

12082

HOUSE C&RA

## Section 2 – Classification of Cities and Boroughs.

### A. Cities.

There are three different classifications of city governments in Alaska – home-rule, first-class, and second-class cities. A community must have at least 400 permanent residents to form a home-rule or first-class city.

First and second-class cities are general law cities – State law defines their powers, duties, and functions. General law is distinct from home-rule. Home-rule cities have all legislative powers not prohibited by law or charter. Details about the differences between the two types of government are provided in Section 3.

Table 1 lists the number of cities of each classification and indicates whether those cities are inside or outside an organized borough. The classification and location of cities are significant in terms of the powers and duties of city governments in Alaska as addressed in Section 3.

Classification	Within Organized Boroughs		Within the Unorganized Borough		Total	
	Number of Cities	20 3 Population	Number of Cities	2003 Population	Number of Cities	2003 Population
Home-rule Cities	7	60,604	5	12,124	12	72,728
First-class Cities	7	22,068	13	16,733	20	38,801
Second-class Cities	34	14,372	79	33,354	113	47,726
<b>Total</b>	<b>48</b>	<b>97,044</b>	<b>97</b>	<b>62,211</b>	<b>145</b>	<b>159,255</b>

## B. Organized Boroughs.

The word "borough" has its origins in 5th century Europe. It means "place organized for local government purposes." A number of countries and a number of states in the US have boroughs; however, they are unlike boroughs in Alaska.

There are five different classifications or types of organized boroughs in Alaska. These are unified home-rule, non-unified home-rule, first-class, second-class, and third-class.<sup>1</sup> First, second, and third-class boroughs are general law governments.

Table 2 lists the number of boroughs according to classification. Details about the distinctions among the different classifications of boroughs are provided in Section 3.

Classification	Number	2003 Population
Unified Home-rule	3	314,177
Non-unified Home-rule	6	21,095
First-class	0	0
Second-class	7	232,071
Third-class	0	0
Total	16	567,343

A "unified municipality" is an organized borough (unified home rule borough). A unified municipality is defined as such by the Local Boundary Commission in 3 AAC 110.990(1). Alaska's Constitution recognizes only two types of municipalities, cities and boroughs (Art. X, Sec. 2). The legislature consistently treats unified municipalities as boroughs. For example, State statutes utilize the same standards for incorporation of a borough as they do for incorporation of a unified municipality (AS 29.05.031). By contrast, the legislature has established separate standards for incorporation of a city (AS 29.05.011). Newly formed unified municipalities and boroughs are entitled to identical organization grants and other transitional assistance (AS 29.05.190; 29.05.210), whereas newly formed cities are entitled to substantially lower levels of organization grants and different transitional assistance. AS 29.06.410 describes the powers of a unified municipality to include all powers granted to a home-rule borough. Additionally, all of the existing unified municipalities in Alaska recognize themselves as boroughs in that each is governed by an assembly. Art. X, Sec. 4 of Alaska's Constitution reserves the term "assembly" for the governing body of a borough, whereas Art. X, Sec. 8 of Alaska's Constitution reserves the term "council" for the governing body of a city. Lastly, none of the unified municipalities exhibits characteristics that are exclusive to city governments.

While the third-class borough classification remains in law, there are no third-class boroughs. Moreover, State law expressly prohibits the formation of new third-class boroughs. Therefore, this publication does not address the powers of a third class borough or other aspects of a third class borough.

## Section 3 – Alaska's Cities and Organized Boroughs – both General Law and Home-rule – Enjoy Broad Powers.

### A. Provisions Applicable to all Local Governments in Alaska.

Article X of Alaska's Constitution establishes the framework for local government in Alaska. Section 1 of the local government article states the following with respect to the purpose and construction of the constitutional provisions regarding local government:

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.* (emphasis added)

All local governments in Alaska – general law cities, home-rule cities, general law boroughs, and home-rule boroughs – enjoy broad powers. The Alaska Supreme Court has noted with respect to the constitution provision for a liberal construction of the powers of local government as follows:

The constitutional rule of liberal construction was intended to make explicit the framers' intention to overrule a common law rule of interpretation which required a narrow reading of local government powers.<sup>2</sup>

<sup>2</sup> The rule, called Dillon's rule states:

[a] municipal corporation possesses and can exercise the following powers and not others. First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation – not simply convenient, but indispensable.

*Merriam v. Moody's Executors*, 25 Iowa 163, 170 (1868). The minutes of the constitutional convention reveal that the liberal construction clause of Article X, Section 1 was intended to assure that general law municipalities, as well as those having home-rule powers, would not be governed by this rule, but would have their powers liberally interpreted. The following colloquy between delegates Helleenthal and Victor Fischer is illustrative:

HELLEENTHAL: Is there a compelling reason for the retention of the last sentence in the section?

V. FISCHER: Mr. President, we were advised by our committee consultants that due to the fact that in the past, courts have very frequently, or rather generally interpreted the powers of local government very strictly under something called "Dillon's Rule", or something like that, that a statement to this effect was rather important, particularly in connection with the local government provisions of the article to make sure that it would be interpreted to give it the

(*Liberati v. Bristol Bay Borough*, 584 P.2d 1115, 1120 [Alaska 1978])

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## B. General Law Cities and Boroughs.

As noted in Section 2, general law local governments derive their powers from laws enacted by the State legislature. The constitutional principle of liberal construction of local government powers is reflected in the laws enacted by the legislature granting powers to general law governments. Among the statutes are the following provisions:

Sec. 29.35.400. General construction. A liberal construction shall be given to all powers and functions of a municipality conferred in this title.

Sec. 29.35.410. Extent of powers. Unless otherwise limited by law, a municipality has and may exercise all powers and functions necessarily or fairly implied in or incident to the purpose of all powers and functions conferred in this title.

In 1983, the Alaska Supreme Court addressed Article X, Section 1 along with the similar version of the two statutes noted above that was in effect at the time. The Court concluded that a second-class (general law) borough had powers beyond those expressly stated in law. Specifically, the Court concluded that even though State statutes did not specifically authorize a second-class borough to dispose of land by lottery, that power was "fairly implied." (*Gilman v. Martin*, 662 P.2d 120, 124 [Alaska 1983])

In reaching its conclusion that a general law government had implied powers, the court cited the irreconcilable conflict rule that it utilized in *Jefferson v. State*, 527 P.2d 37, 43 (Alaska 1974). The court made no distinction as to the deference due to an enactment by a home-rule municipality as compared to an enactment by a general law municipality.

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maximum amount of flexibility that we desire to have in it and to provide the maximum powers to the legislature and to the local government units to carry out the intent of this article.

