

ALASKA LEGISLATURE COMMITTEE FILES

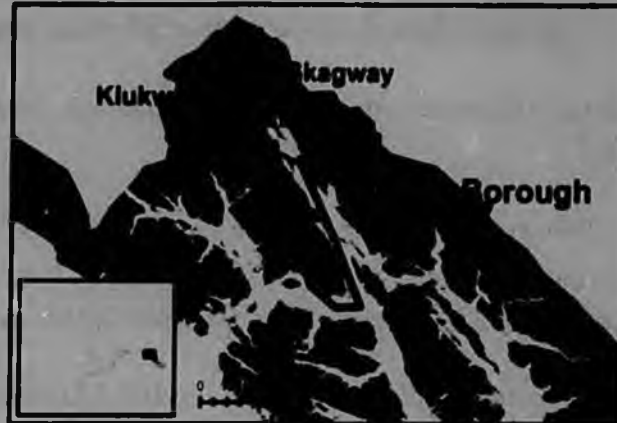
2007-2008

SCRA

12

Some members of the current LBC have been critical of the boundaries set in 1968 for the Haines Borough. Other Commissioners are reluctant to criticize that prior action. The 1968 Commission approved the locally preferred alternative and, in doing so, resolved serious local and State policy concerns over the delivery of education services to the greater Haines area. It is noteworthy that voters in Haines had rejected three previous borough proposals. It is virtually certain that if Klukwan and Skagway had been included in the borough proposal, the collective electorate would have rejected that fourth borough proposal encompassing Haines.

Haines Borough



In the context of the laissez-faire policy of borough formation, it is noteworthy that only about 4 percent of Alaskans have voluntarily formed boroughs in 48 years of statehood. Moreover, in the past 16 years, only one borough has been formed. That was the City and Borough of Yakutat, a single-community borough presently inhabited by an estimated 619 people, including just 135 students.

In the 43 years since the 1963 Mandatory Borough Act, the legislature has debated numerous proposals to mandate further borough formation, consolidate school districts, impose taxes on unorganized borough residents, and create incentives for borough incorporation. However, few such proposals have been enacted, and those that have been seem to have had little effect.

Since the 1980s, the LBC, especially the current Commission, has been a strong advocate of reform. (See, in particular, *Report of the Alaska Local Boundary Commission to the First Session of the Twenty-Fourth Alaska State Legislature* (January 19, 2005) pp. 83 – 164.) However, as anticipated by John Rader, the LBC may have become somewhat of a target because of the Commission's advocacy for reform. Further, in the general absence of locally initiated proposals for regional boroughs, the Commission also seems to bear the brunt of criticism and frustration over the lack of borough formation. Such may be evident in the conclusions of the ad hoc Advisory Commission on Local Government created by the Twenty-Fourth Alaska Legislature. That body, which was comprised of six legislators and three municipal officials, reported as follows in 2006:

The [Advisory Commission on Local Government] received testimony that *rigid adherence by the Local Boundary Commission (LBC) to regulations regarding borough boundaries have been a detriment to new borough formation*. The [members of the Advisory Commission on Local Government] therefore state their intent that the

LBC apply flexible rules when reviewing local proposals. Priority should be given to the standards listed in statute. Minor consideration will be given to the model borough boundaries and other administrative boundaries.

(Advisory Commission on Local Government, *Final Report* (January 20, 2006), p. 7. [Emphasis added.]

The Twenty-Fourth Alaska State Legislature (2005 – 2006) considered various legislative proposals to curtail the powers of the LBC. Those included, in particular, House Bill 133 and Senate Bill 128. Excerpts from the Sponsor Statement regarding House Bill 133 follow:

Sponsor Substitute for House Bill 133 makes three changes in the way the Local Boundary Commission deals with municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution.

This legislation protects the voters' right to incorporate, outline the boundaries, and select the levels of service. The Local Boundary Commission will no longer be able to amend the petition or impose conditions on the incorporation.

Following amendment, *CSSSHB 133(JUD) AM* passed the House by a vote of 35 in favor and only 1 opposed (with 3 members excused and 1 absent). The Senate then approved the bill by a vote of 19 to 0 (with 1 member absent). The Governor signed the bill into law and issued a press release stating:

Governor Frank H. Murkowski has signed into law *HB 133*, which makes changes in the way the Local Boundary Commission processes municipal incorporations, annexations, detachments, mergers, consolidations, reclassifications, and dissolutions.

The bill . . . also protects the voters' right to incorporate, outline the boundaries of their municipality, and select the level of service they want. It also limits the ability of the LBC to impose conditions on an incorporation without an appropriate public process.

"This bill cleans up the process local citizens use to define their own community," Murkowski said. "It is essentially about maintaining local control and putting appropriate sideboards on the Local Boundary Commission to make sure their processes do not usurp or conflict with the direction the communities want to go."

(Frank H. Murkowski, Governor, *Press Release* (May 27, 2006).)

As noted above, *SB 128* is another example of legislative action to curtail the powers of the LBC. Excerpts from the Sponsor Statement regarding Senate Bill 128, including specific reference to the provisions in Article I, Section 2 of Alaska's Constitution, follow:

[Petitions for borough incorporation] should originate with maximum local involvement. . . .

"The Alaska Constitution states, 'All government is to originate with the people and is founded upon their will only.' I interpret that to include borough governments. The role of the Local Boundary Commission is to review proposed changes, not to create boroughs. If we are to have a government by the people, those proposed changes should emanate from the local level up, not from the top of the government pyramid down."

With amendments, *SB 128 AM* passed the Senate by a vote of 15 votes in favor and only 4 against (with 1 member excused). The House then passed *SB 128 AM* by a vote of 36 to 0 (with 4 members excused). That bill was also signed into law by the Governor.

The most recent and extreme example of the sentiments characterized above is reflected in a resolution adopted by the members of the Alaska Municipal League in November 2006. That resolution urges further legislative action and states as follows:

WHEREAS, the Local Boundary Commission has assigned a disproportionate weight toward their administrative criteria<sup>15</sup> for evaluating petitions for borough incorporation, known as the Model Borough Boundary requirement; and

<sup>15</sup> It is noted that the Commission's "administrative criteria" are the standards set out in the Commission's regulations, adopted under AS 44.62. The adoption of such standards is mandated by AS 44.33.812(a), and the Alaska Supreme Court has overturned a Commission boundary decision when such standards were lacking.

The Alaska Supreme Court in *United States Smelt., R. & M. Co. v. Local Bound. Com'n*, 482 P.2d 140, 142 (Alaska 1975), outlined the overarching need for the Commission to adopt regulatory standards when reviewing boundary changes. The Court observed that the requirement for the Commission to adopt such standards was mandatory not discretionary. The court stated in pertinent part:

Since under AS 44.19.260(a) [ ] the legislature required the commission to develop standards in order to recommend boundary changes, and the commission had not developed standards prior to the Nome . . . proceedings, we hold that the commission lacked the power to recommend the Nome boundary changes in question. To do otherwise would be to condone the commission's nonobservance of a valid legislative prerequisite to the exercise of the commission's discretion in matters of local boundary changes.

In addition to the mandatory requirements under AS 44.33.812 for the adoption of boundary change standards, including borough incorporation, AS 29.05.100(a) provides in pertinent part:

If the commission determines that the incorporation . . . meets applicable standards under the state constitution and commission regulations, meets the standards for incorporation under AS . . . 29.05.031, and is in the best interests of the state, it may accept the petition. Otherwise it shall reject the petition. [Emphasis added.]

WHEREAS, the Local Boundary Commission has been unsuccessful using the Model Borough Boundary criteria to promote new borough incorporations and even inhibits such incorporations through the use of this criteria; and

WHEREAS, the Local Boundary Commission's inflexible approach when considering petitions for borough incorporations that do not conform to the Model Borough Boundaries, unduly limits the ability of political subdivisions of the State to propose other viable borough boundaries;

(Alaska Municipal League, *Resolution 2007-06* (November 17, 2006).)

The Alaska Municipal League's legislative proposal urges amendment of existing laws to impose, among other limitations, provisions that would prohibit the LBC from even considering a borough incorporation proposal that included more than one home-rule or first-class city unless the city councils of the cities involved adopted a resolution to permit such.

