

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11356 SENATE STATE AFFAIRS

**Written Testimony Before the Senate State Affairs Committee  
Regarding Senate Concurrent Resolution No. 12**

Dan Bockhorst  
Local Boundary Commission Staff  
Alaska Department of Community and Economic Development  
March 25, 2004

**1. Our Constitution requires all of Alaska to be divided into boroughs.**

**Article X, Section 3. Boroughs.** The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law. (Emphasis added.)

**2. Those boroughs may be either organized or unorganized.**

**Article X, Section 3. Boroughs.** The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law. (Emphasis added.)

**3. Our Constitution places a duty on the legislature to establish, in law, the manner in which boroughs will be formed.**

**Article X, Section 3. Boroughs.** The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs

and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law. (Emphasis added.)

**4. Determinations regarding how boroughs would be organized and the duties of boroughs are subject to the equal rights and equal responsibilities clauses in our Constitution.**

**Article I, Section 1. Inherent Rights.** This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

**5. The framers of our Constitution expected organized boroughs to form in areas with sufficient fiscal and administrative capacity.**

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"[W]e allow for the boroughs remaining unorganized until they are able to take on their local government functions." (Emphasis added.) (John Rosswog, Chair, Committee on Local Government, *Alaska Constitutional Convention Proceedings*, Alaska Legislative Council, page 2612.)

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"Haven't we here inducement to an area to remain an unorganized borough and to get the state to provide all the necessary functions?" (Delegate Barrie White of Anchorage, *Id.*, page 2650.)

"We thought that at the state level it would be the policy as it has been in the past to offer certain inducements to them to organize." (Victor Rivers Member, Committee on Local Government, *Id.*, page 2612.)

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"Is my idea correct that no organized borough will become effectuated without the voice of the people in the area?" (Delegate James Hurley of Palmer, *Id.*, page 2673.)

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"The answer, I think, would be 'no'. . . . [W]hen a certain area reaches a position where it can support certain services and act in its own behalf, it should take on the burden of its own government." (Emphasis added.) (Delegate Victor Fischer, Secretary of the Committee on Local Government, *Id.*, page 2673.)

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The authority to organize a borough was also vested in the state, and there was initial discussion of whether boroughs should be established on a voluntary or compulsory basis.<sup>[1]</sup> It was decided that, although voluntary incorporation would be preferable, organized boroughs could be created without the approval of the people within the area. The rationale behind this position of unilateral state action was that the borough:

. . . is more than just a unit of local government. It is also a unit for carrying out what otherwise got carried out as state functions; and when a certain area reaches a position where it can support certain services and act in its own behalf, it should take on the burden of its own government.<sup>[2]</sup> (Emphasis added.) (Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, 1971, page 61.)

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1. <sup>86</sup> *Minutes*, 8<sup>th</sup> Meeting.

2. <sup>87</sup> *Proceedings*, pp. 2673-74.

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6. The Borough Act of 1961 delegated the question of organization of boroughs to local residents. Even at that time, it was anticipated that the Act would be generally ineffective in forming boroughs.

"Attractive enough on paper, in practice, the organized borough concept had little appeal to most communities. After all, why should they tax themselves to pay for services received from the state, *gratis*?" (Former Governor Jay Hammond (who was a member of the State House of Representatives in 1961) in *Tales of Alaska's Bush Rat Governor*, page 149.)

"It was generally believed [by the drafters and supporters of the original Borough Act of 1961] that the 1963 legislature would adopt a mandatory incorporation law." (Roger W. Pegues, Director, Local Affairs Agency, 1960 -1962, *The Metropolitan Experiment in Alaska - A Study of Borough Government*, page 92.)

7. When the local option approach to borough formation failed, Representative John Rader drafted a bill in 1963 to mandate borough incorporation in certain.

. . . [T]he greatest unresolved political problem of the State was the matter of boroughs.<sup>[3]</sup> As near as I could see, no reasonable solutions were being propounded. A great opportunity to create something of value could be lost. A state of the size, population density, and distribution of Alaska makes State administration of local problems impossible. Anyone who had ever worked in Alaska on the local level or on the State level could see the frustrations of honest attempts repeatedly failing because of the simple fact that there was no governmental structure upon which to hand necessary governmental functions. I therefore decided to do what I could.

. . .  
I formulated in board outline what I felt to be the basic requirements of a borough bill which would:

. . . Provide for tax equalization. However, if tax equalization was to be meaningful, it could not be piecemeal. Mandatory incorporation of boroughs would be necessary in all areas which could feasibly be included within a borough and which did not incorporate on local initiative.

(John Rader, Member of the State House of Representatives 1959, 1963 - 1966; Member of the State Senate 1969 - 1978, Alaska Attorney General, Anchorage City Attorney; *The Metropolitan Experiment in Alaska*, pages 93 - 94.)

3. <sup>23</sup> As a personal matter, my primary interest as a member of the first State legislature and as Attorney General was organization of the State government.

8. With certain compromises, the 1963 Mandatory Borough Act, mandating boroughs in eight regions, became law.

The following regions were required to incorporate boroughs by January 1, 1964:

- |                     |                                      |
|---------------------|--------------------------------------|
| 1. Ketchikan;       | 6. Greater Anchorage;                |
| 2. Sitka;           | 7. Matanuska-Susitna<br>Valleys; and |
| 3. Juneau;          | 8. Greater Fairbanks.                |
| 4. Kodiak Island;   |                                      |
| 5. Kenai Peninsula; |                                      |

9. The State promised in 1963 that regions would not be penalized by forming boroughs.

Section 1. **Declaration of Intent.** It is the intention of the legislature to provide for maximum local self-government with a minimum number of local government units and tax-levying jurisdictions, and to provide for the orderly transition of special service districts into constitutional forms of government. The incorporation of organized boroughs by this Act does not necessarily relieve the state of present service burdens. No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation. With the exception of planning and zoning, education, and tax collection and assessment, all powers granted the first-class boroughs are exercised at the option of the borough assemblies. (Emphasis added.) (Chapter 52 Session Laws of Alaska 1963.)

10. That promise, however, has long been abandoned. For example, in the current fiscal year, areas served by organized boroughs would have received 32.4 percent more in State aid under the education funding formula if education services were being provided by an REAA rather than a borough. The difference in State aid is, in effect, a State tax levied exclusively on borough and city school districts that amounted to \$165 million in FY 2004.

Another example where the promise has been abandoned is evident in the treatment of National Forest Receipts. In the current year, the Ketchikan Gateway Borough would have received 4.6 times the level of National Forest Receipts funding as an REAA compared to a borough (\$1,608,147 vs. \$348,967 – a difference of \$1,259,180).

**Sec. 14.17.410. Public school funding.** (a) A district is eligible for public school funding in an amount equal to the sum calculated under (b) and (c) of this section.

(b) Public school funding consists of state aid, a required local contribution, and eligible federal impact aid determined as follows: . . .

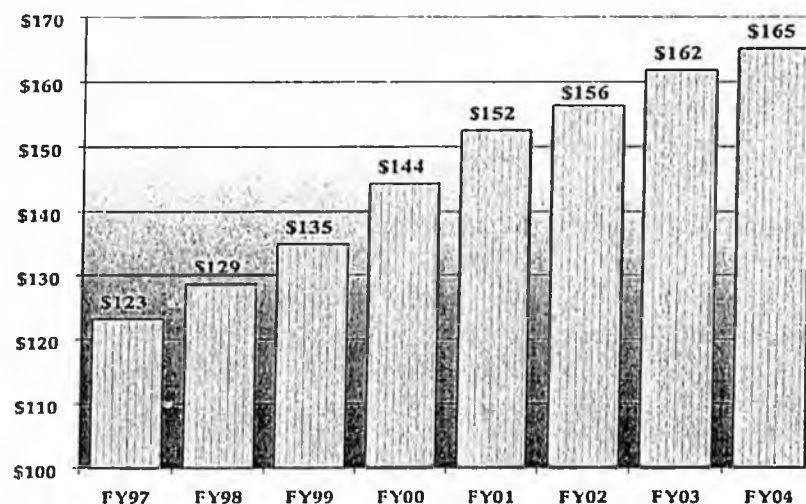
(2) the required local contribution of a city or borough school district is the equivalent of a four mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year, as determined by the Department of Community and 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 subsection.

...  
(d) State aid may not be provided to a city or borough school district if the local contributions required under (b)(2) of this section have not been made.

In FY 2004, the *de facto* tax on organized boroughs amounted to nearly \$156 million. For home-rule and first-class cities in the unorganized borough, the *de facto* tax amounted to \$9.1 million in FY 2004.

The required contribution of borough and city school districts has increased 34 percent since 1997.

**Total Statewide Required Contribution  
(Millions of Dollars)**



**ADM and Funding Components for Borough School Districts with Emphasis on  
Local Contributions Required of Borough School Districts Under AS 14.17.410(b)(2)  
Fiscal Year 2004**

Column 1 School District	Column 2 Basic Need	Column 3 Minus Required Local Contribution AS 14.17.- 410(b)(2)	Column 4 Minus Deductible Federal Impact Aid (PL-874)	Column 5 Equals State Aid	Column 6 Voluntary Local Contribution (AS 14.17.- 410(c))	Column 7 Basic Need and Voluntary Contributions
City and Borough of Yakutat (resident ADM 125)	\$1,153,354	\$201,923	\$37,651	\$913,780	\$225,077	\$1,378,431
Bristol Bay Borough (resident ADM 195.4)	\$1,956,553	\$767,940	\$236,252	\$952,361	\$273,315	\$2,229,868
Aleutians East Borough (resident ADM 280)	\$3,906,853	\$371,742	\$302,952	\$3,232,159	\$528,258	\$4,435,111
Haines Borough (resident ADM 304.9)	\$2,473,968	\$829,391	\$0	\$1,644,577	\$508,833	\$2,982,801
Denali Borough (resident ADM 305.8)	\$4,296,905	\$551,138	\$1,944	\$3,743,823	\$725,512	\$5,022,417
Lake & Peninsula Borough (resident ADM 415.3)	\$6,313,158	\$255,003	\$248,291	\$5,809,864	\$603,432	\$6,916,590
City and Borough of Sitka (resident ADM 1,443.7)	\$9,182,714	\$2,677,839	\$8,006	\$6,496,869	\$2,112,024	\$11,294,738
North Slope Borough (resident ADM 1,810.5)	\$18,991,880	\$8,759,133	\$1,604,082	\$8,628,665	\$14,232,835	\$33,224,715
Northwest Arctic Borough (resident ADM 2,023.2)	\$22,697,537	\$1,526,769	\$1,584,520	\$19,586,248	\$1,688,724	\$24,386,261
Ketchikan Gateway Borough (resident ADM 2,346.9)	\$14,833,469	\$4,488,957	\$2,836	\$10,341,676	\$2,768,812	\$17,602,281
Kodiak Island Borough (resident ADM 2,621.6)	\$18,734,235	\$3,880,880	\$606,794	\$14,246,561	\$4,227,476	\$22,961,711
City and Borough of Juneau (resident ADM 5,360.1)	\$32,450,120	\$10,755,240	\$0	\$21,694,880	\$7,110,060	\$39,560,180
Kenai Peninsula Borough (resident ADM 8,999.3)	\$59,983,705	\$17,843,057	\$0	\$42,140,648	\$13,783,066	\$73,766,771
Matanuska-Susitna Borough (resident ADM 13,354.7)	\$85,762,042	\$13,404,794	\$0	\$72,357,248	\$18,576,130	\$104,338,172
Fairbanks North Star Borough (resident ADM 14,373.9)	\$90,567,373	\$19,800,718	\$5,436,019	\$65,330,636	\$14,744,982	\$105,312,355
Municipality of Anchorage (resident ADM 48,586.2)	\$279,387,870	\$69,729,060	\$5,323,297	\$204,335,513	\$51,761,574	\$331,149,444
<b>TOTALS</b> (resident ADM 102,546.50)	\$652,691,736	\$155,843,584	\$15,392,644	\$481,455,508	\$133,870,110	\$786,561,846

**ADM and Funding Components for City School Districts in Alaska with Emphasis on  
 Local Contributions Required of City School Districts Under AS 14.17.410(b)(2)  
 Fiscal Year 2004**

Column 1 School District	Column 2 Basic Need	Column 3 Minus Required Local Contribution AS 14.17.- 410(b)(2)	Column 4 Minus Deductible Federal Impact Aid (PL-874)	Column 5 Equals State Aid	Column 6 Voluntary Local Contribution (AS 14.17.- 410(c))	Column 7 Basic Need and Voluntary Contributions
City of Pelican (resident ADM 15)	\$276,405	\$46,251	\$0	\$230,154	\$0	\$276,405
City of Tanana (resident ADM 63.3)	\$940,151	\$22,973	\$21,909	\$895,269	\$0	\$940,151
City of Hydaburg (resident ADM 87.1)	\$771,098	\$32,980	\$85,010	\$653,108	\$19,020	\$790,118
City of Skagway (resident ADM 105.8)	\$1,028,576	\$459,390	\$0	\$569,186	\$391,189	\$1,419,765
City of Klawock (resident ADM 147.0)	\$1,338,999	\$129,004	\$132,926	\$1,077,069	\$207,462	\$1,546,461
City of Kake (resident ADM 155.2)	\$1,311,151	\$72,538	\$96,768	\$1,141,845	\$187,940	\$1,499,091
City of Saint Mary's (resident ADM 159)	\$1,728,718	\$17,869	\$0	\$1,710,849	\$1,131	\$1,729,849
City of Hoonah (resident ADM 180.2)	\$1,603,481	\$124,301	\$109,859	\$1,369,321	\$335,099	\$1,938,580
City of Nenana (resident ADM 226.1)	\$4,648,352	\$70,880	\$0	\$4,577,472	\$0	\$4,648,352
City of Galena (resident ADM 229)	\$14,938,277	\$72,361	\$26,878	\$14,839,038	\$868,369	\$15,806,646
City of Craig (resident ADM 381.8)	\$5,075,507	\$409,579	\$64,062	\$4,601,866	\$692,024	\$5,767,531
City of Wrangell (resident ADM 391.8)	\$2,720,106	\$593,989	\$235	\$2,125,882	\$210,363	\$2,930,469
City of Unalaska (resident ADM 398.6)	\$3,400,653	\$1,428,225	\$1,914	\$1,970,514	\$761,914	\$4,162,567
City of Cordova (resident ADM 471.7)	\$3,533,519	\$685,035	\$4,665	\$2,843,819	\$682,465	\$4,215,984
City of Dillingham (resident ADM 527)	\$4,455,369	\$585,855	\$78,978	\$3,790,536	\$514,145	\$4,969,514
City of Petersburg (resident ADM 653.4)	\$4,485,302	\$941,092	\$0	\$3,544,210	\$941,115	\$5,426,417
City of Nome (resident ADM 716.5)	\$5,920,522	\$798,141	\$19,973	\$5,102,408	\$622,436	\$6,542,958
City of Valdez (resident ADM 866.7)	\$6,070,356	\$2,610,516	\$2,742	\$3,457,098	\$2,072,168	\$8,142,524
TOTALS (resident ADM 5,775.2)	\$64,246,542	\$9,100,979	\$645,919	\$54,499,644	\$8,506,840	\$72,753,382

**11. Following the 1963 Mandatory Borough Act, the State reverted to the generally ineffective policy of borough formation by local option. That policy has been widely criticized for decades:**

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After repeated failures, the 1963 Legislature finally exercised its authority. John Rader, *The Metropolitan Experiment in Alaska*, p. 81.

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The State has never had a sound local affairs policy; nor, until recently, has it shown much interest in developing and implementing one. This first became apparent in the years immediately after statehood, when neither the executive nor the legislature were able to cope effectively with the problems of boroughs formation and the definition of borough roles and purposes. (Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, 1971, page 138.)

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"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 Need to Reform State Laws Concerning Borough Incorporation and Annexation, Local Boundary Commission, January 2001, p. 3.)

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"The state has failed to continue the evolution of local government directed by the Constitution." (Alaska Municipal League, AML Issue Paper: *Municipal Government in Alaska*, p. 2 (from the Alaska Municipal League's Internet site at: <http://www.akmunileague.org/whitepaper.htm>.)

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

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"[T]he 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.  
(*Resolution 12-99-83, City of Cordova.*)

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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." (Emphasis added.) (*Final Report: Task Force on Governmental Roles*, Brad Pierce, Governor's Office of Management and Budget, and the Alaska Municipal League, July 10, 1992, p. 15.)

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Six of the eight boroughs created under the 1963 Mandatory Borough Act have endorsed SCR 12. Those are: Kodiak Island Borough, Kenai Peninsula Borough, City and Borough of Sitka, Ketchikan Gateway Borough, Matanuska-Susitna Borough, and Fairbanks North Star Borough. Other municipal governments in Alaska that endorsed SCR 12: City of Cordova, City of Kenai, City of Fairbanks, City of Valdez, City of North Pole, City of Seward; and other entities, Alaska State Chamber of Commerce and Eagle River Chamber of Commerce.