HELLENTHAL: Now I refer to Section 11. Doesn't Section 11 clearly reverse this rule that you refer to as Dillon's Rule?

V. FISCHER: That would apply to home rule, cities and boroughs, but the point is that there may be a lot of local government units in Alaska over the years that may not be granted the home rule authority by the legislature and it may not want to adopt a home rule charter. Alaska Constitutional Convention Proceedings, Part 4, 2690 - 96.

The application of the irreconcilable conflict rule in *Gilman v. Martin* clearly enhanced the powers of general law municipalities in Alaska.

Those powers were further enhanced to a great degree in 1985 when the State legislature eliminated the enumerated list of regulatory powers of general law municipalities (former AS 29.48.035) and the enumerated list of authorized facilities and services of general law municipalities (former AS 29.48.030). The enumerated lists of powers were replaced with the broadest possible grant of powers to general law municipalities; i.e., "...any power not otherwise prohibited by law." [AS 29.35.200(a) & (c); 210(c) & (d); 220(d); 250(a); 260(a)]

The statutory grant of powers to general law municipalities has no general limitations such as '...any municipal power' or '...any local government power' which would imply that the granted powers were limited to those that the court might think of as typical or appropriate local government powers. Finding such an implied limitation would be difficult in light of the language of Article X, § 1, *Liberati v. Bristol Bay Borough*, *Gilman v. Martin*, and the literal language of the statutory grant of powers.

Similarly, it may be relevant that the second sentence of Article X, § 1 reads "A liberal construction shall be given to the powers of local government units" instead of, "A liberal construction shall be given to local government powers." The latter implies that there is some definition or judicial understanding of what constitutes local government powers and invites a court to define what is encompassed by the term before it applies a liberal construction to the power being questioned. If it is not typically a "local government power" as envisioned by the courts across the nation, then the court need not apply a liberal construction to it. The actual language of Alaska's Constitution does not lend itself as easily to such an interpretation and, coupled with the language of the Title 29 grants ("any power not otherwise prohibited by law"), would make it difficult for a court (in a well briefed case) to resort to limiting Alaska municipal powers to common understandings of what powers are traditional municipal powers.

As a practical matter, under the present language of Title 29, the nature of the powers to which a general law municipality has access are substantially the same as those to which a home-rule municipality has access, bearing in mind the specific Title 29 limitations that apply to general law municipalities.

### C. Distinctions Among General Law Boroughs.

A principal distinction between a first-class borough and a second-class borough relates to the authority to assume powers. A first-class borough may exercise any power not prohibited by law on a non-areawide basis (i.e., in the area of the borough outside cities) by adopting an ordinance. In contrast, a second-class borough must gain voter approval for the authority to exercise many non-areawide powers.

### D. Home-Rule Cities and Boroughs.

While general law local governments in Alaska have broad powers, home-rule local governments have even greater powers. Article X, Section 11 of Alaska's Constitution provides that:

A home-rule borough or city may exercise all legislative powers not prohibited by law or by charter.

Adoption of a home-rule charter promotes maximum local self-government to the greatest extent possible. Tom Morehouse and Vic Fischer, recognized experts in Alaska local government, wrote the following account of the views of the constitutional convention delegates with regard to this

matter:

An oft-repeated theme of the [Alaska Constitutional] convention, and one of the stated purposes of the local government article, was provision of maximum local self-government to the people of Alaska. . . . Home rule was held to be the vehicle for strengthening both state and local governments by permitting the people to deal with local problems at the local level. It was also to be the means for promoting local government adaptation in a state with great variations in geographic, economic, social, and political

conditions.

This home rule philosophy was not believed to be inconsistent with a strong state role in local affairs. As the above discussion indicates, the exercise of state authority was considered essential in matters of incorporation and boundaries, i.e., the creation of local governments and their areas of jurisdiction were



Committee on Local Government meeting during the Alaska Constitutional Convention,

felt to be matters ultimately of state responsibility. When properly established, however, their internal organization and operations were to be primarily local concerns, particularly in the case of home rule units. Moreover, a "strong state role" also meant that the state would support local governments with financial aid and technical assistance.

Before Alaska became a state, there was little self-determination either at territorial or local levels. Federal law prescribed the powers of the territorial legislature, severely limiting the scope and types of local government that could be established and restricting the powers that could be exercised by incorporated cities. Throughout its deliberations, therefore, the Local Government Committee emphasized the need for effective constitutional provisions for home rule.

(Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, p. 56 [1971].)

In 1963, the Alaska Supreme Court ruled as follows:

By constitutional provision cities have "the powers and functions conferred by law or charter." (footnote omitted) The meaning of this provision is that where a home rule city is concerned the charter, and not a legislative act, is looked to in order to determine whether a particular power has been conferred upon the city. It would be incongruous to recognize the constitutional provisions stating that a home rule city "may exercise all legislative powers not prohibited by law or by charter" and then to say that the power of a home rule city is measured by a legislative act."

(*Lien v. City of Ketchikan*, 383 P.2d 721, 723 [Alaska 1963])

In 1974, the Alaska Supreme Court ruled that the prohibitions referred to in Article X, Section 11 can be either in express or implied terms. Specifically, the Court stated:

The prohibition must be either by express terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded with weight of law.

*(Jefferson v. State, 527 P.2d 37, 43 [Alaska, 1974])*

There are 138 sections of the current Alaska Statutes that specifically refer to home-rule local governments. Most of those (106) are found in Title 29 of the Alaska Statutes dealing with municipal government. The remaining 32 are scattered in 20 other titles of the Alaska Statutes.

#### **Section 4. The Duties of Cities and Boroughs Depend Upon Classification. City Duties also vary in terms of Location Within or Outside of Organized Boroughs.**

All local governments have certain fundamental duties such as conducting elections and holding regular meetings of the governing bodies. Beyond this, the duties of municipalities in Alaska vary considerably.

All organized boroughs as well as home-rule and first-class cities in the unorganized borough must operate municipal school districts. Second-class cities in the unorganized borough and cities in organized boroughs are not authorized to do so.

All organized boroughs, along with home-rule and first-class cities in the unorganized borough must also exercise planning, platting, and land use regulation. Second-class cities in the unorganized borough are permitted, but not required, to exercise those powers. Home-rule, first-class, and second-class cities in organized boroughs may exercise planning, platting, and land use regulation powers only if those powers have been delegated to them by the borough.

Organized boroughs also have the duty to collect municipal property, sales, and use taxes levied within their boundaries.

Otherwise, municipal powers are exercised at the discretion of local governments. Second-class cities are not obligated by law to provide any particular service.

