

11846 SENATE JUDICIARY

SB

127

SPONSOR STATEMENT

SB 127 – Executive Branch Ethics Act Revisions

SB 127 is a responsible step toward making the Executive Branch Ethics Act clearer, easier to understand, and easier to follow. The bill would fix three problems with the current Ethics Act.

First, the bill sets a clear financial line for executive branch employees' personal financial holdings. The bill declares that a financial holding is "insignificant" only if it is less than \$5000 or 1% of a company's stock, whichever is less. This definition, which is missing under current law, lets executive branch employees know exactly where they can, and cannot, be involved in state decisions that would affect their personal investments.

SB 127 also broadens the definition of "official action" to include most of the day-to-day work activities performed by executive branch employees. This is a key definition: state employees should not be able to use their state offices to benefit their pocketbooks, and then claim that their acts were not "official." If an employee's act is within the scope of the employee's work performance, then it counts as "official" under SB 127.

Finally, the bill removes a potential loophole by removing an "or" from the current law. The current law declares that there is no violation of the law if a public officer's personal or financial interest is "insignificant, or of a type that is possessed generally by the public or a large class of persons to which the public officers belongs." The wording of the current law is unfortunate. An executive branch employee could have \$1,000,000 worth of stock in a company that directly benefited from the employee's official actions. But if the same employee also had an interest possessed generally by the public, then the "or" would work to absolve the employee of wrongdoing. Such a situation might arise for employees that deal with the Permanent Fund investments, for example.

The state's ethics laws should be clear to executive branch employees, and to the public those employees serve. Please join me in supporting SB 127.

March 17, 2005

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 127
(S) Publish Date: 4/28/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title: "An Act prohibiting a public officer RDU: Central Administrative Services
from taking official action regarding a matter..." Component: Personnel
Sponsor: Senator French
Requester: (S) STA Component No.: 56

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact on the Division of Personnel.

Prepared by: Mila Cosgrove, Director
Division: Personnel
Approved by: Mike Tibbles, Deputy Commissioner
Agency: Administration

Phone: 465-4429
Date/Time: 4/25/05 8:38 AM
Date: 4/25/2005

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 127
 (S) Publish Date: 4/28/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act prohibiting a public officer from taking RDU CIVIL
official action regarding a matter in which the public officer..." Component Opinions, Appeals, and Ethics
 Sponsor Senator French
 Requester Senate State Affairs Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 Gr...ental Health						
Other - Regulatory Cost Charge						
TOTAL	0.0	0.0	.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 39.52.110(b) (Alaska Executive Branch Ethics Act - Ethics Code - Scope of code.) The bill establishes a "bright line" test for when a financial interest is insignificant under the ethics act. The bill also amends AS 39.52.960(14) (Alaska Executive Branch Ethics Act - General Provisions - Definitions.) to more clearly define what constitutes taking "official action". Together, these amendments make it simpler for public officials, designated ethics supervisors, and the attorney general to apply, interpret and enforce the Ethics Act.

Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division: Administrative Services Division Date/Time 4/22/05 3:31 PM
 Approved by: Kathryn Daughhete for David Márquez, Attorney General Date 4/22/2005
 Agency: Department of Law

SB

128

SENATE COMMITTEE REPORT.

DATE: 3/22/05

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 128

SB 128 BOROUGH INCORPORATION

"An Act relating to consideration by the Local Boundary Commission of a requested borough incorporation."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

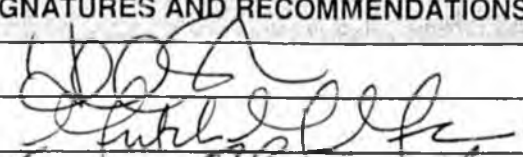
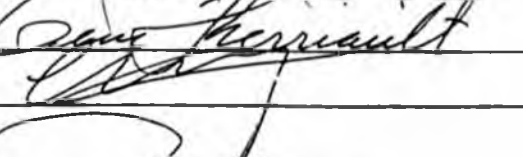
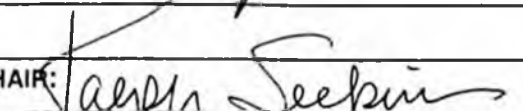

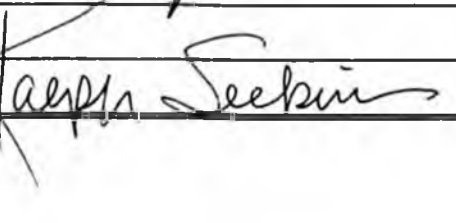
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
			X	
			X	
	X			
	X			
CHAIR: 	✓			

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April 11, 2005

Reply to: Anchorage

Senator Gene Therriault
State Capitol, Rm 111
Juneau, AK 99801-1182

Fax: 1-907-465-3884

RE: S.B. 128
Our File No. 925-258

Dear Senator Therriault:

This letter is drafted in response to "Legal Brief Analyzing S.B. 128," by Bob Hicks, Vice-Chair of the Local Boundary Commission (the "LBC" or "Commission"), submitted to the legislature on April 7, 2005 by letter of Darrol Hargraves, Commissioner of the LBC (the "LBC Memo"). In rebuttal we make the following points.

The LBC Memo first discusses whether S.B. 128 is intended: (i) to restrict LBC authority to use the legislative review process to effectuate a borough incorporation, or (ii) to change 44.33.812(a)(3) from a mandatory provision to a discretionary one without implementing any change in potential petitioners (i.e., make LBC review of a boundary change under the statute optional). It is our understanding that the express purpose of S.B. 128 is to clarify that the LBC may not use legislative review to incorporate boroughs.

There are two related, but separate, sources of authority allowing the LBC to use the "legislative review" process. Under AS 44.33.812(a)(3) and (b)(2), after considering a "local government boundary change" requested of it by the legislature, the Commissioner of Commerce, Community, and Economic Development, or a political subdivision of the state, the LBC can present to the legislature during the first 10 days of a regular session a proposed local government boundary change. If both houses of the legislature do not by a majority reject the proposed change in 45 days, it goes into effect. This procedure has its roots in, and is a codification of, a process provided for in the second source of legislative review authority, art. X, § 12 of the Alaska constitution. The problem with applying these two provisions to borough incorporation, however, is that it is unclear whether a "local government boundary change," either under AS 44.33.812(a)(3) or art. X, § 12, includes borough incorporation. For instance, the Supreme Court has held that the legislature's power to control borough incorporation

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comes not from art. X, § 12 but from art. X, § 3 of the state constitution, indicating that borough formation was not included in the § 12 meaning of boundary change. Mobil Oil Corp. v. Local Boundary Comm'n. 518 P.2d 92 (Alaska 1974).

The Commission has taken the internal position that it has both statutory and constitutional authority to unilaterally create boroughs through the legislative review process. Dan Bockhorst & Jeanne McPherron, Methods by Which Borough Governments in Alaska May Be Incorporated 10-19 (August 2004) (an LBC advocacy piece where its staff lays out the theory that borough incorporation is a boundary change subject to legislative review under both the constitution and Title 44, available at <ftp://ftp.dcbd.dced.state.ak.us/DCBD/LBC_Pubs/Methods_August_2004.pdf>). However, the LBC recognizes that it is on questionable legal ground, so in the past has supported legislation that unquestionably gives it the power under law to do so. See S.B. 48, 22nd Leg., 1st Sess. (Alaska 2001). After all, even if the borough incorporation is not a "local government boundary change" under art. X, § 12, the legislature, using its power under art. X, § 3, could grant the Commission authority to apply legislative review to borough formation because, "Section 3 vests in the legislature power to prescribe procedures for borough incorporation without restriction." Mobil Oil, 518 P.2d at 103. Interestingly in 2001 it appears the LBC admitted it did not have, under the current regime in Title 44, authority to use legislative review to create boroughs. Testimony on S.B. 48 Before the Comm. on Community & Regional Affairs, 22nd Leg., 1st Sess. (Alaska 2001) (statement of Kevin Waring, Chairman, LBC) ("Under current law, a petition for borough incorporation can only be initiated voluntarily by residents of a proposed borough."). Having failed to garner express legislative authority to form boroughs via legislative review, the LBC has adopted a broad interpretation of its organic authority and put forward the legal arguments presented in Bockhorst & McPherron, and reiterated in the LBC Memo, that "local government boundary change" in both Title 44 and art. X, § 12, do include borough incorporation.

We believe, however, that the better interpretation of the relevant law is that the LBC does not have either statutory or constitutional power to form boroughs via the legislative review process. In the LBC Memo it relies on Fairview Pub. Util. Dist. v. Anchorage, 368 P.2d 540 (Alaska 1962), and Oesau v. City of Dillingham, 439 P.2d 180 (1968), which deal respectively with city annexation and city dissolution and annexation. Although there are policy statements that support the Commission's position, a definitive answer cannot be divined from the scant case law and the records from the Constitutional Convention whether a "local government boundary change" under the constitution or Title 44 includes borough incorporation. That is why we feel it is not only appropriate, but necessary, for the legislature to weigh in on the subject and state that it does not consider borough incorporation a boundary change. The LBC has relied on legislative record to support its position that incorporation is a boundary change and the legislature should clarify its stance. See Bockhorst & McPherron at 13 ("It is also noteworthy that the Legislature considers the term 'boundary change' to include incorporation.").

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Finally, the LBC Memo argues that S.B. 128 unconstitutionally tampers with the legislative review process. We find this position untenable. Either the LBC's authority to incorporate boroughs is solely statutory, in which case the legislature can expand or contract that LBC power at its discretion pursuant to art. X, § 3, or it is both statutory and constitutional, meaning LBC authority to incorporate boroughs exists wholly outside of current Title 44. Under the latter interpretation, if current AS 44.33.812(a)(3) has been previously interpreted as allowing the LBC to incorporate boroughs pursuant to a statutory grant of authority, then that would have been in addition to any implicit constitutional authority the LBC has to do the same under § 12. Thus S.B. 128 would clarify that the LBC does not have power to incorporate a borough under law; any constitutional authority pursuant to § 12 would not be affected (of course we believe, as stated above, that the LBC does not have constitutional authority to use legislative review to form boroughs).

We would be pleased to provide further input or assistance on this issue should you find that helpful.

Sincerely,

WALKER & LEVESQUE, LLC



William M. Walker

Therriault
Darrol Hargraves



"typically" - vs "ever"

"precedent"

"legislative fiat"

↑
"Press releases"

● Social Issues -
Brief

Why the higher rate in Aik?

1/40,000 - 14,000 WC

+ SS

+ Unemp'd

+ <waste energy>

Is this a new "insurance reform"?

●
Roses Thrusdale, Inc



State of Alaska Local Boundary Commission

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

April 7, 2005

The Honorable Ralph Seekins
Chair
Senate Judiciary Committee
State Capitol, Room 125
Juneau, Alaska 99801-1182

Dear Senator Seekins:

This is to follow up my testimony at the April 6 Senate Judiciary Committee hearing on SB 128. I inadvertently made a couple of incorrect statements. By copy of this letter to all members of the Committee, I am setting the record straight and offering my sincerest apologies.

Additionally, I am providing you and each member of the Committee with a copy of the legal review and analysis of SB 128 prepared by Bob Hicks, Vice-Chair of the Commission.

The first point that I wish to clarify concerns the status of the prospective proposal to form a borough encompassing Prince William Sound. That matter is addressed in detail on pages 49 - 62 of the Commission's 2005 report to the Legislature. As indicated in that report, the locally elected Council of the City of Whittier adopted a resolution last August requesting that the Commission consider incorporation of a borough encompassing Prince William Sound. (The elected officials of the City of Cordova passed a similar resolution in March of this year.)

As also noted in the 2005 report, the Commission asked the Department of Commerce, Community, and Economic Development to prepare a petition in order that the Commission could carry out its duty to consider the proposal. Doing so, in the Commission's view, does not constitute advocacy. The Commission specifically stated in its request to the Department that it should preserve the quasi-judicial integrity of the Commission in the matter by

. . . using staff and attorneys other than those persons currently assigned to work with the Local Boundary

Commission, and isolating the Local Boundary Commission staff and attorneys from this process in a manner that preserves the integrity of the quasi-judicial role of the Commission and its staff in later investigations, analyses, hearings and reports pertaining to the petition, responsive briefs, comments, and reply briefs.

Please note that under authority of AS 44.33.812(a)(3), the Commissioner of the Department has previously petitioned the Local Boundary Commission for other boundary changes. Those have included at least one borough detachment that was essential to the formation of the Northwest Arctic Borough and five city dissolutions.

The discussion of the topic in the 2005 report concludes with the statement, "A petition for incorporation of a Prince William Sound borough has not yet been filed with the LBC." That remains the case today.

If a Prince William Sound borough incorporation petition is filed with the Commission, there will be substantial opportunity for public input. As a result of such input and deliberation by the Commission, the Commission may amend the petition. It is not uncommon for the Commission to do so in matters that come before it.

The second clarification that I wish to make is the exchange yesterday about the extent to which the Commission has been involved in legislative matters in the past.

I simply misspoke when I said that it is not typical for the Local Boundary Commission to be involved in legislative matters. What I was thinking and what I meant to say was that it is not typical for the Commission to be involved in opposing a particular legislative proposal as we find ourselves doing this year with regard to SB 128 and HB 133. The Commission's staff has informed me that there have been more than 125 proposals submitted by the Commission to the legislature under Article X, Section 12 over the past 46 years.

