
Final Report

On the Proposal to Consolidate the City of Fairbanks and the Fairbanks North Star Borough

March 2001



Deborah B. Sedwick
Commissioner

Tony Knowles
Governor



ACKNOWLEDGMENTS

The Department of Community and Economic Development (DCED) appreciates the thoughtful remarks of the following seven correspondents who submitted timely comments on DCED's Preliminary Report concerning the Fairbanks consolidation proposal.

- Cynthia M. Klepaski, Assistant Borough Attorney, Fairbanks North Star Borough; and
- Patrick B. Cole, Administrative Services Director, City of Fairbanks.
- Don Lowell, Petitioners' Representative;
- Bonnie Williams, resident of the Fairbanks North Star Borough;
- Garry Hutchison, resident of the Fairbanks North Star Borough;
- David Shewfelt, resident of the City of Fairbanks;
- Ron Kovalik, resident of the Fairbanks North Star Borough;

This Final Report was prepared under the policy direction of

- Deborah Sedwick, Commissioner, DCED,
- Lamar Cotten, Rural Development Manager, DCED, and
- Patrick K. Poland, Director, Community & Business Development Division, DCED.

In addition to those who were previously recognized for their assistance in preparing DCED's Preliminary Report, the following individuals provided information or assistance in the development of this Final Report:

- Nanci Bolles, Deputy Borough Clerk, Fairbanks North Star Borough,
- Mona Lisa Drexler, Borough Clerk, Fairbanks North Star Borough,
- Shelly Growden, Election Supervisor, State Division of Elections,
- Gene Kane, Local Government Specialist, DCED,
- Bill Rolfzen, Local Government Specialist, DCED,
- Alice Stonecipher, VISTA Leader, DCED,
- Marjorie Vandor, Assistant State Attorney General; and
- Laura Walters, Research Analyst, DCED.

Page layout was performed by Jennie Morrison, Publications Technician, DCED.

This report was written by Dan Bockhorst, Local Government Specialist, DCED.

Background

DCED Preliminary Report Issued

On December 28, 2000, DCED issued its *Preliminary Report on the Proposal to Consolidate the City of Fairbanks and the Fairbanks North Star Borough* (hereinafter "Preliminary Report"). The Preliminary Report consisted of seventy-six pages of background and analysis, a twenty-eight-page appendix, and a four-page executive summary. The Preliminary Report was distributed to eighty-four individuals. A separate four-page executive summary of the Preliminary Report was distributed to an additional sixty-two individuals. Multiple copies of the Preliminary Report were provided to the Noel Wien Library. Additionally, the report was made available for public review on the Internet.

Comments Received on Preliminary Report

Individuals and organizations were given until January 31, 2001, to comment on the Preliminary Report. Timely comments were received from the following seven individuals or organizations:

- David Shewfelt, resident of the City of Fairbanks;
- Garry Hutchison, resident of the Fairbanks North Star Borough;
- Bonnie Williams, resident of the Fairbanks North Star Borough;
- Don Lowell, Petitioners' Representative;
- Ron Kovalik, resident of the Fairbanks North Star Borough;
- Cynthia M. Klepaski, Assistant Borough Attorney, Fairbanks North Star Borough; and
- Patrick B. Cole, Administrative Services Director, City of Fairbanks.

A copy of the complete written comments on the Preliminary Report was provided to each member of the Local Boundary Commission. The comments were also made available for public review at the Noel Wien Library and on the LBC's web site at:

<http://www.dced.state.ak.us/mra/LBC/lbcactivities.htm>

Schedule of Local Boundary Commission Hearing and Other Proceedings

The Local Boundary Commission has scheduled a public hearing on the Fairbanks Consolidation in the Fairbanks North Star Borough Assembly chambers beginning at 1 p.m., Saturday, April 7, 2001.

Appendix A of this Final Report includes the public notice of the April 7 hearing. Appendix B shows the April 7 hearing agenda. Appendix C offers guidelines for effective public comment to the Commission on the consolidation proposal at the April 7 hearing.

State Division of Elections officials have tentatively indicated that if the LBC approves the consolidation petition, an election on the consolidation proposal would likely be conducted by mail on Tuesday, August 14, or Tuesday, August 21, 2001. Elections officials tentatively indicated further that if voters approve the consolidation proposition in August, the election would likely be held in person on November 6, 2001, for the election of the Mayor and Assembly for the consolidated borough.

The following summarizes the steps remaining in the consolidation process beginning with the publication of DCED's Final Report.

Table 1
SCHEDULE FOR FAIRBANKS CONSOLIDATION PROCEEDINGS

Date or Range of Dates	Days Between Prior Step	Action
03/16/01	NA	DCED issued final report & recommendation
04/07/01	22	LBC conducts public hearing (1 p.m.; FNSB Assembly Chambers)
04/07/01 – 07/06/01	0 - 90	LBC either approves petition (with or without amendments & conditions) or denies petition (assumes 04/07/01 hearing is final)
04/13/01 – 08/06/01	6 - 30	LBC issues written decision (copy sent to Petitioners' Representative, respondents, & others who make request)
05/03/01 – 08/27/01	20	Opportunity for submission of requests for reconsideration of LBC decision. Note: if request(s) is (are) made, additional steps will be involved.
05/04/01 – 08/28/01	1	If consolidation is approved by LBC, State Division of Elections is notified
05/04/01 – 09/27/01	0 - 30	Division of Elections orders consolidation election
05/04/01 – 09/28/01	0 - 1	DCED submits Federal Voting Rights Act preclearance request to U.S. Justice Department
07/10/01 – 12/18/01	65 - 90	Consolidation election (minimum of 65 days based on requirement for preclearance; assumes election on Tuesday)
07/25/01 – 01/07/02	15 - 20	Certification of election results by the Director of the Division of Elections
07/25/01 – 01/17/02	0 - 10	If voters approve consolidation, Division of Elections orders election of officials of the consolidated borough
09/25/01 – 04/16/02	60 - 90	Election of officials for the consolidated municipality
10/10/01 – 05/06/02	15 - 20	Certification of election results and effective date of consolidation

Consideration of Comments on Preliminary Report

Fairbanks North Star Borough

The Fairbanks North Star Borough (FNSB) submitted a four-page letter (with three pages of attachments) offering comments on the Preliminary Report. The FNSB's comments are summarized in the shaded areas below. DCED offers a response to each of the principal topics raised by the FNSB.

FNSB Comment # 1

DCED's Preliminary Report did not fully list services that would be provided on a service area basis in the former City of Fairbanks. "Residents deserve to know with certainty the services that are proposed for the Urban Service Area."

DCED Response

DCED concurs with the FNSB that it is important that voters clearly understand what particular services will be provided on a service area basis within the proposed Urban Service Area if consolidation occurs.