Organized boroughs may provide services on three jurisdictional levels. These are (1) areawide (i.e., throughout the entire borough); (2) nonareawide (i.e., in that part of the borough outside of cities); and (3) service area (the size and configuration of service areas may vary, they may even include territory within the boundaries of city governments under certain circumstances).<sup>3</sup>

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"Service area" means an area in which borough services are provided that are not offered on an areawide or nonareawide basis, or in which a higher or different level of areawide or nonareawide services are provided. Borough service areas are not local governments, service area boards lack legislative and executive powers.

Alaska's Constitution (Article X, § 5) and Alaska Statutes (AS 29.35.450) prohibit the creation of new service areas if services can be provided by an existing service area, annexation to a city, or incorporation of a new city.

Tables 3 and 4 provide additional information concerning the powers and duties of the various types of cities and boroughs.

## **Section 5 – The Unorganized Borough is Unlike an Organized Borough.**

Unlike cities and organized boroughs, the unorganized borough is not a municipal corporation or political subdivision of the State of Alaska.

Unorganized boroughs were intended to serve as a means to decentralize State services and to foster local participation in the administration of state programs within regions not ready or suited for organized borough status.

Art. X, § 6 of Alaska's Constitution stipulates that, "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."

To ostensibly carry out the constitutional mandate that the entire state be divided into boroughs, organized or unorganized, the 1961 Legislature enacted a law providing that all areas not within the boundaries of an organized borough constitute a single unorganized borough. (AS 29.03.010)

The Local Boundary Commission has stressed repeatedly over many years that, given the size and diversity of unorganized areas of Alaska, a single, residual unorganized borough falls far short of the constitutional intent regarding borough boundaries.<sup>4</sup> In 1990, the Commission initiated an effort to define the unorganized borough in terms of model boundaries based on constitutional, statutory, and regulatory boundary standards for borough incorporation. The Commission's work was completed at the end of 1992.

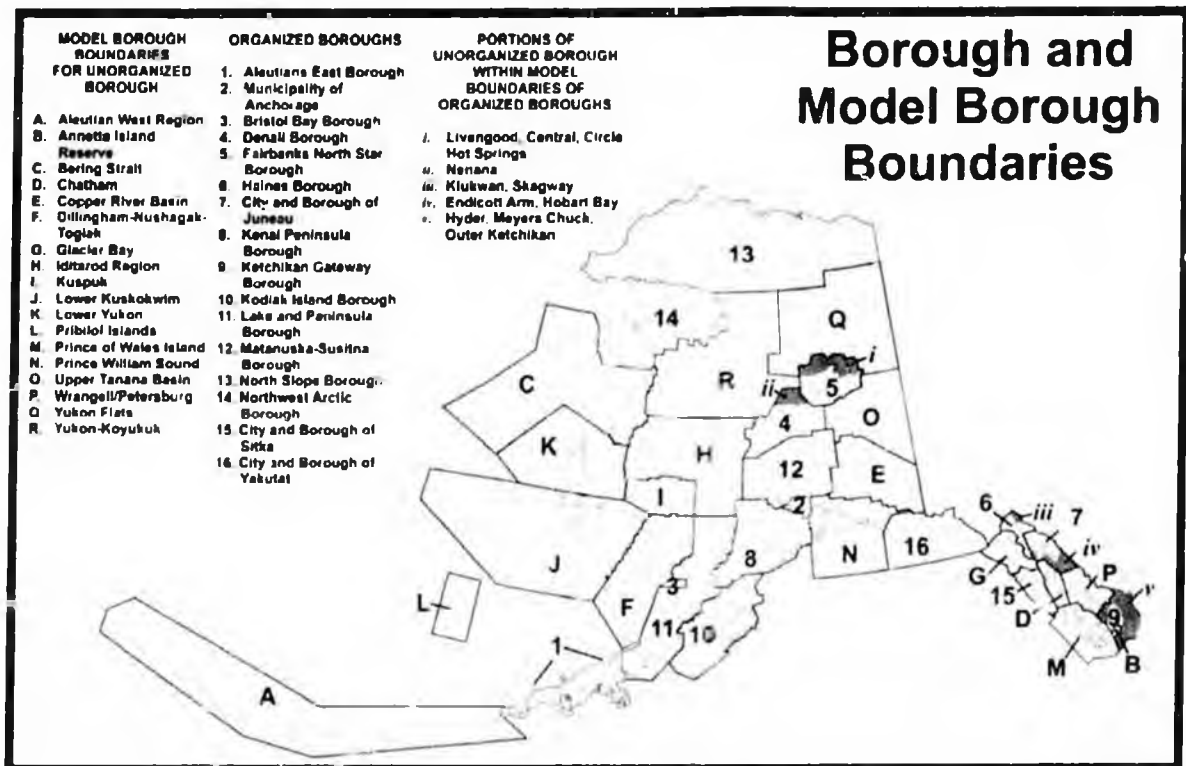
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<sup>4</sup> Most recently the LBC recently expressed the view that the 1961 law creating the single residual unorganized borough, "disregarded the constitutional requirement that each borough must embrace an area of common interests." , Local Boundary Commission and Department of Education and Early Development, *School Consolidation: Public Policy Considerations and a Review of Opportunities for Consolidation*, February 2004, p. 30.

Funding for the project was provided by the Legislature. In the course of the effort, the LBC held hearings involving 88 communities. Since 1992, the model borough boundaries have been modified twice.<sup>5</sup>

Currently, 18 different model boroughs are defined in the unorganized borough. In addition, the Commission identified five parts of the unorganized borough that have greater social, cultural, economic, geographic, transportation, and other relevant ties to existing organized boroughs vis-à-vis any of the 18 model boroughs in the unorganized borough.

A map showing the 16 organized boroughs, 18 model boroughs, and 5 parts of the unorganized borough with ties to organized boroughs is provided below.



The legislature has enacted two key provisions to allow for local participation and responsibility in the delivery of State services in the unorganized borough. These are described below.