Further, beginning with the First Alaska State Legislature, the Commission has often taken the initiative to make relevant recommendations in its annual reports to the legislature. Moreover, it is not uncommon for legislators to ask the Commission for input or comment on a particular matter relevant to the creation or alteration of

The Honorable Ralph Seekins
April 7, 2005
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local governments. I sincerely regret any misunderstanding over my inadvertent comment yesterday. Since I failed to make the point I had intended to express, I stand corrected and apologize.

The written legal analysis of SB 128 prepared by Commissioner Bob Hicks is attached. To avoid any ambiguity, the views expressed in that legal analysis represent those of the Commission, not just Commissioner Hicks. On March 25, the Commission adopted a motion to oppose SB 128 and directed Commissioner Hicks and me to represent the entire Commission on the matter.

Sincerely,



Darroll Hargraves
Chair

Enclosure

cc w/enc.

Senator Huggins, Vice-Chair, Senate Judiciary Committee
Senator Therriault, Senate Judiciary Committee member
Senator French, Senate Judiciary Committee member
Senator Guess, Senate Judiciary Committee member

LEGAL BRIEF ANALYZING SB 128
By Bob Hicks, Vice-Chair, Local Boundary Commission

Introduction

This legal brief consists of three sections, and three Appendices.

The first section reviews and analyzes the ambiguity of SB 128.

The second section reviews and analyzes the unconstitutionality of SB 128.

The third section analyzes a common misinterpretation of a particular Alaska Supreme Court decision pertaining to the question of whether carving a new borough from the Unorganized Borough is a "boundary change" within the meaning of Art. X, §12 of the Alaska Constitution.

The three Appendices are legal abstracts of three relevant decisions by the Alaska Supreme Court, separating the many pages of Supreme Court opinions into component parts.

Section I. Does SB 128 attempt to restrict use of the legislative-review method in Title 44, in favor of using the local option election methods in Title 29 for creation of boroughs; or does SB 128 simply change a mandatory provision to a discretionary provision for the LBC without affecting any change in potential petitioners?

AS 44.33.812(a) states in part that the Local Boundary Commission ("LBC") shall "consider a local government boundary change requested of it by the legislature, the commissioner ... or a political subdivision of the state...." SB 128 amends that statement to provide that the words "'boundary change' may not be construed to include a borough incorporation."

In a press release dated March 3, 2005, the sponsor of SB 128 reported that the bill was designed "to clarify that new boroughs are not to be created by agency personnel of state government." The press release concludes with the opinion that proposed boroughs "should emanate from the local level up, not from the top of the government pyramid down."

On March 21, 2005, during a meeting of the Senate Community and Regional Affairs Standing Committee, the sponsor stated that SB 128 would "increase local public participation with regard to creating new boroughs" and it would "clarify that the Local Boundary Commission (LBC) ... doesn't have the authority to create an entirely new government." Mr. Stancliff then stated "that although Title 29 procedures are typically followed when a new borough is formed this [the Whittier-Cordova initiative opposed by Valdez] is a first attempt to use the legislative review process, authorized in Title 44, to influence borough formation."

In both of the above contexts, the drafters of SB 128 expressed their clear intent that, by defining borough incorporation out of the concept of a "boundary change," SB 128 would restrict the LBC from receiving petitions for incorporation of boroughs through the legislative review method, whenever those petitions originated with the legislature, the commissioner or any political subdivision in Alaska.

On April 6, during testimony before the Senate Judiciary Committee, Mr. Stancliff no longer described SB 128 as a bill to restrict use of the legislative-review method in Title 44, in favor of using the local option election methods in Title 29 for creation of boroughs. Instead, his testimony acknowledged the constitutional latitude given the LBC in Art. X, §12, and he re-characterized SB 128 as a bill eliminating the mandatory "shall" from legislation pertaining to the LBC use of the constitutional legislative-review process.

However, Mr. Stancliff did not explain why SB 128 assumes this new LBC-defender role only for borough incorporation. If the "shall" language of AS 44.33.812(a) is indeed unconstitutional, SB 128 should not simply exclude "borough incorporation" from the legal meaning of "boundary change," but should amend AS 44.33.812(a)(3) to remove it from the mandatory "shall" of subsection (a) and replace it in the discretionary "may" of subsection (b).

SB 128 is indeed poorly drafted, and susceptible of differing interpretations. Given the sponsor's earlier press release and testimony, one would conclude that SB 128 was designed to tell the LBC it "doesn't have the authority to create an entirely new government," and that borough incorporation "should emanate from the local level up, not from the top of the government pyramid down." In short, SB 128 was designed to prevent the commissioner and all political subdivisions of the state from submitting to the LBC a petition for incorporation of a borough by the constitutional legislative-review method.

An alternative interpretation has been offered by the Director of Legal Services, Division of Legal and Research Services, Legislative Affairs Agency: "The bill does not prohibit the Local Boundary Commission from considering a borough incorporation requested of it by any entity if it chooses to do so." If that is the case, why enact SB 128? If the reason to enact SB 128 is to correct an unconstitutional "shall" mandate, why make that alleged correction only for borough incorporation and not for city incorporation or for municipal dissolutions? If the reason to enact SB 128 is to correct an unconstitutional "shall," why not do that correction cleanly by moving sub-subsection (3) out of subsection (a) and into subsection (b)?

At best, SB 128 creates a legal quagmire of ambiguity in meaning. At worst, SB 128 will enter the courts with one party advocating the restrictive purpose in the news release and earlier testimony, while another party advocates the implausible interpretation that SB 128 in effect changed a "shall" to a "may," and really does not restrict the commissioner

and political subdivisions from filing petitions for legislative review of incorporations of boroughs.

It is clear that, before receiving a legal interpretation, the drafters intended that SB 128 would prohibit the LBC from using the legislative review method for incorporating boroughs whenever the petition originates with the legislature, the Commissioner or a political subdivision.

However, another interpretation of the amendment is that SB 128 does not affirmatively prohibit the LBC from considering such a request as a "boundary change."¹ SB 128 simply removes the mandate when borough incorporation would result from such a petition. Unlike everything else in AS 44.33.812(a), which carries a commanding decree, with the word "shall," SB 128 loosens, lessens and relaxes the mandate in the full context of AS 44.33.812(a).² The LBC is no longer *required* to consider a request for borough incorporation as a "boundary change" when it originates in the legislature, from the Commissioner, or from a political subdivision.

That interpretation might in fact be palatable to the judiciary for two reasons. First, it is the only legally reasonable interpretation because no law enacted by the legislature can ever change the Art. X, §12 constitutional power vested in the LBC to consider any boundary change and submit it to legislative review. The only way to change that legislative review method for boundary changes is through an amendment to our Constitution.

Secondly, courts will work hard to find statutes consistent with constitutional law rather than declare a statute unconstitutional.³ The Court will say that Art. X, §12 of the Alaska Constitution empowers the LBC to consider "any proposed local government boundary change" for legislative review without prior restraint from the legislature, that this constitutional legislative-review method for borough incorporation does not disenfranchise the legislature, and that the only way to make SB 128 constitutional is to presume that no prior restraint was intended by the legislature.

In summary, SB 128 is very poorly drafted. Its intent is at best ambiguous. *If it truly was intended to change a mandate to a discretionary decision within the LBC, then it should be amended to move AS 44.33.812(a)(3) into the discretionary AS 44.33.812(b).* The

¹ However, argument following the line of reasoning by the Alaska Supreme Court in *Yakutat* might lead to a contrary interpretation. Where the first two of three sentences of a statute analyzed in that case contained the mandatory "shall," and the third sentence contained the discretionary "may," the Court insisted upon reading the third "may" sentence "in context" with the first two "shall" sentences. In analogous reasoning, the "may" provisions of subsection (b), when read in context with the "shall" provisions of subsection (a), might lead to a common sense full-context interpretation of the SB 128 qualifier as a prohibition rather than a loosening, lessening or relaxation of the mandate.

² But see, *USSR&M*, where the Supreme Court recognized "that the duties imposed upon the commission in subsection (a) [of the predecessor statute] are mandatory, and those in subsection (b) discretionary." (141-42)

³ In *Keane* the Court reaffirmed

language construing the meaning of "boundary change" to exclude borough incorporation is unnecessary and only a partial solution ignoring city incorporation and all dissolutions.

The following analyses assume that SB 128 was instead intended -- as the original press release and testimony stated -- to restrict use of the legislative-review method in Title 44, in favor of using the local option election methods in Title 29 for creation of boroughs. As such, SB 128 is unconstitutional.

Section II. Where the Art. X, §12 legislative-review method is operative by its constitutional language without enabling legislation, can the Legislature (SB 128) virtually extinguish that legislative-review method for boundary changes whenever a boundary change involves incorporation of a borough?

A. The Art. X, §12 Legislative-Review Method Is Operative Automatically by Its Constitutional Language, Without Need for Enabling Legislation.

Art. X, §12 contains five sentences dealing with three distinct subject matters. (1) The first sentence establishes the LBC, "by law." (2) The next three sentences state first that the LBC "may consider any proposed local government boundary change", and then describe the legislative review method/process in detail, including timing. (3) The last sentence of §12 authorizes the local-option election method of making boundary changes, "subject to law."

Note that the creation of the LBC was "by law," and that the local-option election method of boundary changing was "subject to law," but that **the legislative-review process is not subject to modification or change by the legislature.**⁴

In Fairview, the Appellant argued that the LBC is not empowered to annex through legislative review until after legislation is enacted. The Court held that "the method for making boundary changes, contemplated by Article X, Section 12 of the constitution was operative upon the enactment of the 1959 statutes creating a Local Boundary Commission and conferring powers upon it." (545)

⁴ That "silence" by the drafters of the Constitution cannot be construed to leave any ambiguity, or leave anything to implication. Their drafting skills in other sections of Article X demonstrate that they really meant for the legislature to *not* interfere with this §12 process. For example, in §§ 3 and 7, the drafters clearly provided for methods of incorporation "by law." In § 9, the drafters went so far as to grant powers for home rule cities to the local government immediately upon statehood, and "[i]n the absence of such legislation," They knew well how to place qualifiers on powers delegated to an entity other than the legislature, and they knew well how to state a role for the legislature when such a role was intended.

If the drafters had intended the possibility of statutory intervention in the legislative-review method for boundary changes, the drafters would have either written the qualifier "by law," or conversely limited the autonomous power of the LBC to a timeframe "[i]n the absence of such legislation." The drafters did neither.

The Court reasoned that the "plain language" of Article X, Section 12 does not include any statement that the legislative review processes of the LBC are not to take place until certain other events (viz. legislation) had occurred. Stated another way, **no legislation is required beforehand to define or empower the LBC to make boundary changes through the legislative review method.** Unlike the local action method of boundary changes, the legislative review method is fully operational per se, as described in Article X, Section 12, and it is not subject to being defined or limited "by law."

B. Incorporation of a Borough Is a "Boundary Change" Contemplated in Art. X, §12.

At first blush, one might conclude that, because §3 states that boroughs are established and incorporated "by law," incorporation of a borough that results in a "boundary change" through the legislative review method in §12 are likewise subject to limitation by the legislature.⁵ However, the Alaska Supreme Court has pointedly⁶ rejected that interpretation twice.

In *Fairview*, where an annexation and dissolution occurred through legislative review (§12) and differently from a statutory method for annexation and dissolution of a public utility district, the Alaska Supreme Court said that the dissolution was a legally permissible consequence of the legislative-review method for boundary changes. In essence, the §12 legislative-review method co-exists with any other method of dissolution, as an alternative method to those other methods.

The *Fairview* court also held that when the "boundary changes" occurred, "the District was extinguished" automatically. **If the Court recognizes dissolution lawfully occurring through a legislative-review "boundary change," then it follows logically that the Court will recognize incorporation lawfully occurring through a legislative-review "boundary change."** The illogical tertiary reasoning of *Mobil Oil* aside, incorporating a new borough through the legislative review method changes the boundaries of the Unorganized Borough, by dissolving the Unorganized Borough in that area, just as effectively as dissolution of a borough changed the boundary of the Unorganized Borough by expanding it.

In *Oesau*, where dissolution of one city resulted from a §12 legislative review and differently from a §7 statutory method for dissolution of cities, that dissolution of a city was upheld by the Supreme Court as a legally permissible consequence of the §12 legislative-review method for boundary changes. **The Supreme Court recognized that dissolutions of local government can occur through Art. X, §12 in a manner**

⁵ "Alaska's Constitution further provides that the terms "by law" and "by the legislature" are used interchangeably when related to law-making powers." *Douglas v. Juneau*, 484 P. 2d. 1040, 1042, citing Alaska Const. art. XII, §11.

⁶ It is important to note that the Supreme Court "pointedly" recognized dissolution as a legitimate §12 "boundary change" in these two early cases written by Justices personally knowledgeable about the affairs of the Constitutional Convention, because a later Supreme Court in *Mobil Oil* made a contrary statement in far more oblique, tertiary-level "reasoning" that in fact was a non sequitur. See, my analyses below of each of the four reasons advanced by the *Mobil Oil* court in support of its correct holding – the third of which is illogical, incorrect and unnecessary to that decision.

(legislative review) separate and different from statutory methods for dissolution⁷ founded in §7.

In Oesau, the court held that, even where there is a §7 provision for effecting dissolution of a city "in a manner prescribed by law," and even where the legislature had provided three methods in statutes, the City of Wood River was dissolved when the LBC used the legislative review method for boundary changes, as provided at Art. X, §12. In short, the §12 method of legislative review is an independent fourth⁸ method for dissolution of a city.