The pending consolidation petition proposes dissolution of the City of Fairbanks and its reconstitution as the "Urban Service Area" of the FNSB. The boundaries of the proposed Urban Service Area would be identical to the existing boundaries of the City of Fairbanks.

With one exception, services identical to those currently provided by the City of Fairbanks would be provided on a service area basis within the Urban Service Area. The exception is that solid waste collection at transfer stations (currently provided by the FNSB in all areas except the City of Fairbanks) would become an areawide power of the consolidated borough.

The following description of services provided by the City of Fairbanks was compiled from the Responsive Brief of the City of Fairbanks:

- Police, including foot traffic, and bicycle patrol, misdemeanor and felony investigation, controlled substance enforcement, and a number of public programs such as the Volunteer in Policing program, an Explorer Post, a DARE program, Police Reserves, School Resource Officers, Police Academy, student training, and other programs.
- Fire Bureau, offering full-time professional fire suppression, prevention, and educational services.
- Paramedic, full-time service.
- Uniform Fire Code enforcement, inspection, and plan review.
- Enforcement of a criminal code.
- Street maintenance, construction, snow removal.
- Enforcement of a comprehensive building code, including amended version of the Uniform Building Code, Mechanical Code, Plumbing Code, Electrical Code, Housing Code, Energy Code, Mechanical code, Plumbing code, Electrical Code, Housing Code, Energy Code, Accessibility regulations, as well as specialty codes.
- Street curb refuse collection for residential structures (up to a four-plex).
- Enforcement of the Uniform Code for the Abatement of Dangerous Buildings.
- Regulation of transient vendors, security guards, private detectives, alcoholic beverage sales, pawnbrokers, massage practitioners, plumbers, refuse collectors, persons engaged in towing vehicles, public parking lot operators, boiler mechanics, and vehicles for hire.
- Maintenance of Clay Street Cemetery and Birch Hill Cemetery.
- Operation of an emergency alarm system.
- Regulation of certain businesses for health and sanitation purposes.
- Provides for the forfeiture of real and personal property used in or derived from the commission of illegal sales of controlled substances.
- Provides for the forfeiture of motor vehicles operated in violation of laws forbidding operation of a motor vehicle under the influence of alcohol or controlled substances.
- Levies a tax on the sale of alcoholic beverages and tobacco products.
- Motor vehicle and traffic regulation.
- Owns wastewater treatment plant (leased to and operated by Golden Heart Utilities); regulates customer use of the system.
- Levies a hotel/motel tax used to support the visitor industry and other economic development activities.
- City Clerk's office collects police-issued citations for moving violations and parking, solid waste payments, cemetery burial management, issuance of city licenses, special event permits, chauffeur licensing and background checks, tax collection, senior citizen garbage program, use of City light poles for signs, water & sewer assessment collection, and general public contact.
- City charter includes a tax cap, term limits, balanced budget requirement, and controls on the operation of the City.
- Storm drain system and street light system.
- City Permanent Fund.

FNSB Comment # 2

The effects of the loss of home rule status for the area within the City of Fairbanks will be significant. "If a general law (second class) borough wants to provide a new service, it can do so only if the power has been conferred by the Alaska Legislature or approved by borough voters. However, if a home rule municipality wants to provide a new service, it has the authority to do so, unless the service is prohibited by law or charter. The City of Fairbanks is presently a home rule city and can exercise any power not prohibited by law or charter. As a borough service area, the proposed Urban Service Area will not be able to provide any new service without a vote of the residents. Also, the Urban Service Area will not have a charter through which residents of the service area can protect their assets and limit their taxes. These are very real differences from the home rule status City residents presently enjoy. This is not a ephemeral loss of self-government; as a service area, residents of the current City will never enjoy home rule powers or a charter."

DCED Response

The effects of the loss of home rule status for the City of Fairbanks have been exaggerated and are misunderstood by some.

The Preliminary Report indicated that the vision of Alaska's Constitutional Convention delegates regarding home rule has been somewhat diminished over the past forty-two years of statehood through statutory limitations on home rule authority and by decisions of Alaska's judiciary. In contrast, the courts and legislature have *significantly* enhanced the powers of general law municipalities in Alaska, particularly since 1983. Such has occurred to the extent that general law municipalities in Alaska today can reasonably be described as having home rule-like powers.

The City of Fairbanks became a home rule city in 1960. At that early point in Alaska's statehood, there were significant distinctions between home rule and general law municipal governments. However, those distinctions were dramatically reduced as a result of the 1983 Alaska Supreme Court decision in *Gilman v. Martin*, 662 P.2d 120, 124 (Alaska 1983) and the 1985 statutory amendments granting general law municipalities extremely broad powers. It is perhaps more than coincidence that no existing general law city government in Alaska has adopted a home rule charter since 1982.

As is shown in Table 2 on the next page, half of the twenty most populous city governments in Alaska operate under the general law form of government. Similarly, half of the ten most populous borough governments in Alaska also operate under the general law form of government. If home rule were so critical, one must question why half of Alaska's most populous cities and boroughs have remained under the general law form of government.

DCED noted in its Preliminary Report that residents of the City of Fairbanks receive essential services from *both* forms of local government (i.e., the home rule City of Fairbanks and the general law FNSB). Because the current forms of local government in Fairbanks have been in place since 1964, it seems reasonable to conclude that both forms of local government serve the needs of the community. Further, more than 60% of the residents of the FNSB receive municipal services exclusively from the general law FNSB.

Table 2 The Twenty Most Populous City Governments in Alaska		
City Government	Form of City Government	Population
City of Fairbanks	Home Rule	31,423
City of Ketchikan	Home Rule	8,295
City of Kenai	Home Rule	7,039
City of Kodiak	Home Rule	6,836
City of Wasilla	General Law (1st Class)	5,568
City of Bethel	General Law (2nd Class)	5,449
City of Barrow	General Law (1st Class)	4,541
City of Unalaska	General Law (1st Class)	4,283
City of Valdez	Home Rule City	4,271
City of Palmer	Home Rule City	4,261
City of Homer	General Law (1st Class)	4,205
City of Soldotna	General Law (1st Class)	4,157
City of Nome	General Law (1st Class)	3,620
City of Petersburg	Home Rule City	3,387
City of Seward	Home Rule City	3,085
City of Kotzebue	2nd Class City	3,000
City of Wrangell	Home Rule City	2,569
City of Haines	General Law (1st Class)	2,516
City of Cordova	Home Rule City	2,512
City of Dillingham	General Law (1st Class)	2,400

DCED emphasized in its Preliminary Report that the Petitioners' decision to propose a general law consolidated borough is fully defensible in terms of the limited resources available to the petition sponsors. It was noted, for example, that the City of Ketchikan (which filed a home rule borough consolidation petition shortly after the Fairbanks petition was filed) committed many thousands of hours of expert management, legal, and financial staff time to prepare the home rule Ketchikan consolidation petition. In addition to thousands of hours of staff time, the City of Ketchikan and the Ketchikan Gateway Borough spent some \$45,000 in consulting fees to assist in the development and consideration of the Ketchikan consolidation petition.