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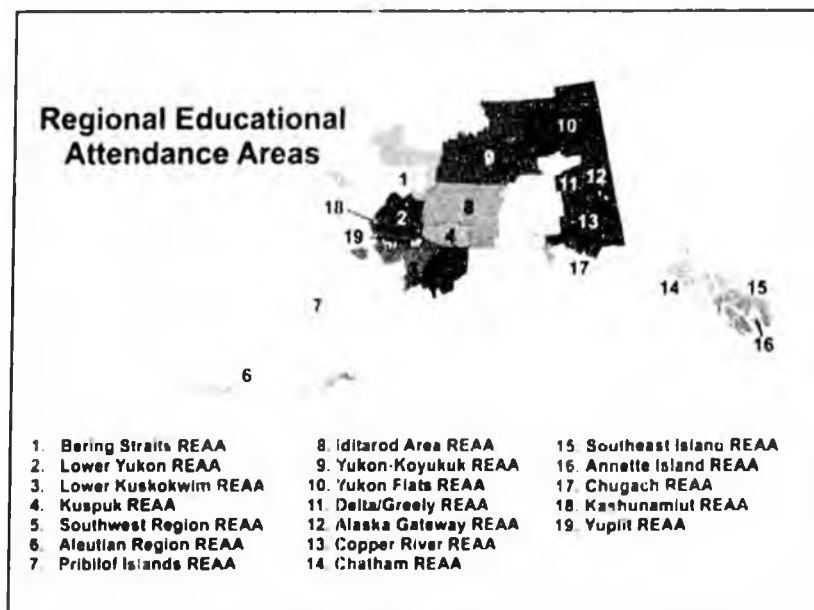
The first modification occurred to the boundaries of the Prince William Sound Model Borough, which were reduced as a result of an annexation to the adjoining City and Borough of Yakutat. The second modification occurred when the LBC merged the former "Aleutian-Military Model Borough" into the "Aleutians West Region Model Borough" in December 2002, during the course of a study of the unorganized borough. (See: Local Boundary Commission, Unorganized Areas of Alaska that Meet Borough Incorporation Standards, February 2003, p. 69.)

**Regional educational attendance areas (REAs)** are state service areas to provide public education to the unorganized borough, except within home-rule and first-class cities. The 1975 legislature required the then Department of Community and Regional Affairs, in consultation with the then Department of Education and local communities, to divide the unorganized borough into educational service areas. The criteria used to establish the boundaries of REAs are similar in many respects to the criteria for setting boundaries of organized boroughs. [AS 14.08.031] In a number of instances, the model borough boundaries set by the Local Boundary Commission in 1990-1992 follow the boundaries of REAs.

Initially, 21 REAs were established. These were: Adak, Alaska Gateway (headquartered in Tok), Aleutian Region, Annette Island, Bering Straits, Chatham (headquartered in Angoon), Chugach (serving Prince William Sound), Copper River, Delta/Greely, Iditarod Area, Kuspuk, Lake and Peninsula, Lower Kuskokwim, Lower Yukon, Northwest Arctic, Pribilof Islands, Railbelt, Southeast Island, Southwest Region, Yukon Flats, and Yukon-Koyukuk.

In 1985, Bureau of Indian Affairs stopped funding schools in Akiachak, Akiak, Tuluksak, Chevak and Chefnak. The 1985 Legislature passed a law allowing the formation of two "federal transfer regional educational attendance areas" to assume the operation of those schools, subject to voter approval.

Voters in Chevak approved the proposition to form the Kashunamiut Federal Transfer REAA. Voters in the other communities, except Chefnak, also approved the proposition to form the Yupiit Federal Transfer REAA.



Since the mid-1970s, five organized boroughs have formed. The formation of the Northwest Arctic Borough, Lake and Peninsula Borough and Denali Borough, resulted in the dissolution of the REAAs in those areas.

In the case of the other two new boroughs, the Aleutians East Borough and the City and Borough of Yakutat took in only portions of the REAAs in those regions. Thus, in those two instances, the REAAs remained in existence.

On July 1, 1997, the Adak REAA was merged into the Aleutian Region REAA.

**Coastal resource service areas** (CRSAs) are unorganized borough service areas that were created to perform certain duties under the Alaska Coastal Management Program (AS 46.40.110 - 46.40.180). In 2003, AS 46.40.110 was enacted to prohibit the formation of new CRSAs. A CRSA develops a coastal management plan for the area within its boundaries. A CRSA gives a region the opportunity to influence the management of coastal resources by recommending conditions on consistency determinations based on a CRSA's coastal management plan. The State may implement the plan through the State permitting process.

There are four CRSAs in the unorganized borough. They are the Bristol Bay CRSA, the Aleutians West CRSA, the Cenaliulriit CRSA and the Bering Straits CRSA.

The Bristol Bay CRSA conforms to the boundaries of the Southwest Region REAA and includes the first-class City of Dillingham.

The Aleutians West CRSA generally has the same boundaries as the Aleutian Region REAA and includes the first-class City of Unalaska. However, Adak, which was merged into the Aleutian Region REAA on July 1, 1997, has not yet been incorporated into the Aleutians West CRSA.

The Cenaliulriit CRSA generally encompasses two REAAs (Lower Yukon and Lower Kuskokwim) and two Federal Transfer REAAs (Kashunamiut and Yupiit) REAAs. The Cenaliulriit CRSA excludes the second-class City of Bethel.

The Bering Straits CRSA conforms to the boundaries of the Bering Straits REAA. The first-class City of Nome is excluded from that CRSA.

***Salmon Production Regional Associations.***

AS 16.10.380 provides that a qualified salmon production regional association, when it becomes a nonprofit corporation under AS 10.20, is established as a service area

in the unorganized borough under AS 29.03.020 for the purpose of providing salmon enhancement services.

***Other Service Areas in the Unorganized Borough.***

AS 29.03.020. provides that the legislature may establish, eliminate, or change service areas of the unorganized borough. Specifically, it provides that:

Allowing for maximum local participation, the legislature may establish, alter, or abolish service areas within the unorganized borough to provide special services, that may include but are not limited to schools, utilities, land use regulations, and fire protection. A new service area may not be established if the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city.

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## **Other Entities**

Other entities may be established under State or federal law to provide public or quasi-public services to residents of Alaska. They include; tribal governments, port authorities, local emergency planning committees, soil and water conservation districts, regional housing authorities, civil defense districts, consolidated health districts, telephone and electrical cooperatives, historical districts, grazing districts, public utility districts, registration districts and local improvement districts. It is beyond the scope of this discussion to provide details about these other entities other than to recognize their existence.