The Court noted that the "boundary change" by the LBC "consisted of the abolition of the boundary of Wood River and the confirmation of the boundary of the City of Dillingham" (183). Hence, a statute (SB 128) attempting to state that petitions for borough incorporation originating from certain petitioners are not "a boundary change," cannot supersede the present Alaska Supreme Court interpretation of Art. X, §12 that a dissolution of a municipality is indeed a boundary change.

Therefore, simply because the legislature has provided certain methods for incorporation of boroughs "by law," those statutory methods do not prohibit the additional and alternative constitutionally-created method for incorporation of boroughs as a "boundary change" pursuant to Art. X, §12 legislative review. If dissolutions of municipal corporations are "boundary changes" independent of statute and pursuant to §12, then incorporations are also "boundary changes" independent of statute and pursuant to §12.

C. The Practical Effect of SB 128 Is to Extinguish the Legislative-Review Method of a Boundary Change Involving Incorporation of a Borough, Leaving All Borough Incorporations Exclusively to the Local Option Method.

One might argue that, while legislation is not "needed" to enable LBC use of the legislative-review method for boundary changes, nothing in Art. X, §12 *prohibits* the legislature from modifying or augmenting that legislative-review method for boundary changes.

However, SB 128 does not simply modify or augment that constitutional method. SB 128 effectively eliminates and extinguishes the legislative-review method whenever a borough incorporation is involved. If the Commissioner and all political subdivisions are

⁷ I cannot think of any legal reason or policy reason motivating the Alaska Supreme Court to treat incorporation different from dissolution, particularly where both are mentioned in §3. The Court has ruled consistently that statutory methods co-exist independent of the Art. X, §12 method for boundary changes.

⁸ Where Art. X, §7 of the Constitution provides that cities may be dissolved "in a manner prescribed by law," and where the legislature has enacted statutes authorizing dissolution either upon an election, or when populations drop below a number, or upon a court order finding that a city has ceased to function, a city nonetheless can be dissolved through the LBC pursuing the legislative review method for boundary changes as provided in Art. X, §12 of the Constitution, and that city is extinguished as a municipal corporation as soon as "the boundary change" becomes effective⁸ through the Art. X, §12 legislative review method. Oesau.

prohibited from initiating a borough incorporation by the legislative review method, then there probably⁹ is no one left in law who can initiate such a boundary change. In practical effect, SB 128 eliminates the constitutionally created legislative-review method of borough incorporation, and leaves only the alternative local option election method for borough incorporation.

The Alaska Supreme Court has repeatedly recognized the underlying policy clearly manifested in the Minutes of the Constitutional Convention, "that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level." SB 128 turns that constitutional policy on its head. SB 128 virtually eliminates the possibility of borough incorporation boundaries being established at the state level through the LBC and legislative review, and instead leaves all future borough boundaries only to local political decisions. For that reason, SB 128 is unconstitutional.

Section III. Does Mobil Support Legislative Intervention In the Legislative Review Method Described At Art. X, §12 of the Alaska Constitution?

The *Mobil* court dealt with seven issues. Issue No. 6 was whether Art. X, §12 of the Alaska Constitution **requires** submission of an accepted incorporation petition to the legislature for review. This is a very different question from the SB 128 issue of **whether the legislature can place prior restraints on who can petition the LBC through the legislative review method of changing boundaries.**

The *Mobil* Court held, "[S]ubmission of an accepted incorporation petition to the legislature is not required by the state constitution." (104) That is a legally correct conclusion. Again, however, that holding addresses the question of whether submission of an incorporation petition for legislative review is **required**. It does not address the question of whether the legislature can place prior restraints on the legislative review method described in Art. X, §12.

The *Mobil* court offered four reasons for that holding:

1. Where Art. X, §3 states that methods by which boroughs may be incorporated shall be prescribed by law, and where the statute does not reserve any power of review by the legislature except to adjustments made by the Commission in boundaries of organized boroughs, then "the Commission's decision need not be submitted to the legislature." (103)
2. Where the statute requires a local election on borough organization after LBC acceptance, and, further requires that upon certification of a favorable election,

⁹ Some commentators argue that Art. X, §12 empowers the LBC to initiate petitions for boundary changes involving incorporation because it refers to "any" boundary change (i.e., howsoever originating). Other commentators contend that the word "consider" contemplates a more passive, receptive role by the LBC, to only receive a petition from another source.

the Lt. Gov. "shall declare that the area ... is an organized borough," then the legislature was not interposing subsequent legislative approval of the petition. (103)

3. *Oesau* "established that" the basic purpose for creating the LBC and conferring its powers was to obviate a controversy which could not be settled at the local level, and, because diminution of the residual unorganized borough does not occur as that *Oesau* type of a boundary change requiring boundary adjustments between two conflicting, functioning local governments, it follows that creation of a borough out of or from the Unorganized Borough is not a "boundary change" within the meaning of Art. X, §12 of the Alaska Constitution. (103-04)

4. The Constitutional Convention did not address the question of whether submission of incorporation petitions for legislative review is required by Art. X, §12. (104)

I will show below that the first two reasons are sound. The third reason however is founded in a misread of the *Oesau* policy, and applies faulty reasoning (a non scquitur) to conclude that a borough carved from the Unorganized Borough is not a "boundary change" contemplated by Art. X, §12. The fourth reason is a simple failure of research.¹⁰

Reasons Nos. 1 and 2 above are clean reads and supportable logic. Art. X, §12 recognizes two methods for adoption of approved petitions: legislative review and local option. The latter method is established "by law" in §12, and again in §3. The facts in *Mobil* involved a local option election, and subsequent submission to legislative review clearly is not "required" under such circumstances.

However, the legislative review method, by its very conspicuous and contrasting language, is not subject to being "established by law." In *Fairview*, where the precise issue was whether Article X of the Alaska Constitution empowered the Local Boundary Commission to annex through legislative review the Fairview Public Utility District into the City of Anchorage prior to boroughs being established and legislation enacted for integration of existing special service districts with borough government (543), the Alaska Supreme Court held just as pointedly that "the method for making boundary changes, contemplated by Article X, Section 12 of the constitution, was operative upon the enactment of the 1959 statutes creating a Local Boundary Commission and conferring powers upon it." (545) Nothing in the middle three sentences of Art. X, §12 suggests that this legislative review method is implemented "by law" or by legislation.

¹⁰ Contrary to the observation of Justice Erwin, the Constitutional Convention did address this question. The best secondary source for this research is Morehouse and Fischer, Borough Government In Alaska at pp. 38, 50, 51-53 and 61, citing the primary sources of the Minutes and the Proceedings of the Constitutional Convention, particularly *Minutes*; 18th Meeting; General Discussion, pp. 6-7; *Minutes*; 19th Meeting; General Discussion, p. 6; *Proceedings*, p. 2750; *Minutes*; 8th Meeting; *Proceedings*, pp. 2673-74; and *Proceedings*, pp. 264-76.

Reason No. 3 in *Mobil* is a misreading of *Oesau*, is illogical as written, and has not been followed in subsequent Supreme Court opinions.

The central policy theme in *Oesau* was no more and no less than the same central policy theme of *Fairview* – both being written by justices very close in time to the Alaska Constitutional Convention:

“As we pointed out in the *Fairview* case, the concept that was in mind when the local boundary commission section of the Constitution was being considered by the constitutional convention was that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. [Footnote omitted.] The purpose of the boundary change effected in this case by the boundary commission and the legislature was to establish boundaries at a state level, and resolve a conflict that could not be properly solved at the local level, by doing away with two separate governments in a single community”

The *Oesau* Court's dictum that “local political decisions do not usually create proper boundaries,” confirming the *Fairview* court's dictum,¹¹ is quite a different statement in both instances from Justice Erwin's later misread in *Mobil*, claiming that *Oesau* “established that” the basic purpose for creating the LBC and conferring its powers was to obviate a controversy which could not be settled at the local level.

Relying upon that unfortunate misread of *Oesau* and *Fairview*, Justice Erwin then concluded illogically that, because diminution of the residual Unorganized Borough does not entail conflicts accompanying boundary adjustments between two functioning local governments, it follows that creation of a borough from the Unorganized Borough is not a boundary change within the meaning of Art. X, §12 of the Alaska Constitution. (103-04). That sequence of statements is a bald-faced non sequitur! Art. X, §12 neither makes a distinction nor implies any distinction among different types of boundary changes.

Carving a borough from the Unorganized Borough frequently does, in fact, entail conflicts between two functioning local governments. Witness the disputes today between Valdez on the one hand, and Whittier/Cordova on the other hand – the local government dispute that motivated the introduction of SB 128.

Fairview and *Oesau* were concerned with the fact that local political decisions do not usually create proper boundaries, not with the fact that there must be a dispute between two local communities before the “boundary change” can qualify for legislative review under Art. X, §12. In *Lake and Pen*, a post-*Mobil* case, the Alaska Supreme Court returned again to the correct and accurate policy stated in *Fairview* and in *Oesau*, (not the J. Erwin/*Mobil* distortion) that “local political decisions do not usually create proper boundaries and that boundaries should be established at the state level.” (1066) This

¹¹ “An examination of the relevant minutes of those [Committee on Local Government] meetings shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level.” (543)

Court then went on to note that the Art. X, §12 legislative review method was the proper method to deal with a boundary change on remand, not the election process. (1066)

A future court, following the *Fairview*, *Oesau*, *Lake and Pen* policy, not the *Mobil* misstatement, will conclude that SB 128 leaves borough boundaries to only local option elections, and local political decisions do not create proper boundaries. Hence, SB 128 unconstitutionally restricts the alternative constitutional method (legislative review) designed to avoid incorporation boundaries made by improper local political decisions.

In the *Yakutat* case, the Alaska Supreme Court stated, "The Alaska Constitution established the LBC to address municipal boundary issues, **including borough formation**, annexation and boundary studies. Alaska Const. art. X, §12." (*Yakutat* at n. 1.) In *Yakutat*, there was no local controversy which could not be settled at the local level. That borough was carved from the unorganized borough, and the Court recognized the power of the LBC to alter the boundaries as first proposed.

In summary, *Mobil* dealt with the question of whether legislative review was "required," not whether legislative review can be curtailed through prior restraints by the legislature. The *Mobil* holding is sound. The first two reasons for that *Mobil* holding are also sound. The third reason however is founded in an unfortunate misread of the *Oesau* policy, which is then applied to faulty reasoning to reach the odd and incongruous conclusion that a borough carved from the Unorganized Borough is not an Art. X, §12 "boundary change." No subsequent Supreme Court decision has adopted that erroneous reasoning in *Mobil*.

SB 128 is unconstitutional because the legislative review method for boundary changes was clearly intended to avoid local political decisions creating improper boundaries, and because the legislative review method described in Art. X, §12 of the Alaska Constitution is conspicuously different from §3, §7 and even the local option method in §12. All of the latter constitutional provisions are implemented "by law," and "by the legislature." The former constitutional provision is a complete statement of method and timing in itself, in the Constitution, and does not authorize the legislature to tamper with that process. (The legislature is not disenfranchised by that process, but rather gets its input in that process after the LBC decides a "boundary change.")

APPENDIX 1

Legal Abstract of
Fairview Public Util. Dist. No. 1 v. City of Anchorage,
368 P. 2d 540 (Ak. 1962)

FACTS: In 1960, the LBC presented for legislative review its recommendation for annexation of the Fairview Public Utility District (surrounded by the City of Anchorage) to Anchorage. The House concurrent resolution disapproved the proposed boundary change, but the Senate refused to concur.

PROCEEDINGS BELOW: The City filed for declaratory judgment that the District is dissolved; that the City was legal successor; that a date should be set for closing District affairs; and that the District be restrained from incurring obligations without the City's consent.

The Superior Court entered summary judgment that the District had been validly annexed and dissolved as a matter of law when the legislature failed to disapprove the LBC recommendation; that the City was the lawful successor to assets, liabilities and responsibilities; that a master shall be appointed to determine assets and liabilities of the District; and that the District's board shall then pay obligations and transfer remaining assets to the City.

In a companion case, residents of the District sought a mandatory injunction to compel a board of directors' election because the terms of the seated board had expired. The Court dismissed the action on grounds that the judgment in the preceding action was controlling.

ISSUE(S) ON APPEAL:

1. Did Article 10 of the Alaska Constitution empower the Local Boundary Commission to annex through legislative review the Fairview Public Utility District into the City of Anchorage prior to boroughs being established and necessary legislation enacted for integration of existing special service districts with borough government? (543)
2. Where a pre-statehood statute provides for dissolution of a public utility district only by local election after petition-annexation, can annexation by legislative review result in dissolution of the district without an election?
3. Does annexation without an election violate the due process clause of the Fourteenth Amendment or the Fifteenth Amendment?
4. Where the terms of directors have expired, should an election of a District board of directors be held after annexation by legislative review has occurred?

HOLDING OF THE COURT¹:

1. "[T]he method for making boundary changes, contemplated by Article X, Section 12 of the constitution, was operative upon the enactment of the 1959 statutes creating a Local Boundary Commission and conferring powers upon it." (545)
2. "When annexation was effected the District was extinguished, and its property, powers and duties were then vested in the city." (545)
3. Annexation without election does not infringe or deprive any rights protected by the Fourteenth Amendment, or the Fifteenth Amendment.
4. No election of a board of directors for the annexed District should occur following annexation by legislative review.