In addition to the issue of resources available to the Petitioners, DCED noted that there was further justification for the decision by the Petitioners to propose a general law consolidated borough. In particular, the Petitioners anticipated that local citizens would prefer to deal with any proposal to adopt a home rule charter through democratically elected representatives as opposed to the relatively few who developed the consolidation proposal.

The FNSB expressed the concern in its comments on the Preliminary Report that the home rule City of Fairbanks can exercise any power not prohibited by law or charter, but the proposed Urban Service Area will not be able to provide any new service without a vote of the residents. That concern has nothing to do with distinctions between home rule versus general law governments. Instead, it relates to distinctions between the provision of services through city governments versus service areas. City governments – both general law and home rule – have broad authority to assume new powers *without a vote of the people*. In contrast, the expansion of service area powers – *in both general law and home rule boroughs* – typically requires voter approval.

Compare, for example, the home rule municipal government serving Anchorage versus the proposed general law consolidated borough in Fairbanks. The Municipality of Anchorage is a unified *home rule* borough. As such, there are no city governments within the unified borough. The former City of Anchorage was reconstituted as an urban service area upon unification, just as is proposed for the City of Fairbanks in the pending Fairbanks consolidation. As is summarized in Table 3, services provided by the Municipality of Anchorage within service areas are undertaken in a manner identical to that which would be required for the proposed Municipality of Fairbanks. Both the home rule Municipality of Anchorage and the proposed general law Municipality of Fairbanks would have virtually equal capacity to exercise municipal powers on a service area basis. However, neither the Municipality of Anchorage nor the Municipality of Fairbanks could do so unless the voters of a service area authorize the exercise of additional powers.¹

TABLE 3
COMPARISON OF SERVICE AREA POWERS – EXISTING ANCHORAGE
GOVERNMENT AND THE PROPOSED FAIRBANKS GOVERNMENT

Home Rule Municipality of Anchorage	General Law Municipality of Fairbanks
Upon approval by the voters of a service area, the Municipality of Anchorage may exercise any power in that service area that is not prohibited by State law or Borough Charter.	Upon approval by the voters of a service area, the Municipality of Fairbanks may exercise any power in that service area that is not prohibited by State law.

Moreover, expansion of the boundaries of service areas in home rule and general law boroughs typically requires voter approval. This is not the case with the expansion of boundaries of city governments.

The FNSB's concerns over the loss of home rule are far more theoretical than tangible. Since virtually all of the current functions of the City of Fairbanks will be carried out in the proposed Urban Service Area, it is relevant to contemplate what municipal service, facility, or function currently goes unmet within the boundaries of the City of Fairbanks. The City of Fairbanks is a mature (98 year-old) city government. One would assume that its functions and duties have evolved over its near-centenarian existence to fully meet the needs of its citizens. However, if, in the future, an unfilled pressing need for services arises, authority to serve that need can be gained through a vote of residents of the Urban Service Area.

FNSB Comment # 3

The Preliminary Report did not accurately summarize the FNSB's estimates of transition costs.

¹ On March 8, 2001, Bill Greene, Municipal Attorney for the Municipality of Anchorage confirmed DCED's understanding that the Home Rule Charter of the Municipality of Anchorage requires voter approval as a condition for the exercise of any power on a service area basis.

DCED Response

The Preliminary Report accurately noted that the FNSB projected that annual operating costs for the proposed consolidated borough would increase by \$2,074,421. The FNSB indicated in its comments on the Preliminary Report, however, that DCED did not accurately characterize the nature of at least one component of the overall projected increase.

Table 5 [of DCED's Preliminary Report] does not accurately summarize the FNSB's estimates of the costs of consolidation. For example, the .35 FTE additional staff needed for Golden Heart Plaza is shown at a cost of \$99,365. The Budget Worksheet in FNSB Appendix B, Section 10, however, shows that the salary and benefits for the employee is only \$14,510; the other expenditures are for repairs and maintenance, fuel, utilities, flower care, and capital, some of which are currently reflected in various sections of the City budget.

The FNSB provided the following table as a substitute for Table 5 on page 55 of DCED's Preliminary Report. The FNSB indicated that the substitute table accurately characterizes its projected cost increases.

Substitute for Table 5 on Page 55 of DCED's Preliminary Report		
FNSB Summary of Estimated Operating Cost Changes if Consolidation Occurs		
Department / Cost Center	Net Projected Effect	
	FTE	Amount
Salaries and Benefits		
Personnel Consolidation	1.000	\$ 43,995
Law Consolidation	1.000	53,802
Computer Services / Network Consolidation	3.000	245,130
Direct Services / Administration Consolidation	0.625	29,540
Financial Services / Accounting Consolidation	-	14,010
Financial Services / Risk Management Consolidation	0.170	(19,659)
Financial Services / Treasury & Budget Consolidation	0.600	(26,031)
General Services / Purchasing Consolidation	1.000	61,134
General Services / Support Services Consolidation	0.800	45,230
Parks & Recreation / Parks Maintenance	0.850	47,122
Urban Service Area / Administration	2.130	83,947
Urban Service Area / Police	1.000	113,600
Urban Service Area / Fire	1.000	113,600
Subtotal Salaries and Benefits	13.175	805,420

Table continued on following page

Substitute for Table 5 on Page 55 of DCED's Preliminary Report
**FNSB Summary of Estimated Operating Cost Changes
if Consolidation Occurs**

Continued from previous page

Department / Cost Center	Net Projected Effect	
	FTE	Amount
Other		
Transportation / Vehicle Fleet Fund Consolidation		931,750
Finance / Risk Management Consolidation		238,766
Other net non-personnel costs		98,485
Subtotal Other		1,269,001
Total		
	13.175	\$ 2,074,421

Notes:

FTE stands for Full-Time Equivalent positions.

\$2,074,421 total assumes continued payments to Economic Development recipients within the Urban Service Area.