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**12. At the request of the Legislature, the Local Boundary Commission completed a review of the unorganized borough in 2003. The study concluded that seven regions of the unorganized borough meet the standards for borough incorporation.**

1. Aleutians East Model Borough region
2. Upper Tanana Basin Model Borough region
3. Copper River Basin Model Borough region
4. Prince William Sound Model Borough region
5. Glacier Bay Model Borough region
6. Chatham Model Borough region
7. Wrangell-Petersburg Model Borough region

**13. SCR 12 proposes that the Local Boundary Commission formally consider incorporation of boroughs in four of those seven regions.**

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SCR12  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
 Title Borough Incorporation: Unorganized / RDU Comm Assist & Econ Dev (405)  
 Component Community Advocacy  
 Sponsor Wilken  
 Requester Senate State Affairs Component No. 2703

**Expenditures/Revenues (Thousands of Dollars)**

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*

Please see Analysis Continuation on next page.

Prepared by: Gene Kane, Director Phone 907.269.4578  
 Division Community Advocacy Date/Time 3/24/04 5:09 PM  
 Approved by: Edgar Blatchford, Commissioner Date 3/24/2004  
 Agency Department of Community & Economic Development

FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. SCR12

ANALYSIS CONTINUATION

Senate Concurrent Resolution Number 12 asks the Local Boundary Commission to consider borough incorporation in four specific areas; Upper Tanana Basin, Copper River Basin, Glacier Bay region and the Chatham region.

Those four areas were identified as meeting the standards for borough incorporation in the Local Boundary Commission's February 19, 2003 report entitled "Unorganized Areas of Alaska that Meet Borough Incorporation Standards."

If, after further study and public hearings, the Commission affirms the determination expressed in its February 19, 2003 report that those four areas meet the standards for borough incorporation, the resolution asks the Commission to present recommendations to the legislature under Article X, Section 12 of the constitution for incorporation of those areas as boroughs.

Any recommendations from the Commission for borough incorporation would be subject to review by the legislature under Article X, Section 12 of the constitution.

The division will perform this work within existing resources, therefore, new funds are not required.

AMENDMENT # 1

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OFFERED IN THE SENATE  
TO: SCR 12

BY SENATOR GUESS

Page 2, line 19:

Delete "four of the seven"  
Insert "seven of the seven"

Page 2, Line 20:

Delete "relatively"

Page 2, Line 22:

Delete "and"

Page 2, Line 23:

Insert "Wrangell – Petersburg Model Borough, Prince William Sound Model  
Borough, and Aleutians West Model Borough,"

Page 3, Line 14:

Delete "and"

Page 3, Line 15:

Insert ", Wrangell – Petersburg Model Borough, Prince William Sound Model  
Borough, and Aleutians West Model Borough"

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3-1*

*Amend # 1  
incl fiscal note  
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AMENDMENT # 1

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OFFERED IN THE SENATE  
TO: SCR 12

BY SENATOR GUESS

Page 2, line 19:

Delete "four of the seven"  
Insert "seven of the seven"

Page 2, Line 20:

Delete "relatively"

Page 2, Line 22:

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Page 3, Line 14:

Delete "and"

Page 3, Line 15:

Insert ", Wrangell – Petersburg Model Borough, Prince William Sound Model  
Borough, and Aleutians West Model Borough"

state financial support. At the same time, 19 Regional Educational Attendance Areas will receive 100% state support, including the four REAA school districts recommended for review.

The following chart compares the four unorganized areas with the borough and city school districts that currently contribute to their local schools.

### FY03 Borough and City School Districts (Includes Four Model Boroughs for Comparison)

School District	2001 F&T Value	Required
Anchorage School District	\$16,961,328,430	\$67,845,314
North Slope School District	10,506,960,850	8,947,234
Fairbanks School District	4,867,270,265	19,469,081
Kenai School District	4,289,812,625	17,159,251
Mat-Su School District	3,224,351,275	12,897,405
Juneau School District	2,669,689,550	10,678,758
Ketchikan School District	1,128,732,900	4,514,932
Valdez School District	986,820,020	2,664,019
Kodiak School District	957,257,150	3,829,029
Sitka School District	657,055,100	2,628,220
Copper River Basin Model Borough	502,729,199	0
Upper Tanana Basin Model Borough	469,045,724	0
Unalaska School District	385,516,300	1,385,586
Northwest Arctic School District	381,186,000	1,524,744
Petersburg School District	251,311,450	1,005,246
Haines School District	207,410,950	829,644
Bristol Bay School District	204,917,800	819,671
Nome School District	199,927,100	799,708
Concova School District	173,873,900	695,496
Skagway School District	168,347,250	498,222
Wrangell School District	157,284,000	629,136
Dillingham School District	152,790,100	611,160
Denali School District	137,911,150	551,645
Craig School District	103,355,150	413,421
Aleutians East School District	93,559,600	374,238
Glacier Bay Model Borough	73,526,489	173,705
Lake and Peninsula School District	69,743,950	278,976
Yakutat School District	45,692,900	182,772
Chatham Region Model Borough	35,908,397	71,262
Klawock School District	32,012,000	128,048
Hoonah School District	31,404,000	125,616
Cheena School District	17,988,400	71,954
Kake School District	17,815,400	71,262
Nenana School District	17,593,000	70,372
Pelican School District	12,022,200	48,089
Hydaburg School District	8,346,400	33,386
Tanana School District	5,710,000	22,840
St. Mary's School District	4,611,400	18,446

1 Included in the Glacier Bay Model Borough

2 Included in the Chatham Region Model Borough

3 Required local effort is limited to 45% of Basic Need of preceding year

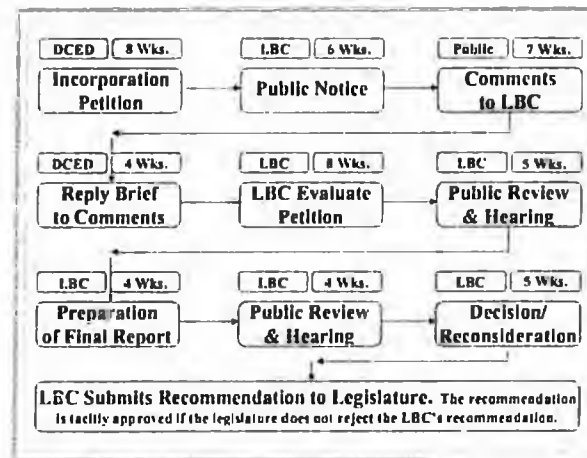
F&T - Full and True Value of Taxable Property

Source - Department of Education and the LBC February 2003 Report

Upon passage of SCR 12, the Department of Community and Economic Development will prepare and file with the Local Boundary Commission a borough incorporation petition for each of the four areas. Not all four petitions will be filed at once and each petition will be developed in consultation with local residents. If the LBC makes a final determination that an unorganized region meets the standards, the LBC will submit a recommendation for borough incorporation to the legislature. Such recommendations can only be submitted during the first 10 days of a regular session.

During the lengthy review process, area residents will have an opportunity to offer suggestions on how their local borough, if formed, should be structured. A conservative estimated timeline shows extensive public involvement and local determination.

### Borough Incorporation under SCR 12

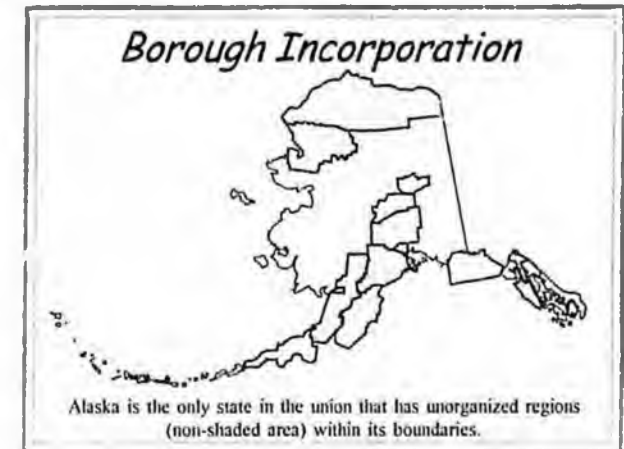


As illustrated, this governmental change will not happen over night. Even after an area is officially incorporated as a regional borough, the actual fiscal responsibility towards education is gradually phased in over a four-year period.

Although the inherent inequality between Alaskans will not be immediately corrected, a process is established in SCR 12 that is fair, responsible, and practical. The question will be asked and, if appropriate, the answer will be heard: "Yes, we can help. We'll help pay our fair share."

Prepared by Gary Wilken's Office  
August 20, 2003

## Senate Concurrent Resolution 12



Answers the Question:  
"Can You Help?"

Alaska's constitution (Article I, Sec. 1) states all Alaskans are equal and entitled to equal rights, opportunities, and protection, but they also have equal obligations to the people and to the state. However, contrary to our constitution, the responsibility to operate and fund our local public school system is inherently unequal among Alaskans.

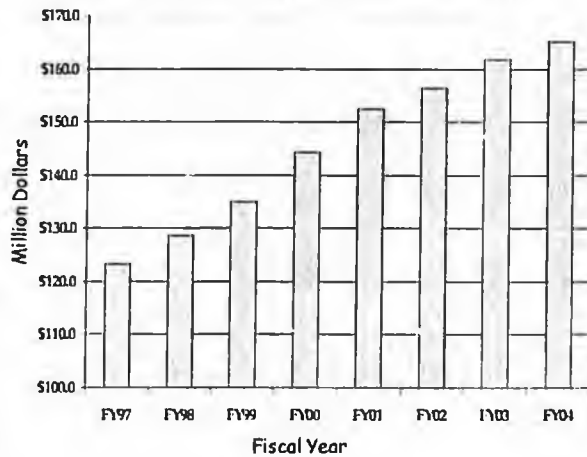
The State of Alaska requires organized boroughs and home rule and first class cities within the unorganized borough to assume the responsibility for their local schools and, correspondingly, reduces state education funding by the *local contribution* required from those municipalities. For example, the residents of the Fairbanks North Star Borough were required to pay \$19,469,081 this year to support their school system.

Since 1997, the total annual local contribution required from organized Alaska has increased 34 percent, from \$123.3 million to \$165.1 million. At the same time, each

school district's state support was decreased by the amount equal to the local district's required contribution. The following graph illustrates the growth in local support for K-12 public schools:

### Total Statewide Contribution for Schools

(Only Organized Alaska is Required to Contribute)



The residents in each organized school district are required to contribute the equivalent of 4 mills\* of the *Full and True Value* of the taxable property within the district. Although most residents pay a property tax to meet this obligation, local taxpayers may choose alternative methods to raise the required amount, for example:

- Aleutians East Borough - Raw Fish Tax
- Denali Borough - Bed Tax & Severance Tax
- Galena, Hoonah, Hydaburg - Sales Tax
- Kake - Sales Tax and Raw Fish Tax
- Klawock - Sales Tax and Bed Tax
- Lake & Peninsula Borough - Raw Fish Tax
- NW Arctic Borough - Negotiated Agreement
- St. Mary's & Tanana - In-Kind Contribution
- Other Options Determined by a Municipality

Senate Concurrent Resolution 12 acknowledges that existing state law imposes significant obligations on organized Alaska while no corresponding duties are imposed on the people living in the unorganized borough outside home rule or first class cities. Unfortunately, at the present time, there is no reasonable basis in

law to distinguish between those Alaskans who are required to accept these obligations and those Alaskans who are not. SCR 12 sets in motion a process to formally ask residents in the unorganized borough, "Can you help? Can you pay your fair share?"

The starting point for this inquiry is the February 2003 report by the Local Boundary Commission entitled: *Unorganized Areas of Alaska that Meet Borough Incorporation Standards*. At the request of the Twenty-Second Alaska State Legislature, the Local Boundary Commission reviewed and analyzed the unorganized borough to determine which areas met existing standards for borough incorporation and, therefore, the ability to help support their local schools.



Each area was measured against the following eleven standards:

### Standards for Borough Incorporation

1. Adequate Facilities that provide communication/integration
2. Common Interests of population
3. Best Interest of the State
4. Conform to REAA Boundaries unless LBC allows otherwise
5. Financial/Human Resources needed to support gov't services
6. Incorporation Encouraged under the Alaska Constitution
7. Interrelated/Integrated - socially, culturally, and economically
8. Large and Stable Populations of at least 1,000 residents
9. Large Boroughs in order to avoid proliferation of boroughs
10. Model Borough Boundaries adopted by the LBC
11. Similar Geography including areas for full services

The Commission found that seven regions met the appropriate standards, including the fiscal and administrative capacity to operate a borough. Four of these seven unorganized areas have relatively significant populations residing outside home rule or first class cities.

- Upper Tanana Basin Model Borough
- Copper River Basin Model Borough
- Glacier Bay Model Borough
- Chatham Region Model Borough

Although these areas may very well have the financial capability and the necessary human resources to help support their neighborhood schools, many of the residents living in these four areas are not required to contribute to their local school system. SCR 12 asks the Commission to refine its analysis and consider borough incorporation for these four areas of the state.

To help put these localities in perspective, the following brief summary highlights several facts regarding the four model boroughs in question:

### Summary of Four Model Boroughs

#### Upper Tanana Basin

1. Includes 19 communities
2. Total of 6,316 residents
3. Includes Delta/Greely & Alaska Gateway REAAs
4. F&T Value - \$469,045,724
5. Ave. home - \$144,044
6. Ave. income - \$47,472

#### Copper River Basin

1. Includes 18 communities
2. Total of 3,089 residents
3. Includes Copper River REAA
4. F&T Value - \$502,729,199
5. Ave. home - \$128,800
6. Ave. income - \$43,990

#### Glacier Bay

1. Includes 7 communities
2. Total of 1,739 residents
3. Includes Pelican, Hoonah, & Chatham REAA
4. F&T Value - \$73,526,489
5. Ave. home - \$136,738
6. Ave. income - \$46,563

#### Chatham Region

1. Includes 3 communities
2. Total of 1,354 residents
3. Includes Kake and Chatham REAA
4. F&T Value - \$35,908,397
5. Ave. home - \$132,854
6. Ave. income - \$47,516

REAA - Regional Educational Attendance Area  
 F&T - Estimated 2001 Full and True Value of Taxable Property  
 Source - Local Boundary Commission's February 2003 Report

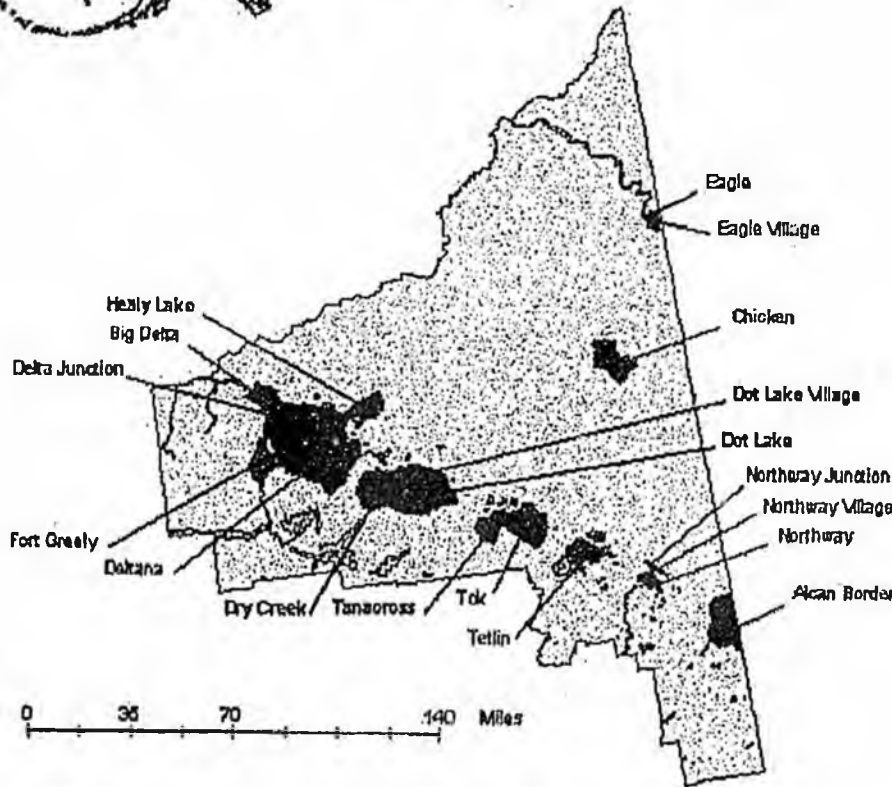
Currently more than 80% of Alaskans live in organized boroughs that were formed under a legislative mandate 40 years ago. The 1963 Mandatory Borough Act was the product of a bipartisan legislative effort that was supported by Governor Egan. When the legislature mandated the formation of eight boroughs, it promised that no area incorporated as an organized borough would be deprived of state services, revenues or otherwise penalized because of incorporation.