REASONING:

1a. The "plain language" of Section 12 of Article X does not include any statement that the legislative review processes of the LBC are not to take place until certain other events had occurred.

1b. The convention proceedings show that the expressed need for state adjustment of local boundaries was a matter of "immediate concern," and not a power that would arise only after a borough government was formed.² With post-WW II rapid growth in Anchorage, inherent inadequacies to the pre-statehood local-action annexation process became apparent during 1954-55 when numerous obstacles by electors in single urban areas outside the city were able to frustrate needed annexation. Presumably, the delegates to the constitutional convention in November and December 1955 were aware of this recent history.

2. The pre-statehood statute providing for a dissolution election applies only to the pre-statehood petition-election procedure for annexation, and has no application where annexation takes place under the different method established by Article X, Sec. 12 (legislative review).

¹ Later, in Oesau, the Court restated its Fairview holding as follows: "In Fairview ... we held that the authority vested in the local boundary commission by the Constitution was sufficient to effect, by means of a local government boundary change proposed by the commission, the annexation to the City of Anchorage of the Fairview Public Utility District No. 1, an area entirely surrounded by the city." (183)

In Douglas, the Court said, "Fairview held that residents of a community have no constitutionally protected interest in its existence as a separate governmental unit, so the legislature may provide for its annexation without their consent." (1043)

² Note that the Court does not find expressions of "immediate concern" in the convention proceedings, but rather *implies* that urgency by *presuming* that the Committee on Local Government (a) knew of the Anchorage frustrations attempting annexation, and (b) felt some urgency to stop that process ASAP. Indeed, even the presumptions by the Court enter the reasoning as blurred negative statements: "We cannot assume that ... they were unaware of these obstacles...." and "We cannot assume that they were insensitive to the inadequacies" This is not sound logic.

"[T]he chief purpose of annexation ... was to do away with two separate governments in a single community, and thus avoid multiplication of facilities and services, duplication of tax burdens, and inevitable jurisdictional conflict and chaos." (545) Requiring a subsequent election in the public utility district would defeat this chief purpose of annexation.

3.a. The expansion of municipal boundaries involves as aspect of the broad political power of the state which has always been considered a most usual and ordinary subject of legislation. [Citation omitted.] "Those who reside or own property in the area to be annexed have no vested right to insist that annexation take place only with their consent. The subject of expansion of municipal boundaries is legitimately the concern of the state as a whole, and not just that of the local community." [Citation omitted.]

3.b. The Fifteenth Amendment and its case law are irrelevant. They deal with the right to vote as it pertains to race or color.

4. Annexation has extinguished the District. There would be no sense in requiring the election of a board of directors for a public utility district that no longer was in existence.

INTERESTING OBITER DICTA:

"An examination of the relevant minutes of those [Committee on Local Government] meetings shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level." (543)³

³ The issue before the Court was whether the powers of the LBC are triggered before or after creation of a borough. This is a temporal question. The observation that boundaries should be created at a state level and not at a local level is irrelevant to the temporal question of when those state powers become effective. Hence, this statement was dicta.

APPENDIX 2

Legal Abstract of
Oesau et al. v. City of Dillingham,
439 P. 2d 180 (Ak. 1968)

FACTS: In 1963, roughly simultaneous local option elections created the cities of Wood River and Dillingham, with Dillingham's boundaries including all of Wood River.

PROCEEDINGS BELOW: The Local Affairs Agency reported the boundary conflict (petitioned?) to the LBC. Following public hearings, and a postponement to allow time for a settlement or formation of a borough, the LBC recommended to the legislature that Wood River be dissolved and that the boundaries of Dillingham include the area of Wood River. The legislature allowed the 45 days to pass without action, then affirmatively enacted a statute recognizing the dissolution of Wood River and confirming the Dillingham boundaries.

Dillingham sued in Superior Court to declare Wood River dissolved and a nullity, and to enjoin persons from acting as Wood River officials. The Court issued summary judgment that pursuant to statutes¹ Wood River ceased to exist on April 9, 1965,² and that the residents of Wood River owed Dillingham all the obligations of citizens.

ISSUE ON APPEAL:

1. Where Art. X, §7 of the Constitution provides that cities may be dissolved "in a manner prescribed by law," and where the legislature has enacted statutes authorizing dissolution either upon an election, or when populations drop below a number, or upon a court order finding that a city has ceased to function, can Wood River be dissolved through the LBC by the legislative review method for boundary changes as provided in Art. X, §12 of the Constitution?

HOLDING OF THE COURT³:

¹ Note that the lower court did not cite Art. X, §12 in its Order, but rather the statutes reiterating the legislative review method.

² Query: Why did the lower court conclude that Wood River did not cease to exist until 66 days after the LBC presented its recommendation for legislative review? Was the lower court counting to the affirmative statute enacted re Dillingham and Wood River, rather than the 45-day deadline for inaction?

³ Later, in *Douglas*, the Court characterized this holding as "upholding the Local Boundary Commission's dissolution of a fourth class city without a vote of its residents." In Footnote 20, the *Douglas* Court noted that *Fairview* reaffirmed the constitution moving the locus of decision-making on boundaries from the local to the state level and avoid needless multiplicity of local government, and *Oesau* upheld dissolution of Wood River by the §12 legislative review method "even though art. X, §12 provided that it should make 'changes' in boundaries [and] art. X, §7 provided that cities may be 'dissolved in a manner provided by law' and the legislature had not explicitly given the Local Boundary Commission power to dissolve cities." (1043 at n. 20)

1. When "the boundary change"⁴ through the Art. X, §12 legislative review method became effective, the city of Wood River was extinguished as a municipal corporation and its property, powers and duties were then vested in the City of Dillingham.

REASONING:

1a. The effect of confirming Dillingham boundaries and dissolving Wood River boundaries is similar to Wood River being annexed to Dillingham, and hence this situation is "not dissimilar" to the law of Fairview.⁵

1.b. "[E]ven though the statutory procedures for dissolution of cities were not followed ... [t]he basic purpose for creating the boundary commission and conferring upon it the powers that it possesses was to obviate the type of situation that existed here where there was a controversy over municipal boundaries which apparently could not be settled at the local level." (183)

INTERESTING OBITER DICTUM: "As we pointed out in the *Fairview* case, the concept that was in mind when the local boundary commission section of the Constitution was being considered by the constitutional convention was that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. [Footnote omitted.] The purpose of the boundary change effected in this case by the boundary commission and the legislature was to establish boundaries at a state level, and resolve a conflict that could not be properly solved at the local level, by doing away with two separate governments in a single community"

⁴ The Court notes that the "boundary change" by the LBC "consisted of the abolition of the boundary of Wood River and the confirmation of the boundary of the City of Dillingham" p. 183)

⁵ "In *Fairview* ... we held that the authority vested in the local boundary commission by the Constitution was sufficient to effect, by means of a local government boundary change proposed by the commission, the annexation to the City of Anchorage of the Fairview Public Utility District No. 1, an area entirely surrounded by the city."

APPENDIX 3

Legal Abstract of
Mobil Oil Corporation et al. v. Local Boundary Commission.
518 P. 2d 92 (Ak. 1974)

FACTS: Through the Local Affairs Agency, the Arctic Slope Native Association submitted a petition for incorporation of a first class borough for consideration by the LBC. The area residents engaged in a subsistence life style. Travel among the borough communities was available only by charter aircraft, dog teams and snowmachines. The petition was signed by 41% of the registered voters. The Agency and the LBC conducted investigations and held hearings. The LBC then accepted the petition and forwarded it to the Lt. Governor.

PROCEEDINGS BELOW: Leaseholders and owners of oil and gas interests and properties filed a petition for judicial review in the superior court. The five villages, the Arctic Slope Native Association and the new North Slope Borough intervened. The superior court denied cross-motions for summary judgment, then upheld acceptance of the petition.

ISSUE(S) ON APPEAL:

1. Does administrative law require the LBC to make findings of fact?
2. Should the superior court have engaged in an independent interpretation of the standards for incorporation?
3. Is the Naval Petroleum Reserve in the exclusive legal jurisdiction of the federal government, such that the borough is powerless to regulate its use and the NPR therefore fails to come within the statutory geographic standard provided for borough boundaries?
4. Are the existing and proposed means of transportation reasonably inexpensive, readily available, reasonably safe, and sufficient both to make areas accessible to other parts of the borough, and to facilitate the communication and exchange necessary for development of integrated local government and a community of interests?
5. Was inclusion of property at Prudhoe Bay a denial of substantive due process?
6. Does Art. X, §12 of the Alaska Constitution require submission of an accepted incorporation petition to the legislature for review?
7. Attorney fees. (Analysis to be completed.)

HOLDING OF THE COURT:

1. The LBC is not required by law to make findings of fact.
2. Where the administrative action involves formulation of fundamental policy, such as the incorporation of a borough, the appropriate standard for judicial review is whether the agency action has a reasonable basis for its decision.
3. The statutory geographic standard has been reasonably satisfied.
4. The LBC could reasonably have found travel facilities adequate to support borough government.
5. The inclusion of Prudhoe Bay in the borough was not a violation of substantive due process.
6. "[S]ubmission of an accepted incorporation petition to the legislature is not required by the state constitution." (104)
7. Attorney fees. (Analysis to be completed.)

REASONING:

1a. The LBC is not one of the agencies listed in the Administrative Procedures Act as those required to make findings of fact, and the statutes defining the LBC processes do not require findings of fact, therefore we find no statutory command for findings of fact.¹

1.b. The LBC has a "special function ... to undertake a broad inquiry into the desirability of creating a political subdivision... [making] us reluctant to impose an independent ... requirement that findings be prepared."

1.c. From our review of the entire record, we have been able to determine the basis for the LBC decision.

2. The statutory standards for incorporation "were intended to be flexibly applied to a wide range of regional conditions,' and the LBC "has been given a broad power to decide the unique circumstances presented by each petition..." Therefore we should affirm "if we perceive in the record a reasonable basis of support for the [LBC] reading ... and ... evaluation" of standards. (98-99)

3.a. The State has been granted concurrent jurisdiction over the NPR until Congress enacts legislation to the contrary, and the State may partially delegate its concurrent authority to a political subdivision.

¹ Curiously, the Court said at n. 11, "We recognize that in the usual case findings of fact would be required even in the absence of a statutory duty in order to facilitate judicial review, insure careful administrative deliberation, assists the parties in preparing for review, and restrain agencies within the bounds of their jurisdiction." [Citations omitted.] What is "the usual case"?

3.b. Reviewing the record in favor of upholding creation of a borough whenever the requirements for incorporation have been minimally met, as required by Art. X, §1 of the Alaska Constitution, the need for protection of a subsistence life style reasonably satisfies the statutory geographic standard

4. Reviewing the record in favor of upholding creation of a borough whenever the requirements for incorporation have been minimally met, as required by Art. X, §1 of the Alaska Constitution, the present and future capacities for travel facilities, considered in the context of transportation in Alaska generally, and considered in comparison to the present cost and availability of travel to centers of government for North Slope residents, there exists a reasonably adequate basis to satisfy the statutory transportation standard.

5.a. The cases from the various states, cited in support, are not founded in a test of due process but rather are founded in "restrictions in pertinent statutes and constitutions on the reach of municipal annexations and incorporations."

5.b. *Myles Salt Co.* (U.S. Sup. Ct. 1916) turned upon a singular allegation in the complaint, and that court could not ultimately evaluate whether the legislation furthered some other legitimate governmental purpose than drainage. Also, the drainage district under attack was not a unit of government. Hence, these "particular facts" carry no more relevance in the instant case than the broad and familiar principle "that the legislature may not act arbitrarily."

5.c. "[T]he need for the state to oversee the course of private development ... [by way of] a local government body which promulgates and enforces planning and zoning regulations" would be a legitimate public purpose for organizing a borough on the North Slope.

6.a. Where Art. X, §3 provides that methods by which boroughs may be incorporated shall be prescribed by law, and where the statute does not reserve any power of review by the legislature except to adjustments made by the Commission in boundaries of organized boroughs, "the Commission's decision need not be submitted to the legislature." (103)

6.b. Where the statute requires a local election on borough organization after LBC acceptance, and that upon certification of a favorable election, the Lt. Gov. "shall declare that the area ... is an organized borough," the legislature was not interposing subsequent legislative approval of the petition.² (103)

6.c. *Oesau* "established³ that" the basic purpose for creating the LBC and conferring its powers was to obviate a controversy which could not be settled at the local level, and because diminution of the residual unorganized borough does not occur as a boundary change with the conflicts accompanying boundary adjustments between two functioning

² This is describing the local option election sentence in Art. X, §12, as well as Art. X, §3. Both provide for legislation of the method. Conversely, the middle three sentences of Art. X, §12 describe a different method for incorporation. Relevant to the facts in the *Mobil* case, namely, the legislative review method.

To: Senate Judiciary (JUD) Committee
Chairperson: Sen. Ralph Seekins
Subject: SB 128 by Sen. Terriault
Date: Friday April 8, 2005
Time: 8:00 AM

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Mr. Chairman;

After listening to the hearing on SB 128 last Wednesday morning I had some concerns and additions to my original written testimony I had faxed in for that hearing. They are as follows...