The LBC envisions that enactment of such a proposal would lead to the Balkanization of Alaska in terms of borough governments. Presently, there are 18 home-rule or first-class cities in the unorganized borough. Additionally, there are 31 second-class cities in the unorganized borough that meet the minimum population threshold for reclassification as a first-class city. Some of those 31 second-class cities are among the most populous communities in the unorganized borough and have expressed interest in forming a single-community borough. Bethel (population 5,960) is just one example. It can be reasonably assumed that a number of the second-class cities would seek reclassification if such would foster their goal of forming a single-community borough. Moreover, there are 12 unincorporated communities in the unorganized borough that meet the minimum population threshold to incorporate as a home-rule or first-class city. Thus, there are a total of 61 existing or prospective home-rule or first-class cities in the unorganized borough.

*Communities in the Unorganized Borough that potentially qualify for borough status under AML Resolution 2007-06.*



If home-rule or first-class city status becomes a basis for determining the boundaries of new boroughs, it stands to reason that it may also become a basis for subdivision of existing boroughs. Take the Kenai Peninsula Borough (KPB), for example. In the past, the LBC has rejected proposals for a "Homer-Ninilchik borough" and a "Nikiski borough." The LBC also rejected a proposal to detach Tyonek from the KBP. In 2005, interest was expressed in forming a new borough encompassing just Seward, Moose Pass, Cooper Landing, and Hope. In that Seward is the only home-rule or first-class city among those four communities, such a borough would

conform to the provisions proposed by AML. However, the KPB encompasses five home-rule and first-class cities. It also includes one second-class city with a population in excess of the minimum population required to reclassify as a first-class city. Moreover, there are 15 communities (including Nikiski, which previously proposed borough incorporation) in the KPB that have populations in excess of the minimum required to incorporate a home-rule or first-class city. In all, there are 21 communities in the KPB and 77 communities in all 16 existing boroughs that meet the minimum population threshold for being a home-rule or first-class city.

---

### **Subsection C. Recommendations**

The circumstances above reflect a climate that often disfavors formation of regional boroughs. Meaningful reform of the current structure will require legislative attention. The LBC continues to offer its assistance and support for legislative efforts to reform the existing policy regarding borough formation.

## **Section II. Substantial Disincentives and a Lack of Adequate Inducements Hinder Incorporation of Organized Boroughs and Annexation to Existing Boroughs**

---

### **Subsection A. Statement of Issue**

As it has done since the 1980s, the Local Boundary Commission continues to urge the legislature to examine and address the substantial disincentives and lack of inducements for borough incorporation and annexation. The legislature and the Commission have complementary duties relating to this issue. Specifically, the legislature has the constitutional duty to prescribe procedures and standards for borough formation (Art. X, Sec. 3). The Commission has the statutory duty to make studies of local government boundary problems (AS 44.33.812(a)(1)).

In 1961, State policy makers opted to make borough formation voluntary. Policy makers recognized from the very beginning that there were inadequate incentives to encourage people to form boroughs. Unfortunately, the inducements to organize that were lacking failed to evolve over time. In fact, disincentives to borough formation and annexation have greatly increased over time. The organized borough concept had then and still has little appeal to most rural communities who surmised that they were better off maintaining the status quo with the State paying for essential services, especially education. Under Alaska law, boroughs that organize are mandated to carry out the State's constitutional duty for public education within their boundaries. They are also required to pay a significant portion of the State's cost of education, while regional educational attendance areas (REAs) are not. There proved to be other inequities as well. Thus, contrary to the stated intent of the 1963 Mandatory Borough Act,

organized boroughs have long been deprived of significant State services, revenues, or assistance and heavily penalized because of incorporation.

A summary of the disincentives for borough incorporation and annexation that exist in the current law follows:

- Areas of the unorganized borough outside of home-rule and first-class cities have no obligation to financially support their schools. Borough formation results in the imposition in those areas of the requirement for local contributions in support of schools (4 mill equivalent or 45 percent of basic need, whichever is less).
- Borough formation would bring about consolidation of school districts in the unorganized borough, an effect that is commonly perceived as a loss of local control regarding schools. Under present circumstance, the delivery of education services in the unorganized borough is carried out in a fractured manner. Although the unorganized borough accounts for about 12 percent of the state's population, 70 percent of Alaska's school districts exist in the unorganized borough.
- In some cases, borough formation carries the prospect of education funding reductions in the form of eliminated supplementary funding floors under AS 14.17.490, reduced area cost differentials, and other factors.
- Borough formation or annexation would mean the loss of eligibility on the part of REAAs and cities in the unorganized borough for National Forest Receipts.<sup>16</sup>
- The extension of borough government would result in the loss of eligibility on the part of cities for federal payments in lieu of taxes (PL 94-565, as amended by PL 104-333).
- The extension of borough government requires areawide planning, platting, and land use regulation. Such is commonly perceived by cities currently exercising those powers as a loss of local control (although boroughs may delegate the powers to cities within the borough).

Circumstances such as the above have contributed to a growing interest in forming single-community borough governments. In addition to the disincentives and the lack of inducements to form boroughs, it appears that local officials are concerned about being compelled into larger, legislatively-mandated boroughs. Local officials from Wrangell, Nome, Petersburg, Hoonah,

---

<sup>16</sup> The 109th Congress failed to reauthorize the Secure Rural Schools and Community Self-Determination Act. Without such reauthorization, National Forest Receipts funding in FY 08 will revert back to the original distribution formula which will likely result in payments to municipalities and school districts in southeast Alaska decreasing by roughly 85 percent. An effort was made to include the reauthorization legislation in the Continuing Resolution or tax extender package. There is a possibility that the program will be reauthorized in February with the Omnibus Spending Bill, which would provide money for the FY 08 distribution. However, the program has a substantial cost and is viewed by a number of representatives and senators as an "earmark" - a large expenditure that benefits some areas much more than others.

Unalaska, Valdez, and other communities have recently expressed interest in forming single-community or relatively small boroughs. Several other communities in the unorganized borough have also expressed interest in single-community borough government in years past. Those include Nenana, Tanana, Cordova, and Pelican. The Commission is concerned that if this trend continues, it will lead to a proliferation of single-community boroughs created in a piecemeal fashion across Alaska. The prospect of single-community boroughs also raises serious questions whether such would undermine the ability of surrounding communities to ever shoulder the responsibility of borough government in an effective and efficient manner.

---

## Subsection B. Background

The authors of the local government article of Alaska's Constitution envisioned that organized boroughs would be established wherever citizens were ready for and capable of assuming the responsibilities of local government.<sup>17</sup> The Framers of our Constitution recognized that the legislature would have widely divergent alternatives available to carry out its duty to prescribe methods for borough formation. Delegates preferred a voluntary, rather than compulsory, approach to borough incorporation. However, they recognized that, to be successful, a voluntary approach needed adequate inducements to establish boroughs.<sup>18</sup> They anticipated that the Alaska Legislature would provide such incentives. Unfortunately, that vision of the Framers of Alaska's Constitution – undoubtedly one of the most critical aspects of implementing the Local Government Article of Alaska's Constitution – still awaits fulfillment. While the Framers preferred voluntary incorporation, they recognized that if regions had the capacity to operate boroughs and refused to incorporate, the State could compel borough formation.

Statistics offer compelling evidence that inducements of voluntary borough incorporation have been generally inadequate over the course of 48 years of statehood.

- Fewer than 4 of every 100 Alaskans (3.6 percent) live in boroughs that were formed voluntarily.<sup>19</sup>
- In contrast to the above figure, 84 of every 100 Alaskans (84.1 percent) live in boroughs that were formed under the 1963 Mandatory Borough Act, which compelled eight particular regions to form boroughs.
- Of the sixteen Alaska boroughs, only eight formed voluntarily.

---

<sup>17</sup> *Borough Government in Alaska*. Thomas A. Morehouse and Victor Fischer, p. 39 (1971).

<sup>18</sup> *Ibid.*, p. 61; also, *Alaska's Constitutional Convention*, Victor Fischer, p. 120 (1975).

<sup>19</sup> Boroughs that have formed voluntarily typically enjoy abundant natural resources or other attributes that make borough government particularly attractive for those regions. Many of the eight boroughs formed under the 1963 Mandatory Borough Act lack comparable resources. The eight boroughs that formed voluntarily are the Bristol Bay Borough, Haines Borough, North Slope Borough, Northwest Arctic Borough, Aleutians East Borough, Lake and Peninsula Borough, Denali Borough, and Yakutat Borough.

Promotion of borough formation is sound public policy. Boroughs:

- promote maximum local self-government with a minimum of local government units;
- provide a formal structure for service delivery;
- offer stable administrative infrastructure to provide services;
- foster local responsibility and decision making;
- promote accountability;
- provide a means to promote private ownership of land;
- have capacity to provide greater financial aid to schools;
- consolidate school districts;
- have capacity for regional control of alcohol and illegal substances;
- promote economic development;
- provide a proper role for State government; and
- promote equity and fairness.