**TABLE 3  
POWERS AND DUTIES OF CITIES**

POWERS AND DUTIES	HOME-RULE CITY	FIRST-CLASS CITY	SECOND-CLASS CITY	REFERENCES
Public Education	If the city is in the unorganized borough it must provide the service in accordance with AS 14. A home-rule city is not permitted to do so within organized boroughs.	Same as for a home-rule city.	The city is not allowed to provide the service under any circumstance.	AS 29.35.260(b) AS 14.12.010 AS 14.12.025
Planning, Platting & Land Use Regulation	If the city is in the unorganized borough, it must exercise the powers. If it is in an organized borough, it may be permitted by borough to exercise the powers.	Same as for a home-rule city, except the power must be exercised in accordance with AS 29.40.	The city is not required to exercise the powers in any circumstance, but may be permitted in all cases in the manner described for first-class cities.	AS 29.35.250(c) AS 29.35.260(c)
Property Tax	The city may tax up to 30 mills, except where a higher levy is necessary to avoid default on debt. Some home-rule charters require voter approval to authorize the levy property taxes.	The city may tax up to 30 mills except where a higher levy is necessary to avoid default on debt. Voter approval is not required under State law, however, some general law municipal governments have more restrictive limitations imposed at the local level.	The city may tax up to 20 mills, except where a higher levy is required to avoid default. Voter approval is required.	AS 29.45.550- AS 29.45.590;
Sales Tax	The rate of levy may be limited by charter. Requirements for voter approval may also be set by charter.	There is no limit on the rate of levy of sales taxes; however, voter approval is required.	Same as for a first-class city.	AS 29.45.700
Other Powers	Possess all legislative powers not prohibited by law or charter.	May exercise other powers not prohibited by law.	May exercise other powers not prohibited by law.	Art. X, § 11 Ak. Const., AS 29.35.250
City Council composition and apportionment	Determined by charter or ordinance.	6 members elected at-large, except the council may provide for election other than at-large.	7 members elected at-large, except the council may provide for election other than at-large.	AS 29.20.130
Election and Term of Mayor	Determined by charter or ordinance.	Elected at large for a 3-year term, unless a different term not to exceed 4 years is provided by ordinance.	Elected from the city council for a 1-year term, unless a longer term is provided by ordinance. Mayor is selected by council (or by voters upon adoption of ordinance).	AS 29.20.230 AS 29.20.240

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**TABLE 3 - Continued  
POWERS AND DUTIES OF CITIES**

<b>POWERS AND DUTIES</b>	<b>HOME-RULE CITY</b>	<b>FIRST-CLASS CITY</b>	<b>SECOND-CLASS CITY</b>	<b>REFERENCE</b>
Vote by Mayor	Determined by charter or ordinance.	May vote to break a tie vote on the city council.	Votes on all matters.	AS 29.20.250
Veto Power of the Mayor	Determined by charter or ordinance, except veto is not permitted of ordinance prohibiting possession of alcohol.	Has veto power with the same exception noted for home-rule cities.	Has no veto power.	AS 29.20.270
Power of Eminent Domain	Permitted by statute.	Permitted by statute.	Permitted, but requires voter approval.	AS 29.35.030
Ability to Attain Home-rule Status	Already has home-rule status.	Voters may adopt home-rule charter.	May not adopt home-rule charter without first reclassifying to a first-class city.	AS 29.10.010

**TABLE 4  
POWERS AND DUTIES OF ORGANIZED BOROUGHS**

POWER	UNIFIED MUNICIPALITY AND HOME-RULE BOROUGH	FIRST-CLASS BOROUGH	SECOND-CLASS BOROUGH
Public Education	The borough or unified municipality must provide the service areawide in accordance with AS 14.	Same as for a home-rule borough.	Same as for a home-rule borough.
Planning, Platting & Land Use Regulation	The borough or unified municipality must exercise the powers areawide, but not necessarily in accordance with AS 29.40.	The borough must exercise the powers areawide, in accordance with AS 29.40; the borough may allow cities to assume such powers within their boundaries	Same as for a first-class borough.
Provide Transportation Systems, Water & Air Pollution Control, Animal Regulation	Determined by charter or ordinance.	May be exercised on an areawide, nonareawide or service area basis by ordinance	May be exercised on an areawide or nonareawide basis by ordinance; approval from voters or property owners required for service area powers.
License Day Care Facilities	Determined by charter or ordinance.	May be exercised on an areawide, nonareawide or service area basis by ordinance	May be exercised on an areawide basis by ordinance; voter approval required for exercise on a nonareawide or service area basis.
Regulate Fireworks, Provide Solid & Septic Waste Disposal, Housing Rehabilitation, Economic Development, Roads & Trails, EMS Communications, Regulate Motor Vehicles and Development Projects	Determined by charter or ordinance	May be exercised areawide upon approval of areawide voters or by transfer of powers from all cities; may be exercised by ordinance on a nonareawide or service area basis	May be exercised areawide upon approval of areawide voters; or by transfer of powers from all cities; may be exercised by ordinance on a nonareawide basis; may be exercised on a service area basis with voter approval
Hazardous Substance Control	Determined by charter or ordinance	Same as above.	Same as above.
Other Powers Not Prohibited	Determined by charter or ordinance	Same as above.	May be exercised areawide upon approval of areawide voters; or by transfer of powers from all cities and approval of nonareawide voters; may be exercised nonareawide upon approval of nonareawide voters; may be exercised on a service area basis with voter approval

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**TABLE 4 - Continued  
POWERS AND DUTIES OF ORGANIZED BOROUGHS**

<b>POWER</b>	<b>UNIFIED MUNICIPALITY AND HOME-RULE BOROUGH</b>	<b>FIRST-CLASS BOROUGH</b>	<b>SECOND-CLASS BOROUGH</b>
Property Tax	Limited to 30 mills except where a higher levy is necessary to avoid default on debt; voter approval to levy property taxes is required by some charters	Same as home-rule except there is no charter. Still some general law boroughs have more limited taxing authority established by local action.	Same as for a first-class borough.
Sales Tax	The rate of levy may be limited by charter and voter approval to levy sales taxes may be required by charter.	No limit exists on the rate of levy; however, voter approval is required to levy sales taxes.	Same as for a first-class borough.
Assembly composition and apportionment	Flexible; determined according to AS 29.20.060 - 29.20.120	Same as for a home-rule borough.	Same as for a home-rule borough.
Election and Term of Mayor	Established by charter or ordinance.	Elected at large for a 3 year term, unless a different term not to exceed 4 years is provided by ordinance.	Same as for a first-class borough.
Vote by Mayor	Established by charter or ordinance.	may vote to break a tie vote only if the borough has a manager form of government	Same as for a first-class borough.
Veto Power of the Mayor	Generally determined by charter, except veto not permitted of ordinance prohibiting possession of alcohol.	generally has veto power, except veto not permitted of ordinance prohibiting possession of alcohol.	Same as for a first-class borough.
Ability to Attain Home-rule Status	Already has home-rule status.	Voters may adopt home-rule charter.	Same as for a first-class borough.