After LBC Chair, Darroll Hargraves testimony I was impressed with the excellent questions that the Senate Judiciary Committee members asked but I was very disheartened to hear how LBC Chair, Darroll Hargraves responded, specially to direct questions such as "have you or any of your staff been working on anything having to due with Valdez?" or his use of words like "technically we do not" or the words "mostly we consider". And the fact he did not have the written testimony to provide the Committee.

But what scarred me was when the LBC Attorney spoke and publicly stated that he had know idea why LBC Chair Darroll Hargraves would make such statements when they were not true. So the record shows that a "STATE AGENCY

PERSONNEL/COMMISSIONER" knowingly provided false statements to the Senate Judiciary Committee. This is the same man that is telling you that it is lawful to take away my right to vote.

For and on the record I want you all to know that during another hearing (SB 122) that LBC Chair, Darroll Hargraves testified on he also gave misleading testimony and it was Sen. Albert Kookesh that confronted him and LBC Chair, Darroll Hargraves had to correct himself.

This man is only to look at the facts not make them up. This man is not elected he has been appointed and not by the legislature so I can not recall him for his wrongful acts...that is your job. Please protect "We the People" from State government agency personnel that want to usurp the powers of the legislature to make rules, policies, laws or create boroughs according to their own views
Thank you for allowing my testimony.

To: Senate Judiciary (JUD) Committee
Chairperson: Sen. Ralph Seekins
Subject: SB 128 by Sen. Terriault
Date: Friday April 8, 2005
Time: 8:00 AM

Written Testimony by: DENNY KAY WEATHERS
Residence Address: Lot 6, Deep Bay, Hawkins Island
in Prince William Sound, District C
Mailing Address: Third Judicial District
c/o P.O. Box 1791
Cordova, Alaska
Rural Radio Phone: 907-424-3745
Email Address: northerngirl@ctcak.net

Mr. Chairman;

After listening to the hearing on SB 128 last Wednesday morning I had some concerns and additions to my original written testimony I had faxed in for that hearing. They are as follows...

After LBC Chair, Darroll Hargraves testimony I was impressed with the excellent questions that the Senate Judiciary Committee members asked but I was very disheartened to hear how LBC Chair, Darroll Hargraves responded, specially to direct questions such as "have you or any of your staff been working on anything having to due with Valdez?" or his use of words like "technically we do not" or the words "mostly we consider". And the fact he did not have the written testimony to provide the Committee.

But what scarred me was when the LBC Attorney spoke and publicly state that he had know idea why LBC Chair Darroll Hargraves would make such statements when they were not true. So the record shows that a "STATE AGENCY

PERSONNEL/COMMISSIONER" knowingly provided false statements to the Senate Judiciary Committee. This is the same man that is telling you that it is lawful to take away my right to vote.

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This man is only to look at the facts not make them up. This man is not elected he has been appointed and not by the legislature so I can not recall him for his wrongful acts...that is your job. Please protect "We the People" from State government agency personnel that want to usurp the powers of the legislature to make rules, policies, laws or create boroughs according to their own views
Thank you for allowing my testimony.

DATE: April 8, 2005

TO: Senator Guess
Fax: 907-465-6615

FROM: Glen Marunde

Written Testimony to the Senate Judiciary Committee Regarding SB 128

To the Chairman and Members of the Senate Judiciary Committee:

My name is Glen Marunde and I am a 43 year resident of Tok. My wife, Dorothy, and I have raised five children in Alaska. I make my living as an electrical and mechanical contractor. I also teach construction trade classes for the University of Alaska.

My testimony pertains to the story of what happen when the Local Boundary Commission forced the Lake Louise Community of just 37 residents to be annexed to the Matsu Borough without a vote of the residents of the annexed area and without the vote of a single elected person.

This story, more than anything else I know of, supports the aims and goal of SB28. I urge you to vote for SB 128.

The facts and figures used in this testimony are taken from The Report of the Local Boundary Commission to the Second Session of the Nineteenth Alaska Legislature.

Once upon a time there were 37 Alaskan citizens living peacefully and happily in the beautiful area around Lake Louise. Lake Louise is located just off the Glenn Highway about 34 miles west of Glennallen and about 110 miles east of downtown Anchorage.

They governed themselves with a local Community Umbrella Corporation, a quasi-government plan overseen by the DCED for areas not ready to incorporate as a second class city. They had total local control of their own lives and destinies.

The Matsu Borough leaders recognized that some day this area could become a major recreational area with a tax base and they reached their talons over a mountain range and thru the notch at the top of Gunsight Mountain and snatched up Lake Louise. The LBC eagerly approved the Matsu petition and forced the Lake Louise residents to be annexed to the Matsu Borough by use of the legislative review method. That's the method whereby the LBC makes a recommendation to the Legislature to annex and it becomes law, if not voted down by a majority in both houses within 45 days. The annexation can become law without a vote of the Legislature and without a vote of the

Lake Louise citizens. The annexation becomes law without the vote of any elected person.

On March 7, 1996 the 37 residents of Lake Louise fought back and filed a petition to detach with the Department of Community and Regional Affairs. The LBC was forced to investigate. Their own investigation showed that Lake Louise had very much more in common with the Glennallen Area than it did with Matsu. The LBC voted to recommend detachment.

On October 3, DCRA issues its preliminary report, which supported the detachment of approx 252 square miles.

But the DCRA attached stipulations to the detachment. They recommended that the Lake Louise residents pay for a proportional share of the Matsu bonded indebtedness. Next, they recommended that Lake Louise pay required local contributions for education and that they assume responsibility for a 23-acre sewage management site currently operated by the Matsu Borough. The dollar amount of these stipulations came to \$160,000.00.

Let's stop and recap! The 37 residents of Lake Louise were forced into annexation with the Matsu Borough without a local vote and against their will. They fought back by filing a petition to detach. Upon review both the LBC and the DCRA changed their opinion and recommended detachment but they added stipulation that in order to detach the citizens of Lake Louise had to buy their way out to the tune of \$160,000.00---for services they never wanted or needed in the first place. Unbelievable!

But wait - there's one more stipulation! At a December 8, 1995 meeting the LBC stipulated that the detachment will not take effect until the detached territory becomes part of another organized borough within two years of the date of tacit legislative approval. There were no other organized boroughs in the area.

Let's sum up, again.

The DCRA and the LBC imposed a borough annexation of Lake Louise against their will. Lake Louise fights back and files a petition to detach. After a thorough investigation, which shows that Lake Louise has much more in common with Glennallen than with the Matsu Borough, they reverse themselves and recommend detachment.

Next the LBC and the DCRA add stipulations to the detachment that Lake Louise must pay \$160,000.00 to buy their way out and that they must join another borough, first. There was no other borough within 100 miles and still isn't as of today's date! Both the LBC and the DCRA are dead wrong but they win anyway --- and the 37 citizens of Lake Louise lose and no elected person has voted on anything!

The saga continues.

The citizens of Lake Louise could not afford to buy their way out and they did not want to join another borough. They fought back again by filing a petition to reconsider and ask to detach and form a 2nd class city as the lesser of two evils. At least with a 2nd class city they would retain local control compared to seeing control pass to a borough assembly 100 miles away.

The LBC approves the formation of a 2nd class city but stipulates approx the same conditions as they did for detachment and then, believe it or not, adds another stipulation.

Here it is (if you love our Democracy, and believe in the rights of individuals, brace yourself):

"It is further stipulated in the event a city government is formed, the incorporation is conditioned upon the passage of a proposition authorizing the city to levy a property tax at a rate that will generate revenues sufficient rate to pay the \$160,000.00 noted above to the Matanuska-Susitna Borough within two years of incorporation and to carry out the duties listed above and other reasonable anticipated functions of the city."

And here is the final outrageous stipulation, "that the Local Boundary Commission shall be the arbitrator of any dispute between the petitioners and the Matanuska-Susitna Borough concerning payments required by this action or the implementation of any other aspect of the detachment and the conditions stipulate above."

Talk about the fox guarding the chicken coop!" The LBC was a prime party and should not be the arbitrator. That is the job for a 3rd party arbitrator.

The Lake Louise residents did not accept the stipulations and today they are still a part of the Matsu Borough.

Please note that Darrell Hargraves, the current Chairman of the LBC, was also the Chairman during the Lake Louise fiasco.

I believe that the story of how the LBC forced the Community of Lake Louise, against their will, without a vote, into the wrong borough and forced it to remain there clearly points out the need to pass SB 128.

If you wish to read the LBC report regarding the annexation of Lake Louise into the Matsu Borough, call me at 907-883-4601 or email me at: Marunde@aptalaska.net and I will send it to you.

Alaska State Legislature

SENATOR
GENE THERRIAULT

Mailing Address:
119 N. Cushman, Suite 101
Fairbanks, Alaska 99701
(907) 488-0857
Fax: (907) 488-4271



Senate

While in session
State Capitol
Juneau, Alaska
99801-1182
(907) 485-4797
Fax: (907) 485-3884
SENATE DISTRICT F

Sponsor Statement for SB 128

Senate Bill 128 will help insure that petitions to create new boroughs receive a higher degree of local public participation.

The foundation for this legislation is Article I, Section 2 of the State Constitution, "All political power is inherent in the people. *All government originates with the people*, is founded upon their will only, and is solely for the good of the people as a whole."

The specific authority to make this statutory change is in Article X, Section 3 of the State Constitution. "*The entire state shall be organized into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law.*"

The Local Boundary Commission has acted against overwhelming objections of Valdez residents in directing an employee of the Department of Community, Commerce and Economic Development to originate a borough petition surrounding their community. The LBC is using a process that does not follow the typical Title 29 procedures for public involvement in the petition formulation process.

While the Constitution in Article X, Section 12 of the Constitution states: the Local Boundary Commission "may consider any proposed local government boundary *change*". It does not state, that a state agency or the LBC may create entirely new borough boundaries. In fact, the statutory language that once specifically recognized such authority was eliminated.

It is clear from the minutes of the Constitutional Convention that the founders did not intend a borough to be created by a state employee, or five unelected commissioners. The founders no doubt intended the phrase "*All government originates with the people*" to guide and temper the actions of the LBC and government agencies in their deliberations and actions.

SB 128 is based on Article I, Section 2, and affirms for the LBC and the Department of Community, Commerce and Economic Development that "*all government*" applies to boroughs, and the words "*originates with the people*" applies first and foremost to citizens within proposed borough boundaries.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 12E
 (S) Publish Date: 3/22/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Borough Incorporation RDU Comm Assist & Ec Dev (405)
 Component Community Advocacy
 Sponsor Therriault
 Requester Senate Community & Regional Affairs Component No. 2703

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURE 3						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation amends AS 44.33.812(a) to require that the term "boundary change" may not be construed to include a borough incorporation. It would not create a fiscal impact on the operations of the department.

Prepared by: Michael Black, Director Phone 907.269.4580
 Division: Community Advocacy Date/Time 3/21/05 10:19 AM
 Approved by: Edgar Blatchford, Commissioner Date 3/21/2005
 Agency: Commerce, Community, and Economic Development



Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Senator Gene Therriault

Current Version: SB 128

Contact: Dave Stancliff, 465-4797

Fact Sheet for: Senate Bill 128

Short Title: BOROUGH INCORPORATION

Summary:

- Amends AS 44.33.812 to clarify that the authority of the Local Boundary Commission (LBC) does not include borough incorporation when the LBC considers a local government "boundary change."

Benefits:

- Ensures a higher degree of local public participation in the petition process.
- Resolves a potential constitutional conflict.
- Clarifies state law regarding the formation of boroughs to reflect the intentions of participants in Alaska's Constitutional Convention.

Background:

- SB 128 clarifies that agency personnel of state government cannot create a new borough. The bill is in response to a recent action of the LBC and the Department of Commerce, Community and Economic Development to draft a petition that would surround the community of Valdez with a new borough. The action is against overwhelming objections of Valdez residents, does not follow typical Title 29 procedure allowing for public involvement, and can be interpreted as unconstitutional. Validation for SB 128 comes from Article I, Section 2 of the State Constitution, "All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is solely for the good of the people as a whole." The specific authority for the statutory change made in SB 128 comes from Article X, Section 3, "The entire state shall be organized into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law." Minutes of the Constitutional Convention clearly indicate that the founders did not intend borough creation by a state department or five unelected commissioners.



February 22, 2005

Governor Frank Murkowski
State of Alaska
Office of the Governor
P. O. Box 110001
Juneau, Alaska 99811
Fax: (907) 465-3532

Dear Governor Murkowski:

The City of Valdez respectfully requests your attention to the development of a petition for the incorporation of the Prince William Sound Borough that follows the model borough boundaries in the Prince William Sound area. In August of 2004, the City of Whittier passed a resolution asking the Local Boundary Commission to have the State act as the petitioner for the incorporation of the Prince William Sound Borough through the Legislative Review Process. The Local Boundary Commission voted favorably to grant Whittier's request. Subsequently, staff time within the Division of Community Advocacy was allocated for preparation of the petition. A number of issues relating to this process are cause for alarm.

First, the petition process has been assigned to a very accelerated schedule. The Division of Community Advocacy has informed stakeholders that the petition will be submitted by the end of March, 2005. This submission date does not guarantee, but positions the petition to be submitted by the LBC within the first ten days of the 2006 Legislative session. The timeline virtually prohibits the affected communities from completing their own analysis of alternative borough boundaries. The model borough boundaries were drawn up more than a decade ago. Much has changed in that time. There very well may be alternative boundary options that make more social and economic sense for the individual communities within Prince William Sound. The "fast-tracked" petition provides no opportunity for different options to be explored.