---

### **Subsection C. Recommendations**

For more than four decades, experts and public policy makers have recognized that Alaska has failed to implement an effective policy regarding borough formation.

The Commission urges the Legislature to consider ways in which inducements for borough incorporation and annexation may be increased and disincentives for such may be decreased. Those include the following.

1. Tax the unorganized borough (e.g. property, sales, employment, or head taxes).
2. Provide financial aid to boroughs.
3. Increase organization grants for new boroughs and extend grants to boroughs that expand their boundaries.
4. Extend municipal land grants for annexations and consider increases in entitlements.
5. Restrict National Forest Receipts and Shared Fisheries Fees and Taxes to boroughs and cities within boroughs.

## Section III. Lack of Standards and Methods for Establishment of Unorganized Boroughs

---

### Subsection A. Statement of the Issue

Article X, Section 3 of Alaska's Constitution requires the Alaska legislature to enact laws providing for (1) standards for establishment of both organized *and unorganized* boroughs and (2) methods for establishment of both organized *and unorganized* boroughs. In 1961, the Legislature enacted standards for establishment of organized boroughs. Laws providing the manner for establishment of organized boroughs have also been enacted. However, laws providing standards and the manner for establishment of *unorganized boroughs* have never been enacted.

The absence of standards for establishment of unorganized boroughs and the lack of compliance with the common-interest principle on the part of the single unorganized borough established in 1961 act as a significant impediment to achievement of the constitutional goal of maximum local self-government with a minimum of local government units set out in Art. X, sec. 1 of Alaska's Constitution.

This issue is reflected in the following excerpt from comments made in 1981 by Dr. John Bebout, a consultant to the Local Government Committee at the Alaska Constitutional Convention, Assistant Director of the National Municipal League, and Professor at the New York University School of Administration:

The development of consensus for organized borough government seems likely in most regions to be a gradual process if it occurs at all. The first step toward it is to break up the single unorganized borough by a single act which established boundaries that make sense in terms of the socio-economic standards set by the constitution and reflect the needs of all regions of the state. To continue to create new boroughs, whether unorganized or organized, piecemeal would be likely to leave shapeless areas that could never be assembled in viable borough units unless radical changes were made in the boundaries of already established boroughs, always a politically chancy business.

*(Problems and Possibilities for Service Delivery and Government in the Alaska Unorganized Borough, pp. 86 - 88.)*

---

## Subsection B. Background

In summary, Alaska's Constitution imposes the following seven duties upon the legislature:

1. Enact standards for establishment of organized boroughs;
2. Enact standards for establishment of unorganized boroughs;
3. Enact laws providing the manner for establishment of organized boroughs;
4. Enact laws providing the manner for establishment of unorganized boroughs;
5. Classify boroughs;
6. Prescribe the powers and functions of boroughs; and
7. Enact methods by which boroughs may be "organized, incorporated, merged, consolidated, reclassified, or dissolved."

Five of the seven duties outlined in Article X, Section 3 have been fulfilled. The exceptions are the duty to enact standards for establishment of unorganized boroughs and the duty to enact laws providing for the manner in which unorganized boroughs will be established.

A single, residual unorganized borough does not conform to constitutional requirements. The 1961 Alaska Legislature, without the benefit of standards, established a single unorganized borough encompassing all of Alaska not within an organized borough. Given the vast and diverse nature of Alaska, this action was inconsistent with the mandate of Article X, Section 3 that each borough, organized and unorganized, "embrace an area and population with common interests to the maximum degree possible." Prior legislative proposals, at least six in the last decade, have recognized that the unorganized borough does not conform to the common interest clause of the Alaska Constitution.

Standards for unorganized boroughs should include consideration of the fiscal and administrative capacity of the area. In the LBC's view, the capacity of an area to assume local responsibility is determined by two fundamental factors. One is the specific duties imposed on boroughs by the State. Obviously, the greater the duties imposed on boroughs (e.g. education, transportation, public safety, health and social services, etc.), the greater the difficulty regions will have in meeting the capacity threshold. The second factor is the human and financial resources available to the borough.

The failure to follow the constitutional principles concerning unorganized boroughs hinders coordinated delivery of state services. In remarks to the LBC, former Senators Arliss Sturgulewski and Victor Fischer stressed the importance of establishing multiple unorganized

boroughs. Both stressed that the issue was the fundamental concern in a 1979 Local Government Study initiated by the Chairs of the Senate and House Community and Regional Affairs Committees in response to recognized problems related to local government in Alaska. The study recommended the establishment of multiple regional unorganized boroughs. The purpose of doing so was twofold: (1) to promote efficient and effective delivery of all state services, and (2) to provide common areas for collection of information, data, and other materials important to the region and to agencies responsible for provision of technical and financial assistance.

---

### **Subsection C. Recommendation**

The LBC recommends that the Alaska Legislature enact laws providing standards for establishment of unorganized boroughs and the manner in which unorganized boroughs are created identical to those for organized boroughs found in AS 29.05.031, except with respect to fiscal and administrative capacity.

AS 29.05.031 states:

- (a) An area that meets the following standards may incorporate as a home rule, first class, or second class borough, or as a unified municipality:
  - (1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government;
  - (2) the boundaries of the proposed borough or unified municipality conform generally to natural geography and include all areas necessary for full development of municipal services;
  - (3) the economy of the area includes the human and financial resources capable of providing municipal services; evaluation of an area's economy includes land use, property values, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough or unified municipality;
  - (4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government.

The LBC is prepared to lend its expertise and assistance to the Legislature in the development of appropriate standards and procedures for establishment of unorganized boroughs.

---

## **Section IV. Funding for Borough Feasibility Studies**

---

### **Subsection A. Statement of the Issue**

Although the 2006 Legislature appropriated funds for borough feasibility studies in three specific areas, there is no continuing source of funding for such studies.

---

### **Subsection B. Background**

AS 44.33.840 – 44.33.846 authorizes the undertaking of borough feasibility studies. However, funding for studies under that program has never been appropriated. The 2006 Legislature did, however, appropriate \$237,500 for borough studies in three specific regions in Alaska (Glacier Bay/Chatham, Middle Kuskokwim, and Eagle River/Chugiak). Additionally, the Department of Commerce, Community, and Economic Development provided a grant (\$30,000) for another borough study (Yukon Flats). Details of those studies are presented in Chapter 2. As further outlined in Chapter 2, a number of regions have interest in considering borough incorporation. If the Legislature institutes adequate inducements for borough incorporation on the order recommended by the LBC earlier in this Chapter, interest in borough incorporation will likely increase significantly.

---

### **Subsection C. Recommendation**

The LBC recommends the Legislature appropriate funding for local borough study efforts in the near term; and if inducements for borough incorporation are implemented, to significantly increase funding.

---

## **Section V. Compensation for the LBC**

---

### **Subsection A. Statement of the Issue**

Members of the LBC receive no compensation for their service. Demands on members of the LBC have always been considerable. However, those demands have reached a point where current Commission members feel that some token compensation is warranted.

---

## **Subsection B. Background**

The demands placed on the Commission have grown beyond what can be reasonably expected of unpaid members. In one proceeding before the current LBC, members of the Commission were faced with a formal record comprising approximately 3,000 pages. Members had to devote many hours to review that record. Each Commission member also devoted 5 or 6 days (including travel) to conducting a public hearing in the community. Substantial additional time was devoted to other proceedings in that case. One Commission member reported that he has devoted upwards of 350 hours (equivalent to nearly nine 40-hour weeks) to that one case alone. This was in addition to many other LBC matters in which members of the LBC had to participate.

The Commission formulates fundamental policies that have important statewide political, economic, and social implications. Such responsibilities demand that the Commission exercise prudence and diligence in carrying out its duties. The Commission is expected to exhibit expertise in all matters involving municipal boundary proposals.

It appears that nearly 20 State boards and commissions (excluding full-time boards and commissions) currently receive some form of compensation. The expectations and demands on the LBC seem to be at least equal to those nearly 20 boards and commissions that are presently compensated.

---

## **Subsection C. Recommendation**

That the Alaska legislature provide compensation, at par with that provided to other unpaid boards and commissions, for service by members of the LBC.

Unorganized Boroughs

The Commission has reviewed the proposed changes to the boundaries of the Unorganized Boroughs. It has found that the proposed changes are consistent with the intent of the Alaska Constitution and the Local Government Act. The Commission believes that the proposed changes will result in more efficient and effective local government.

The Commission has also reviewed the proposed changes to the boundaries of the Unorganized Boroughs. It has found that the proposed changes are consistent with the intent of the Alaska Constitution and the Local Government Act. The Commission believes that the proposed changes will result in more efficient and effective local government.