The total cost increase estimated by the FNSB for the Golden Heart Plaza component was correctly stated by DCED to be \$99,365. What was arguably 'inaccurate' was that DCED didn't describe, in detail, the nature of the projected \$99,365 increase in Golden Heart Plaza expenses projected by the FNSB. While DCED recognizes that it is important to provide accurate information, the level of concern exhibited by the FNSB on this particular point seems excessively scrupulous since such detailed aspects of the projected cost increase have little or no bearing on the merits of the consolidation proposal.²

² It appears that the FNSB's comment on the lack of accuracy of DCED's figure is, itself, inaccurate. The FNSB states that "the salary and benefits for the employee is (sic) only \$14,510." That figure was derived by adding line 9 of the "FY 2001 Budget Worksheet: Parks and Recreation Golden Heart Plaza" found in Section 10 of Appendix B of the FNSB's responsive brief (\$9,930 for a permanent park maintenance worker) to line 12 (\$4,580 for benefits). However, the \$4,580 figure includes benefits to be paid to the permanent park maintenance worker, a temporary park maintenance worker, and for overtime for the workers at the Golden Heart Plaza. If "the worker" to whom the FNSB refers is only the permanent park maintenance worker, the total of the salary and benefits would be less than \$14,510. If, however, the FNSB meant to cite all salary and benefit costs associated with its projected increase for maintenance of the Golden Heart Plaza, the correct figure would be \$19,100.

FNSB Comment # 4

Table 6 on page 57 and Appendix D of DCED's Preliminary Report indicate that Judi Slajer projects annual savings of \$579,723 to result from consolidation. Table 6 and Appendix B should be deleted because they are inaccurate and misleading, or amended to state that they do not fully reflect Petitioners' estimate of the total operational costs of a consolidated government.

DCED Response

In support of its contention, the FNSB cites the following statement by Judi Slajer in her July 1, 2000 report entitled "A City and Borough Consolidation Budget and Fiscal Comments." (Emphasis added by FNSB).

A review of the potential tax and other financial considerations that should result from consolidation indicates that a portion of the savings resulting from consolidation will need to be used to add administrative support to meet the requirements for reasonable government operations. More simply stated, the new government will need to add some administrative costs, over and above those existing in the current City and Borough, to continue services at their current levels. . . . Adding these positions and associated costs reduces the potential cost savings from consolidation to under \$580,000 in the total budget. Five positions are eliminated in this presentation of a Consolidation Budget. **Continuing to be a question is whether the new government will be sufficiently staffed in the areas of support for the personal computing, accounting and labor relations functions. Staffing requirements in these areas will require interviews with the City and Borough staffs.**

The FNSB omitted relevant text from its quote of Ms. Slajer. The following is Ms. Slajer's complete statement on the issue (emphasis added by DCED to text omitted by FNSB; bracketed text added by DCED for clarification).

A review of the potential tax and other financial considerations that should result from consolidation indicates that a portion of the savings resulting from consolidation will need to be used to add administrative support to meet the requirements for reasonable government operations. More simply stated, the new government will need to add some administrative costs, over and above those existing in the current City and Borough, to continue services at their current levels. **Several new administrative support positions have been added [in Ms. Slajer's consolidation budget] for minimal level of administrative support in purchasing, personnel, and cashing and billing. As an example, one-half of a personnel support position has been added to perform the tasks required for a total personnel count over 500 employees. This will avoid compromising the level and quality of the public services.** Adding these positions and associated costs reduces the potential cost savings from consolidation to under \$580,000 in the total budget. Five positions are eliminated in this presentation of a Consolidation Budget. Continuing to be a question is whether the new government will be sufficiently staffed in the areas of support for the personal computing, accounting and labor relations functions. Staffing requirements in these areas will require interviews with the City and Borough staffs.

Ms. Slajer indicates that she added personnel to the budget she prepared where she felt such was necessary to do so in order to "avoid compromising the level and quality of the public services." Further, while she indeed noted the need for additional consideration of staffing requirements in personal computing, accounting, and labor relations, it should not be assumed that such would necessarily result in determinations that additional staff are needed in those areas. It may be that such reviews and the examination of other aspects of the consolidated borough will result in the identification of ways to utilize existing staff and other resources more efficiently to meet the local service responsibilities of the proposed consolidated borough. Indeed, Ms. Slajer hints at the prospect of such on page 2 of her July 1 report:

The City's operations appear to suffer from the lack of centralized administrative support, whether it be accounting practices, purchasing in bulk, personal computer technical support, competitive bidding, employee hiring and management practices, training supervisors to appropriately manage their employees, sending out timely garbage bills, properly investing City monies, providing for major maintenance of buildings and equipment, apply[ing] for and reporting on grants in a timely manner, replacing outdated equipment, printing its approved budget, or preparing its financial reports in a timely manner.

A strong management tool, in some organizations, is to have centralized core management systems with a lean oversight staff, while decentralizing the daily functions to the departmental level. Another management method is to centralize both the staff and the systems. The City appears to do neither. Decentralized staff tend not to work well with their counterparts in other departments; they tend not to be fully trained, and tend to lack a professional outlook for the big picture – failing to efficiently map out future plans for the organization, staying current with the latest changes in federal and state regulations, and supervising the function. Additionally, good tools are required for staff to function efficiently and effectively. Just like a mechanic that needs a good toolset to repair an engine, the administrative support staff needs tools to do its job. These types of tools include integrated core systems (organization wide) for purchasing, financial management, facilities management, information, and personnel management.

DCED notes that it conferred extensively with Ms. Slajer in the preparation of the Preliminary Report (as it did with the FNSB and others). Additionally, a copy of the Preliminary Report was provided to Ms. Slajer in a timely manner. Ms. Slajer made no comment that DCED's characterization of her projections was inaccurate and misleading.

The FNSB asserts that the Petitioners' own Reply Brief supports the Borough's contention that DCED's characterization of Ms. Slajer's projected savings is inaccurate and misleading. Specifically, the FNSB notes that the Petitioners state that, "The Borough also correctly states that the City is currently understaffed by Borough standards as also addressed in the updated budget mentioned above." Here again, the comment appears out of context. The Petitioners stated as follows with respect to this issue on page 4 of Section 1 of their Reply Brief (emphasis added by DCED).

The Borough correctly questions the Petitioners two page consolidated budget. The new 39-page City and Borough Consolidation Budget and Fiscal Comments submitted with the Petitioners Reply Brief addresses the several questions herein.

The Borough also correctly states that the City is currently understaffed by Borough standards as also addressed in the updated budget mentioned above.

DCED interprets those comments as an expression by the Petitioners' Representative that Ms. Slajer's budget (which results in projected savings of approximately \$580,000 annually compared to the Petitioners' original estimate of \$2 million in savings) addresses questions about adequate staff for the consolidated borough. The Petitioners' representative confirmed this interpretation. Further, the Petitioners' Representative takes the position that DCED's Preliminary Report is accurate with respect to the characterization of Ms. Slajer's projected cost savings.³

Given the facts in this matter, DCED does not agree with the FNSB's contention that the Preliminary Report is inaccurate and misleading with respect to Ms. Slajer's projected savings from consolidation.

In the end, it must be recognized that it is virtually impossible for anyone to accurately predict what the financial impacts of consolidation will be in the FNSB or elsewhere. Those impacts will depend on a number of variables, some of which are unknown at this time.⁴

The projected financial impacts of consolidation are, no doubt, of great interest to the citizens of the FNSB. However, as DCED noted in its Preliminary Report, this issue is not among the factors that the LBC must consider in judging the merits of the proposal. That particular question is best left to debates between the Petitioners and the respondents. Voters of the FNSB can best judge which party offers the most credible scenario.