Secondly, the City of Whittier passed and submitted its resolution to the Local Boundary Commission with no forewarning to the other four impacted communities. The population of Whittier is approximately 172 people. Based on information we have received, not all of the residents are in favor of borough incorporation. This means that less than 2% of the population in Prince William Sound is driving a borough petition process for the other 98% of the residents in the impacted area.

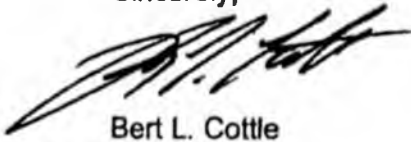
Finally, it is the stated policy of the Administration that Alaska residents will not be forced into new local government. Much of the push behind borough formation is to ensure that Alaskans are paying "their fair share." We see that as a reasonable goal. However, in Prince William Sound, 95% of the population is currently paying for schools, land use

planning. An even higher number (98%) are paying taxes for services that far exceed those provided by most borough governments in Alaska.

With this in mind, it begs the question, "Why the rush?" All five communities within Prince William Sound should be given the dignity and time to determine which boundaries make the most sense for the social and economic well being of our citizens for this generation and those to come.

The City of Valdez urges you to review the State's role and process in preparation of the petition for incorporation of the Prince William Sound Borough.

Sincerely,



Bert L. Cottle
Mayor

CC: Representative John Harris, Speaker of the House
Senator Gene Therriault

CITY OF CORDOVA



April 6, 2005

Senator Ralph Seekins, Chair
Senate Judiciary Committee Members
State Capital
Juneau, AK 99801-1182

Re: SB 128

Dear Senators:

Article 10, section 1 of the Alaska State Constitution provides for the maximum local self government with a minimum of local government units to prevent duplication of tax levying jurisdictions. This article directs the state to form government units that encompass a large geographic area, a "minimum of local government units," to provide for the maximum local self government (borough).

Article 10, section 2 of the Constitution says that all local government powers shall be vested in boroughs and cities. And Section 12 of Article 10 establishes the Local Boundary Commission as part of the executive branch of state government. The Commission may consider "**any proposed local government boundary change**" (emphasis added).

Senate Bill 128 would restrict the powers of the Local Boundary Commission so it could no longer consider borough boundary changes. The constitution mandates that any proposed government boundary change be considered by the boundary commission. This legislation mandates an unnecessary and potentially unconstitutional restriction, since the legislature already has the power to "disapprove by resolution concurred by the majority of the members of each house" any proposal from the Commission.

The framers of the constitution envisioned a very simple form of government. They did not want multiple governments with overlapping powers and jurisdictions. This simple form of government included the state, cities, and boroughs. It became apparent shortly after the constitution was adopted that borough formation was not taking place as envisioned. As a result, in 1963 the mandatory borough act was passed to create boroughs. Those boroughs now contain 84% of the population of Alaska. Passage of SB 128 would create another barrier to borough formation, which is contrary to the intent of the constitution.

The City of Cordova is not in support SB 128 and feels it should be rejected as unnecessary and possibly unconstitutional.

Thank you for allowing me to submit this written testimony.

Sincerely,


Tim Joyce, Mayor 

To: Senate Judiciary (JUD) Committee
Chairperson: Sen. Ralph Seekins
Subject: SB 128 by Sen. Therriault
Date: Wednesday 5, 2005
Time: 8:30 AM

Written testimony by: DENNY KAY WEATHERS
Residence Address: Lot 6, Deep Bay, Hawkins Island
In Prince William Sound, District C
Mailing Address: Third Judicial District
c/o P.O. Box 1791
Cordova, Alaska
Rural Radio Phone: 907-424-3745
Email Address: northerngirl@ctcak.net

Mr. Chairman;

I strongly support SB 128 because under title 44 the LBC is taking away the public process. In 1998 in the Sectional Analysis and Policy Concerns for SB 337 under sub-header "Mandatory Boroughs Inhibit Development of Local Government" It states "This agency's experience with mandatory boroughs is that because there is so much resentment and animosity revolving around their creation, the borough is seen as an enemy to be fought against for years after its initial creation." But now this very agency is trying to create a forced borough with no public process.

When an agency within the government starts to supersede the rights of "We the People" and usurps the powers of the legislature we no longer have a constitutional government. Under section 3 of the Alaska Statehood Act Public Law 85-508 it states, "The constitution of the State of Alaska shall always be republican in form and shall not be *repugnant* to the Constitution of the United States and the *principles* of the Declaration of Independence." Under Title 44 not only is the public process as well as our right to vote being taken away by this agency (the LBC) it is also trying to

suspend our own legislature by declaring themselves invested with power to legislate for us. This goes directly against the principles of the Declaration of Independence as well as the Alaska Statehood Act.

The Constitution of the State of Alaska under Article I, Section 2. Source of Government. All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole. Under Title 44 the power of the people is being taken away by the removal of the public process, the government is no longer originating with the people but instead with a government agency, and our will and good of the people as a whole is lost to this agency.

The majority of the People within the Prince William Sound Model Borough area are opposed to the LBC trying to use Title 44 to create a borough without a public process and it seems that only a handful of citizens within the Prince William Sound Model Borough area, the Cordova City government and the Whittier City government are for this type of forced borough.

The LBC needs to be reigned in and some checks and balances put into place to protect "We the People" from this State agency that wants to take our rights away. SB 128 is a good start. Please pass SB 128 and up hold not only our Constitution but the Alaska Statehood Act too. Thank you for the opportunity to testify.

Denny Kay
Weathers

LEGAL SERVICES

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

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

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

MEMORANDUM

April 5, 2005

SUBJECT: Borough incorporation (SB 3)

TO: Senator Gene Therriault
Attn: Dave Stancliff

FROM: Tamara Brandt Cook
Director *TBC*

You ask for an explanation of how SB 128 would change existing law if enacted. Under AS 44.33.812(a)(3) the Local Boundary Commission is required to consider local government changes requested of it by the legislature, the commissioner of commerce, community, and economic development, or a political subdivision of the state. This bill specifically removes a borough incorporation from potential coverage under AS 44.33.812(a)(3) as a "local government change." The Local Boundary Commission would not be required to consider a borough incorporation requested by the listed entities. Note that it is the mandatory nature of the duty that is affected. The bill does not prohibit the Local Boundary Commission from considering a borough incorporation requested of it by any entity if it chooses to do so.

TBC:lmb
05-109.lmb

proved by the voters as prescribed by law. Each bill for appropriations for capital projects in excess of the limit shall be confined to capital projects of the same type, and the voters shall, as provided by law, be informed of the cost of operations and maintenance of the capital projects. No other appropriation in excess of this limit may be made except to meet a state of disaster declared by the governor as prescribed by law. The governor shall cause any unexpended and unappropriated balance to be invested so as to yield competitive market rates to the treasury.

SECTION 17. BUDGET RESERVE FUND.

(a) There is established as a separate fund in the State treasury the budget reserve fund. Except for money deposited into the permanent fund under Section 15 of this article, all money received by the State after July 1, 1990, as a result of the termination, through settlement or otherwise, of an administrative proceeding or of litigation in a State or federal court involving mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments or bonuses, or involving taxes imposed on mineral income, production, or property, shall be deposited in the budget reserve fund. Money in the budget reserve fund shall be invested so as to yield competitive market rates to the fund. Income of the fund shall be retained in the fund. Section 7 of this article does not apply to deposits made to the fund under this subsection. Money may be appropriated from the fund only as authorized under (b) or (c) of this section.

(b) If the amount available for appropriation for a fiscal year is less than the amount appropriated for the previous fiscal year, an appropriation may be made from the budget reserve fund. However, the amount appropriated from the fund under this subsection may not exceed the amount necessary, when added to other funds available for appropriation, to provide for total appropriations equal to the amount of appropriations made in the previous calendar year for the previous fiscal year.

(c) An appropriation from the budget reserve fund may be made for any public purpose upon affirmative vote of three-fourths of the members of each house of the legislature.

(d) If an appropriation is made from the budget reserve fund, until the amount appropriated is repaid, the amount of money in the general fund available for appropriation at the end of each succeeding fiscal year shall be deposited in the budget reserve fund. The legislature shall implement this subsection by law.

ARTICLE X. LOCAL GOVERNMENT.

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 tax levying jurisdictions. A liberal construction shall be given to the powers of local government units.

SECTION 2. LOCAL GOVERNMENT POWERS. All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

SECTION 3. BOROUGHES. 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.

SECTION 4. ASSEMBLY. The governing body of the organized borough shall be the assembly, and its composition shall be established by law or charter.

SECTION 5. SERVICE AREAS. Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services.

SECTION 6. UNORGANIZED BOROUGHES. The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

SECTION 7. CITIES. Cities shall be incorporated in a manner prescribed by law, and shall be a part of the borough in which they are located. Cities shall have the powers and functions conferred by law or charter. They may be merged, consolidated, classified, reclassified, or dissolved in the manner provided by law.

SECTION 8. COUNCIL. The governing body of a city shall be the council.

SECTION 9. CHARTERS. The qualified voters of any borough of the first class or city of the first class may adopt, amend, or repeal a home rule charter in a manner provided by law. In the absence of such legislation, the governing body of a borough or city of the first class shall provide the procedure for the preparation and adoption or rejection of the charter. All charters, or parts or amendments of charters, shall be sub-

mitted to the qualified voters of the borough or city, and shall become effective if approved by a majority of those who vote on the specific question.

SECTION 10. EXTENDED HOME RULE. The legislature may extend home rule to other boroughs and cities.

SECTION 11. HOME RULE POWERS. A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.

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

SECTION 13. AGREEMENTS; TRANSFER OF POWERS. Agreements, including those for cooperative or joint administration of any functions or powers, may be made by any local government with any other local government, with the State, or with the United States, unless otherwise provided by law or charter. A city may transfer to the borough in which it is located any of its powers or functions unless prohibited by law or charter, and may in like manner revoke the transfer.

SECTION 14. LOCAL GOVERNMENT AGENCY. An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local

Mar 10 05 07:01a

NATIVE VILLAGE OF EAGLE
EAGLE VILLAGE IRA COUNCIL
P. O. BOX 19
EAGLE, ALASKA 99738

PHONE NO. (907) 547-2281
FAX NO. (907) 547-2318

March 7, 2005

Gene Therriault
Alaska State Legislature
Alaska State Senate
State Capital
Juneau, Alaska 99801-1182

RE: Senate Bill 128

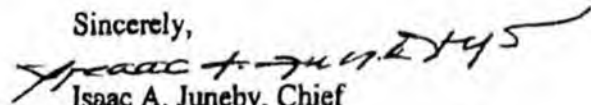
Dear Honorable Senator Therriault:

I am writing in references to Senate Bill 128, which you introduced ton March 3, 2005. After reviewing the synopsis of SB-128, I wanted to let you know that I support it. I like the intent of this bill, however, I do have a few questions? You quoted the "Alaska State Constitution" Article 1, Section 2, which states that all government originates with the people. I read and understands this to mean, if someone wants a borough, that it is up to the people who resides within the area to formulate, vote and introduce it as legislation.

The individual rights within our Bill of Rights, states we the people, for the people and by the people. The bill, which you are sponsoring, has all of these safeguards and merits. I do believe that we need a bill like SB-128 to safeguard all of our rights, especially in this case, the formation of boroughs or other forms of government.

Thank you for giving me the time to comment. I strongly support and recommend passage of this bill. If you have any questions or comments, feel free to call me at (907) 547-2271 (office) or (907) 547-3030 (home).

Sincerely,


Isaac A. Juneby, Chief
Eagle Village IRA Council



February 22, 2005

State of Alaska
Department of Commerce, Community & Economic Development
Commissioner Edgar Blatchford
P. O. Box 110800
Juneau, Alaska 99811-0800
Fax: (907) 465-5442

Dear Commissioner Blatchford:

The City of Valdez respectfully requests your attention to the development of a petition for the incorporation of the Prince William Sound Borough that follows the model borough boundaries in the Prince William Sound area. In August of 2004, the City of Whittier passed a resolution asking the Local Boundary Commission to have the State act as the petitioner for the incorporation of the Prince William Sound Borough through the Legislative Review Process. The Local Boundary Commission voted favorably to grant Whittier's request. Subsequently, staff time within the Division of Community Advocacy was allocated for preparation of the petition. A number of issues relating to this process are cause for alarm.

First, the petition process has been assigned to a very accelerated schedule. The Division of Community Advocacy has informed stakeholders that the petition will be submitted by the end of March, 2005. This submission date does not guarantee, but positions the petition to be submitted by the LBC within the first ten days of the 2006 Legislative session. The timeline virtually prohibits the affected communities from completing their own analysis of alternative borough boundaries. The model borough boundaries were drawn up more than a decade ago. Much has changed in that time. There very well may be alternative boundary options that make more social and economic sense for the individual communities within Prince William Sound. The "fast-tracked" petition provides no opportunity for different options to be explored.

Secondly, the City of Whittier passed and submitted its resolution to the Local Boundary Commission with no forewarning to the other four impacted communities. The population of Whittier is approximately 172 people. Based on information we have received, not all of the residents are in favor of borough incorporation. This means that less than 2% of the population in Prince William Sound is driving a borough petition process for the other 98% of the residents in the impacted area.