Unorganized Boroughs

The Commission has reviewed the proposed changes to the boundaries of the Unorganized Boroughs. It has found that the proposed changes are consistent with the intent of the Alaska Constitution and the Local Government Act. The Commission believes that the proposed changes will result in more efficient and effective local government.

# Appendix A

## Fundamental Nature of Boroughs and Cities in Alaska

The Commission recognizes several fundamental principles about borough governments and city governments in Alaska. These principles are grounded in the constitutional and decisional law of the State of Alaska as well as earlier decisions of the Commission.

### *1. Each Borough and Each City is Both a Municipality and Political Subdivision.*

Boroughs and cities are municipal corporations and political subdivisions of the State of Alaska. AS 29.04.010 – 29.04.020. They are the only types of municipalities in Alaska.<sup>1</sup> *Id.*; Art. X, sec 2, Ak Const.

### *2. The Function of Boroughs is Comparable to that of Home Rule and First Class Cities in the Unorganized Borough.*

Generally, the powers and duties of home rule and first class cities in the unorganized borough are comparable to those of boroughs. There are, of course, subtle distinctions between the powers and duties of particular classes of boroughs. The same is true for home rule and first class cities in the unorganized borough."

<sup>1</sup> In addition to "city" and "borough", AS 29.04.010 refers to "a unified municipality." A unified municipality is a borough as defined in 3 AAC 110.990(1). More specifically, a unified municipality is a home rule borough in which city governments are precluded. AS 29.71.800(24). See also Department of Community and Economic Development, *Local Government in Alaska* at 4 (2001).

<sup>2</sup> Consider, for example, the following comparison between a first class borough and a first class city in the unorganized borough. A first class borough has three mandatory areawide responsibilities. Those are education, assessment and collection of taxes, and land use regulation. AS 29.35.150 – AS 29.35.180. In comparison, a first class city in the unorganized borough has the duty to "establish, operate, and maintain a system of public schools as provided by AS 29.35.160 for boroughs." AS 29.35.260(b). Further, the law stipulates that a "first class city outside a borough shall . . . provide for planning, platting, and land use regulation as provided by AS 29.35.180(a) for first and second class boroughs." AS 29.35.260(c). Additionally, a first class city in the unorganized borough may assess, levy, and collect a property tax in the manner provided by law for boroughs. AS 29.45.550. Lastly, a first class city in the unorganized borough "may levy and collect sales and use taxes in the manner provided for boroughs." AS 29.45.700(c).

Beyond its three mandatory functions, a first class borough has broad discretionary powers. The law provides that a "first class borough may exercise by ordinance on a nonareawide basis any power not otherwise prohibited by law." AS 29.35.200(a). Similar language exists with respect to the powers of cities in the unorganized borough. Specifically, the law provides that "[a] city outside a borough may exercise a power not otherwise prohibited by law." AS 29.35.260(a).

### ***3. A Borough is a Regional Municipality whereas a City is a Community-Based Municipality.***

As noted in subparts A-1 and A-2, cities and boroughs are identical in certain fundamental respects. Both are municipal corporations and political subdivisions. Moreover, the powers and duties of boroughs are comparable to those of home rule and first class cities in the unorganized borough.

However, major distinctions exist between boroughs and cities with respect to form. Boroughs are governments that serve relatively large natural regions. In contrast, city governments are relatively small community-based governments. Thus, home rule and first class cities may exercise borough-like powers, but only within city-like jurisdictions. Additional specifics about the distinctions between boroughs and cities are noted in subparts A-3-a and A-3-b below.

#### ***a. The "Limitations of Communities" Doctrine does not apply to Boroughs but does to Cities.***

Cities are subject to the "limitation of community" doctrine while boroughs are not. The Alaska Supreme Court held as follows concerning that distinction:<sup>iii</sup>

[Appellants] offer a series of cases striking down municipal annexations and incorporations where the lands taken have been found to receive no benefit. We find this authority unpersuasive when applied to borough incorporation. In most of these cases, the courts inferred from statutes or state constitutions what has

#### Footnote continued from previous page

Prohibitions and limitations on the powers of second class cities in the unorganized borough are significantly greater than is the case for first class cities. For example, a second class city in the unorganized borough is prohibited from operating a school district, while a first class city outside a borough is required to operate a school district. AS 29.35.260(b). Further, a second class city in the unorganized borough is permitted, but not required, to exercise land use regulation. AS 29.35.260(c). Another example is the limited taxing property authority for a second class city. AS 29.45.590. In contrast, limitations on the powers of a first class city in the unorganized borough are similar to those of a first class borough.

<sup>iii</sup> In the *Mobil Oil* case (involving incorporation of the North Slope Borough) the Court addressed the limitation of communities doctrine by making a distinction between boroughs and what it termed "municipalities" (e.g., "boroughs are not restricted to the form and function of municipalities"). Clearly, in the view of the Commission, the Court was referring in the *Mobil Oil* case to "cities" (or derivatives thereof such as "city", or "city government") when it used the term "municipalities", (or derivatives thereof such as "municipality", or "municipal"). It is significant in that regard that when the North Slope Borough incorporation petition was filed, statutory standards and procedures for borough incorporation as well as other laws concerning boroughs were codified in "Alaska Statutes – Title 7 – Boroughs." In contrast, statutes relating to cities were codified in "Alaska Statutes – Title 29 – Municipal Corporations." The Court made reference to borough standards and other provisions in AS 07 seventeen times in the *Mobil Oil* case. In 1972, Titles 7 and 29 of the Alaska Statutes were repealed and new laws concerning both cities and boroughs were enacted as "Alaska Statutes – Title 29 – Municipal Government". Today, AS 29 refers to both cities and boroughs as municipalities. The distinction in the terms used by the Court in *Mobil Oil* to describe the two types of governments (i.e., "boroughs" and "municipalities") was purely nominal. However, the distinction made by the Court as to the form of the two types of governments (boroughs and cities) was significant.

been called a 'limitation of community' which requires that the area taken into a municipality be urban or semi-urban in character.

There must exist a village, a community of people, a settlement or a town occupying an area small enough that those living therein may be said to have such social contacts as to create a community of public interest and duty. . . .

The limitation has been found implicit in words like 'city' or 'town' in statutes and constitutions or inferred from a general public policy of encouraging mining or agriculture. In other cases, the limitation has been expressed as a finding that the land taken is not susceptible to urban municipal uses. The result in these cases was determined not by a test of due process but by restrictions in pertinent statutes and constitutions on the reach of municipal annexations and incorporations.

Aside from the standards for incorporation in AS 07.10.030, there are no limitations in Alaska law on the organization of borough governments. Our constitution encourages their creation. Alaska const. art. X, § 1. And boroughs are not restricted to the form and function of municipalities. They are meant to provide local government for regions as well as localities and encompass lands with no present municipal use.

*(Mobil Oil Corp. v. Local Boundary Commission, 518 P.2d 92, 100 (Alaska 1974) (footnotes omitted).)*

The Commission finds that the limitation of communities doctrine is, indeed, implicit in the Alaska statutes concerning incorporation of cities. In particular, AS 29.05.011 provides as follows (emphasis added):

**Incorporation of a city.**

(a) A community that meets the following standards may incorporate as a first class or home rule city:

- (1) the community has 400 or more permanent residents;
- (2) the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale;
- (3) the economy of the community includes the human and financial resources necessary to provide municipal services; in considering the economy of the community, the Local Boundary Commission shall consider property values, economic base, personal income, resource and commercial

development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;

(4) the population of the community is stable enough to support city government;

(5) there is a demonstrated need for city government.

(b) A community that meets all the standards under (a) of this section except (a)(1) may incorporate as a second class city.

Moreover, the limitation of communities doctrine is explicit in terms of the Commission's regulations governing city incorporation and annexation.<sup>iv</sup> For example, 3 AAC 110.040(b) provides:

The boundaries of the proposed city must include only that territory comprising a present local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of incorporation.

Further, 3 AAC 110.040(c) provides:

The boundaries of the proposed city may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in 3 AAC 110.005 - 3 AAC 110.042.

*b. Geographically, Boroughs were Envisioned as Relatively Large Regional Units while Cities are Intended to be Relatively Small Units.*

The Local Government Committee at the Alaska Constitutional Convention envisioned boroughs as units of government that would cover large areas. According to Vic Fischer:<sup>v</sup>

<sup>iv</sup> The Commission has a duty under AS 44.33.812(a)(2) to adopt regulations providing standards and procedures for incorporation of cities and boroughs. Further, AS 29.05.100(a) conditions approval of a city incorporation petition upon a determination by the Commission that the standards it has adopted in regulation are satisfied.