³ Don Lowell, Petitioners' Representative, March 9, 2001, personal communication.

⁴ On the issue of potential savings from consolidation, it may be of interest to the LBC, parties in this proceeding, and citizens of Fairbanks that legislative auditors examined the potential for administrative savings from consolidation of city school districts with regional school districts in Alaska in 1992. While the current proposal does not involve consolidation of school districts, certain of the underlying principles and concepts are similar to consolidation of municipal governments. The Division of Legislative Audit concluded that 5.5% of district administration costs of school districts could be cut through school district consolidation. The audit report noted that

... we used the recent formation of the Aleutians East Borough as a case study to evaluate the impact of consolidation on schools. The current superintendent of the new Aleutians East Borough School District (AEBSD) reported that in [many] respects, the consolidation of schools involved an optimum situation. The two major schools joining the borough district were previously city school districts, with relatively "lean" district administration costs. Compared to REAAs, city school districts generally incur less district administrative cost on a per student basis.

(Division of Legislative Audit, *Audit Report – Potential for Administrative Savings from School District Consolidation*, p. 17, May 11, 1992.)

FNSB Comment # 5

"DCED's inference on Page 62, and its conclusion on Page 64 that the 'Petitioners offer no specific estimate, but implicitly suggest that the [transition costs] figure will be more on the order of \$1 million,' are inaccurate. It would be accurate to say that Petitioners made no specific estimate of transition costs. It may be accurate to say that Petitioners implicitly suggest that transition costs will exceed \$1 million."

DCED Response

DCED stated on page 62 of its Preliminary Report that

The Petitioners acknowledge that there will be transition costs, but offer no specific estimate of such. As noted previously, Ms. Slajer indicated that "transition costs would offset, and likely would exceed, any savings resulting from consolidation for two or more years." Given the Petitioners' projection of annual savings from consolidation (\$579,723), one can infer that Ms. Slajer believes that transition costs will likely amount to at least \$1,159,446 (2 X \$579,723).

DCED does not accept the FNSB's contention that its characterization of the Petitioners' views regarding transition costs is "inaccurate." Here again, Ms. Slajer offered no comment on DCED's Preliminary Report demonstrating that the report was inaccurate. Moreover, the Petitioners' Representative indicated that DCED's characterization of the Petitioners' position on the matter was accurate.⁵

FNSB Comment # 6

The transition plan included with the petition contains errors. DCED does a disservice to the voters to recommend approval of a petition with errors.

DCED Response

Errors in the transition plan involve ministerial matters that are readily resolved and controlled by State law. For example, the transition plan proposes that, within thirty days of consolidation, the new mayor must submit to the new assembly an "executive plan" to combine overlapping services. The transition plan provides that the executive plan is to become law twenty days after submission to the assembly unless it is adopted or rejected by the assembly prior to that time. If rejected, the transition plan states that an alternate plan must be submitted. If no plan is adopted by the assembly within 20 days, the transition plan provides that the alternate plan executive plan becomes law.

The executive plan cannot become law automatically. However, in DCED's view, that fact provides no legitimate basis to declare that the petition is flawed to the point that it would be a "disservice" to recommend approval of the proposal. The new mayor and new assembly could certainly view the call for the executive plan as a guideline or expression of intent on the part of the Petitioners.

⁵ Don Lowell, Petitioners' Representative, March 9, 2001, personal communication.

It is important to consider the FNSB's concerns in the context of the purpose of transition plans. Transition plans are required by the Local Boundary Commission for every type of proposal that comes before the LBC (annexations, detachments, etc.) to demonstrate a reasonable certainty that there is both intent and capability to provide essential services.

In some cases, transition plans take on greater significance (e.g., unorganized areas in which there is no history of providing services, or cases where a local government is proposed to be dissolved and details must be carefully set out for provision of future services and distribution of assets and liabilities). There are several factors that make a transition plan less critical in this particular instance. These include the size and maturity of the community and region involved, the substantial capacity of the local governments involved, and the limited nature of the changes that would result from consolidation. Additionally, State law (AS 29.06.150 – 29.06.160) spells out key provisions relating to transition matters. Given these circumstances, DCED affirms its preliminary conclusion that the standards set out in 3 AAC 110.900 are reasonably satisfied with respect to the pending Petition.

Nonetheless, DCED recommends in Part 3 of this Final Report that the LBC amend the Petition to eliminate errors in the transition plan that have been identified by the FNSB.

FNSB Comment # 7

"Petitioners worked on their Petition for at least two years prior to filing. They chose to file a Petition with a two-page operating budget. It was only after the Petition was filed – and while the Borough was responding to the Petition – that the Petitioners requested the assistance of Borough staff, at the same time opposing the Borough's request for additional time to respond. If there is fault, it lies with the Petitioners for failing to include a detailed budget with the Petition. Either that point should be emphasized in the report, or there should be no mention of the Borough's inability to participate in the development of the Petitioners' late budget."

DCED Response

The FNSB's comments relate to footnote 43 in the Preliminary Report. That footnote was a rebuttal to the Petitioners' assertion that the Borough refused to assist the Petitioners in developing an updated budget because the Petitioners opposed the FNSB's request for an extension of the opportunity for filing responsive briefs. The footnote was included because an official of the FNSB expressed concern to DCED that the Petitioners' statement was incorrect. DCED appreciates the further clarification of the issue by the FNSB.

City of Fairbanks

Patrick B. Cole, Administrative Services Director of the City of Fairbanks, wrote a ten-page letter offering comments on the Preliminary Report.

The City of Fairbanks' comments are summarized in the shaded areas below. Most of the City's comments on the Preliminary Report addressed the loss of home rule status for the City of Fairbanks that would result from the proposed consolidation. That issue was analyzed extensively by DCED in its Preliminary Report on pages fourteen through thirty-

two. The issue of home rule was addressed in the Preliminary Report more thoroughly than any other aspect of the consolidation proposal. The discussion in the Preliminary Report comprises nineteen pages – a full twenty-five percent of the report.

City of Fairbanks Comment # 1

Prior municipal unifications and pending consolidations have sought home rule for the newly created municipalities.

DCED Response

The City is correct that the three unified borough governments in Alaska (Anchorage, Juneau, and Sitka) are home rule. State law allows no alternative to home rule for unified municipalities. The City is also correct that the two pending borough consolidation proposals, other than the Fairbanks proposal, (i.e., Ketchikan and Haines) propose the creation of home rule consolidated boroughs. As DCED noted in its Preliminary Report, the home rule consolidation proposals in Haines and Ketchikan were prepared by local governments with resources beyond those available to the citizens who initiated the Fairbanks consolidation proposal. Further, one of the fundamental distinctions between unification and consolidation is that the latter allows flexibility with respect to the type of consolidated government. In other words, the law allows the creation of general law boroughs through consolidation.