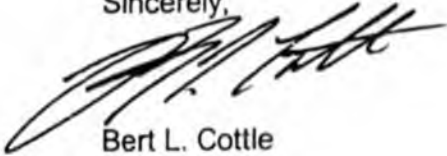
Finally, it is the stated policy of the Administration that Alaska residents will not be forced into new local government. Much of the push behind borough formation is to ensure that Alaskans are paying "their fair share." We see that as a reasonable goal. However, in Prince William Sound, 95% of the population is currently paying for schools, land use

planning. An even higher number (98%) are paying taxes for services that far exceed those provided by most borough governments in Alaska.

With this in mind, it begs the question, "Why the rush?" All five communities within Prince William Sound should be given the dignity and time to determine which boundaries make the most sense for the social and economic well being of our citizens for this generation and those to come.

The City of Valdez urges you to review the State's role and process in preparation of the petition for incorporation of the Prince William Sound Borough.

Sincerely,



Bert L. Cottle
Mayor

CC: Representative John Harris, Speaker of the House
Senator Gene Therriault

SKAGWAY CITY SCHOOL

P.O. Box 497

• Skagway, Alaska 99840

• (907) 983-2960

March 24, 2005

The Honorable Senator Gene Therriault
SENATE
State Capitol, Juneau, Alaska 99801-1182

Re: Borough Incorporation
Senate Bill 128

My dear Senator Gene Therriault,

I provided testimony in support of SB128 to the Community & Regional Affairs Committee of the Alaska State Senate on Monday, March 21, 2005 while I was in Juneau attending the Legislative Fly-In for the Alaska Association of School Administrators. I am the Superintendent of the Skagway City School District and I share with you the belief that it is in the vital interest of the future of our cities, Valdez and Skagway, that SB128 become law.

I really appreciate your efforts on behalf of small cities and towns throughout Alaska. It is imperative that local autonomy and the principles of self-rule be protected in state statute. I applaud your attempts to preserve this important aspect of rural life. Many people who choose to live in our small communities are advocates of keeping government at a local level as much as possible. Your bill will further secure those needs of letting people be in charge of their own lives and destinies.

I have shared through a letter to the City of Skagway City Council the broad benefits your bill will guarantee for the citizens of our cities. I actively seek to promulgate our mutual agenda whenever the opportunity becomes available. I felt that this public hearing was just such an occasion and was glad to lend my voice to your effort.

Besides protecting our communities through your bill I know that the City of Skagway has petitioned the Local Boundary Commission and the Alaska State Legislature to be made a borough. Skagway shares with Valdez, in my opinion, the perception of many people in our state that they are "cash cows" whose wealth derived from the very arduous work of the people in those cities would be a benefit to surrounding communities through an annexation into their borough governments. If that type of borough formation were to

be permitted then our communities would probably lose their ability to plan for their futures. Other entities would be making decisions impacting our cities without the mutual consent of our residents since there would be a shift in majority voting.

I wholeheartedly believe that our Skagway City Council objective of making Skagway a borough is imperative in obtaining financial independence and local autonomy for the future needs of Skagway's citizens especially her children. I would speculate that the citizens of Valdez would also benefit by forming their own borough. We can either become a borough in the State of Alaska or, as an alternative plan, we can find ways to enact through legislation, law that would make it impossible for other boroughs or communities from incorporating us into their borough without our voter's approval. Your bill would provide our residents with this later strategy and its corresponding legal indemnity.

I personally believe that only this type of a legal deterrent, which impedes or actually stops an unwilling city participant from being forced into an existing borough, will ultimately protect the fiscal integrity, quality of life, and the future interests of our wonderful communities. Congratulations on having your bill unanimously voted out of the Senate Committee for Community & Regional Affairs!

Thank you so much for taking your time to read this letter. Please know that if there is any opportunity in which I could be of help in your pursuit of getting SB128 in state statute you need only to ask. I can be reached at the aforementioned telephone number or by e-mail address: mdickens@skagwayschool.org. I know that by working together we will be helping to sustain and foster a safe, secure, and financially sound future for the citizens of our mutual cities!

Warmest Regards,



Dr. Michael Dickens
Superintendent

Cc: President Chris Ellis and the Skagway City School District School Board
Mayor Tim Bourcy and the Skagway City Council members

SB

129

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 3/3/05

FURTHER:

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 129

SB 129 WRONGFUL FILING OF LIS PENDENS

"An Act relating to the wrongful recording of a notice of pendency of an action relating to title to or right to possession of real property."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:
 Same Title
 New Title

House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
			X	
			X	
	X			
	X			
CHAIR:	✓			

ALASKA STATE LEGISLATURE

Senate District H
600 E. Railroad Avenue
Wasilla AK 99654
907-376-4866
907-373-4724 – Fax
Senator_Charlie_Huggins@legis.state.ak.us



State Capitol, Room 417
Juneau AK 99801-1182
907-465-3878
Fax: 907-465-3265
800-862-3878
www.akrepublicans.org/huggins/

Charlie Huggins Senator

3/8/05

Sponsor Statement

SB 129 – An act relating to the wrongful recording of a notice of pendency of an action relating to title to or right to possession of real property

SB 129 seeks to discourage abusive filings of illegal lis pendens notices and in fact makes it a Class A misdemeanor to file a wrongful “notice of lis pendens”¹. While the filing does not create a formal lien, such a notice can have an impact similar to that of a lien on the ability of the targeted person to do business with the affected real estate.

SB 129 responds to instances of nuisance filings used as a form of retribution against public officials. Current law is clear that lis pendens are only supposed to be filed against property for which the title or right to possession is subject to litigation, but the recorder’s office currently has no way to prevent people from filing improper lis pendens. Ordinarily, the improper filing is against property that is not subject to dispute; however, the filing is made simply because the filer has a grievance against the owner or someone connected with the owner.

In one case in 2003, a former state employee filed lis pendens targeting the home, development property and mining claims of members of the Alaska Board of Game, an assistant attorney general, and a real estate developer. None of the properties were actually the subject of a title or possession dispute, but the case took months and thousands of dollars of attorney time to resolve.

¹*Notice of lis pendens* . – A notice filed on public records for the purpose of warning all persons that the title to certain property is in litigation, and that they are in danger of being bound by an adverse judgment. The notice is for the purpose of preserving rights pending litigation.

Contact Information – Deborah Grundmann 465-4711

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 129
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Wrongful Filing of Lis Pendens BRU Alaska Court System
 Component Trial Courts
 Sponsor Senator Huggins
 Requester _____ Component No. 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of SB 129.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750
 Division: Alaska Court System Date/Time 3/21/05 11:35 AM
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 3/21/2005
 Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB129-LAW-T&WC-3-18
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to the wrongful recording of a RDU CIVIL
notice of pendency..." Component Torts & Workers' Compensation
 Sponsor Senator Huggins
 Requester Senate Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

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TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The proposed legislation would make it a Class A misdemeanor to present a lis pendens to a recorder with reckless disregard for the fact that the underlying action does not concern title to or possession of the property at issue. The intent of the legislation is to deter the use of improper restraints on real property of public officials and members of the public as a means of retribution or intimidation.

Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division Administrative Services Division Date/Time 3/18/05 2:32 PM
 Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General Date 3/18/2005
 Agency Department of Law

Sectional Analysis of SB 129 (wrongful recording of notice of pendency of action relating to title or possession of real property)

SB 129 seeks to discourage abusive filings of illegal *lis pendens* notices. There is currently no penalty for filing illegal *lis pendens* notices. Filing a *lis pendens* notice creates property title "clouds" that can interfere with property sales or financing.

Sec. 1. The first section of the bill adds an additional type of conduct to the actions designated in AS 11.46.560(a) as comprising "the crime of offering a false instrument for recording in the second degree." This crime is a Class A misdemeanor. Under SB 129, criminal liability is extended to those who file notices of *lis pendens* with the recorder of deeds with knowing or reckless disregard for the fact that the court action specified in the notice does not concern either the title to, or the right to possess, the real property referred to in the notice. Liability is also extended to those who file such a notice with knowing or reckless disregard for the fact that there is no pending court action at all that concerns either the title to, or the right to possess, the real property referred to in the notice.

The language in section 1 tracks AS 09.45.940, which sets out the circumstances under which it is proper to file with the recorder of deeds a notice of the pendency of an action affecting title to real property or the right to possession of real property. The common legal term for these notices is "notices of *lis pendens*." Under SB 129, a person knowingly or recklessly using a notice of *lis pendens* in circumstances not provided in AS 09.45.940 will, in general, be subject to prosecution.

Sec. 2. Section 2 makes it a complete defense to criminal liability if the person filing the wrongful notice shows that the owner of the property consented to the filing. Thus, even if the filing of the notice is not within the law as set out in AS 09.45.940, the person making the filing is not guilty of a misdemeanor if the owner of the property agreed to let the wrongful document be filed with the recorder of deeds.

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

KENNETH H. MANNING, JD,)

Plaintiff,)

v.)

ALASKA BOARD OF GAME, GREG)

ROCZICKA, Chair, GEORGE MATTZ,)

MIKE FLEAGLE, DANA PRUHS,)

BEN GRUSSENDORF, Vice Chair,)

GREG STREVELER, JULIE MAIER,)

STATE OF ALASKA DEPT. OF LAW,)

KEVIN SAXBY, ASSISTANT)

ATTORNEY GENERAL, State of)

Alaska Department of Law,)

Defendants.)

Case No. 3AN-02-4392 Ci

AFFIDAVIT OF MARK SPARROW

Mark Sparrow, being first duly sworn, deposes and states:

1. My name is Mark Sparrow. I am a resident of Anchorage, Alaska and am over the age of eighteen. I make this affidavit on personal knowledge.
2. I am not a defendant in this case.
3. I have never been a member of the Alaska Board of Game.
4. I do not know Kenneth Manning, and to my knowledge I have never had any contact with him.
5. Since February, 2003, I have been one of the owners of Lot 9A, Block 6, Plat 71-256, District 301 (hereafter "Lot 9A").

- 6. Lot 9A is an integral part of a 28-unit condominium development project that is scheduled for construction this summer.
- 7. Lot 9A is under contract for sale at a price of \$244,500. The title company for the transaction is First American Title.
- 8. First American Title has informed me that it will not insure the title of Lot 9A until the *lis pendens* filed by Mr. Manning is removed. Title insurance is required for the transaction to proceed.
- 9. If the *lis penden* is not removed promptly, I believe I will suffer serious financial harm.

Mark Sparrow

STATE OF ALASKA)
ANCHORAGE, ~~SSP~~) ss.
THIRD JUDICIAL DISTRICT

Personally appeared before me the above-named Mark Sparrow this __ day of April, 2004, and made oath that the foregoing statements are true to the best of his knowledge.

Notary Public, ~~IN AND FOR ALASKA~~
Printed name:
My commission expires: _____

ALASKA LAND TITLE ASSOCIATION
P.O. Box 241811 • Anchorage, Alaska 99524

March 22, 2005

The Honorable Charlie Huggins
Alaska State Senate
State Capitol Building
Juneau, Alaska

Subject: Letter of Support for SB 129

Dear Senator Huggins:


The Legislative Committee of the Alaska Land Title Association (ALTA) has met and discussed SB129, an Act relating to wrongful recording of lis pendens. This letter is to express support by ALTA for SB129.

The Alaska Land Title Association is the state professional association and voice of the title insurance industry. ALTA members search, review and insure land titles to protect home buyers and mortgage lenders who invest in real estate. Members of the association are in business in communities throughout Alaska.

During our review and discussion of this bill, we noted that SB129 would help prohibit abusive recordings of lis pendens against blameless property owners. While it is hard to imagine why someone would use such disingenuous methods, history has shown that this, indeed, can happen.

Thank you for sponsoring this bill and allowing us this opportunity to express support.

Sincerely,


Sheila Bader, President
Alaska Land Title Association
Sheila@aktitle.com

ALASKA LAND TITLE ASSOCIATION

P.O. Box 241811 • Anchorage, Alaska 99524

March 22, 2005

The Honorable Charlie Huggins
Alaska State Senate
State Capitol Building
Juneau, Alaska

Subject: Letter of Support for SB 129

Dear Senator Huggins:

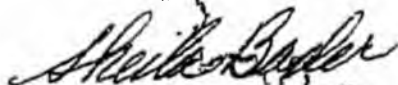
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The Alaska Land Title Association is the state professional association and voice of the title insurance industry. ALTA members search, review and insure land titles to protect home buyers and mortgage lenders, who invest in real estate. Members of the association are in business in communities throughout Alaska.

During our review and discussion on SB129, we noted that SB129 would help prohibit abusive recordings of liens against blameless property owners. While it is hard to imagine why someone would use such disingenuous methods, history has shown that this, indeed, can happen.

Thank you for sponsoring this bill and allowing us this opportunity to express support.