<sup>v</sup> Mr. Fischer is recognized by the Alaska Supreme Court as "an authority on Alaska government." *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1244 (Alaska 1995). The Court has relied on his work in the *Keane* case (1242, 1243) and in the *Mobil Oil* case (98). Mr. Fischer is well known to most members of the Commission. He has addressed the majority of the current Commission in the past on a number of occasions concerning matters relating to local government in Alaska. Most recently, he addressed all current members of the Commission on August 10, 2002. Mr. Fischer received a bachelor's degree from the University of Wisconsin in 1948 and a Master's Degree in Community Planning from the Massachusetts Institute of Technology in 1950. He also received the Littauer Fellowship in public administration from Harvard University (1961-1962). Mr. Fischer has held several planning related positions in Alaska. He was

As the committee was evolving [borough] principles, its members agreed that some type of unit larger than the city and smaller than the state was required to provide both for a measure of local self-government and for performance of state functions on a regionalized basis.

... the initial principles set forth by the committee for consideration in the formation of the new areawide government units included these guidelines: ...

- Units should cover large geographic areas with common economic, social, and political interests. ...

(Victor Fischer, *Alaska's Constitutional Convention*, p. 118 – 119, (1975).)

This fundamental characteristic of boroughs is reflected in Article X, Section 3 of the Constitution.

**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.

The fourth sentence of Article X, Section 3, which provides that “[e]ach borough shall embrace an area and population with common interests to the maximum degree possible”, is particularly significant with regard to the fundamental characteristic at issue. This sentence, by itself, does not indicate the territorial or socioeconomic scale at which the commonality of interests ought to be evaluated. The minutes of the Alaska Constitutional Convention, however, provide compelling evidence as to the framers’ intent with respect to the character and scope of boroughs. In the following exchange, delegate John Rosswog, Chairman of the Committee on Local Government, responded to a query from delegate John Coghill on January 19, 1956 about the Committee’s

#### Footnote continued from previous page

a delegate to the Alaska Constitution Convention in 1955-1956. During the convention he was a member of the Committee on Local Government and served as its Secretary. Mr. Fischer has written and co-authored a number of books and publications concerning state and local government in Alaska. These include *The State and Local Governmental System* (1970), *Borough Government in Alaska* (1971), and *Alaska's Constitutional Convention* (1975). Mr. Fischer served in Alaska’s Territorial House of Representatives (1957-1959) and the Alaska State Senate (1981-1986). He was a member of the faculty of the University of Alaska Fairbanks and of the University of Alaska Anchorage. At the University, he was primarily associated with the Institute for Social and Economic Research, where he was director for ten years. His current work includes studying Alaska Native and regional governance issues.

intent with respect to the language that each borough shall embrace an area and population with common interests to the maximum degree possible.

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

ROSSWOG: We had thought that the boundaries should be flexible, of course, and should be set up so that we would not want too small a unit, because that is a problem that has been one of the great problems in the states, the very small units, and they get beyond, or they must be combined or extended.

*(Proceedings of the Alaska Constitutional Convention, Alaska State Legislature, Legislative Council p. 2620 - 2621 (1963).)*

A nearly identical question arose on the floor of the Convention later that same day. Delegate Barrie White inquired about the Local Government Committee's intent with respect to the term "maximum extent possible." Committee member James Doogan and Committee Chairman John Rosswog responded:

WHITE: Mr. President, on page 2, Section 3, I would like to ask the Committee, on line 4, if the words "to the maximum extent possible" could be construed to mean the largest possible area?

PRESIDENT EGAN: Mr. Doogan.

DOOGAN: I think that is the intent. It was pointed out here that these boroughs would embrace the economic and other factors as much as would be compatible with the borough, and it was the intent of the Committee that these boroughs would be as large as could possibly be made and embrace all of these things.

WHITE: Is it the thinking of the Committee that the largest possible area, combining area and population, with common interest, would be the most desirable type of borough?

PRESIDENT EGAN: Mr. Rosswog.

ROSSWOG: Could I answer on that? I think that was the idea or the thinking of the Committee that they would have to be fairly large but the wording here would mean that we should take into consideration the area and population and common interest to the maximum extent possible because you could not say definitely that you were taking it all in, but as much as you possibly could.

(*Id.* p. 2638.)

The following day, January 20, 1956, delegate Katherine Nordale raised the virtually identical question. Vic Fischer, Local Government Committee Secretary responded.

NORDALE: Mr. President, I think this was brought up yesterday, but I have sort of forgotten what was said. It is just a question. On line 4, page 2 of Section 3, there was some discussion of the wording, "Each borough shall embrace to the maximum extent possible an area and population with common interests." Does that mean to the greatest degree it shall be a group of people with common interests? Nothing to do with the area -- I mean the square mile?

V. FISHER: What it means is that wherever possible, "Each borough shall embrace an area and population with common interests.

(*Id.* p. 2711.)

In summary, the constitutional, statutory, and regulatory standards for local governmental boundaries indicate that cities are meant to be local community governments, and boroughs are meant to be regional governments. Indeed, it is difficult to suppose that a city government's boundaries could be consistent with both 3 AAC 110.040(b) and the constitutional and statutory standards for borough boundaries.

***4. Both Cities and Boroughs Must Embrace Areas with Common Social, Cultural, and Economic Interests, but the Requisite Degree for Such is Significantly Greater for Cities than Boroughs.***

As noted with respect to subpart A-3-a of this section of the decisional statement, each city government must embrace a community. For purposes of the Local Boundary Commission, the term "community" is defined in law. A community is comprised of a discrete area and population with significant common interests concerning social, cultural, economic, and other characteristics.<sup>11</sup>

<sup>11</sup> A "community" is defined by 3 AAC 110.990(5) to mean a social unit of 25 or more permanent residents as determined by 3 AAC 110.920. A community exists where individuals reside permanently in a close geographical proximity that allows frequent personal contacts and comprise a population density that is characteristic of neighborhood living. Factors such as school enrollment, number of sources of employment,

As noted in subpart A-3-b of this decisional statement, the fourth sentence of Article X, Section 3 of the constitution stipulates that each borough must maximize the area and population, but with the condition that the maximum area and population also have common interests. However, the requirement for maximum area and population necessarily presumes an acceptable level of common interests less than that found at the community level.

The following discussion on the floor of the Constitutional Convention on January 19, 1956 between delegate James Hurley, Local Government Committee Chairman John Rosswog, Local Government Committee member Eldor Lee and delegate John Hellenthal is important in several respects in terms of defining the nature of a borough. It demonstrates that the Local Government Committee had no precise upper or lower limits in mind regarding the geographic size of boroughs. It also stresses the importance of flexibility in setting borough boundaries. Further, the dialogue provides additional evidence that the delegates foresaw, in general terms, relatively large boroughs. Perhaps most importantly, however, the exchange provides insights with respect to the framers' vision concerning the requisite degree of common interests within boroughs.

HURLEY: Mr. President, going back to Section 4, the matter has been mentioned many times about the possible thinking as to the size of the boroughs. I took occasion to check back into the criteria which would be used for the establishment of election districts. I find that except for two different words they are the same as the criteria that you use for the establishment of boroughs: population, geographic features, and the election districts say integrated socio-economic areas, and you say economy and common interests which I think means the same thing. Consequently, I might be led to the conclusion that your thinking could well be carried out by making election districts and boroughs contiguous or congruous, the same area, is that true?

ROSSWOG: It was thought this should be left very flexible. Of course, you would not say they should be the same as election districts because of rather unwieldiness for governing. It would more possibly, and should, take more study of whether the size should bear on whether your governing body would be able to supervise an area of that size.

PRESIDENT EGAN: Mr. Lee.

Footnote continued from previous page

voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers are evidence of a community. Further, the law presumes that a population does not constitute a community if public access to or the right to reside at the settlement is restricted, if the population is adjacent to a community and is dependent upon that community for its existence, or if the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence.

LEE: Mr. Hurley, I think we are unanimous in the opinion that many of these boroughs will be substantially the same as election districts but that is just the idea that we had in mind. Some of them won't be feasible, but in our thinking I consider that form of boroughs we felt they would be much the same as an election district.

PRESIDENT EGAN: Mr. Helleenthal.

HELLENTHAL: Did any of you think that they might ever be greater than the election districts in size?

LEE: If that question is directed to me, we did not give it any consideration because actually we have not made any statement about the size. But in our thinking we didn't consider that thought, but it is certainly very possible.

HELLENTHAL: In other words, that the boundaries of the election districts could possibly be maximums governing the size of the boroughs?