The City of Fairbanks asserts that the Fairbanks consolidation is “fatally flawed” because “it takes away home rule from some 33,000 people.” For reasons that are addressed in extensive detail in the Preliminary Report, DCED does not concur with the City’s conclusion. The lack of home rule status for the proposed Municipality of Fairbanks is not a deficiency, let alone a “fatal flaw” in the proposal.

City of Fairbanks Comment # 2

The Fairbanks consolidation proposal is contrary to the Alaska Constitution’s mandate for maximum local self-governance.

DCED Response

The City asserts that maximum local self-government (which, in its view, means home rule) is “mandated” by Alaska’s Constitution. Alaska’s Constitution (Article X, § 1) promotes and provides for maximum local self-government, but does not “mandate” it. It is also inaccurate to assert that maximum local self-government is achieved only through home rule. More than 60% of the residents of the FNSB (those living outside of the City of Fairbanks and the City of North Pole) and more than 40% of the residents of Alaska are outside the boundaries of any home rule municipal government.

Maximum local self government is achieved through the incorporation of both general law and home rule municipal governments. For example, DCED noted on page 17 of the Preliminary Report that the 1963 State Legislature expressly provided for “maximum local self-government” when it mandated the creation of the general law Fairbanks North Star Borough.

City of Fairbanks Comment # 3

Alaska court decisions have not diminished home rule and the courts have provided no grounds for the dissolution of a city in favor of a borough service area.

DCED Response

DCED disagrees with the assertion that the courts have not diminished home rule in Alaska. The Preliminary Report cites Gerald L. Sharp's authoritative work *Home Rule in Alaska: A Clash Between the Constitution and the Court*; 3 U.C.L.A. – Alaska L.R. 1, 53 (1973). The Preliminary Report notes in this regard:

... in 1970, Alaska's Supreme Court handed down the first of two decisions which Mr. Sharp severely criticized as a reversal of the prior patterns of judicial interpretations of broad, constitutionally based home rule powers and of a liberal judicial construction of home rule powers.

... in *Chugach*⁶, a case which followed a substantial change in court personnel, the court reversed both patterns. It adopted the state-local test, which it denominated the "local activities rule," with the result that where any statewide interest is at stake a state statute which is inconsistent with an ordinance of a home rule municipality will constitute a prohibition.

The court in adopting the rule which the framers of the constitution had rejected justified itself on the simplistic bandwagon approach to judicial interpretation – the "current trend of authority." To compound its error the court even cited as examples of the rule decisions from a state which had been pointed out to the committee and convention as an example of what to avoid.

The court reaffirmed its retreat from the constitution in *Macauley*⁷ when it clearly limited the meaning of local activities to *purely* local activities. Purely local activities, i.e., those not touched by any state interest, are extremely limited, if, indeed, any exist at all. But the court, in a burst of inane generosity, conceded recognition of broad home rule governmental powers in matters of purely local concerns. The result is that now a home rule municipality in Alaska may act in areas of mixed state and local concern so long as its acts are not inconsistent with state statutes. If it can find an area of *purely* local concern it may exercise its broad governmental powers by acting in conflict with those statutes which are not intended to apply to home rule municipalities.

Home rule in Alaska as construed by the court is hardly worthy of the name. Of those states which purport to have constitutional home rule, Alaska must be placed among the weakest. The court's violation of clear constitutional intent coupled with its manifest restrictive attitude toward local government leaves little hope that home rule in Alaska will

⁶ (Footnote added by DCED) *Chugach Electric Association v. City of Anchorage*, 476 P.2d 115 (Alaska 1970).

⁷ (Footnote added by DCED) *Macauley v. Hildebrand*, 491 P.2d 120 (Alaska 1971).

be restored to its proper status by the court. Short of a constitutional amendment, the only solution may be restoration by the legislature.

What the framers of the constitution had though (sic) was a bold, new approach to home rule, one which created a strong and forward looking home rule structure, the court has converted into a weak, common, regressive form of home rule plagued by all the difficult questions the framers sought to avoid in addition to questions created by the new grant. In the 49th state a mere constitution is ineffective to purge local government law of the pervasive influence of judge Dillon's restrictive rule and transfer political decision making from the court to the legislature.

Ibid., p. 53.

In 1974, shortly after the publication of the Sharp article, the Alaska Supreme Court was again faced with a question of the scope of home rule authority. In that case, *Jefferson v. State*, supra, the Court did not directly overrule its prior adoption of the "local activities" rule, however, it cited the Sharp law review article and adopted the irreconcilable conflict test proposed in that article as the appropriate means to resolve alleged conflicts between municipal home rule enactments and State law. Thus, the Jefferson court abandoned the "local activities" rule that had led Sharp in 1973 to the conclusion that "Home rule in Alaska is hardly worthy of the name." However, the "irreconcilable conflict" rule adopted by the Court is not without its problems as it sets a threshold which, itself, is still subject to interpretation by the courts on a case by case basis.

The City also seems to imply that there is a constitutional barrier to the dissolution of a city government and its reconstitution as a borough service area. DCED disagrees. In 1971, the Alaska Supreme Court dealt with a case that involved the dissolution of the home rule City of Douglas and its reconstitution as a borough service area. The Court stated:

Appellants further contend that unification is barred by an implied constitutional requirement that cities not be dissolved in favor of boroughs.⁸ On this theory the appellants challenge the constitutionality of AS 29.85.170, which provides that upon ratification of the unification charter, local government units within the unified area are dissolved. We think appellants' challenge is for the most part disposed of by our discussion pertaining to the constitutionality of AS 29.85.160(c). Unification is consistent with the purpose expressed in article X,

⁸ (Footnote original) The Constitutional provisions from which appellants infer a bar against unification are art. X, §§ 1, 2, 4, 7, 9, and 13. These six sections provide, respectively, that (1) the purpose of the local government article is to "provide for maximum local self-government with a minimum of local government units"; (2) "[a]ll local government powers shall be vested in boroughs and cities"; (4) cities are to be represented on borough assemblies; (7) cities are to be incorporated, merged, consolidated, and dissolved as provided by law and shall be part of the boroughs in which they are located; (9) home rule charters may be repealed by the voters of the city or borough having the charter; (13) cities may transfer powers or functions to boroughs unless prohibited by law or charter and may revoke the transfers. Appellants' argument is that these sections show that their draftsmen contemplated the continuation of cities within boroughs rather than the swallowing up of the former by the latter.

section 1 of minimizing the number of local government units. Article X, section 2 merely authorizes but does not require the coexistence of cities and boroughs. In view of the express constitutional policy of minimizing the number of local government units, the grant to the legislature of the power to decide on the manner of dissolution of cities, found in article X, section 7, and the absence of either an explicit ban against unification, or a persuasive basis for inferring such a prohibition, we hold AS 29.85.179 constitutional.

