, property taxes are not necessarily the most practical or preferred means of generating municipal revenue. This is evidenced by the fact that four of the last five organized boroughs formed in Alaska do not levy property taxes. Those four boroughs comprise twenty-five percent of all organized boroughs in Alaska.

44 AS 14.17.410(b)(2) provides that "the required local contribution of a city or borough school district is the equivalent of a four mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year, as determined by the Department of Community and Economic Development under AS 14.17.510 and AS 29.45.110, not to exceed .45 percent of a district's basic need for the preceding fiscal year as determined under (1) of this section." Since the value of the trans-Alaska Oil Pipeline is so substantial, the inclusion of portions of the Pipeline within an organized borough increases that borough's local contribution for schools required under AS 14.17.410 to an extent that the only practical way for the borough to meet that requirement is to levy a property tax.

However, current laws governing education funding effectively dictate that any organized borough encompassing substantial oil and gas exploration, production, and pipeline transportation properties such as the trans-Alaska Oil Pipeline must levy a property tax.⁴⁴ Many residents in unorganized areas along the trans-Alaska Oil Pipeline view the inexorable need for a property tax as a significant disincentive to borough formation.

When a municipal government levies property taxes on the trans-Alaska Oil Pipeline or other oil and gas exploration, production and pipeline transportation properties, the proceeds from that tax are deducted from revenues that the State of Alaska would otherwise receive under AS 43.56.010. Thus, the State's financial gains from including oil and gas properties in the local required contribution determinations for a municipality under AS 14.17.410 are offset by an equal loss in State taxes levied under AS 43.56 on oil and gas properties. Moreover, the State incurs a net financial loss when such municipalities invariably levy property taxes on oil and gas properties to meet costs beyond their required local contributions for schools. The certainty of adverse financial impacts to the State that would result from formation of more boroughs along the Pipeline has been a long-standing argument against borough incorporation by critics of such.

Section 1 of the proposed legislation is intended to address the borough disincentive and State fiscal policy issue noted above by eliminating provisions in law which effectively require that boroughs encompassing the trans-Alaska Oil Pipeline levy property taxes. Municipalities would retain the option of levying property taxes, however, they would not be effectively required to do so as they are now. Section 1 provides that if municipal property taxes are not levied within a municipal school district, the value of any oil and gas properties within the municipality shall be excluded from the determination of that municipality's required local contribution for schools. The provision would apply to any home rule or first class city in the unorganized borough and to all municipalities within an organized borough (i.e., the borough and all cities within the borough). To take advantage of the alternative, neither a borough nor any city within that borough could levy property taxes on oil and gas properties.

In addition to determinations of local required contributions in support of schools, Section 1 applies the same principle for the identical reasons to other provisions in State law concerning municipalities. These consist of provisions relating to: (1) school district participation under AS 14.11.008 in grant programs for construction, rehabilitation, and improvement of schools and

education-related facilities; (2) supplementary public school funding floor under AS 14.17.490; and (3) determination of millage rate equivalents under AS 29.60.030 for municipal tax resource equalization entitlements.

Section 2.

As noted in the overview, this section establishes a process under which the State of Alaska will initiate proceedings for borough incorporation and annexation in portions of the unorganized borough that have the human and financial resources necessary to support the extension of borough government. A detailed analysis and explanation of each of the seven subsections of Section 2 follows.

Subsection (a).

This subsection provides that in addition to procedures for borough incorporation and annexation in existing law, incorporation of second class boroughs and annexation to existing boroughs (including unified municipalities) may occur as outlined under subsection (b) – (f) of Section 2.

Additionally, subsection (a) provides that existing State laws (AS 44.33.814 – 44.33.828) governing the Local Boundary Commission generally apply to actions taken by the commission under Section 2. Those existing laws relate to Local Boundary Commission meetings, hearings, minutes, records, notice of public hearings, quorum, approval of boundary changes, expenses, hearings on boundary changes, and effective dates of boundary changes.

Subsection (b).

This subsection requires that by September 30 of each year, the Alaska Department of Community and Economic Development (DCED) must provide the Local Boundary Commission with a list of areas that DCED concludes reasonably appear to satisfy standards for borough incorporation or for annexation to an existing borough or unified municipality. DCED must also provide the Commission with the department's analysis supporting listings.

By November 30 of each year, the Commission must select areas from the list that the Commission determines may warrant incorporation or annexation.

By March 31 of the following year, DCED must prepare a petition for borough incorporation or for annexation of each of the areas selected by the Commission. In the course of preparing the petitions, DCED must conduct at least one public meeting in each area to gather information needed to prepare the petition.

DCED must provide public notice when a petition has been prepared. DCED must provide copies of the petition and must provide opportunity for the public to submit written comments on the petition.

After considering written comments on the petition, DCED may amend the petition. DCED must then file the original petition, or if amended, the amended petition, with the Local Boundary Commission.

Subsection (c).

After the Commission receives a petition, it must hold at least one public hearing in or near the area proposed for incorporation or annexation.

Following the hearing, the Commission may amend the petition and may impose conditions on the incorporation or annexation.