LEE: It is possible. It is up to the legislature to decide.

HELLENTHAL: Would it be desirable to make them minimums?

LEE: That would take away the flexible portion which we wish to keep here.

HELLENTHAL: I gather then you would not desire to make them minimums but probably would have little objection to making them maximum.

LEE: I can't speak for the Committee. I would have no objection, personally.

The framers envisioned that the initial State election districts would be, in many cases, models for future boroughs. As originally adopted, Article VI, Section 6 of Alaska's constitution established the following standards for drawing State House election districts (emphasis added by underlining):<sup>111</sup>

Section 6. Redistricting. The governor may further redistrict by changing the size and area of election districts, subject to the limitations of this article. Each new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Each shall

<sup>111</sup> Article VI was amended in 1999. The amendments dealt principally with the process for redistricting. However, two changes dealt somewhat with the standards. Both occurred in the third sentence which was revised as follows (added text in bold type and underlined, deleted text struck through): "Each shall contain a population as near as practicable ~~at least equal~~ to the quotient obtained by dividing the total-civilian population of the state by forty."

contain a population at least equal to the quotient obtained by dividing the total civilian population by forty. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible.

The Alaska Supreme Court addressed the meaning of the term "relatively integrated socio-economic area" with respect to election districts in *Hickel v. Southeast Conference*, 846 P.2d 38, 47 (Alaska 1992) (emphasis added):

The Alaska Constitution requires districts comprising "relatively integrated" areas. . . "Relatively" means that we compare proposed districts to other previously existing and proposed districts as well as principal alternative districts to determine if socio-economic links are sufficient. "Relatively" does not mean "minimally," and it does not weaken the constitutional requirement of integration.

The framers' vision that the initial State election districts were, in many cases, models for future boroughs is reinforced by the fact that election district boundaries were used to define prospective boroughs in the 1963 Mandatory Borough Act. As introduced by Representative John L. Rader, the mandatory borough legislation called for the compulsory incorporation of the nine State election districts in Alaska that encompassed independent school districts.<sup>viii</sup>

The mandatory borough legislation was introduced just four years after Alaska's constitution took effect. The short interval between those two seminal events, in the view of the Commission, is further evidence of the suitability of the early election districts for borough boundaries. Six of the twenty members (30%) of the 1963 Senate had been delegates to the Constitutional Convention.<sup>ix</sup> Additionally, two members of the 1963 House of Representatives had been Constitutional Convention delegates.<sup>x</sup>

<sup>viii</sup> House Bill No. 90 provided that the areas would be incorporated as boroughs by legislative fiat if the voters in those regions failed to form boroughs before January 1, 1964. The nine regions were designated as follows in Section 3 of House Bill No. 90:

- (1) Anchorage Election District;
- (2) Lynn Canal - Icy Straits Election District;
- (3) Ketchikan - Prince of Wales Election District;
- (4) Kodiak Election District;
- (5) Palmer - Wasilla - Talkeetna Election District;
- (6) Sitka Election District;
- (7) Fairbanks - Fort Yukon Election District;
- (8) Juneau Election District; and
- (9) Kenai - Cook Inlet Election District.

<sup>ix</sup> The former delegates in the 1963 Senate were Senators Coghill, Kilcher, McNealy, Nolan, Peratrovich, and Smith.

<sup>x</sup> The former delegates that were members of the 1963 House of Representatives were Representatives Sweeney and Taylor.

Moreover, the Commission considers it noteworthy that the use of election districts to define borough boundaries in the 1963 mandatory borough legislation occurred just two years after the Alaska Legislature first adopted statutory standards for incorporation of boroughs. That fact becomes even more significant when it is recognized that 11 of the 20 Senators (55%) and 23 of the 40 Representatives (57.5%) in the 1963 Legislature had held the same elected offices during the 1961 Legislature.<sup>x1</sup>

While the early State election districts were viewed by the framers to be, in many cases, suitable borough models, the Commission does not take the position that the same is necessarily true today. Social and economic integration remains a fundamental characteristic of election districts for the State of Alaska, however, there have been numerous social, political, and legal developments which have had great influence over the size and configuration of election districts in Alaska. Social changes include a significantly greater concentration of Alaska's population in southcentral Alaska. Political changes include the uniform use of single-member election districts throughout Alaska.<sup>xii</sup> They also include the enactment of legislation such as the Federal Voting Rights Act which have significantly influenced the configuration of election districts in Alaska. Lastly, judicial rulings have shaped election districts. For example, in *Hickel v. Southeast Conference, id.* at 62, the Alaska Supreme Court directed that certain factors be given priority in the drawing of house election districts:<sup>xiii</sup>

Priority must be given first to the Federal Constitution, second to the federal voting rights act, and third to the requirements of article VI, section 6 of the Alaska Constitution. The requirements of article VI, section 6 shall receive priority inter se in the following order: (1) contiguousness and compactness, (2) relative socioeconomic integration, (3) consideration of local government boundaries, (4) use of drainage and other geographic features in describing boundaries.

While it can no longer be said that election districts make for ideal borough boundaries in most cases, the original vision does provide a measure of the geographic scale within which boroughs were expected to exhibit a distinguishing degree of social, cultural, and economic integration.

---

<sup>x1</sup> The Senators were Bronson, Coghill, Hopson, McNealy, Nolan, Owen, Peratrovich, Brad Phillips, Vance Phillips, Smith, and Walsh. The Representatives were Biggen, Baker, Binkley, Blodgett, Boardman, Cashel, Christiansen, Ditman, Hammond, Harris, Jarvela, Kendall, Kubley, Leonard, Longworth, Parsons, Pearson, Reed, Sanders, Stalker, Strandberg, Sweeney, and Taylor.

<sup>xii</sup> The initial election districts in the more populous areas of Alaska encompassed multiple House seats to retain their regional characteristics. Of the original 24 districts, five were two-member districts, one was a five-member district, and one was an eight-member district. The remaining seventeen districts were all single-member districts. The current plan utilizes forty single-member districts, which diminishes the regional character of those districts in the more populous areas.

<sup>xiii</sup> The Alaska Supreme Court adhered to the same priorities in *re 2001 Redistricting Cases*, 44 P.3d 141 (Alaska 2002).

***5. Boroughs Should Generally Include Multiple Communities and Should be Able to Provide Services Efficiently and Effectively.***

As noted in subparts A-3 and A-4, city governments are intended to be small governmental units with intense common interests, while boroughs are envisioned as large governmental units with moderate common interests.

Other indications of the intended difference in scale between cities and boroughs also exist. For example, Article X, Section 5 of the constitution allows boroughs to establish service areas. There is no comparable constitutional provision for city governments.<sup>xiv</sup> In the Commission's view, such reflects the vision that, as relatively large units of government, boroughs require the flexibility to establish service areas to meet the varying needs of particular communities within boroughs.

Another indicator of the framers' vision regarding the relative scale of city and borough governments is found in Article X, Section 7 of Alaska's constitution. That provision reinforces the perspective that boroughs are large units and cities are small units by stating that cities, "shall be part of the borough in which they are located."

On January 20, 1956, delegate Vic Fischer expressed the view that it is 'unimaginable' that a city would be the same size as a borough as reflected in the following exchange.<sup>xv</sup>

GRAY: Mr. Chairman, I would like to ask the Committee a question. Is it possible under Section 5 that the city council complete would also be complete in the assembly? Is it quite possible?

V. FISCHER: I think that would be possible only if the borough was the same size as the city, or if the legislature provided that the people outside of the city shall have no representation.

GRAY: It could be so?

V. FISCHER: I could not imagine it happening.

---

<sup>xiv</sup> The Commission recognizes that AS 29.45.580 authorizes city governments to establish differential property tax zones. In some respects, those are the city equivalent to a borough service area. However, the Commission still considers Article X, Section 5 to be evidence of the intended large scale of boroughs.

<sup>xv</sup> The dialog was also relevant in terms of original Article X, Section 4 of Alaska's constitution which provided in relevant part that:

Each city of the first class, and each city of any other class designated by law, shall be represented on the assembly by one or more members of its council. The other members of the assembly shall be elected from and by the qualified voters resident outside such cities.

The provision was repealed in 1972.

Finally, Article X, Section 13 authorizes cities to transfer, and revoke transfer of city power and functions to the borough in which it is located. There is no similar constitutional provision for transfer of borough powers and duties to cities. This asymmetry is consistent with the notion that boroughs would have broader jurisdiction than cities.