(*City of Douglas v City and Borough of Juneau*, 484 P.2d 1040, 1043 [Alaska 1971].)

City of Fairbanks Comment # 4

Principles of municipal law support the creation and preservation of home rule governments.

DCED Response

As noted previously, more than 60% of the population of the FNSB and more than 40% of the population of the entire state are outside home rule municipal governments. Moreover, even residents of the City of Fairbanks receive many of their most fundamental municipal services from the general law FNSB. These include education, flood control, transportation, library, land use regulation, platting, planning, disaster and civil defense, solid waste disposal, animal control, parks and recreation, and limited health and social services.

Arguably, the City's position implies that the voters and officials of the FNSB (and 40% of Alaskans statewide) are operating in conflict with principles of municipal law. DCED does not take the view that citizens of Fairbanks have failed to comply with principles of Alaska municipal law simply because they have chosen for the past thirty-seven years to remain a general law borough government.

City of Fairbanks Comment # 5

The Ketchikan consolidation petition seeks to maximize local self-government

DCED Response

This issue has been dealt with previously. Again, the City of Ketchikan and the Ketchikan Gateway Borough have committed significant resources over the past 10 years to the consideration of consolidation. These resources have included thousands of hours of professional staff time and the payment of some \$45,000 in consulting fees.

City of Fairbanks Comment # 6

Consolidation will result in abrogation of the City's tax cap, term limits, and annexation limitations.

DCED Response

The City states that its tax cap, term limits, and annexation limitations are the "product of home rule, which empowers local voters to shape and mold the type of government they

want.” The City incorrectly implies that a general law municipality cannot impose identical limits.

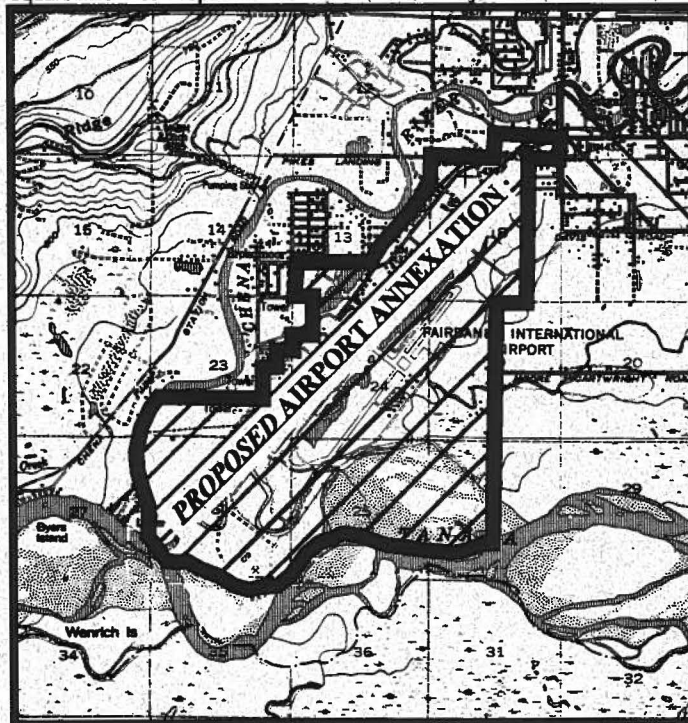
In fact, identical State laws govern term limits for general law municipalities and home rule municipalities. AS 29.20.140(d)-(e) provide as follows:

Except by ordinance ratified by the voters, no limit may be placed on the total number of terms or number of consecutive terms a voter may serve on the governing body. This section applies to home rule and general law municipalities.

Moreover, identical State laws also govern the levy and collection of municipal property taxes by general law municipalities and home rule municipalities. AS 29.10.200(46) expressly requires home rule municipalities to follow AS 29.45.010 – 29.45.570 regarding the levy of property taxes.

With regard to “annexation limitations” the simple fact is that State law imposes no annexation limit on the City of Fairbanks. The City is authorized by Alaska’s Constitution (Article X, Section 12) and by Alaska Statutes (AS 29.06.040 and AS 44.33.812) to petition for annexation without a vote of the residents of the territory proposed for annexation. The City of Fairbanks, in fact, last did so in March of 1995 when it sought the annexation of a 5.1 square mile area encompassing the Fairbanks International Airport and adjacent properties.⁹

- 5.1 Square Mile Area Proposed for Annexation to the City of Fairbanks in March of 1995.



⁹ In June of that same year, the City withdrew its petition.

In contrast, the Fairbanks North Star Borough must get voter approval or approval from 75% of the property owners for the annexation of territory to a service area. The Fairbanks North Star Borough code states in this regard as follows:

Section 14.01.171 Alteration of service area boundaries.

A. The assembly, by ordinance and after written notice to affected property owners, may alter the boundaries of any service area.

B. No new service area shall be formed if the new area can be served by annexation to an existing service area.

C. In the event of a proposed annexation to an existing service area, an election in accord with Section 14.01.071 through Section 14.01.081 shall be held after passage of the annexation ordinance. Only those registered voters residing within the proposed addition may vote. In the event that seventy-five percent (75%) of the property owners of record within the proposed addition consent in writing to the information, no election shall be required. (Ord. 81-22 § 2 (part), 1981)

The annexation limits of the FNSB would apply to the proposed Urban Service Area. When considering these and other effects of consolidation, it is important to keep in mind the following provisions of State law concerning consolidation.

AS 29.06.150(b). When two or more municipalities consolidate, the newly incorporated municipality succeeds to the rights, powers, duties, assets, and liabilities of the consolidated municipality.

AS 29.06.160. After a merger of consolidation, the ordinances, resolutions, regulations, procedures, and orders of the former municipalities remain in force in their respective territories until superseded by the action of the new municipality.

City of Fairbanks Comment # 7

Residents of the City must vote separately on their future.

DCED Response

The City asserts that it is necessary to have a separate vote among residents of the City of Fairbanks for the creation of the proposed Urban Service Area because State law requires voter approval for the exercise of powers on a service area basis by a second class borough. This matter was among the issues raised in DCED's inquiry to the State Attorney General's Office in the memorandum included as Appendix F in the Preliminary Report.

In a response dated March 15, 2001, the State Attorney General's Office concluded

With respect to your question as to whether voters in the existing home rule city (to become the Urban Service Area) must vote on propositions on the continued exercise of powers noted above, the answer is no. All of those powers listed were exercised by the City of Fairbanks prior to consolidation and, assuming consolidation is accomplished, the newly incorporated municipality will succeed to all of these listed powers by operation of law. See AS 29.06.150(b). No additional proposition duplicating these powers is necessary to be placed before the voters in order for the new municipality to have authority to exercise these powers.