# POPULATION CHARACTERISTICS OF MUNICIPAL GOVERNMENTS IN ALASKA

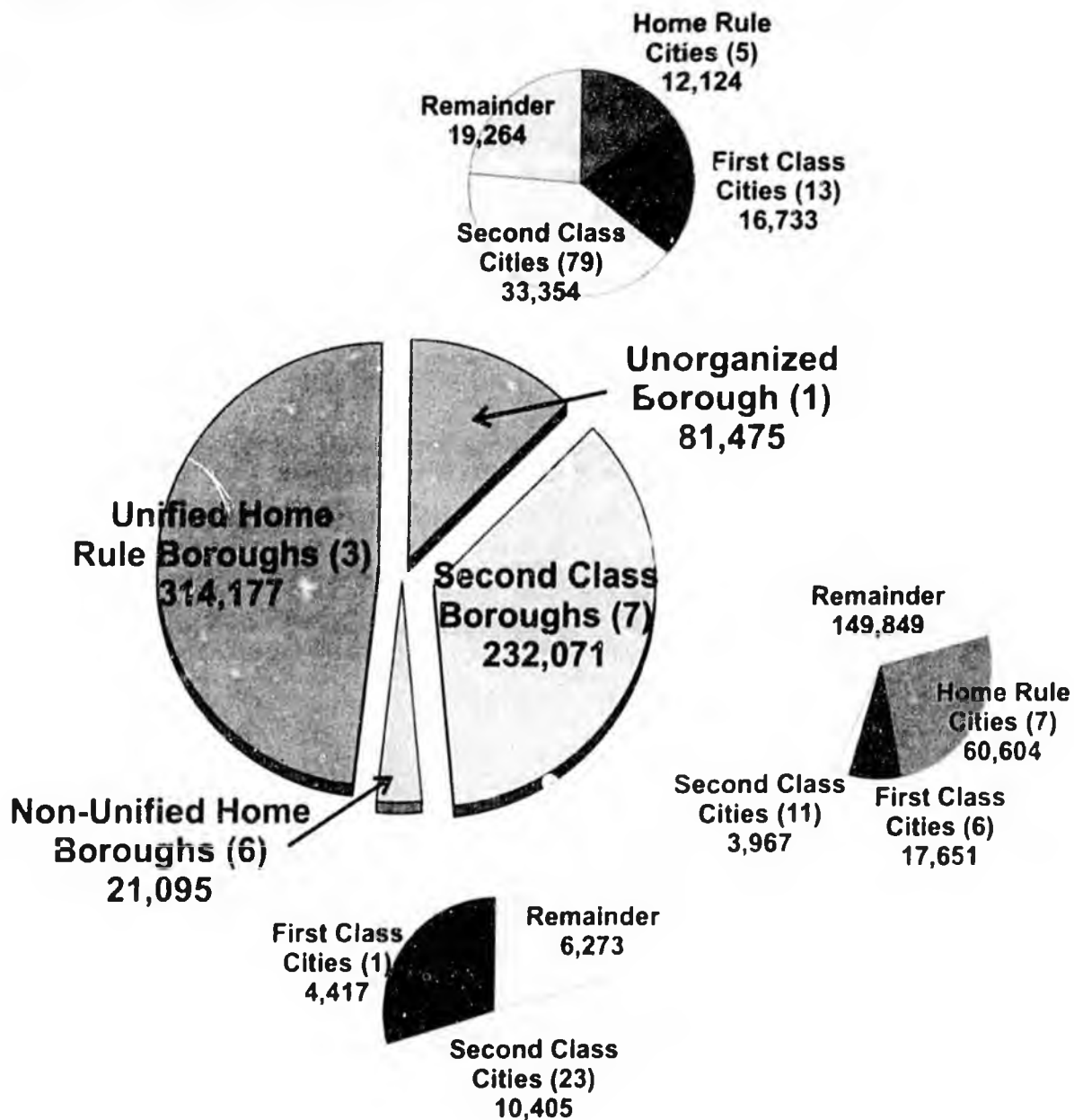
(based on July 1, 2003 population figures)

97.0 percent of Alaskans live in at least one municipal government; the remaining 3.0 percent live outside a municipal government

87.4 percent of Alaskans live within organized boroughs; the remaining 12.6 percent live in the unorganized borough

82.9 percent of organized borough residents receive municipal services exclusively from their borough; the remaining 17.1 percent receive municipal services from their city government and their borough.

91.9 percent of Alaskans live in municipal school districts (organized boroughs and home rule and first class cities in the unorganized borough); the remaining 8.1 percent of Alaskans live in regional educational attendance areas



# Appendix C

## 2006 Overview of Boroughs in Alaska

### I. History of Borough Formation

Year	Action/Comments	2005 Population	Area (land & water)
1962	Bristol Bay Borough (BBB) incorporated. Many, beginning with Alaska Secretary of State Hugh Wade in 1962, have been highly critical of BBB's incorporation because it fails to embrace a large natural region. Vic Fischer called it a "gross error."	1,073	707 square miles
1963	Ketchikan Gateway Borough incorporated under 1963 mandate from Legislature.	13,125	1,749 sq. mi
1963	Greater Juneau Borough incorporated under 1963 mandate from Legislature.	31,193	3,231 sq. mi.
1963	Greater Sitka Area Borough incorporated under 1963 mandate from Legislature.	8,947	4,457 sq. mi.
1963	Kodiak Island Borough incorporated under 1963 mandate from Legislature.	13,638	11,470 sq. mi.
1964	Greater Anchorage Area Borough incorporated under 1963 mandate from Legislature.	278,241	1,942 sq. mi.
1964	Matanuska-Susitna Borough incorporated under 1963 mandate from Legislature.	74,041	25,196 sq. mi.
1964	Kenai Peninsula Borough incorporated under 1963 mandate from Legislature.	51,224	19,819 sq. mi.
1964	Fairbanks North Star Borough incorporated under 1963 mandate from Legislature.	87,650	7,469 sq. mi.
1968	Haines Borough incorporated. History of incorporation is complex; State cut off school funding; voters rejected borough formation 3 times; voters approved 4 <sup>th</sup> proposal after legislature created new class of borough; legislature repealed that class of borough in 1985.	2,207	2,733 sq. mi.
1972	North Slope Borough incorporated	6,894	94,383 sq. mi.
1986	Northwest Arctic Borough incorporated after Red Dog mine site was detached from North Slope Borough	7,323	38,621 sq. mi.
1987	Aleutians East Borough incorporated.	2,659	13,530 sq. mi.

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Year	Action/Comments	2005 Population	Area (land & water)
1989	<b>Lake and Peninsula Borough.</b> Incorporation was initiated after Aleutians East Borough and Kodiak Island Borough annexed parts of the region. The L&P Borough surrounds the BBB on three sides and has its borough seat in the BBB.	1,620	28,832 sq. mi.
1990	<b>Denali Borough.</b> Incorporation was initiated to thwart annexation by the Matanuska-Susitna Borough.	1,823	12,687 sq. mi.
1992	<b>City and Borough of Yakutat.</b> This borough was formed against the recommendation of the Department; not all members of the LBC voted in favor of it.	619	9,044 sq. mi.