#### ***6. The Constitution Encourages a Minimum Number of Boroughs.***

Article X, Section 1 of the Constitution of the State of Alaska provides, in part, that “[t]he purpose of this article is to provide for maximum local self-government with a minimum of local government units. . . .”

Vic Fischer indicates that one of the fundamental principles concerning borough formation set forth by the Local Government Committee was that, “units should be large enough to prevent too many subdivisions in Alaska . . .” Victor Fischer, *supra*, p. 119.

The Commission concludes that the creation of boroughs should be limited, not to a specific total number, but by the principle that only the minimum number of governments necessary to provide effective and efficient local self-government should be created.

#### ***7. Borough Boundaries Should be Established at the State Level to Reflect State-Wide Considerations as well as Regional Criteria and Local Interests.***

Article X, Section 12 of Alaska’s constitution provides for the establishment of the Local Boundary Commission. Of the 116 active State boards and commissions, only the Local Boundary Commission and four others have origins in the constitution.<sup>xv</sup>

The Alaska Supreme Court observed that the Commission was created to serve as an impartial body to review, from a statewide perspective, proposals relating to the establishment and alteration of municipal governments. Specifically, the Court stated:

An examination of the relevant minutes of [the Local Government Committee of the Constitutional Convention] 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. The advantage of the method proposed, in the words of the committee:

... lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this

<sup>xv</sup> The other four are the (legislative) Redistricting Board, Judicial Council, Commission on Judicial Conduct, and the University Board of Regents.

third party, arguments for and against boundary change can be analyzed objectively.

*(Fairview Public Utility District No. 1 v. City of Anchorage, 368 P.2d 540, 543 (Alaska 1962).)*

***8. Alaska's Constitution Encourages the Extension of Borough Government; However, All Standards Must be Met and the Commission is not Obligated to Approve Proposals that Only Minimally Meet the Standards.***

Article X, Section 1 of Alaska's constitution promotes maximum local self-government which encourages the extension of borough government in areas that satisfy the standards for borough incorporation and annexation. In this regard, the Alaska Supreme Court held as follows:

Our review of the record has been undertaken in light of the statement of purpose accompanying article X, the local government article, of the Alaska constitution. Section 1 declares in part:

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. . . .

We read this to favor upholding organization of boroughs by the Local Boundary Commission whenever the requirements for incorporation have been minimally met.

*(Mobil Oil, supra, at 99.)*

However, the Commission stresses that it is prohibited from approving any borough proposal if the application does not meet each applicable standard established in the Constitution of the State of Alaska, Alaska Statutes, and the Alaska Administrative Code. Specifically, Alaska Statute 29.05.100(a) provides as follows:

The Local Boundary Commission may amend the petition and may impose conditions on the incorporation. If the commission determines that the incorporation, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations, meets the standards for incorporation under ... 29.05.031, and is in the best interests of the state, it may accept the petition. Otherwise it shall reject the petition.

The use of the term "shall" in the third sentence of AS 29.05.100(a) clearly indicates that the Commission must reject any proposal if it does not meet each of the applicable standards, with or without amendments and/or conditions.

While the Supreme Court held in the *Mobil Oil* case that Article X, Section 1 of the constitution should be read to favor upholding of an LBC-approved incorporation whenever the requirements for incorporation have been minimally met, the Court also held in a subsequent case that the Commission is not obligated to approve any minimally acceptable petition. Specifically, the Court stated:

Petitioners' arguments, however, reflect the mistaken premise that the LBC must approve any minimally acceptable petition for incorporation and has only limited authority to consider or adopt "the most desirable" borough boundaries.

It is difficult to conjecture circumstances under which the Commission would reject a borough proposal if it met each of the applicable standards; however, the Commission clearly has that prerogative. The use of the term "may" in the second sentence of AS 29.05.100(a) leaves no doubt that the Commission has discretion to approve any borough incorporation petition, even if it meets all requisite standards.

***9. Boroughs Should not be Prematurely Formed when Local Government Needs Can be met by City Annexation or Incorporation.***

Occasionally, communities in the unorganized borough express interest in borough formation, particularly, single-community boroughs, when the expansion of boundaries of an existing city or the incorporation of a new city would be more fitting and would serve the needs of the territory in question.



## Appendix B

### LOCAL GOVERNMENT IN ALASKA

prepared by Local Boundary Commission Staff  
Alaska Department of Community and Economic Development  
updated March 2004

#### Section 1 – Alaska has just two types of municipal government – cities and organized boroughs.

Unlike most other states that typically have local government structures consisting of many overlapping local government service providers, Alaska's system of local government is simple, efficient, and effective. It consists of just two types of municipal government as described below.

##### A. Cities.

Federal law did not allow the incorporation of city governments in Alaska until 1900. The City of Skagway was the first city government incorporated in Alaska.

A city government is a municipal corporation and political subdivision of the State of Alaska. City governments are subject to the "limitation of community" doctrine. (See *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 100 (Alaska 1974).) The doctrine requires the area taken into the boundaries of a city to be urban or semi-urban in character.

On average, the corporate boundaries of cities in Alaska encompass just over 27 square miles. However, there are wide variations in the size of individual cities. The City of Skagway encompasses the largest area (466 square miles), while the City of Kiana encompasses the smallest area (0.3 square miles).

Current State law restricts the inclusion of large geographical regions or large unpopulated areas in cities. [3 AAC 110.040(b) - (c); 3 AAC 110.130(c) - (d)]. A city is part of the borough in which it is located. [Art. X, § 7, Ak. Const.]

Presently, there are 145 city governments in Alaska. In 2003, those cities were inhabited by 159,255 individuals or 24.5 percent of Alaska's total population of 648,818.

The 2003 population of cities ranged from a high of 29,486 (City of Fairbanks) to a low of 30 (City of Kupreanof).

## B. Organized Boroughs.

Prior to statehood, federal law prohibited the creation of counties in Alaska

Like a city, an organized borough in Alaska is a municipal corporation and political subdivision of the State of Alaska. However, organized boroughs are regional governments – much larger than cities.

Article X, Section 3 of Alaska's Constitution requires that the entire state be divided into boroughs, organized or unorganized. It also requires that each borough embrace a maximum area and population with common interests.

Article X, § 1 of Alaska's Constitution calls for minimum numbers of local governments. Together, Sections 1 and 3 of Article X promote large boroughs embracing natural regions.

Presently, there are 16 organized boroughs in Alaska. On average, organized boroughs encompass just over 17,400 square miles (644 times the average size of cities). Like cities, the size of individual organized boroughs varies considerably. The largest organized borough is the North Slope Borough (94,770 square miles), while the Bristol Bay Borough is the smallest (850 square miles)



In 2003, Alaska's 16 organized boroughs were inhabited by 567,343 individuals, or 87.4 percent of the total population of the state. Of the 567,343 residents of organized boroughs in Alaska, 97,044 (17.1 percent) also lived within a city government during 2003.

Organized boroughs encompass about 43 percent of the geographic area of Alaska. State law provides that the part of Alaska outside organized boroughs comprises a single unorganized borough. As it is presently configured, the unorganized borough encompasses 374,843 square miles. The unorganized borough was inhabited by 81,475 residents in 2003. Additional information about the unorganized borough is provided later in this publication.

## 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.

**Table 1**  
**City Governments in Alaska**

Classification	Within Organized Boroughs		Within the Unorganized Borough		Total	
	Number of Cities	2003 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
Total	48	97,044	97	62,211	145	159,255

## 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.

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

<sup>1</sup> 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])*

## **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.

---

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:



Committee on Local Government meeting during the Alaska Constitutional Convention,

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

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>

3

"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.