However, in FY04 organized Alaska will pay \$165.1 million to support their local schools before receiving any

\* or 45% of Basic Need of the preceding year, whichever is less



# Southeast Fairbanks Census Area



Source: Alaska Department of Labor And Workforce Development, Research and Analysis and US Census Bureau, 2000 Tigerline files.

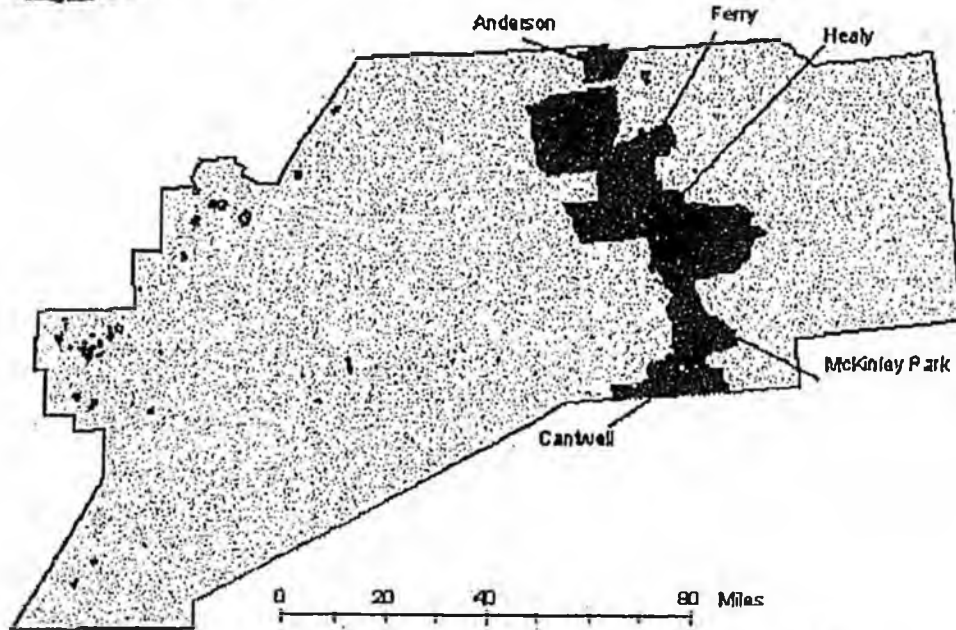
Sen G. Stevens office

TO: SSTA 3/25

From SALLY YOUNG, TOK



# Denali Borough



Click on the map below to view demographic

Choose

Choose or Census dropdown

Borough

Go

Profile

Source: Alaska Department of Labor And Workforce Development, Research and Analysis and US Census Bureau, 2000 Tigerline files.

TO: SSTA 3/25

FROM SALLY YOUNG, TOK

## Support for Senate Concurrent Resolution 12

### FORMAL RESOLUTIONS IN SUPPORT

1. Kodiak Island Borough Resolution No. 2003-17 Adopted 5/15/03
2. Matanuska-Susitna Borough Resolution No. 03-098 Adopted 9/02/03
3. City of Cordova Resolution 09-03-81 Adopted 9/03/03
4. Kenai Peninsula Borough Resolution 2003-16 Adopted 9/16/03
5. City of Kenai Resolution No. 2003-46 Adopted 9/17/03
6. Ketchikan Gateway Borough Resolution No. 1761 Adopted 9/22/03
7. City of Fairbanks Resolution No. 4086 Adopted 9/22/03
8. City of Valdez Resolution No. 03-90 Adopted 10/06/03
9. City of North Pole Resolution No. 03-15 Adopted 10/06/03
10. Fairbanks North Star Borough Resolution No. 2003-60 Adopted 10/09/03
11. City and Borough of Sitka Resolution No. 2004-08 Adopted 2/10/04
12. State Chamber of Commerce Adopted 12/04/03

### FORMAL LETTERS IN SUPPORT

1. City of North Pole letter Letter of 9/16/03
2. City of Seward letter Letter of 9/18/03
3. Chugiak-Eagle River Chamber of Commerce Letter of 11/13/03

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: SCR 12  
(S) Publish Date: 5/19/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
Title Borough Incorporation: Unorganized Areas BRU Comm Assist & Econ. Dev. (405)  
Sponsor Senator Wilken Component Community & Business  
Requester Senate Community & Regional Affairs Component No. 2486

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Please see Analysis Continuation.

Prepared by: Gene Kane, Director  
Division: Community & Economic Development  
Approved by: Edgar Blatchford, Commissioner  
Agency: Department of Community & Economic Development

Phone 907-269-4578  
Date/Time 5/6/03 5:18 PM  
Date 5/6/2003

FISCAL NOTE #1

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

BILL NO. SCR 12

ANALYSIS CONTINUATION

Senate Concurrent Resolution Number 12 asks the Local Boundary Commission to consider borough incorporation in four specific areas; Upper Tanana Basin, Copper River Basin, Glacier Bay region and the Chatham region.

Those four areas were identified as meeting the standards for borough incorporation in the Local Boundary Commission's February 19, 2003 report entitled "Unorganized Areas of Alaska that Meet Borough Incorporation Standards."

If, after further study and public hearings, the Commission affirms the determination expressed in its February 19, 2003 report that those four areas meet the standards for borough incorporation, the resolution asks the Commission to present recommendations to the legislature under Article X, Section 12 of the constitution for incorporation of those areas as boroughs.

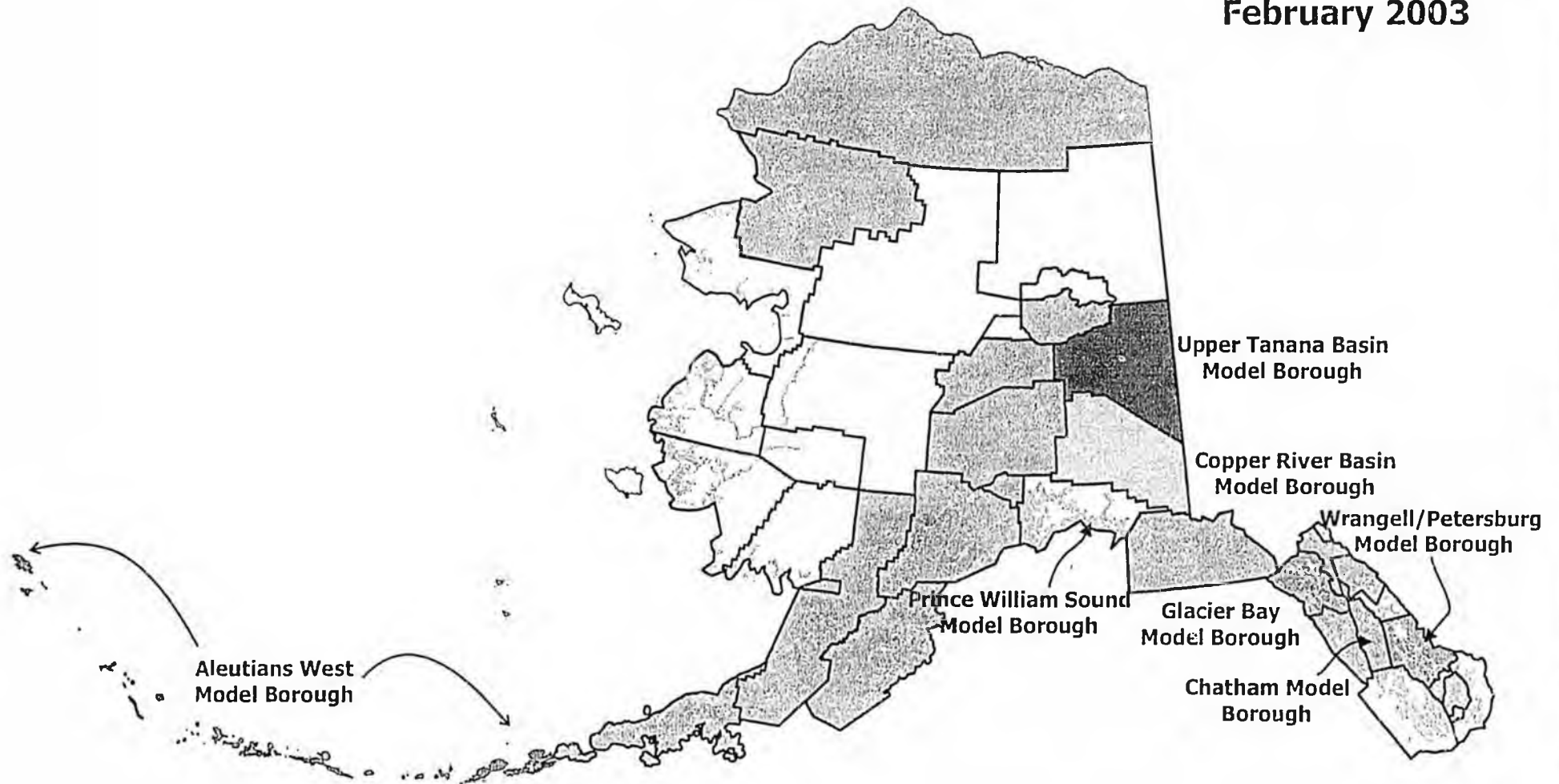
Any recommendations from the Commission for borough incorporation would be subject to review by the legislature under Article X, Section 12 of the constitution.

The division will perform this work within existing resources, therefore, new funds are not required.

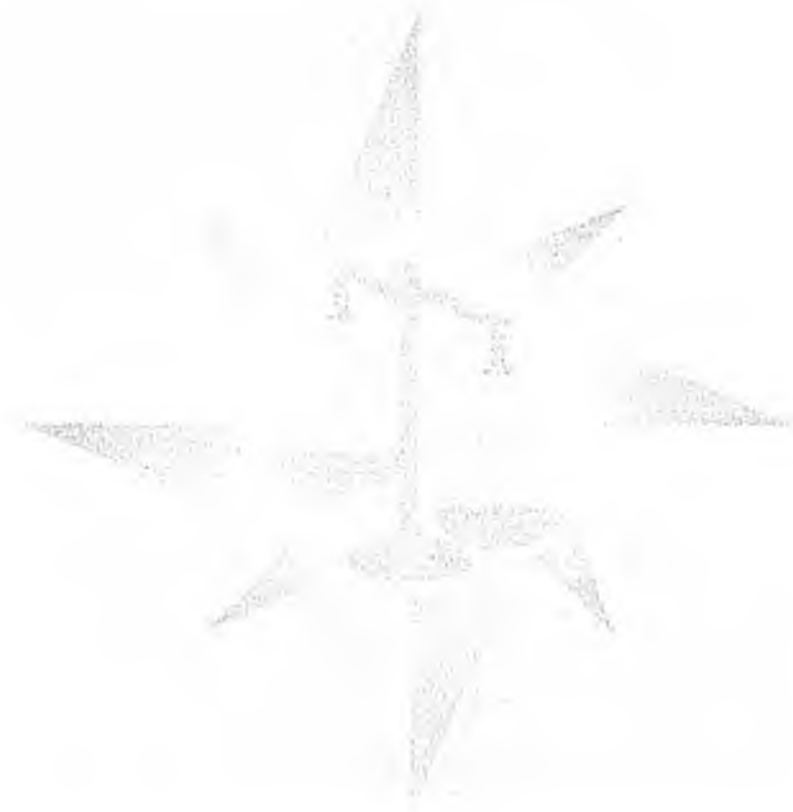
# Unorganized Areas of Alaska that Meet Borough Incorporation Standards

A Report by the Alaska Local Boundary Commission  
to the Alaska Legislature Pursuant to  
Chapter 53, Session Laws of Alaska 2002

February 2003



*Executive Summary and Chapter 1 written by the Local Boundary Commission  
Provided by Gary Wilken*



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/cbd/lbc/lbc.htm>**



# State of Alaska Local Boundary Commission

550 West Seventh Avenue, Suite 1770 • Anchorage, Alaska 99501-3510  
Telephone: 907-269-4560 • Fax: 907-269-4539

The Honorable Gene Therriault  
Senate President  
Twenty-Third Alaska State Legislature  
State Capitol, Room 111  
Juneau, Alaska 99801-1182

The Honorable Pete Kott  
Speaker of the House  
Twenty-Third Alaska State Legislature  
State Capitol, Room 208  
Juneau, Alaska 99801-1182

Dear President Therriault and Speaker Kott:

Chapter 53, SLA 2002 directed the Local Boundary Commission to report to the First Regular Session of the Twenty-Third Alaska State Legislature which areas of the unorganized borough meet borough incorporation standards. On behalf of the Commission, I am pleased to submit the Commission's report, *Unorganized Areas of Alaska that Meet Borough Incorporation Standards*, in fulfillment of the Commission's duty.

As explained below, the Commission found that the following seven regions in the unorganized borough meet standards for borough incorporation:

- Aleutians West Model Borough;
- Upper Tanana Basin Model Borough;
- Copper River Basin Model Borough;
- Prince William Sound Model Borough;
- Glacier Bay Model Borough;
- Chatham Model Borough; and
- Wrangell-Petersburg Model Borough.

The Commission began its review of the unorganized borough shortly after Chapter 53, SLA 2002 took effect on September 17, 2002. From the beginning, the Commission endeavored to promote broad public awareness about and participation in the Commission's review. The Commission met six times concerning the unorganized borough review – October 22, November 13, and December 9, 2002; January 17, February 8, and February 11, 2003. During the February 8 meeting, the Commission held a

statewide hearing on the matter and received testimony from residents of twenty-seven communities. Extensive written comments were also submitted to the Commission. All written comments, along with a transcript of the Commission's meetings of December 9, January 17, February 8, and February 11 are part of the record of the Commission's review. Once compiled, a copy of those materials will be provided to the Secretary of the Senate and the Chief Clerk of the House.

Among the Commission's other responsibilities is a duty under AS 44.33.812 to "make studies of local government boundary problems." Two years ago, the Commission issued a written policy statement concluding that the lack of a strong State policy promoting the extension of borough government is "the most pressing local government boundary problem facing Alaska." In that context, the Commission included in Chapter 1 of this report a discussion of fundamental public policy issues relating to borough incorporation.

Chapter 2 of the Commission's report identifies borough incorporation standards established in the Constitution of the State of Alaska, Alaska Statutes, and Alaska Administrative Code. Those standards relate generally to four broad areas: (1) economic capacity; (2) population size and stability; (3) regional commonalities; and (4) broad public interest.

Chapter 3 of the report details the application of the borough incorporation standards to areas of the unorganized borough. The conclusions reached by the Commission in Chapter 3 are summarized below.

**Economic Capacity.** Based on: (1) anticipated borough functions; (2) anticipated expenses; (3) anticipated income; (4) ability to generate and collect local revenue; (5) economic base, land use, existing and reasonably anticipated industrial, commercial, and resource development; (6) property valuations; (7) personal income; and (8) prior borough feasibility studies, the Commission concluded that the seven unorganized areas previously noted have the human and financial resources needed to provide borough services.

One additional area – the Prince of Wales Island region – was also carefully considered by the Commission. Given the resources and time available for this report, it was necessary for the Commission to use the most current available secondary data (e.g., reports of the 2000 census). Detailed economic data from the 2000 census was released by the U.S. Census Bureau on September 25, 2002 – just one week after the legislative directive for this study took effect. While the data became available less than five months ago, the Commission recognized that recent socioeconomic trends not reflected in such official published data may significantly affect the capacity of the Prince of Wales Island region to support borough government at this time. Therefore, pending more up-to-date information and further analysis, including fuller analysis of the fiscal impacts of school district consolidation, the Commission declined to render a finding as to whether the Prince of Wales Model Borough has the human and financial resources to support borough government.

**Population Size and Stability.** At the time of the 2000 census, the eight unorganized areas carefully reviewed in this report had populations ranging from 6,964 to 1,354. The populations of those regions have been reasonably stable over time, with the exception of the Aleutians West region. The population fluctuation in that region stemmed from the closure of major military facilities during the 1990s. Notwithstanding, the Commission concluded that each of the eight unorganized areas has a population that is large and stable enough to support borough government.

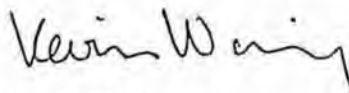
**Regional Commonalities.** The Commission concluded that each of the eight model boroughs reviewed in detail embraces an area and population that has common interests in a regional context as called for in Article X, Section 3 of Alaska's constitution. Each area has a population that is interrelated and integrated socially, culturally, and economically. Additionally, the boundaries of the eight unorganized regions conform generally to natural geography and include all areas necessary for full development of municipal services. Further, communications facilities and land, water, and air transportation facilities in each of the eight regions examined allow the communication and exchange necessary for the development of integrated borough government. In addition, each of the eight regions embraces multiple communities. The model borough boundaries conform to existing regional educational attendance area boundaries, except where the Commission determined that model borough boundaries are better suited. None of the territory defined by the model borough boundaries for the eight areas under review is non-contiguous or contains enclaves.