If the Commission determines that the incorporation or annexation meets applicable standards under the state constitution as well as those established by law and commission regulation, and is in the best interests of the state, it may accept the petition. Otherwise, it must reject the petition.

Each incorporation or annexation approved by the Commission must be submitted to the legislature during the first ten days of a regular legislative session. The legislature then has 45 days to review the incorporation or annexation. The incorporation or annexation is tacitly approved by the legislature unless both the House and Senate adopt a concurrent resolution rejecting the proposal within the 45-day review period. This is consistent with the process set out in Article X, Section 12 of Alaska's Constitution for municipal boundary changes recommended by the Commission.

Subsection (d).

This subsection provides that certain regulations adopted by the Local Boundary Commission apply to the preparation and consideration of petitions under Section 2 as long as they do not

conflict with Section 2. These consist of regulations dealing with the form and content of petitions, public notice of the filing of petitions, service of petitions, opportunity to file responsive briefs, amendment of petitions, notice and conduct of hearings, conduct of decisional sessions, and reconsideration. These regulations are found under 3 AAC 110.

Subsection (d) further provides that the Commission may adopt regulations providing additional standards and procedures for incorporations or boundary changes under Section 2 and to carry out the purposes of Section 2.

Subsection (e).

If a proposal for incorporation of a second class borough receives tacit approval from the legislature, the Commission must notify the State director of elections. Within 30 days, the director of election must order an election in the area for initial borough officials. The election must be held under AS 29.05.120 not less than 30 or more than 90 days after the date of the election order. The election order must specify the dates during which nomination petitions for election of initial officials may be filed.

Subsection (e) provides that other general laws governing borough incorporation apply to boroughs incorporated under Section 2. These consist of laws relating to integration of special districts and service areas (AS 29.05.130); transition (AS 29.05.140); challenge of legality (AS 29.05.150); organization grants (AS 29.05.190); organization grant fund (AS 29.05.200); transitional assistance to boroughs (AS 29.05.210); and land grants (AS 29.65.030).

Subsection (f).

This subsection provides two incentives for borough annexation. First, it extends land grants to boroughs that annex parts of the unorganized borough. Like grants for newly incorporated boroughs, the grant equals 10 percent of the total acreage of vacant, unappropriated, unreserved land within the boundaries of the portion of the unorganized borough that was annexed. Land grants are subject to general laws governing municipal land grants under AS 29.65.030 – 29.65.140 to the extent that those provisions can be made applicable.

Additionally, the borough to which an unorganized area is annexed is also entitled to an organization grant under AS 29.05.190.

Time Line for Incorporation or Annexation Under Proposed Legislation

By September 30 ↓	DCED lists prospective borough incorporations & annexations	New provision in law
By November 30 ↓	LBC selects proposals from DCED list	New provision in law
December 1 ↓	DCED conducts meetings in regions selected by LBC	Parallel provision in existing law [AS 29.05.080(a)]
	DCED prepares petitions	Parallel provision in existing law [AS 44.33.812(a)(3)]
	DCED provides public notice of petitions	Existing law (3 AAC 110.450)
	Interested persons allowed to comment on petitions	Existing law (3 AAC 110.480)
	Based on comments DCED may amend petitions	Existing law (3 AAC 110.540)
March 31 ↓	DCED files petitions with LBC	Existing law [3 AAC 110.440(c)]
April 1 ↓	Notice given of LBC hearings	Existing law (3 AAC 110.550)
	LBC conducts hearing in region	Existing law (AS 29.05.090)
	LBC approves, rejects, or amends/conditions/approves petitions	Existing law [AS 29.05.100(a)]
	LBC adopts written decisional statement for each petition	Existing law [3 AAC 110.570(f)]
	Interested parties may seek reconsideration of LBC decision	Existing law (3 AAC 110.580)
mid- January ↓	LBC files recommendations with Legislature	Parallel provision in existing law (Art. X, § 12, Ak. Const.)
	Legislature considers LBC recommendations for 45 days	Parallel provision in existing law (Art. X, § 12, Ak. Const.)
late-March ↓	Recommendations approved unless rejected	Parallel provision in existing law (Art. X, § 12, Ak. Const.)
	LBC notifies Division of Elections of approved boroughs	Existing law [AS 29.05.110(a)]
late -March to late-April ↓	Division of Elections orders election for initial borough officials	Existing law (AS 29.05.120)
by late-July	Division of Elections conducts elections for initial borough officials	Existing law (AS 29.05.120)

Summary of Standards for Borough Incorporation in Existing Law

Standards regarding the creation of organized boroughs are provided in Alaska's Constitution, statutes, and regulations. The standards are summarized below