## II. Borough Actions Currently Pending

Action/Comments	2005 Population	Area (land & water)
<b>Deltana Borough</b> incorporation petition is currently pending. The Department's November 2006 preliminary report recommends that the LBC approve incorporation.	4,148	5,892 square miles
<b>Skagway Borough</b> incorporation proposal is pending. In 2002, the LBC unanimously rejected this proposal. The matter was remanded to the LBC. The proposal would convert an existing city government into a borough government, with no increase in population, area served, or powers and duties. Although Skagway operates a city school district, borough formation would convert it into a borough school district. AS 14.12.025 prohibits new schools districts with fewer than 250 students unless best interests of State and district are served. Skagway has approximately 100 students and faces declining enrollment.	834	443 sq. miles
<b>Wrangell Borough</b> incorporation petition is currently pending. Virtually all of the students of the proposed borough currently attend school in the City of Wrangell School District. The Wrangell proposal partially overlaps the pending Ketchikan Borough annexation proposal	2,445	3,465
<b>The Ketchikan Gateway Borough</b> has filed a petition for annexation.	25	4,701 square miles
<b>Petersburg</b> city officials and other residents are currently drafting a petition to incorporate a borough. Virtually all of the students of the proposed borough currently attend school in the City of Petersburg School District.	3,200	NA

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Action/Comments	2005 Population	Area (land & water)
Chatham/Glacier Bay officials and other residents of Heonah, Argoon, Kake, Pelican, Elfin Cove, Tenakee Springs, and Gustavus are conducting a feasibility study regarding borough incorporation.	2,700 (est.)	9,500 sq. mi. (est.)
Middle Kuskokwim area residents (Aniak and neighboring communities) are conducting a borough feasibility study. This area encompasses the Donlin Creek mine site.	1,500 (est.)	11,440 sq. mi
Prince William Sound residents in Cordova and Whittier have expressed interest in a Prince William Sound borough; but Valdez has expressed opposition to being included in such a borough.	6,500 (est.)	7,180 sq. mi.
Eagle River – Chugiak is being examined in terms of fiscal viability of detachment from the Municipality of Anchorage and formation of an Eagle River – Chugiak Borough	30,000 (est.)	750 sq. mi. (est.)
Yukon Flats is the subject of a just-completed feasibility study. The study concludes that a borough is fiscally viable.	1,300 (est.)	50,000 (est.)
Ekwok officials have recently expressed interest in forming an Ekwok-only Borough.	118	NA
Kake officials have recently expressed interest in forming a Kake only borough.	598	NA

### III. General Information

**Less than half the state lies within organized boroughs.** Alaska has sixteen organized boroughs, which encompass 43% of the geographic area of the state and 88% of all Alaskans.

**Our Constitution requires the entire state to be divided into boroughs.** Boroughs may be organized or unorganized. The framers of our Constitution envisioned that those areas with the fiscal and administrative capacity to operate boroughs would form organized boroughs.

**96% of Residents of Organized Boroughs Live in Boroughs Mandated by 1963 Legislature and Signed into Law by Governor Egan.** The framers of our Constitution hoped that boroughs would be formed voluntarily. They recognized, however, that if areas with the capacity to operate boroughs did not incorporate voluntarily, the State could compel areas to incorporate. The vast majority (96%) of organized borough residents in Alaska live in boroughs that were mandated to be formed by an act passed by the 1963 Legislature and signed into law by Governor Egan.

**Obstacles impede borough development in Alaska. Chief among the impediments are anti-borough sentiments reflecting:**

- perceived loss of autonomy under borough formation;
- perception that boroughs are a new layer of government and taxation;
- desire among unorganized borough residents outside of home-rule and first-class cities to preserve their freedom from obligation to support schools;
- feeling of entitlement by younger voters who grew up in unorganized borough.

**A number of areas in the unorganized borough have the capacity to operate boroughs, but choose not to organize.** Today, an estimated 374,843 square miles, 57 percent of the total area of Alaska, lie outside organized boroughs. Many of those regions have been found to have the capacity to operate boroughs, but incentives for voluntary borough formation are lacking.

**Interest in small or single-community boroughs abounds among the more prosperous communities in the unorganized borough.** The Constitution calls for minimum numbers of boroughs (Article X, Section 1) and boroughs that embrace natural regions (Article X, Section 3). The framers of our Constitution clearly envisioned that boroughs would be intermediate-sized governments – smaller than the state but larger than a city. A number of communities in the unorganized borough are promoting single community borough governments. The situation is reminiscent of the scenario under which Secretary Wade and Vic Fischer objected to the formation of the first borough, the Bristol Bay Borough, forty-four years ago.

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**While establishment of regional boroughs is a difficult challenge, the potential benefits of such are substantial.**

Governor Egan, in remarks to the Legislature on January 26, 1960, stated

“It has been said that the local government provisions of our constitution are based on ideals that may be difficult to achieve. This may be true. But there is nothing wrong in reaching high and working hard for something that will be better than what we have today. Given the real desire to create workable boroughs, and given the necessary time and effort, I am sure that we will achieve that better form of local government that is possible through the Constitution.”

The benefits of borough government include the following:

- economic development (every borough engages successfully in economic development activities; boroughs have the capacity to issue bonds, thereby leveraging State and federal funding, boroughs can promote economic development through better decisions regarding infrastructure, land use, and job-training initiatives than what is currently offered through State and federal agencies far removed from the problems of the region;
- transfer lands from the State ownership to local ownership (through municipal land grant entitlements);
- local responsibility and accountability (as Governor Egan stated in his 1963 State-of-the-State Address, "Local government problems continue to be the subject of deep and understandable concern. Many areas need improved school systems, sanitation, fire protection, planning and zoning, water and flood control, community water and sewer systems. Organized boroughs can provide these services.");
- stable administrative capacity (there are approximately 180 communities in the unorganized borough. Sixty percent of them have fewer than 300 residents. Only 7 percent have more than 1,000 residents. It is extremely difficult for the smaller communities to maintain a stable and capable administrative capacity);
- capacity to supplement State aid for schools;
- consolidation of small school districts;
- regional control of alcohol and other substances;
- a proper role for State government (rather than a provider of local services);
- promotion of equity and fairness to 88 percent of Alaskans who currently live in organized boroughs.