Based on public comment and other information, the Commission found that an alternative boundary scenario for the Glacier Bay Model Borough and the Chatham Model Borough might better meet borough incorporation standards. Therefore, pending additional local consultation and analysis, the Commission deferred a final determination as to the specific boundaries that best meet the standards for incorporation in those two areas.

**Broad Public Interest.** The Commission concluded that the incorporation of new boroughs serves the broad public interest. Many important fundamental public benefits are derived from boroughs, including the promotion of greater efficiency and effectiveness in the delivery of public services. For example, if boroughs formed in the seven regions determined to meet all borough incorporation standards in this report, the number of school districts serving those regions would be reduced from fourteen to seven. Additionally, if the Prince of Wales Island region incorporated as a borough, the four school districts in that region would be consolidated into one.

The Commission hopes that this report will promote constructive debate among legislators regarding ways to enhance efficient and effective delivery of services in areas of Alaska that are currently unorganized.

Very truly yours,



Kevin Waring  
Chair

# ACKNOWLEDGEMENTS

The Local Boundary Commission gratefully acknowledges assistance from the following individuals in the preparation of this report:

- Bockhorst, Dan – Local Boundary Commission staff;
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# Table of Contents

<b>Chapter 1 - Background .....</b>	<b>1</b>
Section A. Directive for Unorganized Borough Review .....	1
Section B. Nature of Borough Government in Alaska .....	2
Section C. Role of the Legislature in the Formation of Boroughs .....	3
Section D. Role of the Local Boundary Commission in the Formation of Boroughs .....	9
Section E. Development of Borough Government in Alaska .....	13
Section F. Policy Issues Relating to Borough Incorporation .....	17
Section G. Proceedings Involved with this Review .....	32
<b>Chapter 2 - Borough Incorporation Standards .....</b>	<b>35</b>
Section A. Introduction .....	35
Section B. Constitutional Standards for Borough Incorporation .....	35
Section C. Statutory Standards for Borough Incorporation .....	49
Section D. Alaska Administrative Code Standards for Borough Incorporation .....	52
<b>Chapter 3 - Application of Borough Incorporation Standards .....</b>	<b>91</b>
Section A. Background .....	91
Section B. Economic Capacity .....	93
Section C. Population Size and Stability .....	137
Section D. Regional Commonalities .....	152
Section E. Broad Public Interest .....	212

# Chapter 1 Background

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Section A. Directive for Unorganized Borough Review .....	1
Section B. Nature of Borough Government in Alaska .....	2
Section C. Role of the Legislature in the Formation of Boroughs .....	3
Section D. Role of the Local Boundary Commission in the Formation of Boroughs.....	9
Section E. Development of Borough Government in Alaska .....	13
Section F. Policy Issues Relating to Borough Incorporation .....	17
Section G. Proceedings Involved with this Review .....	32

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## Section A. Directive for Unorganized Borough Review

The 2002 Alaska Legislature directed the Local Boundary Commission to determine which areas of Alaska’s unorganized borough meet the standards for incorporation of boroughs. Specifically, the Alaska House of Representatives approved “House CS for CS for Senate Bill No. 359(FIN)” by a vote of 35 – 0 (with 5 members absent); the Senate approved the measure by a vote of 19 – 0 (with 1 member absent). Then-Governor Knowles signed the bill into law as Chapter 53, SLA 2002.

Section 3 of Chapter 53, SLA 2002 mandated the Local Boundary Commission to undertake this review of the unorganized borough. Specifically, Section 3 of the law provides as follows:

**Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

**NEW BOROUGH INCORPORATION.** The Local Boundary Commission shall review conditions in the unorganized borough. By the 30th day of the First Regular Session of the Twenty-Third Alaska State Legislature, the commission shall report to the legislature the areas it has identified that meet the standards for incorporation. No portion of the report under this section constitutes a Local Boundary Commission proposal for purposes of art. X, sec. 12, Constitution of the State of Alaska.

Chapter 53, SLA 2002 calls for the Commission to report its findings to the Legislature by February 19, 2003.



## Section B. Nature of Borough Government in Alaska

The term "borough" refers generally to "a place organized for local government purposes" (*Black's Law Dictionary*). Boroughs are not unique to Alaska. They exist in other countries (e.g., United Kingdom) and in other states in this country (e.g., New York, New Jersey, Connecticut, Pennsylvania, and New Hampshire).

Boroughs in Alaska, however, are not at all like their namesakes elsewhere. Boroughs in other states are typically the equivalent of small cities. They have origins in colonial America, where boroughs were virtually the only municipal corporation in existence. *Municipal Government and Administration in America*, Jewell Cass Phillips, p. 123 (1960).

In contrast, the borough in Alaska is an innovative, modern form of local government. The fact that Alaska lacked regional governments before statehood gave the Alaska Constitutional Convention delegates freedom to

fashion a modern governmental concept to serve the diverse needs of Alaska. The new form of government was designated the "borough."<sup>1</sup> It was designed to avoid fundamental problems inherent in local government structures – particularly the county form of government – evident in states existing at the time.<sup>2</sup>

There are two broad types of boroughs in Alaska – organized and unorganized boroughs. Organized boroughs are municipal corporations and political subdivisions of the State of Alaska.<sup>3</sup> As reflected in the following account, the founders of Alaska's governmental structure envisioned organized

<sup>1</sup> Thomas Morehouse and Victor Fischer noted that:

Much controversy surrounded the selection [by the delegates to the Alaska Constitutional Convention] of the name "borough." While there were strong proponents of the word "county" (as well as canton, division, province, and others), the majority believed that the term [county] had a very definite connotation and that its use should be avoided in order to preclude rigid thinking as well as restrictive court interpretations and decisions based on the extensive body of county law developed in the older states. It was believed that a different name could more readily be interpreted in the context of the Alaska Constitution; *Black's Law Dictionary* defines "borough" as "a place organized for local government purposes." See *Minutes*, 18<sup>th</sup>, 29<sup>th</sup> Meetings; *Commentary*, p. 4; *Proceedings*, pp. 2618-19; 2777-87, 3599-3608, 3621-25, 3627.

As it turned out, the strangeness of the name did not help endear the borough concept to the people, and the use of the more familiar term "county" might have facilitated general acceptance. Years after statehood, however, this is a moot point since the borough exists and any change in name would only create confusion.

*Borough Government in Alaska*, Thomas Morehouse and Victor Fischer, page 37 (1971).

<sup>2</sup> "As seen by the delegates, the inadequacies of counties included limited functional jurisdiction, frozen boundaries, an overabundance of constitutionally established elective offices, and lack of specifically local governmental authority. They noted also that numerous special districts were created to fill service gaps left by counties and municipalities, resulting in a multiplicity of overlapping taxing jurisdictions." *Id.*, p. 37-38.

<sup>3</sup> See AS 29.04.010 - 29.04.020.

boroughs as the primary unit for the delivery of local services.

At the center of Alaska's local governmental scheme was the borough. As a vehicle for unifying local legislative and executive authority, and for coordinating the administration of state and local functions, borough government was Alaska's attempt to reach "at one stride a goal that local government reformers and specialists have been striving to attain in many states over a period of several generations."<sup>4</sup>

The borough was intended to serve as an all-purpose instrument of local government.<sup>5</sup> It was to encompass a "natural" social, economic, and political community, and serve both urban and rural needs; it was to be primarily responsible for functions best carried out on an areawide, rather than a limited community, basis; and it was to be highly adaptable, changing its shape and powers in response to the population and economic growth of an area.

*Borough Government in Alaska*,  
Thomas A. Morehouse and Victor  
Fischer, p. 6 (1971).

The founders also provided for unorganized boroughs because they "perceived that parts of the state would not be ready for incorporation as organized boroughs due to fiscal and

administrative inability to support areawide functions." *Id.*, p. 41. The conceptual nature of unorganized boroughs is described as follows:

Unlike the organized borough, legally a municipal corporation, unorganized boroughs were regarded as instrumentalities of the state. They would serve as vehicles for decentralizing and regionalizing state services and for fostering local participation in the administration of state programs within regions not ready or suited for corporate municipal status.

*Id.*, p. 41.

Additional information about the fundamental nature of boroughs is provided in Section C of this chapter and throughout Chapter 2 of this report.

## Section C. Role of the Legislature in the Formation of Boroughs

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Part 1. Duties Imposed by Alaska's Constitution .....	3
Part 2. Express Constitutional Provisions .....	6
Part 3. What the Legislature has Done .....	7

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### Part 1. Duties Imposed by Alaska's Constitution

Article X, Section 3 of Alaska's constitution requires the Legislature to set fundamental public policies regarding the establishment, alteration, and nature of boroughs. It provides as follows:

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner

<sup>4</sup> (Footnote original) Public Administration Service, *Constitution Studies*, prepared on behalf of the Alaska Statehood Committee for the Alaska Constitutional Convention, November 1955 (mimeo.), Vol. III, p. 60.

<sup>5</sup> (Footnote original) Chapter III below discusses in detail the concept of the borough and the local government deliberations of the Constitutional Convention of 1955-56.

and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.<sup>6</sup>

In sum, Section 3 requires the Legislature to:

- (1) enact standards for establishment of organized and unorganized boroughs;
- (2) enact procedures for establishment of organized and unorganized boroughs;
- (3) classify boroughs;
- (4) prescribe the powers and functions of boroughs; and
- (5) enact methods by which boroughs may be "organized, incorporated, merged, consolidated, reclassified, or dissolved."

The plain language of the second sentence of Section 3 ("They shall be established in a manner and according to standards established by law.") is unambiguous. The pronoun "they" clearly refers to "boroughs, organized and unorganized" in the preceding sentence. There is little basis for asserting that "they" refers "boroughs, organized but not unorganized" or that it refers to "boroughs, not organized but unorganized." Thus, Section 3 requires the Legislature to enact standards and procedures for the establishment of both types of boroughs – organized and unorganized.

The duty of the Legislature to enact standards and procedures for both types of boroughs is fundamental to local government in Alaska. Further indication that standards and procedures are required for both types of boroughs is found in the fact that the second sentence of Section 3 uses the general expression "establish" rather than the more specific terms

"incorporate" or "organize." Since an unorganized borough is neither "incorporated" nor "organized", those more specific terms are unsuited to the broad application of the second sentence to both types of boroughs. The broader term "establish" was fitting, again, because the second sentence applies to both types of boroughs – organized and unorganized.

Moreover, the last sentence of Section 3 ("Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.") offers further evidence of the requirement for enactment of standards and procedures governing establishment of both types of boroughs. The last sentence of Section 3 uses the specific terms "organized" and "incorporated" that were avoided in the second sentence. Again, those terms can only apply to organized boroughs, as is the case with

<sup>6</sup> The term "by law" is defined by Article XII, Section 11 of the constitution to mean "by the Legislature." It states, "As used in this constitution, the terms 'by law' and 'by the legislature,' or variations of these terms, are used interchangeably when related to law-making powers..."

other terms used in the last sentence (i.e., "reclassified", "dissolved", and, arguably, "merged" and "consolidated").

If the pronoun "they" in the second sentence applied only to organized boroughs, significant portions of Section 3 would be rendered surplus. Specifically, the provisions of the last sentence requiring the Legislature to establish methods by which boroughs may be organized and incorporated would then be redundant.

Finally, given the specific terms used in last sentence of Section 3 – "organized" and "incorporated" – the provisions of the second sentence requiring the Legislature to enact procedures for establishment of boroughs would be superfluous if they applied only to organized boroughs.<sup>7</sup>

Beyond Section 3, other parts of Article X impose additional requirements on the Legislature regarding boroughs. Specifically:

- Section 4 provides that the legislature must establish the composition of borough assem-

<sup>7</sup> The rules of statutory construction force the rejection of any argument that provisions of Section 3 are redundant. The U.S. Supreme Court held as follows in this regard:

We are not at liberty to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word. As early as in Bacon's Abridgment, § 2, it was said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word, shall be superfluous, void, or insignificant.' This rule has been repeated innumerable times."

Justice Strong, *United States v. Lexington Mill & E. Co.*, 232 US 399, pp. 409. (1914) (emphasis added)

To add to the evidence that the Legislature is required to enact standards and procedures for establishment of both organized and unorganized boroughs, consideration should be given to the drafting guidelines adopted by the Style and Drafting Committee at Alaska's Constitutional Convention. Those guidelines included the following (emphasis added):

- No unnecessary words should be used.
- Uniformity of expression is important; brevity is desirable, but precision should not be sacrificed to simplicity.
- Same words should not be used for different meanings.

*Alaska's Constitutional Convention*, Vic Fischer, p. 60 (1975).

Since the Style and Drafting Committee adopted the guideline that the same words should not be used for different meanings, it seems to follow that the same meaning should not be derived from different words (e.g., "establish" does not mean the same thing as "incorporate").

The entire local government article of Alaska's constitution was originally comprised of only 833 words. (Today, Article X is comprised of only 784 words following a 1972 amendment deleting a portion of Section 4.) Given the evidence presented above concerning the rules of statutory construction and the formal guidelines for drafting the Constitution of the State of Alaska, there is no basis for arguing that provisions found within Section 3 are superfluous.

blies, at least for general law boroughs;

- Section 6 requires the Legislature to "provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility;"
- Section 12 calls for the Legislature to establish "a local boundary commission or board" with implicit authority for determining the initial boundaries of boroughs and also for making adjustments to borough boundaries;
- Section 14 obliges the Legislature to establish an executive branch agency to advise and assist boroughs (and cities), review their activities, collect and publish local government information, and perform other duties; and
- Section 15, in effect, requires the Legislature to enact laws providing for the integration of special service districts with a newly formed borough government.

## Part 2. Express Constitutional Provisions

In addition to several duties, Article X of the constitution grants the Legislature specific authority to exercise a number of other powers relating to boroughs. Specifically:

- Section 5 provides that the Legislature may enact provisions concerning the establishment, alteration, or abolition of service areas within organized boroughs by the assembly;
- Section 6 states that the Legislature may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough;<sup>8</sup>
- Section 9 provides that the Legislature may enact laws concerning the manner in which the qualified voters of a first class borough may adopt, amend, or repeal a home rule charter;
- Section 10 authorizes the Legislature to extend home rule to other boroughs;
- Section 11, in effect, provides that the Legislature may restrict the legislative powers of home rule boroughs;
- Section 12 states that the Legislature may define in law how the Local Boundary Commission implements its constitutional authority to "establish procedures whereby boundaries may be adjusted by local action;" and
- Section 13, in effect, authorizes the Legislature to limit the constitutional authority of local governments to make agreements with any other local government, with the State, or with the United States; it also allows the Legislature to limit the authority of a city to transfer (or revoke the transfer of) any of the city's powers or functions to the borough in which the city is located.

<sup>8</sup> This particular provision found in the second sentence of Article X, Section 6 is often misconstrued in two fundamental respects. First, it is sometimes misinterpreted as imposing a duty on the Legislature. The preceding sentence of Section 6 indeed imposes an obligation on the Legislature. Clearly, however, the language of the second sentence grants the Legislature power to act in the fashion described without imposing a duty on it to do so.

Secondly, the provision is often mischaracterized as one in which the Legislature is rendered the assembly of the unorganized borough. A careful reading of the sentence clearly shows that this is not the case. The constitutional provision in question merely provides that the Legislature "may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough." Giving one the power to act as another is not the same as being that other. For example, AS 29.35.480 gives the assembly of a first class borough the authority to exercise in a service area any power granted to the council of a first class city by law. AS 29.35.480 certainly does not mean, however, that the assembly of a first class borough becomes a city council of a service area.

Moreover, the notion that the Alaska Legislature should serve as the assembly of the unorganized borough contravenes the fundamental principles of representative government. An assembly is the governing body of a borough (Article X, Section 4). Today, Alaska's unorganized borough is inhabited by about 13% of all Alaskans. Thus, 87% of the legislators (52 of 60) are elected by residents of organized boroughs. A circumstance where 87% of a governing body of a particular borough is elected by residents of other boroughs can hardly be construed as representative democracy. The extremes of such representation would actually be much greater if multiple unorganized boroughs had been created (as called for in the constitution) rather than a single residual unorganized borough.

The purpose of the second sentence of Article X, Section 6 is simple. The founders granted the Legislature express constitutional authority to exercise in an unorganized borough any power or function exercised by an assembly in an organized borough. This was done merely to exempt such actions from the constitutional prohibition regarding local or special acts of the Legislature as set out in Article II, Section 19 of the constitution. In that respect, *Borough Government in Alaska*, p. 41 notes, "By permitting the legislature to act as the borough assembly, the general prohibition against local legislation was overcome, and laws could be enacted for differential performance of functions in accordance with the requirements of different boroughs."