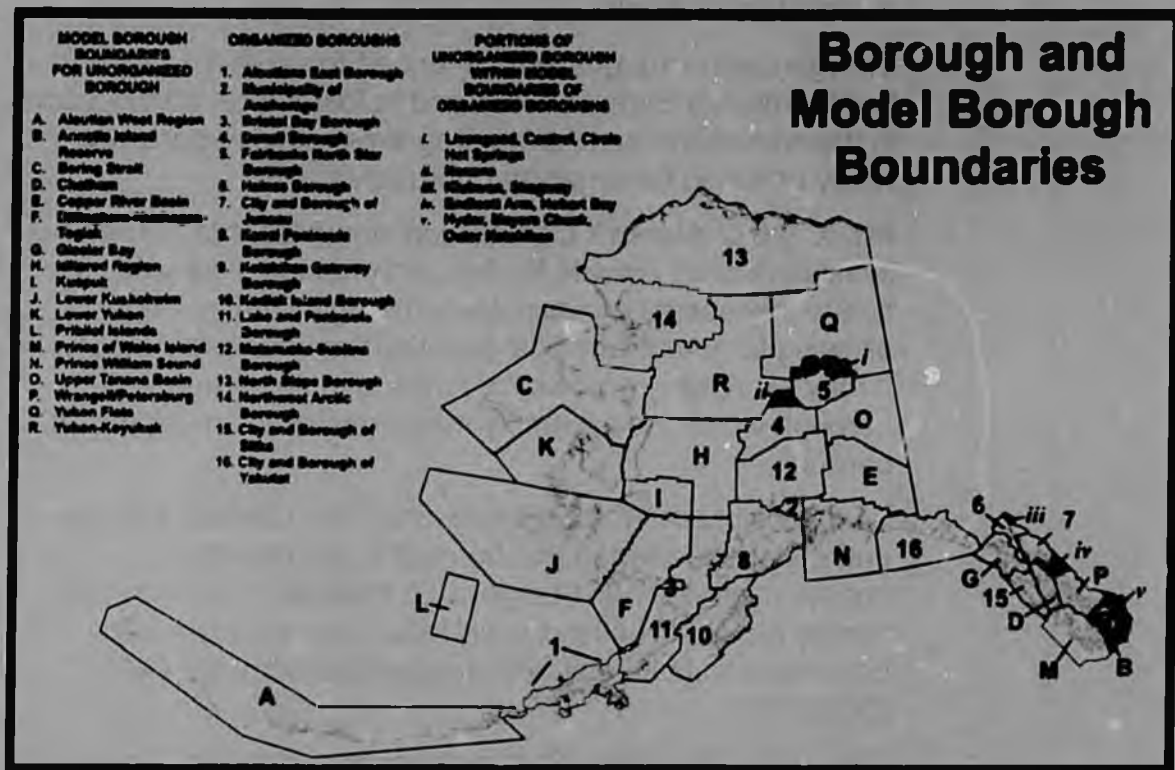
---

<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.

5

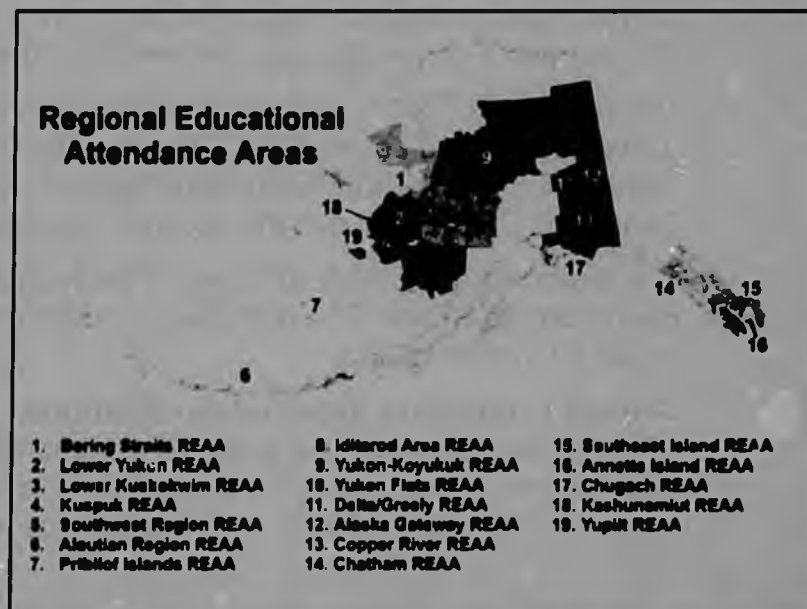
The first modification occurred to the boundaries of the Prince William Sound Model Borough, which were reduced as a result of an annexation to the adjoining City and Borough of Yakutat. The second modification occurred when the LBC merged the former "Aleutian-Military Model Borough" into the "Aleutians 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, Kuspuks, 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 Cheformak. 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 Cheformak, also approved the proposition to form the Yupik 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.

---

### **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 1  
POWERS AND DUTIES OF CITIES

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

Table continued on next page

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

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

Table continued on next page

TABLE 4 - Continued  
 POWERS AND DUTIES OF ORGANIZED BOROUGHs

	Home-Rule Borough	First-Class Borough	First-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.

# POPULATION CHARACTERISTICS OF MUNICIPAL GOVERNMENTS IN ALASKA

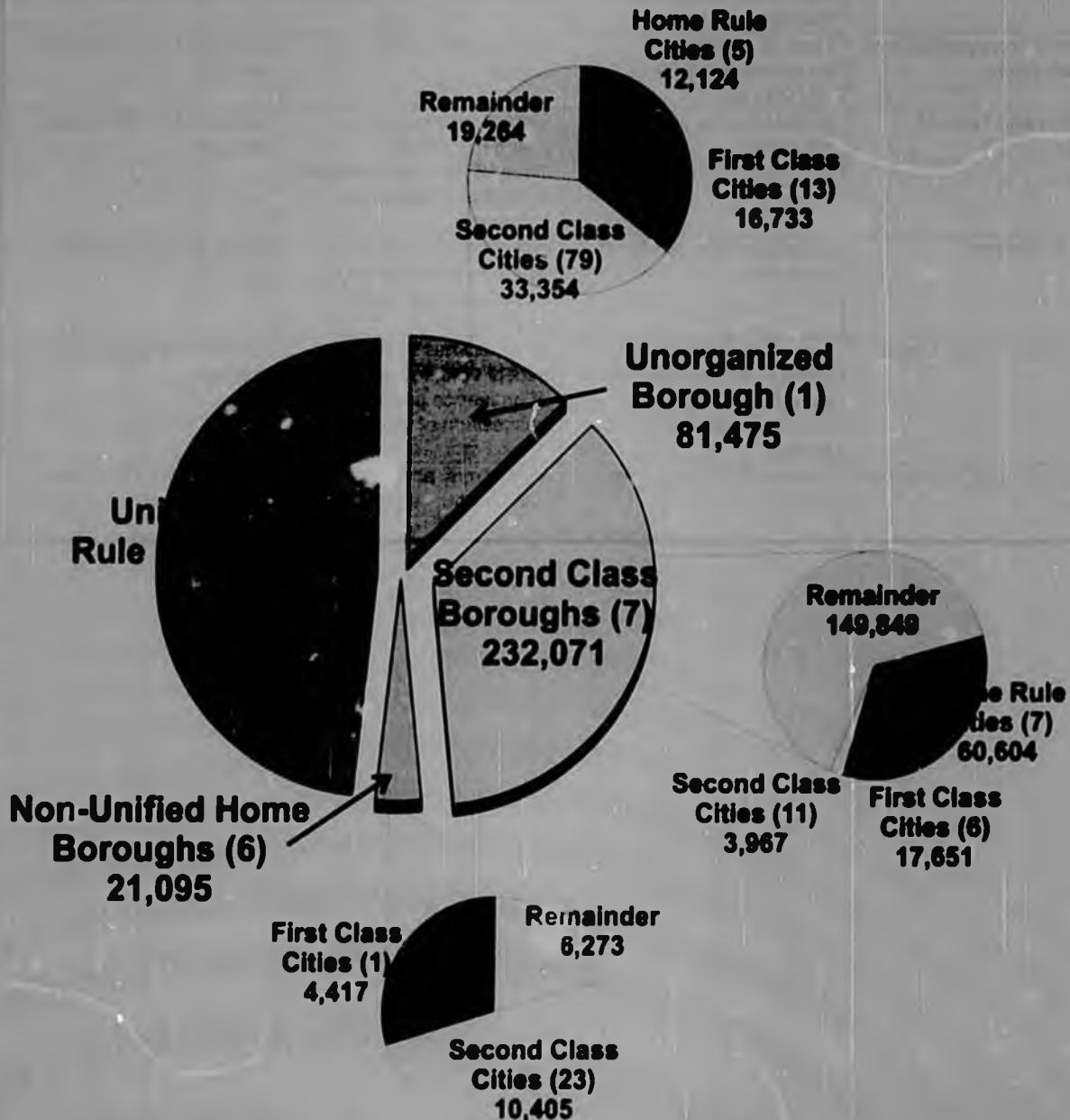
(based on July 1, 2003 population figures)

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	4,400 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.

Table continued on next page

Table continued from previous page

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	22,832 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

Table continued on next page

Table continued from previous page

Action Comments	2005 Population	Area (land & water)
Angoon, Kake, Pelican, Elfin Cove, Tenakee Springs, and Gustavus are conducting a feasibility study regarding borough incorporation.	2,700 (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.	6,900 (est.)	7,100 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 feasible.	1,300 (est.)	50,000 sq. mi
Ekwook officials have recently expressed interest in forming an Ekwook-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.

---

**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.