- Borough incorporation is encouraged under Alaska's Constitution. (Art. X, § 1, Ak. Const.)
- All of Alaska must be divided into boroughs (organized or unorganized) with each embracing an area and population with common interests to the maximum degree possible. (Art. X, § 3, Ak. Const.)
- Alaska's Constitution favors larger boroughs in order to avoid the proliferation of small boroughs. (Art. X, § 1, Ak. Const.)
- Borough incorporation must be in the best interests of the state. (AS 29.05.100)
- Borough residents must be socially, culturally, and economically interrelated and integrated. (AS 29.05.031(a)(1); 3 AAC 110.045(a)-(b))
- The population must be large and stable enough to support borough government. It is formally presumed that a borough will have at least 1,000 permanent residents. (AS 29.05.031(a)(1); 3 AAC 110.050)
- Boundaries must conform generally to natural geography and include all areas necessary for full development of municipal services. (AS 29.05.031(a)(2); 3 AAC 110.060(a))
- Consideration must be given to model borough boundaries adopted by the Local Boundary Commission. (3 AAC 110.060(b))
- Boundaries must conform to regional educational attendance area boundaries, unless the Local Boundary Commission allows otherwise. (3 AAC 110.060(c))
- There must be adequate human and financial resources to provide borough services. (AS 29.05.031(a)(3); 3 AAC 110.055)
- There must be adequate facilities to allow the communication and exchange necessary for the development of integrated borough government. (AS 29.05.031(a)(4); 3 AAC 110.045(c)-(d))

Section 4. Biographical Information About the Local Boundary Commission

The Commission consists of five members appointed by the Governor for overlapping terms of five years. Members serve at the pleasure of the Governor. The Chairperson is appointed from the state at-large and one member is appointed from each of Alaska's four judicial districts. Members serve without compensation. Appointments to the Commission are made, "...on the basis of interest in public affairs, good judgment, knowledge and ability in the field ... and with a view to providing diversity of interest and points of view in the membership." (AS 39.05.060)

Information about current Commissioners follows.



Kevin Waring, a resident of Anchorage, has served on the Commission since July 15, 1996. He was appointed Chairperson on July 10, 1997. He was reappointed to a new term as Chairperson effective January 31, 1998. Commissioner Waring was one of the original division directors of the former

Alaska Department of Community and Regional Affairs (1973-1978). Between 1980 and the spring of 1998, he operated a planning/economics consulting firm in Anchorage. From the spring of 1998 until early 2000, Commissioner Waring was employed as manager of physical planning for the Municipality of Anchorage's Community Planning and Development Department. He has since returned to private consulting. Mr. Waring has been active on numerous Anchorage School District policy and planning committees. His current term on the LBC expires January 31, 2003.



Kathleen S. Wasserman, a resident of Pelican, is the Vice-Chairperson of the Commission. She serves from Alaska's First Judicial District. She was first appointed to the Commission for an unexpired term on September 14, 1995. She was reappointed to a new term beginning January 31,

1996. Commissioner Wasserman also serves as the current Mayor of the City of Pelican. She is currently serves as the District 1 representative on the Alaska Municipal League Board of Directors and as Secretary/Treasurer for the Alaska Conference of Mayors. In the past, Commissioner Wasserman has served as a member of the Assembly of the City and Borough of Sitka and as

Mayor of the City of Kasaaan. Additionally, she has served as president of the Southeast Island Regional Educational Attendance Area School Board. Commissioner Wasserman is self-employed. Her present term on the Commission expires January 31, 2001.



Nancy E. Galstad serves from the Second Judicial District. She was appointed to the LBC on September 14, 1995 and reappointed to a new term effective January 31, 1999. Formerly Special Assistant to the Commissioner of the Alaska Department of Labor, Ms. Galstad now serves as the Manager of the City of Kotzebue. She is currently Second Vice-President of the Alaska Municipal Managers' Association. Ms. Galstad was a member of the Alaska Safety Advisory Council for eight years and currently serves as Vice Chair of the Alaska Municipal League Joint Insurance Association. She also served as a member of the State's Task Force on Education Funding in 1995. Ms. Galstad's current term on the LBC expires January 31, 2004.



Allan Tesche serves from the Third Judicial District and is a resident of Anchorage. He was appointed to the LBC on July 10, 1997. In April 1999, Mr. Tesche was elected to the Assembly of the Municipality of Anchorage. In the past, Mr. Tesche has served as Deputy and Assistant Municipal Attorney in Anchorage and Borough Attorney for the Matanuska-Susitna Borough. He is a founder and past president of the Alaska Municipal Attorneys' Association and served as a member of the attorneys' committee which assisted the Alaska legislature in the 1985 revisions to the Municipal Code (AS 29). Mr. Tesche is a shareholder in the Anchorage law firm of Russell, Tesche, Wagg, Cooper & Gabbert, PC. Mr. Tesche's term on the Commission expires January 31, 2002.



Ardith Lynch serves from the Fourth Judicial District and lives in the greater Fairbanks area. She was appointed to the LBC on December 21, 1999. Ms. Lynch is the Borough Attorney for the Fairbanks North Star Borough. She has also worked for the State of Alaska as an Assistant Attorney General and as Deputy Director of the Child Support Enforcement Division. Ms. Lynch has served on the Board of Governors of the Alaska Bar Association and is a past president of the Alaska Municipal Attorneys' Association. Her term on the Commission expires December 21, 2004.

Appendix A

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