### Part 3. What the Legislature has Done

With regard to the aforementioned constitutional imperatives and prerogatives, the Legislature has enacted laws:

- providing standards for establishment of organized boroughs (AS 29.05.031; AS 29.05.100) and directing the Local Boundary Commission to adopt additional standards for incorporation of boroughs (AS 44.33.812(a)(2)); however, standards for establishment of unorganized boroughs have never been enacted;
- providing procedures for establishment of organized boroughs by local action (AS 29.05.060 - 150), directing the Local Boundary Commission to adopt additional procedures for borough incorporation (AS 44.33.812(a)(2)), creating the unorganized borough (AS 29.03.010), and mandating the incorporation of eight specific regions as organized boroughs

- (Chapter 52, SLA 1963); however, the Legislature has not enacted general laws providing for incorporation of boroughs by legislative review or for establishment of unorganized boroughs;
- classifying boroughs (AS 29.04.010 - 29.04.060);
  - prescribing the powers and functions of boroughs (AS 29.35);
  - establishing methods by which boroughs may be organized (AS 29.05.060 - 29.05.150), incorporated (AS 29.05.060 - 29.05.150), merged (AS 29.06.090 - 29.06.170), consolidated (AS 29.06.090 - 29.06.170), reclassified (AS 29.04.050 - 29.04.060), and dissolved (AS 29.06.450 - 29.06.530);
  - establishing the composition of borough assemblies (AS 29.20.060 - 29.20.080);
  - providing for the performance of services in unorganized boroughs (AS 04, Alcoholic Beverages; AS 05, Amusements and Sports; AS 09, Code of Civil Procedure; AS 14, Education, Libraries, and Museums; AS 15, Elections; AS 16, Fish and Game; AS 19, Highways and Ferries; AS 23, Labor and Workers' Compensation; AS 29, Municipal Government; AS 30, Navigation, Harbors, and Shipping; AS 35, Public Buildings, Works, and Improvements; AS 38, Public Land; AS 40, Public Records and Recorders; AS 41, Public Resources; AS 43, Revenue and Taxation; AS 44, State Government; AS 46, Water, Air, Energy, and Environmental Conservation; AS 47, Welfare, Social Services and Institutions);
  - establishing the Local Boundary Commission (AS 44.33.810) and providing for its powers and duties (AS 44.33.812 - 44.33.828; AS 29.04.040; AS 29.05.080 - 29.05.090; AS 29.06.040; AS 29.06.120 - 29.06.130; AS 29.06.450; AS 29.06.490 - 29.06.500);
  - establishing the Department of Community and Economic Development to advise and assist boroughs (and cities), review their activities, collect and publish local government information, and perform other duties (AS 44.33.010 - 44.33.900);
  - providing for the integration of special service districts with a newly formed borough government (AS 29.05.130 - 29.05.140);
  - concerning the establishment, alteration, or abolition of service areas within organized boroughs (AS 29.35.450 - 29.35.490);
  - addressing the manner in which voters of a first class borough may adopt, amend, or repeal a home rule charter (AS 29.10.010 - 29.10.100);
  - extending home rule to other boroughs (AS 29.10.010);
  - restricting the legislative powers of home rule boroughs (and/or cities) (AS 01, General

Provisions; AS 09, Code of Civil Procedure; AS 14, Education, Libraries, and Museums; AS 15, Elections; AS 18, Health, Safety, and Housing; AS 19, Highways and Ferries; AS 21, Insurance; AS 23, Labor and Workers' Compensation; AS 29, Municipal Government; AS 30, Navigation, Harbors, and Shipping; AS 37, Public Finance; AS 38, Public Land; AS 39, Public Officers and Employees; AS 40, Public Records and Recorders; AS 41, Public Resources; AS 42, Public Utilities and Carriers; AS 43, Revenue and Taxation; AS 44, State Government; AS 45, Trade and Commerce; AS 46, Water, Air, Energy, and Environmental Conservation);

- regarding authority of local governments to make agreements with any other local government, with the State, or with the United States (AS 29.35.010(13));
- regarding the authority of a city to transfer (or revoke the transfer) to the borough in which

the city is located any of the city's powers or functions (AS 29.35.310).

The lack of standards and procedures for the establishment of unorganized boroughs, coupled with the absence of general law provisions for incorporation of organized boroughs by means other than local action, have had profound consequences on the development of local government in Alaska. Those matters are addressed in Section F of this chapter.

### Section D. Role of the Local Boundary Commission in the Formation of Boroughs

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Part 1. Constitutional Origin of the Commission .....	9
Part 2. Duties Imposed by the Legislature .....	10
Part 3. Express Discretionary Powers of the Commission .....	10

Part 4. Implicit Constitutional Authority for Borough Incorporation by the Legislative Review Process.....	11
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### Part 1. Constitutional Origin of the Commission

Among the 120 or so active State boards and commissions, the Local Boundary Commission is one of only five with origins in Alaska's constitution.<sup>9</sup> Article X, Section 12 of the constitution provides as follows:

**Section 12. Boundaries.** A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject

<sup>9</sup> The four other boards with constitutional origins are the University of Alaska Board of Regents, Judicial Council, Commission on Judicial Conduct, and Redistricting Board.

to law, may establish procedures whereby boundaries may be adjusted by local action.

## Part 2. Duties Imposed by Legislature

Under general laws enacted by the Legislature, the Local Boundary Commission has been given the following duties relating to boroughs:

- to act on petitions for incorporation of boroughs (AS 29.05.090 – 29.05.100);
- to judge petitions for merger of boroughs with other local governments (AS 29.06.120 – 29.06.130);
- to make determinations concerning petitions for consolidation of boroughs with other local governments (AS 29.06.120 – 29.06.130);
- to act on petitions for dissolution of boroughs (AS 29.06.490 – 29.06.500);
- to consider a local government boundary change, including

borough annexation or detachment, requested of it by the legislature, the commissioner of community and economic development, or a political subdivision of the state (AS 44.33.812(a)(4));

- to conduct studies of local government boundary problems (AS 44.33.812(a)(1));
- to adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution (AS 44.33.812(a)(2)); and
- to establish procedures for local action annexation and detachment in addition to the regulations governing annexation by local action adopted under AS 44.33.812 (AS 29.06.040(c)).

Additionally, as noted in Section A of this chapter, the Commission also has a duty under Chapter 53, SLA 2002 to conduct this review of the unorganized borough.

## Part 3. Express Discretionary Powers of the Commission

In addition to the above duties, the Commission has certain discretionary powers expressly provided in statutory law. Specifically, the Commission may:

- conduct meetings and hearings to consider local government boundary changes and other matters related to local government boundary changes, including extensions of services by incorporated cities into contiguous areas and matters related to extension of services (AS 44.33.812(b)(1));
- on its own initiative, present to the legislature during the first 10 days of a regular session proposed local government boundary changes, including gradual extension of services of incorporated cities into

contiguous areas (upon a majority approval of the voters of the contiguous area to be annexed) and transition schedules providing for total assimilation of the contiguous area, and its full participation in the affairs of the incorporated city, within five years (AS 44.33.812(b)(2); (AS 29.06.040(a));

- consider, amend, and impose conditions on any proposed municipal boundary change. (AS 29.06.040(a)); and
- accept a proposed municipal boundary change if the commission determines that the proposed municipal boundary change, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations and is in the best interests of the state; otherwise, it must reject the proposed change. (AS 29.06.040(a)).

#### **Part 4. Implicit Constitutional Authority for Borough Incorporation by the Legislative Review Process**

In addition to the express constitutional and statutory duties and powers outlined in Parts 1 – 3 above, a number of local government experts and legal authorities believe the Local Boundary Commission has implicit authority under Article X, Section 12 of Alaska's constitution to submit recommendations to the Legislature for incorporation of new boroughs, even in the absence of formal proceedings initiated by residents of the area to be incorporated. This view is based on an interpretation that the phrase "local government boundary change" used in Article X, Section 12 includes incorporation of local governments.

Among the experts holding such views is Vic Fischer. Mr. Fischer was a delegate to Alaska's Constitutional Convention where he served as Secretary to the Committee on Local Government. His expertise in Alaska local government has been recognized by the Alaska Supreme Court (see

*Keane v. Local Boundary Commission*, 893 P.2d 1239, 1242, 1243, 1244 (Alaska 1995); and *Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d 92, 98 (Alaska 1974)).

Mr. Fischer argues that, "The Local Boundary Commission has total authority to establish boroughs . . . subject to legislative veto, within the 45-day provision [of Article X, Section 12 of the Alaska constitution]." *Transcript of Review of Local Government Article of Alaska's Constitution*, Department of Community and Regional Affairs, page 14, February 13 and 14, 1996.

Mr. Fischer's views are reflected in the Minutes of the 18<sup>th</sup> meeting of the Local Government Committee at the Constitutional Convention. The minutes of that meeting, held December 4, 1955, state as follows (emphasis added):

The idea was advanced that boundaries be established by a separate local government boundary commission, vested with the power to hear petitions for establishment of boundaries or for boundary changes and which could undertake such on its own initiative. The

legislature would be given the power to veto or revise any decisions of such a commission.

When the Constitutional Convention delegates reviewed the Local Government Article on the convention floor, they made frequent reference to the Local Boundary Commission's role in establishing boroughs consistent with those described above in the minutes of the Committee on Local Government. For example, Delegate John Coghill made the following remarks on January 19, 1956 in the context of Article X, Section 3 of the constitution (*Proceedings of the Alaska Constitutional Convention*, p 2620) (emphasis added).

COGHILL: Further on in Section 3, I would like to ask you, Mr. Rosswog, on line 6 of page 2, "Each borough shall embrace, to the maximum extent possible, an area and population with common interests." My question here is directed to you to find out what the Committee's thinking was as to boundary areas of local government. Could you give us any light on that as to the extent? I know that you have delegated the powers to a commission, but you have said that each borough shall embrace the maximum extent possible. I am thinking now of an area that has maybe five or six economic

factors in it — would they come under one borough?

After conferring with the State Attorney General's office, the initial members of the Alaska Local Boundary Commission (appointed November 1, 1959) shared the view that the Commission has the power to incorporate boroughs, subject to legislative veto. However, they declined to exercise such authority to avoid litigation. The Commission noted as follows in that respect in its report to the 1960 Legislature:

... there would appear to be no objection (to) the Commission recommending in this or any other session, proposed original boundaries or boundary changes, which would become effective unless negated within forty-five days or at the end of the legislative session during which such proposals are made, whichever is earlier.

But, to avoid a needless law-suit by any citizen objecting to the formation of a borough under the above procedures, and to give stability to any unit so created, it is suggested that any recommendation of the Commission as to initial boundaries be adopted by the usual legislative processes of enacting a statute. The Commission is agreed (sic) and impressed with the Attorney General's chain of reasoning, and they are convinced it would prevail in a court of law, particularly

in view of the fact that the creating of boroughs is in the nature of a political undertaking, over which the courts are not readily disposed to take jurisdiction or to otherwise set aside. However, as stated above, formal legislation is the safest course and for this reason is strongly advocated.

Notwithstanding the predilection of the initial Boundary Commission to avoid litigation, the powers of the Commission have been tested in the courts on many occasions over the past forty-four years. The Alaska Supreme Court has consistently acknowledged the special purpose and broad powers of the Commission concerning the creation and alteration of local governments in Alaska. The Supreme Court has invariably deferred to the Commission concerning matters involving expertise relating to complex subject matters or matters of fundamental policy formulation, as long as the Commission has a reasonable basis for its actions. See: *Fairview Public Utility Dist. No. One v. City of Anchorage*, 368 P.2d 540, (Alaska 1962); *Oesau v. City of Dillingham*, 439 P.2d 180, (Alaska 1968); *Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d 92, (Alaska

1974); *Valleys Borough Support v. Local Boundary Commission*, 863 P.2d 232, (Alaska 1993); *Lake and Peninsula Borough v. Local Boundary Commission*, 885 P.2d 1059, (Alaska 1994); *Keane v. Local Boundary*, 893 P.2d. 1239, (Alaska 1995); and *Yakutat v. Local Boundary Commission*, 900 P.2d 721, (Alaska 1995).

Moreover, the State Attorney General's office noted in a 1991 memorandum of opinion that, "In our view 'changing local boundary lines' includes not only annexation or detachment proceedings but also incorporation proceedings." In the same opinion, the Attorney General's office observed:

We have often opined as to the framers (sic) intent that boundary formation and adjustment be from a statewide perspective and that the role of the LBC is to facilitate the framer's (sic) goals. See 1990 Inf. Op. Att'y Gen. (March 21; 663-90-0307) 1986 Inf. Op. Att'y Gen. (Jan. 14; 366-234-86); 1972 Inf. Op. Att'y Gen (R. Garnett, Feb. 24).

1991 Inf. Op. Att'y Gen. (Feb. 15; 663-91-0212).

Chapter 53, SLA 2002 also seems to implicitly recognize the Commission's constitutional authority to formally recommend incorporation of boroughs pursuant to Article X, Section 12 of Alaska's constitution. As noted earlier, the last sentence of the legislative directive for the Commission to undertake this review of the unorganized borough states, "No portion of the report under this section constitutes a Local Boundary Commission proposal for purposes of art. X, sec. 12, Constitution of the State of Alaska."

Notwithstanding its authority to do so, the Commission has never exercised its implicit constitutional authority under Article X, Section 12 to recommend incorporation of a particular region as a borough. Moreover, the Commission cannot conjecture circumstances under which it would exercise such powers in the absence of formal incorporation or annexation proceedings initiated by a petitioner. The Commission has, however, on some 120 occasions since statehood, submitted recommendations pursuant to Article X, Section 12 for the

"incorporation" of areas into existing city and borough governments through annexation and for other municipal boundary changes.

## Section E. Development of Borough Government in Alaska

Formal authority to establish municipal governments of any kind in Alaska was not granted by Congress until 1900. Even then, the authority was limited to city governments.

In 1912, Congress incorporated Alaska as a territory. In doing so, it extended restrictive home rule status to Alaska. One of the restrictions – which was seen as a concession to outside mining, timber, and fishing interests in Alaska – prohibited the Alaska Territorial Legislature from establishing counties without the specific authority of Congress. As noted in Section B of this chapter, that circumstance actually worked to the later advantage of Alaska when the founders designed the local government structure for Alaska as a state.

In 1935, the Territorial Legislature authorized additional types of local governments – small independent school districts and small public utility districts. In doing so, it began a course

long-practiced in other parts of the country by providing for the establishment of small single-purpose or limited-purpose governmental units with overlapping boundaries.

The following is a brief summary of activities beginning with the Constitutional Convention that shaped the regional governmental structure in Alaska today.