# Appendix D

## Powers and Duties of Organized Boroughs

Power	Unified Municipality and Home Rule Borough	First Class Borough	Second Class Borough
Public Education (education powers have been broadly interpreted by the Ak Dept of Law)	The borough or unified municipality must provide the service areawide in accordance with AS 14.	Same as for a home rule borough.	Same as for a home rule borough.
Planning, Platting & Land Use Regulation	The borough or unified municipality must exercise the powers areawide, but not necessarily in accordance with AS 29.40.	The borough must exercise the powers areawide; in accordance with AS 29.40; the borough may allow cities to assume such powers within their boundaries	Same as for a first class borough.
Provide Transportation Systems, Water & Air Pollution Control, Animal Regulation	Determined by charter or ordinance.	May be exercised on an areawide, nonareawide or service area basis by ordinance.	May be exercised on an areawide or nonareawide basis by ordinance; approval from voters or property owners required for service area powers.
License Day Care Facilities	Determined by charter or ordinance.	May be exercised on an areawide, nonareawide or service area basis by ordinance.	May be exercised on an areawide basis by ordinance; voter approval required for exercise on a nonareawide or service area basis.
Regulate Fireworks, Provide Solid & Septic Waste Disposal, Housing Rehabilitation, Economic Development, Roads & Trails, EMS Communications, Regulate Motor Vehicles and Development Projects	Determined by charter or ordinance	May be exercised areawide upon approval of areawide voters or by transfer of powers from all cities; may be exercised by ordinance on a nonareawide or service area basis.	May be exercised areawide upon approval of areawide voters; or by transfer of powers from all cities; may be exercised by ordinance on a nonareawide basis; may be exercised on a service area basis with voter approval
Hazardous Substance Control	Determined by charter or ordinance	Same as above.	Same as above.
Other Powers Not Prohibited	Determined by charter or ordinance	Same as above.	May be exercised areawide upon approval of areawide voters; or by transfer of powers from all cities and approval of nonareawide voters; may be exercised nonareawide upon approval of nonareawide voters; may be exercised on service area basis with voter approval

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Power	Unified Municipality and Home Rule Borough	First Class Borough	Second Class Borough
Property Tax	Limited to 30 mills except where a higher levy is necessary to avoid default on debt; voter approval to levy property taxes is required by some charters	Same as home rule except there is no charter. Still some general law boroughs have more limited taxing authority established by local action.	Same as for a first class borough.
Sales Tax	The rate of levy may be limited by charter and voter approval to levy sales taxes may be required by charter.	No limit exists on the rate of levy; however, voter approval is required to levy sales taxes.	Same as for a first class borough.
Assembly composition and apportionment	Flexible; determined according to AS 29.20.060 - 29.20.120	Same as for a home rule borough.	Same as for a home rule borough.
Election and Term of Mayor	Established by charter or ordinance.	Elected at large for a 3 year term, unless a different term not to exceed 4 years is provided by ordinance.	Same as for a first class borough.
Vote by Mayor	Established by charter or ordinance.	may vote to break a tie vote only if the borough has a manager form of government	Same as for a first class borough.
Veto Power of the Mayor	Generally determined by charter, except veto not permitted of ordinance prohibiting possession of alcohol.	generally has veto power, except veto not permitted of ordinance prohibiting possession of alcohol.	Same as for a first class borough.
Ability to Attain Home Rule Status	Already has home rule status.	Voters may adopt home rule charter.	Same as for a first class borough.

# Appendix E

## July 9, 1962, Memorandum From Hugh J. Wade to William A. Egan

### MEMORANDUM State of Alaska

TO:  Governor William A. Egan

DATE : July 9, 1962

FROM: Hugh J. Wade, Secretary of State SUBJECT: Incorporation of Bristol Bay  
borough

This is a matter which I had intended to call to your attention before I left on my trip with the Task Force. The attached notice, copy of which may have been made available to you, reached me while I was away. I have been following the proceedings in connection with the hearings on this proposed borough and have discussed from time to time the proposed action with the Local Affairs Agency. The proposed borough just doesn't make sense to me. In fact, its defects were so obvious to me that I felt that the Boundary Commission would never approve it. I was mistaken, and apparently after hearings in Dillingham, Naknek, and King Salmon the Boundary Commission followed the recommendation of the Local Affairs Agency and reduced the area of the borough even smaller than it was originally proposed, and now we are confronted with holding an election in the area embraced within the proposed boundaries for this borough and undoubtedly it will be favorably voted upon.

My objection to the proposed borough, of course, is that it takes the principal tax resources in the area and makes that tax resource available only to a limited number of people--less than 600 I believe--to the exclusion of all other people in the Bay area. They even excluded from the area the Village of Levelock which is only a few miles north of the boundary line. Carl Nunn of Dillingham, when he was in Juneau a few months ago, was protesting the proposed borough and then when the hearing was held in Dillingham he apparently appeared on behalf of the Chamber of Commerce and objected to the establishment of the borough, but I notice from the findings of fact report of the Local Affairs Agency that his testimony was disregarded and the protest of that community passed over very lightly. When I was in Dillingham with the Task Force, Mr. Nunn again questioned me about the proposed borough, and when I asked him if he had received a copy of the Local Affairs Agency's report and recommendation to the Boundary Commission, he said he had not. In fact he expressed great surprise to learn that the report had already been made to approve the borough. Just yesterday I asked Mr. Pegues if it were true that the attached report was not sent to Dillingham, and he confirmed the fact, but stated that he would mail them a copy right away.

-2-

I know the Local Affairs Agency is very anxious to establish a borough and I, too, am anxious to get a start in establishing them throughout the State, but I just can't help but feel that this will get us off to a poor start. It is bound to be met with great resistance in the Bristol Bay area, and in my opinion it is fundamentally wrong to allow this relatively small area to grab this rich tax resource and set up a borough government which will be financed entirely by the tax revenue from the raw fish packed by the canneries at Naknek. Local people will not be required to contribute in any way to a local government, and when the other areas in Bristol Bay start looking for some sort of a tax base to establish local government, they are going to find that this relatively small area has taken all of the rich tax resource for the benefit of a relatively few people.

I am required under Chapter 146 of SLA 1961 to order an election to be held in the area of the proposed borough, and according to this law I have 30 days to call the election and it must be held within 90 days after the date I issue the order of election. The notice was received in my office on June 18, and it would appear, therefore, that the election would have to be held sometime before the 18th of October. It is my understanding that the Local Affairs Agency is urging that the election be held early in September. Personally, I am disposed to take the full time allowed me under the law for fixing the date of the election, because I think that the people in that area should be given all time possible to take whatever action they may now take at this late date to enjoin creation of this borough.

It is difficult for me to conceive of a borough established in the Bristol Bay area that did not include the community of Dillingham and the other villages in that area that are now excluded from this proposed borough.

HJW/w

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