Sincerely,



Sheila Bader, President
Alaska Land Title Association
Sheila@aktile.com

SB

130

SENATE COMMITTEE REPORT

DATE: 4/1/05

FURTHER: Finance

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 130

SB 130 WORKERS' COMPENSATION

"An Act relating to a special deposit for workers' compensation and employers' liability insurers; relating to assigned risk pools; relating to workers' compensation insurers; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to the Alaska Workers' Compensation Board; assigning certain Alaska Workers' Compensation Board functions to the division of workers' compensation in the Department of Labor and Workforce Development and to that department, and authorizing the board to delegate administrative and enforcement duties to the division; establishing a Workers' Compensation Appeals Commission; providing for workers' compensation hearing officers in workers' compensation proceedings; relating to workers' compensation medical benefits and to charges for and payment of fees for the medical benefits; relating to agreements that discharge workers' compensation liability; relating to workers' compensation awards; relating to reemployment benefits and job dislocation benefits; relating to coordination of workers' compensation and certain disability benefits; relating to division of workers' compensation records; relating to release of treatment records; relating to an employer's failure to insure and keep insured or provide security; providing for appeals from compensation orders; relating to workers' compensation proceedings; providing for supreme court jurisdiction of appeals from the Workers' Compensation Appeals Commission, providing for a maximum amount for the cost-of-living adjustment for workers' compensation benefits; relating to attorney fees; providing for the department to enter into contracts with nonprofit organizations to provide information services and legal representation to injured employees; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; relating to fraudulent acts or false or misleading statements in workers' compensation and penalties for the acts or statements; providing for members of a limited liability company to be included as an employee for purposes of workers' compensation; establishing a workers' compensation benefits guaranty fund; relating to the second injury fund; making conforming amendments; providing for a study and report by the medical services review committee, and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

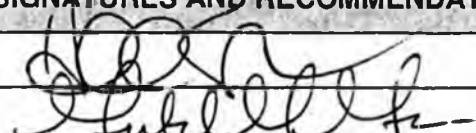
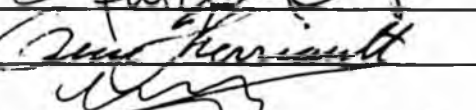
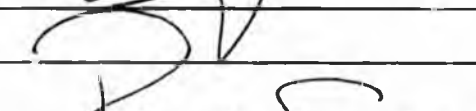
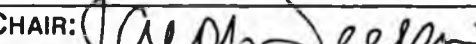
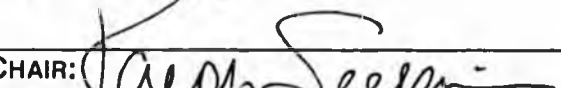
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
			X	
			X	
			X	
			X	
CHAIR: 	✓			

AMENDMENT

#1
Passed or amended

OFFERED IN SENATE JUDICIARY
COMMITTEE

BY

TO: CSSB 130 (L&C)

1 * Sec. 54. The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 "TASK FORCE ON WORKERS' COMPENSATION. (a) There is established
4 in the legislative branch the Task Force on Workers' Compensation to address the
5 improvement of the Alaska workers' compensation system, including

6 (1) a review of workers' compensation and insurance reform
7 measures throughout the United States and an assessment of the effects of those
8 reforms;

9 (2) an analysis and assessment of proposals for workers'
10 compensation and workers' compensation liability insurance reform in Alaska;

11 (3) a review of current Alaskan workers' compensation benefits
12 and costs and an assessment of needed changes;

13 (4) a review of compliance with current Alaska workers'
14 compensation laws;

15 (5) a consideration of other issues determined to be relevant by
16 members of the task force.

17 (b) The task force established under (a) of this section shall consist of ~~nine~~ ¹⁰
18 voting members. One member shall be a state senator appointed by the president
19 of the senate and one member shall be a representative appointed by the speaker of
20 the house of representatives. ~~Seven~~ ^{eight} members shall be appointed jointly by the
21 president of the senate and speaker of the house of representatives, as follows:

22 (1) Representative of ASMA

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- (2) a corp. entity w/ experience in workers comp. (2)
- (3) a rep. of the insurance industry
- (4) org. labor
- (5) unorg. labor
- (6) small bus.
- (7) large bus.

(c) The task force established under (a) of this section

- (1) may begin work immediately upon the appointment of its full voting membership and shall meet at least three times telephonically or in person;
- (2) shall hold public hearings and may perform research related to its work;
- (3) may meet in the interim and vote telephonically;
- (4) shall report its written findings and give a copy of proposed legislation and other recommendations to the legislature before December 1, 2005; and
- (5) is terminated on February 1, 2006.

AMENDMENT

Passed
2 as amended

OFFERED IN SENATE JUDICIARY
COMMITTEE

BY

TO: CSSB 130 (LRC)

1 Page 26, following line 23:

2 Insert the following new material:

3 "(35) "attending physician" means one of the following designated by the
4 employee under AS 23.30.095(a) or (b):

5 (A) a licensed medical doctor;

6 (B) a licensed doctor of osteopathy;

7 (C) a licensed dentist or dental surgeon;

8 (D) a licensed physician's assistant acting under supervision of a licensed
9 medical doctor or doctor of osteopathy;

10 (E) a licensed ~~advanced~~ nurse practitioner acting under supervision of a
11 licensed medical doctor or doctor of osteopathy; or,

12 (F) for a period of 30 days from the date of first visit following an injury
13 or for 12 visits, whichever first occurs, a licensed chiropractor;"

14
15 Page 26, line 24:

16 Delete "(35)"

17 Insert "(36)"

18

19 Page 26, line 26:

20 Delete "(36)"

21 Insert "(37)"

1

2 Page 26, line 28:

3 Delete "(37)"

4 Insert "(38)"

5

6 Page 26, line 30:

7 Delete "(38)"

8 Insert "(39)"

9

AMENDMENT #3

BY _____

Passed

In the SENATE JUDICIARY COMMITTEE

TO: CS SB 130 (L&C)

Page 15, Line 31, after "...medical treatment or services."

INSERT:

Treatment may not be denied based on American College of Occupational and Environmental Medicine Practice Guidelines if the treatment for the indication in question is not specifically addressed by the American College of Occupational and Environmental Medicine Practice Guidelines.

AMENDMENT

#4

Passed

BY _____

In the SENATE JUDICIARY COMMITTEE
TO: CS SB 130 (L&C)

Page 4, Delete Section 5

Page 6, Delete Section 11

Page 22, Delete Section 37

Page 27, Delete Section 46

Page 28, Delete Sections 50 and 54

Renumber all other sections accordingly

AMENDMENT

OFFERED IN SENATE JUDICIARY
COMMITTEE

TO: CSSB 130 (L&C)

BY

Passed

Taflov

#5

1 Page 26, following line 23:

2 Insert a new bill section to read:

3 ***Sec. 42.** AS 23.30.395(17) is amended to read:

4 (17) "injury" means accidental injury or death arising out of and in the course of
5 employment, and an occupational disease or infection which arises naturally out of the
6 employment or which naturally or unavoidably results from an accidental injury; "injury"
7 includes breakage or damage to eyeglasses, hearing aids, dentures, or any prosthetic
8 devices which function as part of the body and further includes an injury caused by the
9 wilful act of a third person directed against an employee because of the employment;
10 **"injury" does not include aggravation, acceleration or combination with a pre-**
11 **existing condition unless the employment is the major contributing cause of**
12 **disability or need for medical treatment;** "injury" does not include mental injury
13 caused by mental stress unless it is established that (A) the work stress was extraordinary
14 and unusual in comparison to pressures and tensions experienced by individuals in a
15 comparable work environment, and (B) the work stress was the predominant cause of the
16 mental injury; the amount of work stress shall be measured by actual events; a mental
17 injury is not considered to arise out of and in the course of employment if it results from a
18 disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or
19 similar action, taken in good faith by the employer;"

20

21 Renumber the following bill sections accordingly.

A M E N D M E N T

Passed
#6
Held

OFFERED IN SENATE JUDICIARY
COMMITTEE

BY

TO: CSSB 130 (L&C)

1 Page 15, following line 3:

2 Insert a new bill section to read:

3 ****Sec. 23.** AS 23.30.095(c) is amended to read:

4 (c) A claim for medical or surgical treatment, or treatment requiring continuing
5 and multiple treatments of a similar nature is not valid and enforceable against the
6 employer unless, within 14 days following treatment, the physician or health care
7 provider giving the treatment or the employee receiving it furnishes to the employer and
8 the board notice of the injury and treatment, preferably on a form prescribed by the
9 board. The board shall, however, excuse the failure to furnish notice within 14 days
10 when it finds it to be in the interest of justice to do so, and it may, upon application by a
11 party in interest, make an award for the reasonable value of the medical or surgical
12 treatment so obtained by the employee.

13 (1) When a claim is made for a course of treatment requiring continuing
14 and multiple treatments of a similar nature, in addition to the notice, the physician or
15 health care provider shall furnish a written treatment plan if the course of treatment will
16 require more frequent outpatient visits than the standard treatment frequency for the
17 nature and degree of the injury and the type of treatments. The treatment plan shall be
18 furnished to the employee and the employer within 14 days after treatment begins. The
19 treatment plan must include objectives, modalities, frequency of treatments, and reasons
20 for the frequency of treatments. If the treatment plan is not furnished as required under
21 this subsection, neither the employer nor the employee may be required to pay for

AMENDMENT to AMENDMENT ~~136~~



BY _____

In the SENATE JUDICIARY COMMITTEE

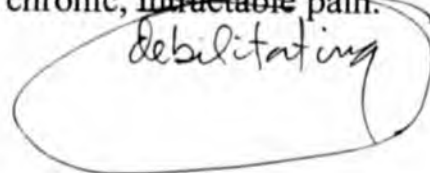
TO: CS SB 130 (L&C)

Page 2, Line 11, after "...treatments of a similar nature."

Insert:

"Limitations described in this subsection do not apply in the event that the physician certifies that the treatment is needed to treat chronic, ~~intractable~~ pain."

debilitating



1 treatments that exceed the frequency standard. The board shall adopt regulations
2 establishing standards for frequency of treatment.

3 (2) Notwithstanding subsection (a) of this section, a claim for
4 palliative care or treatment provided after the employee's condition is medically
5 stable is not valid and enforceable against the employer unless the employee's
6 attending physician certifies that the palliative care or treatment is required to
7 enable the employee to continue in the employee's employment at the time of
8 treatment or to enable the employee to continue to participate in an agreed or
9 approved reemployment plan. Palliative care or treatment is also subject to the
10 requirements of subsection (1) of this section if the palliative care or treatment
11 involves continuing and multiple treatments of a similar nature."

12
13 Remember the following bill sections accordingly.
14

24-GS1112V.1
Craver
4/7/05

AMENDMENT

#7

OFFERED IN THE SENATE
TO: CSSB 130(L&C)

BY SENATOR FRENCH

1 Page 11, line 8, following "AS 23.30.130":

2 Insert ":

3 (4) the administrator may not accept an election to accept a job
4 reallocation benefit by an employee who is not represented by an attorney"

*was not sign which
conspicuously notes the benefit
is being waived.*

24-GS1112G.2
Craver
4/7/05

AMENDMENT

#8
Failed
BY SENATOR FRENCH

OFFERED IN THE SENATE
TO: CSSB 130(L&C)

- 1 Page 12, line 18, following "AS 23.30.130.":
- 2 Insert "The division may not accept a wavier executed by an employee who is not
- 3 represented by an attorney before the board's review and approval of the employee's
- 4 wavier."

just who makes the form

AMENDMENT

#9 tabled
Passed

OFFERED IN SENATE JUDICIARY
COMMITTEE

BY

TO: CSSB 130 (L&C)

1 Page 23, line 6, following "this chapter":

2 Insert ", or that a provider has received a payment,"

3

4 Page 25, line 21:

5 Delete "AS 23.30.250"

6 Insert "AS 23.30.250(a)"

7

8 Page 25, line 22:

9 Delete "Sec. 23.30.250. Penalties for fraudulent or misleading acts."

10

11 Page 26, lines 3 - 14:

12 Delete all material.

13

14 Page 26, lines 15 - 17:

15 Delete all material and insert:

16 **** Sec. 40.** AS 23.30.250(b) is repealed and reenacted to read:

17 (b) To the extent allowed by law, in a civil action under (a) of this section, an
18 award of damages by a court or jury may include compensatory and punitive damages,
19 subject to AS 09.17. Attorneys fees may be awarded to a prevailing party as allowed
20 by law."

allows compensatory
but not punitive
damages

#

Pending #10 *Amended*

*Sec. 17. AS 23.30.041(k) is amended to read:

(k) Benefits related to the reemployment plan may not extend past two years from the date of plan approval or acceptance, whichever date occurs first, at which time the benefits expire. If an employee reaches medical stability before completion of the plan, temporary total disability benefits shall cease and permanent impairment benefits shall then be paid at the employee's temporary total disability rate. If the employee's permanent impairment benefits are exhausted before the completion or termination of the reemployment process [PLAN], the employer shall provide compensation equal to 70 percent of the employee's spendable weekly wages, but not to exceed 105 percent of the average weekly wage, until the completion or termination of the process [PLAN], except that any compensation paid under this subsection is reduced by wages earned by the employee while participating in the process [PLAN] to the extent that the wages earned, when combined with the compensation paid under this subsection, exceed the employee's temporary total disability rate. If permanent partial disability or permanent partial impairment benefits have been paid in a lump sum before the employee requested or was found eligible for reemployment benefits, payment of benefits under this subsection is suspended until permanent partial disability or permanent partial impairment benefits would have ceased, had those benefits been paid at the employee's temporary total disability rate, notwithstanding the provisions of AS 23.30.155(j). A permanent impairment benefit remaining unpaid upon the completion or termination of the plan shall be paid to the employee in a single lump sum. An employee may not be considered permanently totally disabled so long as the employee is involved in the rehabilitation process under this chapter. The fees of the rehabilitation specialist or rehabilitation professional shall be paid by the employer and may not be included in determining the cost of the reemployment plan.