<b>1955</b>	<ul style="list-style-type: none"> <li>▪ Alaska Constitutional Convention convened.</li> </ul>
<b>1956</b>	<ul style="list-style-type: none"> <li>▪ Constitutional Convention delegates adopted constitution (2/5/56). Delegates decided that "although voluntary incorporation would be preferable, organized boroughs could be created without the approval of the people within the area." (<i>Borough Government in Alaska</i>, p 61).</li> <li>▪ Alaska voters ratified the constitution (4/24/56)</li> </ul>
<b>1959</b>	<ul style="list-style-type: none"> <li>▪ Alaska's constitution took effect (1/3/59). Art. X, § 3 requires legislature to determine procedures and standards for establishment of organized and unorganized boroughs. Art. X, § 15 required legislature to provide for integration of independent school districts and public utility districts into boroughs.</li> </ul>
<b>1961</b>	<ul style="list-style-type: none"> <li>▪ Legislature adopted standards and procedures for incorporation of boroughs by local action. The law created a single unorganized borough encompassing all of Alaska outside organized boroughs. The new law also provided that independent school districts and public utility districts must be integrated by July 1, 1963.</li> </ul>
<b>1962</b>	<ul style="list-style-type: none"> <li>▪ Bristol Bay Borough incorporated</li> </ul>
<b>1963</b>	<ul style="list-style-type: none"> <li>▪ LBC rejected proposal to incorporate 1,400 square mile "Homer-Ninilchik Borough."</li> <li>▪ Residents of Kenai-Soldotna area withdrew petition to incorporate a borough roughly the size of the Kenai Recording District (approximately 2,500 square miles) after LBC rejects Homer-Ninilchik Borough proposal.</li> <li>▪ Representative Rader introduced House Bill 90 mandating incorporation of nine regions into boroughs. Stated objectives included: (1) promotion of maximum local self-government with a minimum of local government units, (2) elimination of special districts not recognized in constitution, and (3) tax equity. Boundaries are based on House election districts. The nine regions encompassed all independent school districts.</li> <li>▪ House Bill 90 was enacted by a single vote in the Senate after it was amended to exclude the Lynn Canal Icy Straits Election District. The bill extended the deadline for integration of independent school districts into borough to July 1, 1964. It required boroughs to form in the following regions:             <ol style="list-style-type: none"> <li>1. Ketchikan,</li> <li>2. Sitka,</li> <li>3. Juneau,</li> <li>4. Kodiak Island,</li> <li>5. Kenai Peninsula,</li> <li>6. Anchorage,</li> <li>7. Matanuska-Susitna valleys, and</li> <li>8. Fairbanks.</li> </ol> </li> </ul>

<b>1964</b>	<ul style="list-style-type: none"> <li>▪ 11,054 square miles detached from the southeast portion of the Fairbanks North Star Borough (including Delta Junction and Tok)</li> <li>▪ 1,333 square miles annexed to the northwest portion of the Fairbanks North Star Borough</li> <li>▪ LBC approved a proposal to form a first class borough in Haines in March; voters rejected the proposal</li> <li>▪ The Haines Independent School District was dissolved on July 1, 1964, in accordance with the provisions of the 1963 Mandatory Borough Act</li> <li>▪ Commissioner of the Department of Education formed the Haines-Port Chilkoot Special School District under an obscure statutory provision in August of 1964</li> </ul>
<b>1966</b>	<ul style="list-style-type: none"> <li>▪ Legislature repealed authority for operation of special school districts under which the Haines-Port Chilkoot Special School District had formed; notwithstanding, the district continued to operate</li> </ul>
<b>1967</b>	<ul style="list-style-type: none"> <li>▪ LBC approved a petition to incorporate a second class borough in Haines; voters rejected the proposal</li> <li>▪ The State Attorney General advised the Department of Education to discontinue funding for the Haines-Port Chilkoot Special School District because it had no legal basis</li> <li>▪ Following the action by the State Attorney General's office, the City of Haines and second class City of Port Chilkoot each organized city school districts; the State school district served students outside the two cities; thus, three school districts served a total of 346 students in the Haines area in 1967</li> <li>▪ A third proposal to form a Haines Borough – again, a second class borough – was prepared shortly after voters rejected the second proposal in October of 1967; that proposal was also defeated by the voters</li> </ul>
<b>1968</b>	<ul style="list-style-type: none"> <li>▪ Legislature enacted laws establishing a third class borough</li> <li>▪ In May, voters in Haines petitioned to incorporate a third class borough; the LBC subsequently approved the proposal; voters did likewise, establishing the third class Haines Borough</li> </ul>
<b>1970</b>	<ul style="list-style-type: none"> <li>▪ The City of Juneau, City of Douglas, and the Greater Juneau Borough unified into a borough named the City and Borough of Juneau.</li> </ul>
<b>1971</b>	<ul style="list-style-type: none"> <li>▪ The City of Sitka and Greater Sitka Borough unified into a borough named the City and Borough of Sitka</li> </ul>
<b>1972</b>	<ul style="list-style-type: none"> <li>▪ The North Slope Borough incorporated.</li> </ul>
<b>1974</b>	<ul style="list-style-type: none"> <li>▪ Alaska Legislature detached Eagle River-Chugiak from the Greater Anchorage Area Borough; litigation later reversed the action on constitutional grounds</li> </ul>
<b>1975</b>	<ul style="list-style-type: none"> <li>▪ The City of Anchorage, City of Girdwood, City of Glen Alps, and Greater Anchorage Area Borough unified into a borough named the Municipality of Anchorage</li> </ul>
<b>1985</b>	<ul style="list-style-type: none"> <li>▪ The State Legislature enacted laws prohibiting the formation of new third class boroughs</li> </ul>

<b>1986</b>	<ul style="list-style-type: none"> <li>▪ 3,298 square miles detached from North Slope Borough on condition the area is included in another borough</li> <li>▪ Northwest Arctic Borough incorporated including the 3,298 square miles detached from the North Slope Borough</li> </ul>
<b>1987</b>	<ul style="list-style-type: none"> <li>▪ Aleutians East Borough incorporated</li> </ul>
<b>1988</b>	<ul style="list-style-type: none"> <li>▪ Annexation to Fairbanks North Star Borough approved by Local Boundary Commission; rejected by Legislature</li> <li>▪</li> </ul>
<b>1989</b>	<ul style="list-style-type: none"> <li>▪ Model borough boundaries project initiated</li> <li>▪ Lake and Peninsula Borough incorporated</li> <li>▪ Shelikof Strait and portion of Alaska Peninsula annexed to Kodiak Island Borough</li> </ul>
<b>1990</b>	<ul style="list-style-type: none"> <li>▪ Denali Borough incorporated;</li> <li>▪ Valleys Borough incorporation petition (proposal competing with Denali Borough incorporation) rejected</li> <li>▪ Matanuska-Susitna Borough annexation petition (proposal competing with Denali Borough incorporation) rejected</li> <li>▪ Petition for annexation of approximately 140 square miles to the City and Borough of Juneau approved</li> </ul>
<b>1992</b>	<ul style="list-style-type: none"> <li>▪ City and Borough of Yakutat incorporated</li> <li>▪ Model borough boundaries project completed</li> </ul>
<b>1996</b>	<ul style="list-style-type: none"> <li>▪ Petition to detach 5,400 square miles from the Fairbanks North Star Borough and incorporate that area plus an additional 3,550 square miles of unorganized area as the North Pole Borough denied</li> </ul>
<b>1997</b>	<ul style="list-style-type: none"> <li>▪ City and Borough of Yakutat annexed 3,199 square miles</li> <li>▪ Petition to detach 993 square miles from the Matanuska-Susitna Borough and annex the same area to the Denali Borough denied</li> <li>▪ Petition to detach Lake Louise from the Matanuska-Susitna Borough denied</li> </ul>
<b>1998</b>	<ul style="list-style-type: none"> <li>▪ Petition for consolidation of the City of Haines and Haines Borough approved by Commission; rejected by voters</li> </ul>
<b>1999</b>	<ul style="list-style-type: none"> <li>▪ Petition to annex 5,524 square miles to the Ketchikan Gateway Borough rejected</li> </ul>
<b>2001</b>	<ul style="list-style-type: none"> <li>▪ Petition to consolidate the City of Fairbanks and Fairbanks North Star Borough approved by Commission; rejected by voters</li> <li>▪ Petition to consolidate the City of Ketchikan and Ketchikan Gateway Borough approved by Commission; rejected by voters</li> </ul>
<b>2002</b>	<ul style="list-style-type: none"> <li>▪ City of Haines and Haines Borough consolidate into a new borough</li> <li>▪ Skaqway Borough incorporation petition denied</li> </ul>

**Section F. Policy Issues  
Relating to Borough  
Incorporation**

Part 1. Lack of Standards  
Triggering the Formation  
of Organized Boroughs Hinders  
Development of Local  
Government in Alaska ..... 18

Part 2. A Single Unorganized  
Borough Does Not Satisfy  
Constitutional Requirements  
Governing Unorganized Areas  
of Alaska ..... 19

Part 3. Local Residents in  
Organized and Unorganized  
Areas are not Treated Equally  
Regarding Obligations for  
Services ..... 20

Part 4. Equity is an Important  
Reason to Promote Boroughs  
but Boroughs are Good Public  
Policy for Many Other Reasons..... 21

Part 5. Boroughs are Suitable  
to Rural Areas as well as  
Urban Areas ..... 27

Part 6. Voluntary Borough  
Formation is Appealing  
but is Ineffective in Terms of  
Promoting Boroughs ..... 28

Part 7. Current State Law  
does not Adequately  
Encourage the Voluntary  
Formation of Boroughs..... 29

Part 8. Alaska Alone has  
Unorganized Regions ..... 32

**Introduction**

For more than forty 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 Alaska. For example, a contemporary publication of the Alaska Municipal League declares plainly:

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

*Municipal Government in Alaska – White Paper*, Alaska Municipal League (undated, currently posted on Internet at <<http://www.akml.org/>>).

Two years ago, the Local Boundary Commission formally stated that it “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 Need to Reform State Laws Concerning Borough Incorporation and Annexation*, Local Boundary Commission, p. 3 (January 2001).

A review of the shortcomings regarding the manner in which new boroughs are formed is certainly relevant in terms of future deliberations by the Legislature regarding this report of the Commission called for by Chapter 53, SLA 2002. As noted in Section D-2 of this chapter, the Local Boundary Commission has a duty to make studies of local government boundary problems. In that respect, the Commission takes this opportunity here to present fundamental public



*Local Government Committee, Alaska Constitutional Convention, 1956*

policy issues relating to the extension of borough government. Important misconceptions about borough government are also addressed.

### **Part 1. Lack of Standards Triggering the Formation of Organized Boroughs Hinders Development of Local Government in Alaska**

Noted above, the founders provided for unorganized boroughs because they perceived that, at least initially, some regions of Alaska would not be ready or suited for organized boroughs because of a lack of fiscal and administrative capacity to support areawide functions.

Thus, fiscal and administrative ability, logically, should be the distinguishing characteristic between organized boroughs and unorganized boroughs.

Unfortunately, the Legislature has not yet enacted standards and procedures for the establishment of unorganized boroughs. The lack of such standards and procedures precludes a meaningful determination of whether an unorganized area has attained the fiscal and administrative capacity to support areawide functions. If such standards existed, an unorganized area could be signaled to form an organized borough when it achieved the administrative and fiscal capacity to support areawide functions.

The lack of effective standards and procedures triggering the incorporation of organized boroughs led John Rader, Alaska's first State Attorney General and a former member of the State House of Representatives, to the conclusion in 1963 that "the greatest unresolved political problem of the State was the matter of boroughs." *The Metropolitan Experiment in Alaska: A Study of Borough Government*,

Ronald C. Cease and Jerome R. Saroff; eds., p. 93 (1968).

For the past 42 years, with the single exception of the 1963 Mandatory Borough Act, the Legislature has delegated to local citizens the decision 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 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 the Act 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.

*Id.*, p. 81.

Mr. Rader's statement is perhaps overly broad in the sense that the 1963 Mandatory Borough Act applied only to eight particular regions of Alaska. An informal understanding had reportedly been reached among legislators in 1963 that subsequent legislative enactments would be made to compel other areas to form boroughs.<sup>10</sup> However, the State has never since exercised such authority. Instead, the State returned to its 1961 policy which Mr. Rader characterized as a failed strategy for formation of boroughs.

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." *Alaska State Government and Politics*, Gerald A. McBeath and Thomas A. Morehouse; eds., p. 44 (1987).

## **Part 2. A Single Unorganized Borough does not Satisfy Constitutional Requirements Governing Unorganized Areas of Alaska**

To fulfill the constitutional requirement for the division of the entire state into organized and unorganized boroughs under Article X, Section 3, the Local Boundary Commission recommended in 1960 that the Legislature give the Commission a mandate to undertake the task. However, the recommendation was formally rejected by the Legislature.

Instead, in 1961, the Legislature implemented Article X, Section 3 by enacting a law providing that all of Alaska not within organized boroughs would constitute a single unorganized borough. That law remains in effect today.

From its inception, the single unorganized borough has embraced an area and population with highly diverse interests rather than the maximum common interests required by the constitution. The diversity of the social, cultural, economic, transportation, and geographic characteristics of the unorganized borough is remarkable. As currently configured, the existing unorganized borough contains an estimated 374,843 square miles – 57% of the total area of Alaska. It ranges in a non-contiguous manner from the southernmost tip of Alaska to approximately 150 miles above the Arctic Circle. This borough extends in a non-contiguous manner from the easternmost point in Alaska (at Hyder) to the westernmost point in Alaska at the tip of the Aleutian Islands.

The lack of formal standards and procedures for the establishment of unorganized boroughs noted in Section C-1 of this chapter allowed the creation

<sup>10</sup> Clem Tillion, a member of the 1963 State House of Representatives, indicated that the 1963 Mandatory Borough Act was 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).

of the single residual unorganized borough. Such a borough lacks requisite common interests.

Compliance with the common interests clause of Article X, Section 3 of Alaska's constitution can be achieved if AS 29.03.010 were amended to divide the single unorganized borough into multiple unorganized boroughs formed along natural regions in accordance with standards and procedures established in law.

### **Part 3. Local Residents in Organized and Unorganized Areas are not Treated Equally Regarding Obligations for Services**

Article I, Section 1 of Alaska's constitution is often referred to as the "equal protection clause." However, it also requires equal responsibility among Alaska's citizens. Article I, Section 1 provides as follows (emphasis added):

This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal

rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

Under the constitution, all residents of Alaska have equal obligations to the people and State, yet statutory law imposes no responsibility on residents of the unorganized borough outside home rule and first class cities to support fundamental services such as public education and plating. Those areas comprise approximately two-thirds of the population of the unorganized borough.

A 1991 study of Alaska's education foundation funding formula raised basic 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.

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

In contrast to residents served by 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-seven city governments in the unorganized borough have financial responsibility for operation of local schools.

The required local contributions of municipal school districts directly offsets education funding that the State would otherwise be obligated to provide to those municipal school districts. In contrast, the State has chosen to bear the financial burden of fundamental municipal services for approximately two-thirds of the population of the unorganized borough, again, without regard for local fiscal capacity or human resources. This

disparate treatment of Alaskans lacks a rational basis.

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, 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." *Task Force on Governmental Roles – Final Report*, Governor's Office of Management and Budget and the Alaska Municipal League, p. 15 (July 10, 1992).

Numerous attempts to levy taxes on unorganized areas followed the report of the Task Force. However, every attempt met a fusillade of opposition from residents of unorganized areas. None were 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. 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.

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

Conflict clearly exists between the circumstances described here and the principles of Article I, Section 1 of Alaska's constitution. Approximately one in every twelve Alaskans receives fundamental public services at no cost, *without regard to fiscal capacity*, while

all other Alaskans are compelled to pay for the same services because they reside within the boundaries of organized boroughs or home rule or first class cities in the unorganized borough. The previously noted 1991 Task Force on Governmental Roles reported 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."

#### **Part 4. Equity is an Important Reason to Promote Boroughs but Boroughs are Good Public Policy for Many Other Reasons**

Alaska's Constitution promotes boroughs as the cornerstone of efficient and effective delivery of municipal services throughout Alaska. The Alaska Supreme Court interprets Article X, Section 1 as encouraging the creation of borough governments. *Mobil Oil Corporation v. Local Boundary Commission, supra*, 101.

Boroughs benefit the State of Alaska and local areas in many ways including:

- enhanced service delivery through greater economies of scale;
- ability to provide financial support for fundamental services and facilities;
- greater capacity for economic development;
- power to address fundamental social services and public safety needs on a regional basis; and
- greater local control.

These advantages of boroughs are addressed in subparts (a) through (e) below.

### **Subpart (a). Boroughs Provide Greater Economies of Scale for Local Service Delivery.**

The Alaska Municipal League characterizes service delivery in the unorganized borough as the exact opposite of what was intended by the constitution. The League notes:

Article X of the Constitution also states, "The purpose of this article is to provide for maximum local self government with a minimum of local government units." In the Unorganized Borough the opposite is true. There is currently a minimum of local self-government with a maximum of local government units.

*Municipal Government in Alaska – White Paper, supra.*

Organized boroughs deliver fundamental services such as education and plating on an areawide basis. In contrast, education services in the unorganized borough are delivered in a highly fragmented manner through a combination of service areas and cities.

For example, each organized borough comprises a single school district. Yet, the lone unorganized borough encompasses thirty-seven different school districts – more than twice the number in all organized boroughs combined. The unorganized borough has just thirteen percent of Alaska's population, yet it contains seventy percent of the school districts in the state. If the state were organized along the model borough boundaries defined by 3 AAC 110.990(9), the

The unorganized borough has just thirteen percent of Alaska's population, yet it contains seventy percent of the school districts in the state.

number of school districts serving the area now within the unorganized borough would be reduced by more than 50%.

Based on the 2001-2002 enrollment figures, thirteen of the thirty-seven school districts in the unorganized borough (35%) have fewer than 250 students. A 250 student threshold was established by the State as the floor seventeen years ago for new school districts (AS 14.12.025). Moreover, one-third of the school districts in the unorganized borough sought from and were granted by the State Board of Education waivers for FY 2000 of the requirement that at least 65 percent of operating funds must be budgeted for instruction.

In organized boroughs, citizens have elected to streamline municipal government through unification or consolidation of smaller units of local government. In 1970, half of the people who lived in organized boroughs also lived in city governments. Today, the figure stands at just seventeen percent. In October 2002, voters in Haines were the latest to combine their local governments when voters approved consolidation of the City of Haines and the Haines Borough.

In contrast, more than three-quarters of the residents of the unorganized borough live in cities 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 (67%) of the total city governments in Alaska.

The Alaska Municipal League publication referred to earlier offers 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.

In a 1981 study of the unorganized borough by the former Department of Community and Regional Affairs, Dr. John J. Kirlin characterized the structure for service delivery in the unorganized borough 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 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.

*Problems and Possibilities for Service Delivery and Government in the Alaska Unorganized Borough*, supra, p. 54.

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." *Task Force on Governmental Roles – Final Report*, supra, p. 15.

The extension of some form of borough government to unorganized areas of Alaska would enable residents of those areas to approach public policy issues and service delivery on a regional basis. Until that happens, however, the State's ability to meet the public service needs of the over two hundred communities in the unorganized borough will be poor, at best. If the State is ever going to shed the responsibility of providing what are

Perceived shortfalls for operation of schools and other fundamental services can be addressed by borough governments. In contrast, regional educational attendance areas lack authority to levy taxes.

essentially local government services, the evolution of local government from State government must proceed.

**Subpart (b). Boroughs increase opportunity to provide financial support for fundamental services and facilities for local residents.**

A borough offers the ability to provide funding for fundamental regional services such as schools. Some communities have suggested that the \$645,468,498 allocated by the State of Alaska in Education Foundation Program financial aid during Fiscal Year 2002 for 134,358 students was inadequate. As the Department of Education noted in a 2001 report to the

Legislature on education funding, municipal school districts have the legal capacity to supplement state funding for education:

The consumer price index for Anchorage has risen approximately 30% from 1990 to 1999. The January-to-January index rose 29.57% and the July-to-July index rose 30.7% in ten years. Between 1990 and 1999, the legislature has increased the base foundation funding formula approximately 5%. Many school districts have had to absorb the effects of the additional 25% of inflation. Many municipalities have increased the local contribution to offset the effects.

Increasing the base student allotment by the additional 25% inflation factor would result in an increase of \$985, or a revised student allotment of \$4,925. If the base student allotment were \$4,925, overall state foundation aid would increase by more than \$200 million.

The FY2002 foundation program budget request is \$665 million to educate an estimated 133,300 children statewide. In FY2001, Alaska spent \$664 million to inflation proof the permanent fund. It is estimated in FY2002 Alaska will spend \$714 million to inflation proof the permanent fund. In FY2002, Alaska will spend approximately 7.4% or \$49 million

dollars more to inflation proof the permanent fund than it will spend on the state's 133,300 children's K-12 education.

*Alaska's Public School Funding Formula: A Report to the Alaska State Legislature, Department of Education and Early Development, p. 11, (January 15, 2001).*

As the Governor and Legislature continue to struggle with declining State revenues and a growing population, the perceived disparity between the State's ability to fund services and the need for services may become much greater in the foreseeable future.

Perceived shortfalls for operation of schools and other fundamental services can be addressed by borough governments. In contrast, regional educational attendance areas lack authority to levy taxes.

**Subpart (c). Boroughs Promote Economic Development Activities.**

Urban and rural boroughs in Alaska routinely engage in successful economic development activities that

benefit local residents. For example, the Haines Borough is currently exploring ways in which it might assist the local commercial fishing industry following the recent decision of Wards Cove Packing Company to close its Alaska salmon operations. In the Haines Borough, that action has forced the closure of the Excursion Inlet processing plant and former cannery at Letnikof Cove.

Haines gillnetters recently passed a resolution asking the Haines Borough to consider buying Wards Cove Packing Company's former cannery at Letnikof Cove for use as a base of operations for the fleet. The Haines Borough economic development director is exploring other ways and means of assisting the industry. One Haines Borough Assembly member recently committed that, "The borough isn't going to sit back and do nothing. The assembly is very interested in keeping Excursion Inlet and the Letnikof property to benefit the fisheries."

A 1999 study concerning fisheries in the Bristol Bay region stressed that "... borough governments in rural Alaska are often the largest employer and serve as the economic engine for

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

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.

Moreover, boroughs can also be effective advocates in the promotion of public policies that benefit local economies. For example, the Natural Resources Department of the Aleutians East Borough represents local residents before various fishery advisory and management bodies. The Aleutians East Borough also assists in the development and implementation of scientific efforts and regulations

... boroughs can also be effective advocates in the promotion of public policies that benefit local economies.

regarding commercial fisheries in the region.

Organized boroughs are also empowered 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 which now employs hundreds of residents of the Northwest Arctic Borough.

### **Subpart (d). Boroughs can Address Fundamental Social Services and Public Safety Needs on a Regional Basis.**

Boroughs offer the jurisdictional basis for addressing social and public safety issues. For example, there is currently no mechanism to provide alcohol control on a regional basis in the unorganized borough. However, the law allows voters in organized boroughs to establish areawide alcohol controls.

Another example concerns the National Flood Insurance Program regulated by the Federal Emergency Management Agency (FEMA). Participation in the National Flood Insurance Program requires passage of a municipal ordinance to meet applicable FEMA regulations. Residents and businesses in floodprone areas of the unorganized borough outside of cities are ineligible for federal flood insurance because no local government structures exist which can adopt such ordinances. The lack of

flood insurance coverage can have profound economic effects on unprotected areas.<sup>11</sup>

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. *Final Report to the Governor, Alaska Commission on Rural Governance and Empowerment*, p. 65 (June 1999).

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." *Id.*, p. 72. While the Local Boundary Commission does not view that statement as an endorsement for borough government, boroughs certainly possess the characteristics listed.

<sup>11</sup> FEMA's Public Assistance Policy Digest states:

A distinct reduction in disaster assistance is made for facilities located in the 100-year-floodplain, whether or not the applicant has the facility insured by a National Flood Insurance Program (NFIP) standard flood insurance policy.

This reduction is the maximum amount of insurance proceeds the applicant would have received if the facility had been fully covered by an NFIP standard flood insurance policy. It is made separately for buildings and contents up to a maximum of \$500,000 each. . . . If the insurance is not maintained, at the next disaster the facility will receive no assistance." (FEMA 321, October 2001)

Moreover, federal laws require that "...Provisions of the Flood Disaster Protection Act of 1973 prohibit approval of assistance for the Private Nonprofit unless the community agrees to participate in the NFIP within six months after the major disaster declaration date, and the required flood insurance is purchased." (Title 44, Ch. I, Part 206 - Subpart I Public Assistance Insurance Requirements Sec. 206.252 Insurance requirements for facilities damaged by flood.)

### **Subpart (e). Boroughs Offer Greater Local Control over Public Services and Regulation.**

Through a borough government, residents of a region have greater opportunity to make decisions at the local level. For example, one of the fundamental services required of boroughs is platting.

Platting typically entails regulation and control of the (1) form, size, and other aspects of subdivision, dedications, and vacations of land; (2) dimensions and design of lots; (3) street width, arrangement, and rights-of-way, including requirements for public access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage, and other public utility facilities and improvements; and (4) dedication of streets, rights-of-way, public utility easements and areas considered necessary by the platting authority for other public uses.

In the absence of a borough or city platting authority, the Alaska Department of Natural Resources is

formally designated platting authority under AS 29.03.030. The exercise of such local responsibilities by the State seems to run counter to the principle of "maximum local participation and responsibility" called for in Article X, Section 6 of Alaska's constitution.

It is difficult to reconcile arguments for self-determination when it comes to borough government with the willingness of most of the unorganized borough to rely on the State of Alaska to exercise control over local matters such as platting.

### **Part 5. Boroughs are Suitable to Rural Areas as well as Urban Areas**

Boroughs are adaptable to both rural and urban areas. *Mobil Oil Corporation v. Local Boundary Commission, supra*, p. 98. More than one-third of Alaska's existing 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

In the absence of a borough or city platting authority, the Alaska Department of Natural Resources is formally designated the platting authority. . . . The exercise of such local responsibilities by the State seems to run counter to the principle of "maximum local participation and responsibility" called for in Article X, Section 6.

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. *Alaska's Urban and Rural Governments*, Thomas Morehouse, et al., p. 144 (1984).

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.<sup>12</sup>

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.<sup>13</sup>

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.<sup>14</sup>

## **Part 6. Voluntary Borough Formation is Appealing but is Ineffective in Terms of Promoting Boroughs**

It has been widely recognized by experts in Alaska local government that the local option (voluntary) approach to forming boroughs implemented in 1961 has been successful only in those few instances where local self-interests outweighed the significant disincentives to borough incorporation. Indeed, less than 4% of Alaskans live in boroughs that were formed voluntarily through local action. In contrast, nearly 83% of Alaskans live in boroughs that were formed in a matter of a few months under the 1963 Mandatory Borough Act. The remaining 13% of Alaskans live in the unorganized borough. Stated differently, more than 96% of Alaskans live in areas that have not voluntarily initiated borough incorporation.

Constitutional convention delegates expressed a preference for voluntary incorporation of boroughs. However, they also felt that the State should require areas to take on the burden of their own regional government where

<sup>12</sup> 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, p. 44.

<sup>13</sup> Alaska Municipal League, *supra.*, p. 4.

<sup>14</sup> Cornell, et al., *supra.*, Appendix A lists 223 BIA-recognized villages, 72 of which are within organized boroughs.

they can support it. The following reflects the views of the constitutional convention delegates regarding the establishment of boroughs.

Convention delegates intended that the initial delineation of borough boundaries would take place only after thorough study of relevant economic, geographic, social, and political factors. The objective was to assure that boroughs would be so established that their boundaries would reflect statewide considerations as well as regional criteria and local interests. As indicated, the delegates did not believe that local determination of boundaries would likely achieve this objective.<sup>15</sup>

The authority to organized a borough was also vested in the state, and there was initial discussion of whether boroughs should be established on a voluntary or compulsory basis.<sup>16</sup> It was decided that, although voluntary incorporation would be preferable, organized boroughs could be created without the approval of the people within the area. The rationale behind this position of unilateral state actions was that the borough:

... is more than just a unit of local government. It is also a unit for carrying out what otherwise got carried out as state functions; and when a certain area reaches a position where it can support

certain services and act in its own behalf, it should take on the burden of its own government.<sup>17</sup>

It was anticipated, however, that the legislature might choose to provide the local people with the opportunity to vote upon the issue in a referendum.<sup>18</sup>

While compulsory establishment of organized boroughs was authorized, it was also expected that the state would offer adequate inducement to local people to accept organized borough status or even to initiate incorporation:

We [the Local Government Committee] thought that at the state level it would be the policy as it has been in the past to offer certain inducements to them [boroughs] to organize ... [To] the extent that the benefits that the legislature sets up will offset the added cost to the people... it was our thought there would be enough inducement for them to organize and exercise home rule so that as time went on they would gradually all become incorporated

boroughs... The thought was that inducements to organize would be offered on the basis of the granting of home rule powers plus certain other inducements that would make it advantageous to them to be boroughs, as we now have the same program of inducement to organized communities.<sup>19</sup>

*Borough Government in Alaska, supra*, p. 61 – 62.

### **Part 7. Current State Law does not Adequately Encourage the Voluntary Formation of Boroughs**

As noted above, Article X, Section 1 is interpreted by the Alaska Supreme Court as encouraging voluntary formation of borough governments in Alaska. Thus, to be consistent with the provisions of Article X, the methods

<sup>15</sup> (Footnote original). See *General Division*, p. 6; also, p. 38 above.

<sup>16</sup> (Footnote original). *Minutes*, 8<sup>th</sup> Meeting.

<sup>17</sup> (Footnote original). *Proceedings*, pp. 2673-74.

<sup>18</sup> (Footnote original). *Proceedings*, pp. 2674-76.

<sup>19</sup> (Footnote original). *Proceedings*, p. 2650.

established by the Legislature to organize boroughs should encourage the creation of boroughs.

The Local Boundary Commission joins others that have previously expressed a preference for voluntary extension of borough government. However, many 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.<sup>20</sup>

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."<sup>21</sup> (emphasis added)

However, instead of promoting borough formation, State policy has actually continued to regress in that arena since the 1991 Task Force study.<sup>22</sup>

Citizens and local officials in some areas have also 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

<sup>20</sup> Victor Fischer, *Alaska's Constitutional Convention*, 1975, p. 119.

<sup>21</sup> Brad Pierce, Governor's Office of Management and Budget, and the Alaska Municipal League, *Final Report: Task Force on Governmental Roles*, July 10, 1992, p. 15.

<sup>22</sup> 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 23-24 of the Commission's report to the 2002 Legislature. That report is available on the Internet at: [http://www.dced.state.ak.us/cbd/lbc/pubs/2001\\_LBC\\_Annual\\_Rpt.pdf](http://www.dced.state.ak.us/cbd/lbc/pubs/2001_LBC_Annual_Rpt.pdf)

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.

*First Report to the Second Session of the First Alaska State Legislature, Local Boundary Commission, p. 2 – 4 (February 2, 1960).*

Despite the wishes of some Cordova residents to create a Prince William Sound Borough in 1960, such a borough, of course, has yet to form. However, officials of the City of Cordova 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 comments from Ed Zeine, then-Mayor of Cordova in letter to the Chairman of the Local Boundary Commission dated December 20, 1999:

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.

In December of 1999, circumstances led the City of Cordova to seek reform of State laws similar to that proposed by the Commission in 2001 and embodied in Senate Bill 48 before the Twenty-Second Alaska Legislature.

*Proposal for Reform of State Law Regarding Borough Formation, City of Cordova (December 1999).* At the time, the Cordova City Council adopted Resolution 12-99-83 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.

The City of Cordova continues to work toward formation of a Prince William Sound Borough. On January 8, 2003, the Cordova City Council adopted Resolution 01-03-05 endorsing the formation of a Prince William Sound borough.

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.<sup>23</sup> The test of time has clearly proven them to be correct.

<sup>23</sup> 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.

## **Part 8. Alaska Alone has Unorganized Regions**

Alaska is the only state in the nation that is not organized at the regional level into counties or equivalent units of regional government. Alaska is also unique among state governments in the extent to which it assumes responsibility for local services.

The State continues to shoulder the burden for education and plating services in communities that decline to accept local responsibility, even though a number of such communities have ample resources to assume the responsibility. At the same time, the

Alaska is the only state in the nation that is not organized at the regional level into counties or equivalent units of regional government. Alaska is also unique among state governments in the extent to which it assumes responsibility for local services.

State of Alaska has dramatically reduced financial aid to communities that have assumed local responsibility for services.

The deterrents in State law to form boroughs are so pervasive and so overwhelming that they impede successful incorporation of new borough governments. 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.

### **Section G. Proceedings Involved with this Review**

The legislation directing the Local Boundary Commission to conduct this review of the unorganized borough was approved by the Legislature on May 12, 2002. It was transmitted to the Governor on June 21, 2002.

Then-Governor Knowles signed the legislation into law the same day that it was received from the Legislature. The law went into effect on September 17, 2002.

From the beginning, the Commission endeavored to promote broad public awareness in the Commission's review of the unorganized borough. The Commission also took steps to facilitate public comment on the matter. Extensive information about the Commission's efforts was posted on the Commission's Internet website. Printed materials were widely circulated to potentially interested individuals and organizations. Extensive public notice of the proceedings of the Commission was provided.

On October 22, 2002, the Local Boundary Commission approved a work plan for the study of the unorganized borough and work on the project proceeded on the basis of that work plan. At the same meeting, the Commission opted to exclude from consideration five portions of the unorganized borough that had been identified by the Commission in the early 1990s as unorganized remnants

within the model boundaries of existing organized boroughs. (For example, Hyder and Meyers Chuck lie within the Ketchikan Gateway Borough model boundaries and were, therefore, excluded.)

On November 12, 2002, the Commission mailed significant project background information to some 360 individuals and organizations. The same materials were posted to the website on the same date.

On November 13, 2002, the Local Boundary Commission met in Valdez during the Alaska Municipal League's annual local government conference. The Commission presented written and verbal information concerning the unorganized borough review to League members.

On December 9, 2002, the Commission met to review information about the unorganized borough concerning population, per capita household income, percent of unemployment, percent of adults not working, average household income, percent of poverty, and residential property values. The

Commission also gave consideration to circumstances not necessarily fully reflected in the 2000 federal census data such as the depressed condition of the commercial fishing industry, and potential access to oil and gas property tax base. The Commission made a preliminary determination at that time that eight regions of the unorganized borough may have the financial capacity to operate borough governments.

Notice of the Commission's preliminary determination and additional information concerning the unorganized borough review was mailed on December 12, 2002, to approximately 350 cities, village-traditional-IRA councils, school districts, and other interested parties within the eight regions identified by the Commission at its December 9 meeting.

On January 17, 2003, the Commission met to review draft components of its report dealing with borough incorporation standards and the application of those standards to the eight areas under review. At the

meeting, the Commission approved the release of the draft materials for review by the public. Posting of materials to the web occurred on January 24. Beginning January 27, over 370 copies of the draft materials were distributed.

Newspapers have reported on the pending unorganized borough issue throughout the course of the Local Boundary Commission's review.

Radio stations throughout Alaska have broadcast many reports and even special programs on the unorganized borough review. For example, the Commission Chair participated in an hour-long program on the topic broadcast by the Alaska Public Radio Network and member stations.

On February 8, the Local Boundary Commission held a statewide public hearing on the matter. The hearing convened at 9:00 a.m. and lasted more than six hours. Twenty-seven communities participated in the hearing. During the hearing more than seventy-five individuals provided testimony to the Commission regarding the matter.

On February 11, the Commission met again. At the February 11 meeting, the Commission unanimously adopted this report and voted to submit it to the Legislature by February 19, 2003.

Extensive written public comments on the Commission's unorganized borough review have been submitted to the Local Boundary Commission. All written comments, along with a transcript of the Commission's meetings

of December 9, January 17, February 8, and February 11 are part of the record of this proceeding. Once compiled, those materials will be forwarded separately to the Legislature.

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## GARY WILKEN

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### SPONSOR STATEMENT

#### Senate Concurrent Resolution 12 *Borough Incorporation: Unorganized Areas*

One of my biggest surprises since being elected to the Alaska State Senate in 1996 was the realization that some areas of our state, even with the capacity to do so, do not financially support their local public schools. While residents living in organized boroughs and home rule or first class cities in the unorganized borough are required to operate and help fund their public school system, citizens residing in unorganized Alaska have no such requirement, even if the area has the financial resources necessary to help. This inherent inequality among Alaskans concerns me.

Senate Concurrent Resolution 12 acknowledges the natural unfairness in our current local governmental structure and offers a possible solution. As noted, existing state law imposes significant obligations on organized Alaska while no corresponding duties are imposed on the remainder of Alaska. Unfortunately, there is no reasonable basis in law to distinguish between Alaskans who are required to accept these obligations and those Alaskans who are not. One suggested solution, embodied in SCR 12, sets in motion a process to formally ask residents in the unorganized borough, "Can you help? Can you pay your fair share?"

The Local Boundary Commission (LBC) determined in its February 2003 report entitled *Unorganized Areas of Alaska that Meet Borough Incorporation Standard* that seven unorganized areas meet current standards for borough incorporation, including the necessary fiscal and administrative capacity to conduct borough functions. Four of these seven areas have a significant number of residents who are not required by the state to help operate or support their local schools.

Senate Concurrent Resolution 12 requests the Local Boundary Commission to analyze the capacity for borough incorporation for these four areas:

- Upper Tanana Basin Model Borough
- Copper River Basin Model Borough
- Glacier Bay Model Borough
- Chatham Region Model Borough.

The resolution further requests the LBC to present a recommendation for borough incorporation to the legislature for each model borough listed above that meets applicable borough incorporation standards. Through a lengthy, public review process, a thorough and complete analysis of the economic and social strength of each unorganized area will be undertaken to determine whether the residents of each area can govern themselves and, in the process, help support and fund their local neighborhood school system.

Now is the time to formally ask residents living in unorganized Alaska to help operate and financially provide for their local public schools. In fairness to all the residents of Alaska, this question needs to be asked and appropriately resolved. Passage of SCR 12 is the first step in this process.

I respectfully request your consideration and support for Senate Concurrent Resolution 12.

# **Borough Incorporation**

***Senate State Affairs Committee***

**Anchorage Legislative Information Office**

**October 3, 2003**

**Gary Wilken  
Senator - Fairbanks**

OCT-03-03 FRI 10:20 AM ANC LEGIS INFO OFC

FAX NO. 907 269 0229

445-5011 P. 01

### Topics

1. Historical perspective - how did we get where we are today?
2. Public policy perspective - why should ~~state~~ government be concerned about local government?
3. Legislative perspective - how does SCR 12 benefit Alaska?

## Part I

# Historical Perspective

Regional government was a central topic at Alaska's Constitutional Convention.



The Committee on Local Government often focused on regional government during the 44 meetings held to draft the Local Government Article.




The Local Government Committee called for all of Alaska to be divided into boroughs - organized or unorganized.

John Rasswag, Chair, Committee on Local Government

"... we allow for the boroughs remaining unorganized until they are able to take on their local government functions."  
(emphasis added)




Alaska Constitution Convention Proceedings, Alaska Legislative Council, page 2612



**Delegate James Hurley**

**"Is my idea correct that no organized borough will become effectuated without the voice of the people in the area?"**

*Alaska Constitution Convention Proceedings, Alaska Legislative Council, page 2673*



**Alaska Constitution Convention Proceedings, Alaska Legislative Council, page 2673**

**"The answer, I think, would be 'no'. ...when a certain area reaches a position where it can support certain services and act in its own behalf, it should take on the burden of its own government."**

**Vic Fischer, Secretary, Local Government Committee**

**ALASKA CONSTITUTION ARTICLE X**

**Section 3. Boroughs.** The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions, standards by which boroughs may be organized, unorganized, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

**It provided that all of Alaska must be divided into boroughs (organized or unorganized).**

**ALASKA CONSTITUTION ARTICLE X**

**Section 1. Purpose and Construction.** The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of taxing jurisdictions. A liberal construction shall be given to the powers of local government units.

**It encourages the creation of organized boroughs.**

**ALASKA CONSTITUTION ARTICLE I**

**Section 1. Inherent Rights.** ... all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.


**It provides that there must be a rational basis for disparate treatment of Alaskans (e.g., organized vs. unorganized areas).**

**Local responsibility is also called for under Alaska's constitution.**


**ALASKA CONSTITUTION ARTICLE X**

**Section 3. Boroughs.** The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions, standards by which boroughs may be organized, unorganized, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

**It imposes a duty on the legislature to set State policy regarding establishment of boroughs.**




**The First Alaska State Legislature (1959 - 1960) considered several proposals for establishment of boroughs. None was adopted.**




**The Second Alaska State Legislature adopted the Borough Act of 1961.**

**At the time, State policy makers anticipated that the Borough Act of 1961 would be generally ineffective in promoting borough formation.**



**"A'tractive enough on paper, in practice, the organized borough concept had little appeal to most communities. After all, why should they tax themselves to pay for services received from the state, gratis?"**

Jay Hammond, State Representative at the time of the Borough Act of 1961.



**Roger W. Pogus, Director, Local Affairs Agency, 1960-1962**

**"It was generally believed [by the drafters and supporters of the original Borough Act of 1961] that the 1963 legislature would adopt a mandatory incorporation law."**

*The Metropolitan Experiment in Alaska - A Study of Borough Government, page 62*

**Arguments against boroughs in the early 1960s are the same as those voiced today.**

*Alaska's Urban and Rural Governments, page 43*



"School district officials wanted to avoid loss of autonomy, city residents saw no need for a new layer of government and taxation, and Alaskans outside cities and school districts wanted to preserve their tax-free status."

20

*The Metropolitan Experiment In Alaska, page 93*



John Rader

"... the greatest unresolved political problem of the State was the matter of boroughs. ... A great opportunity to create something of value could be lost."

**Representative Rader's solution to the greatest unresolved political problem facing the State:**

- encourage local initiative and voluntary incorporation of boroughs;
- mandate incorporation of all regions with fiscal capacity to support boroughs if they do not incorporate voluntarily (thereby achieving comprehensive tax equity);

**Representative Rader's solution:**

- grant each borough 10% of State lands to give them a meaningful responsibility and interest in natural resource development;
- encourage formation of large boroughs;
- provide a reasonable period before mandatory incorporation for local initiative efforts.


With a few compromises, Representative Rader's proposal was adopted by the Legislature as the 1963 Mandatory Borough Act.

Governor Egan signed the Mandatory Borough Act into law as Chapter 53, SLA 1963.

**Ch. 52, SLA, 1963 mandated boroughs in:**

- Ketchikan
- Sitka
- Juneau
- Kodiak Island
- Kenai Peninsula
- Anchorage
- Mat-Su
- Fairbanks





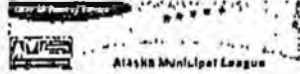
Section 1. Declaration of Intent.

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

Chapter 52,  
Session Laws of  
Alaska, 1963

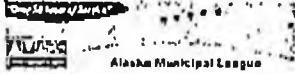
- In 44 years of statehood, boroughs have formed under the local option process in areas encompassing just 4% of Alaskans.
- In contrast, the eight boroughs formed under the 1963 Mandatory Borough Act encompass 83% of Alaskans.

- Incentives to incorporate boroughs were generally inadequate in the early 1960s.
- Since then, borough incentives have diminished substantially.



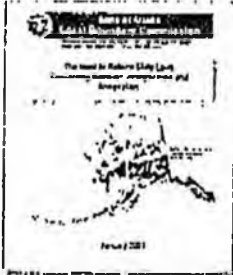
Excerpts from:  
Municipal Government in  
Alaska - WHITE PAPER  
< <http://www.akml.org> >

- "Alaska is the only state with no local government for a large geographical part of the state,"




Excerpts from:  
Municipal Government in  
Alaska - WHITE PAPER  
< <http://www.akml.org> >

- "Adding borough government would not be a new, expensive layer of government. Local services are currently provided by the state and a patchwork of over 400 separate [entities]. Current service delivery is neither inexpensive or efficient, due to the lack of coordinated service delivery."

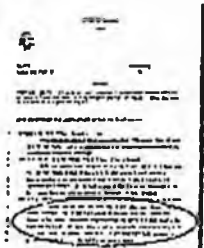


"Shortcomings in the manner in which the borough concept has been implemented" were studied by the Local Boundary Commission in 2001.



"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."

CHAPTER 13  
SESSION LAWS OF ALASKA, 2003



"The Local Boundary Commission shall review conditions in the unorganized borough. ... the commission shall report to the legislature the areas it has identified that meet the standards for Incorporation."

### Seven Areas Meet Standards

Unorganized Areas of Alaska that Meet Borough Incorporation Standards  
A Report by the Alaska Local Boundary Commission to the Alaska Legislature, pursuant to Chapter 13, Session Laws of Alaska, 2003  
February 2004

1. Aleutians West;
2. Upper Tanana Basin;
3. Copper River Basin;
4. Prince William Sound;
5. Glacier Bay;
6. Chatham;
7. Wrangell-Petersburg.



## Part II

### Public Policy Perspective

Why should State government be concerned with local government?

**BOROUGHS ARE UNITS OF STATE GOVERNMENT**

Boroughs carry out essential services on behalf of the State of Alaska (e.g., State's duty under Article VII, Section 1, AK Const., to establish and maintain a system of public schools is delegated to boroughs).

**BOROUGHS PROMOTE  
ECONOMIC DEVELOPMENT**

**Boroughs Promote Economic  
Development**

All boroughs commonly engage in economic development activities.

Borough governments in rural Alaska "serve as the economic engine for the area."

**Boroughs Promote Economic  
Development**

The Aleutians East Borough has used its bonding capacity in the past to assist the regional fisheries, thereby promoting economic development.

The Aleutians East Borough also represents local residents before fisheries advisory and management bodies.

**Boroughs Promote Economic  
Development**

The Northwest Arctic Borough was instrumental in the development of the world-class Red Dog Mine.

The Lake and Peninsula Borough provides a variety of economic development planning functions to the number of small communities within the Borough.

**BOROUGHS PROMOTE  
EQUITY AMONG ALASKANS**

**Boroughs Promote Equity**

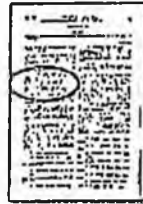
Art. I, Sec. 1 requires equal responsibility among Alaskans. Yet, statutory law singles out organized boroughs and home rule & first class cities in the unorganized borough by requiring them to provide significant support for fundamental services such as public education.

**Boroughs Promote Equity**

Local contributions required of municipal school districts under AS 14.17.410 reduce education foundation funding that would otherwise be paid by the State to boroughs and home rule & first class cities in the unorganized borough.

**Boroughs Promote Equity**

Reduction of funding conflicts with the express intent of the 1963 Mandatory Borough Act.



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

**Boroughs Promote Equity**

The requirement for local contributions for schools is, in effect, a \$160 million annual State tax levied only on organized boroughs and home rule & first class cities in the unorganized borough.

**Boroughs Promote Equity**

In the absence of standards and procedures to determine whether unorganized areas have the capacity to take on responsibility for their own government, the current disparate treatment of Alaskans lacks a rational basis.

**BOROUGHS PROMOTE  
MAXIMUM LOCAL  
SELF-GOVERNMENT**

**Boroughs Promote Maximum  
Local Self-Government**

Practical examples of the manner in which boroughs promote maximum local self-government include:

- providing capacity to supplement State funding for fundamental regional services like education (REAs are dependent upon the State);

**Boroughs Promote Maximum Local Self-Government**

- establishing an entity with ability to issue bonds to construct or rebuild regional facilities such as schools (REAs lack authority to issue bonds);
- creating a government to levy taxes to provide services not otherwise available (boroughs are the only regional governmental unit in Alaska with taxing power);

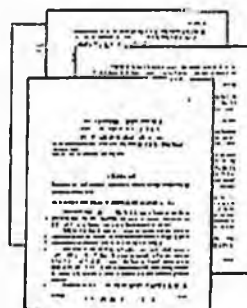
**Boroughs Promote Maximum Local Self-Government**

- establishing a municipal platting authority (the State has the burden of serving as the platting authority in the unorganized borough outside the relatively few cities that exercise such power);
- offering a mechanism to provide alcohol control on a regional basis (currently available only on a community basis in the unorganized borough);

**Part III**

**Legislative Perspective**

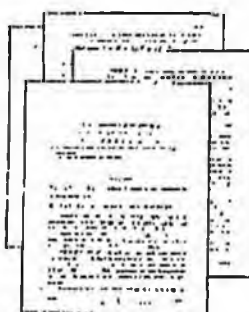
**Senate Concurrent Resolution 12**



SCR 12 is sponsored by Senator Gary Wilken of Fairbanks.

Eight other senators co-sponsored the resolution (45% of the total State Senate).

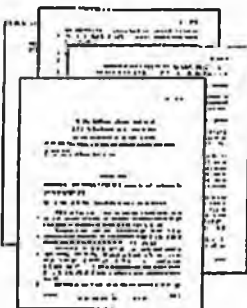
**Senate Concurrent Resolution 12**



Requests LBC to consider boroughs in

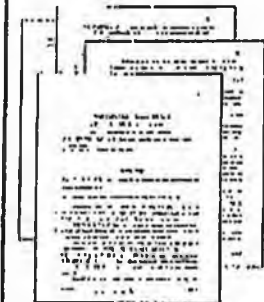
- Upper Tanana Basin
- Copper River Basin
- Glacier Bay Region
- Chatham Region

**Senate Concurrent Resolution 12**



The four areas listed have relatively significant populations outside home rule and first class cities.

**Senate Concurrent Resolution 12**



SCR 12 is a question of fairness.

SCR 12 answers two important questions:  
*"Can you help support your local schools?  
 Can you pay your fair share?"*

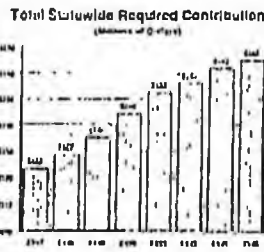
**Contribution to Education**

As you recall, statutory law requires only organized boroughs and home rule and first class cities in the unorganized borough to operate and help fund their local public school system.

**Contribution to Education**

In FY04, Alaskans in borough and city school districts paid \$165.1 million to help support their local schools.

The required contribution has increased 34% since 1997.



**Contribution to Education**

- Two of the four areas listed in SCR 12 have very high property value.
- All four areas have property value greater than 9 school districts that currently support their schools.

**Model Borough Summary**

**A Snapshot of Four Model Boroughs**

- Upper Tanana Basin**
  - ✓ 19 communities
  - ✓ 6,316 residents
  - ✓ Delta/Greely REAA
  - ✓ Alaska Gateway REAA
  - ✓ Value - \$469,045,724
  - ✓ Avg. Home - \$144,044
  - ✓ Avg. Income - 547,472
- Copper River Basin**
  - ✓ 18 communities
  - ✓ 3,089 residents
  - ✓ Copper River REAA
  - ✓ Value - \$502,729,199
  - ✓ Avg. Home - \$128,800
  - ✓ Avg. Income - \$43,900

**Model Borough Summary**

**A Snapshot of Four Model Boroughs**

- Glacier Bay**
  - ✓ 7 communities
  - ✓ 1,739 residents
  - ✓ Pelican Schools
  - ✓ Hoonah Schools
  - ✓ Chatham REAA
  - ✓ Value - \$73,526,409
  - ✓ Avg. Home - \$136,738
  - ✓ Avg. Income - \$46,563
- Chatham Region**
  - ✓ 3 communities
  - ✓ 1,354 residents
  - ✓ Kake Schools
  - ✓ Chatham REAA
  - ✓ Value - \$35,908,397
  - ✓ Avg. Home - \$132,854
  - ✓ Avg. Income - \$47,516