A copy of the complete four-page March 15, 2001 response from the State Attorney General's Office is included in this Final Report as Appendix D.

Don Lowell, Petitioners' Representative

Don Lowell, the formally designated representative of the 4,042 voters of the FNSB and City of Fairbanks who initiated the Fairbanks consolidation petition, wrote a three-page letter commenting on the Preliminary Report. Mr. Lowell's comments are summarized in the shaded areas below. DCED offers a response to each of the principal topics raised by Mr. Lowell.

Don Lowell Comment # 1

The Preliminary Report indicates that additional areawide powers would be limited to solid waste, maintenance of the Fairbanks Health Center and cemeteries. The Petitioners did not propose adding the Health Center and cemeteries as areawide powers, though borough residents use both. The addition of cemeteries was an assumption made by the FNSB.

DCED Response

Mr. Lowell is correct. He emphasizes in his remarks that the State funds the Health Center. Mr. Lowell also notes that the City charges for opening and closing a grave at the cemetery and that volunteer organizations maintain the cemeteries. Given those circumstances, Mr. Lowell indicated at a March 7, 2001 forum on the Fairbanks consolidation proposal that making the two powers areawide would have no fiscal consequences for areawide property taxpayers.

The apparent lack of fiscal impact to areawide taxpayers suggests that this is likely to be a matter of little or no concern to the voters. Mr. Lowell indicated that the Petitioners have no objection to an amendment of the petition by the LBC to make the two powers areawide. Given these circumstances, and because the services in question are of an areawide nature, DCED recommends that the Commission modify the petition to provide for the areawide exercise of the powers by the proposed consolidated borough.

Don Lowell Comment # 2

The Preliminary Report discusses the election of a new Assembly but not a new Mayor. The Petitioners were pleased with the notice in the Preliminary Report that a new school board would not have to be elected.

DCED Response

As Mr. Lowell indicates, if the LBC grants the consolidation petition and if voters approve consolidation at an August 2001 election, voters will select a new mayor and a new assembly in November of 2001. New School Board members will not be elected. Consolidation takes effect upon the election of the new mayor and assembly.

Don Lowell Comment # 3

The Preliminary Report noted that the City of Fairbanks asserted that the consolidation proposal failed to meet the standards for a socially, culturally, and economically integrated population. The Final Report should note, however, that the FNSB reached the opposition conclusion.

DCED Response

Mr. Lowell is correct and the point he makes is a legitimate one. The FNSB stated in its Responsive Brief as follows:

A consolidated municipality must meet the standards for borough incorporation. Because the proposed consolidated Municipality would have the same boundaries as the existing Borough, it would meet most of the statutory incorporation standards. The population of the area is interrelated and integrated as to its social, cultural, and economic activities, and it is large and stable enough to support borough government. . .

(Brief of the Fairbanks North Star Borough in Opposition to the Proposed Consolidation (hereinafter, "FNSB Brief"), p. 12)

Don Lowell Comment # 4

To update line items 5 and 6 of Table 5 on page 55 of the Preliminary Report, it should be noted that the City of Fairbanks has now hired a fire chief and a police chief.

DCED Response

Among the components making up the FNSB's \$2,074,421 projected increase for the annual cost of operating a consolidated borough government were \$113,600 for a police chief and an additional \$113,600 for a fire chief. Those same figures were included in the FNSB's substitute table addressed under the discussion of "FNSB Comment # 3" in this Final Report.

Since the City is currently incurring the expense for those two positions, it would appear that the costs associated with the positions (which account for 11% of the FNSB projected cost increases) should no longer be included in such projections.

Don Lowell Comment # 5

Pages 58 and 59 of the Preliminary Report address the issue of bed taxes and economic development. "The Petitioners wholeheartedly endorse DCED's recommendation to request the LBC to amend the consolidation petition to authorize the new Municipality of Fairbanks to exercise economic development on an areawide basis."

DCED Response

Each of the responsive briefs filed in opposition to the consolidation petition in July of last year asserted that upon consolidation, the City of Fairbanks 8% bed tax would become an areawide borough revenue source. The FNSB addressed this issue in two parts of its brief:

Currently both the City and the Borough levy an areawide hotel bed tax. The Borough utilizes its bed tax revenues to pay for operation of the Carlson Activity Center, a parks and recreation facility which hosts concerts, conventions, and athletic events. The City distributes the majority of its hotel bed tax revenues to the Fairbanks Convention and Visitors Bureau and Fairbanks Industrial Development Corporation for economic development. (A portion is also distributed to other organizations.¹⁰) However, the hotel tax of the new Municipality is an areawide tax, and therefore must be used for areawide functions.¹¹ This therefore eliminates the opportunity for the new Municipality to fund economic development (a nonareawide power) with hotel tax revenues.¹²

(FNSB Responsive Brief, p. 18.)

¹⁰ (Footnote original) City Resolution 3848 allocating the funds for the CY00 budget is included as Exhibit 4.

¹¹ (Footnote original) AS 29.35.110:

Borough revenues received through taxes received on an areawide basis by the borough may be expended on general administrative costs and on areawide functions only. Borough revenues received through taxes collected on a nonareawide basis may be expended on general administrative costs and functions that render service only to the area outside all cities in the borough.

¹² (Footnote original) For the same reason, these areawide tax revenues will not be able to be appropriated for some other current uses, including the service area Public Works or law enforcement.

Consolidation will have a significant negative effect on the economic development organizations that currently receive funding from the City's hotel bed tax. Because the hotel tax will be an areawide tax, and economic development will be a nonareawide power, the consolidated municipality will be prohibited by law from distributing hotel bed tax funds for economic development.

(FNSB Responsive Brief, p 46.)

The City of Fairbanks stated as follows in its responsive brief:

It is noteworthy that the current City bed tax revenues are not designated for the "Urban Service Area" but instead would become part of the new borough's general fund.

(Brief of the City of Fairbanks in the Matter of the Petition for Consolidation of the City of Fairbanks and the Fairbanks North Star Borough, p. 4)

The Interior Taxpayers' Association stated in its responsive brief as follows:

The "bed tax" collected in the new municipality will be area wide and go into the borough coffers - it will not be earmarked for use by the "Urban Service Area." While much of that money presently goes to tourism related non-profits, some of it is used by the city for city operations (snow removal, road repairs, etc).

(Brief, Interior Taxpayers' Association, Inc., p. 2)

Mr. Lowell responded in the Reply Brief filed on behalf of the Petitioners as follows:

The new municipality assembly, as proposed in the Consolidation Petition, is not restricted from continuing present use of the (City) Bed Tax.

(Petitioners' Reply Brief, Section 2, page 4.)

DCED's Preliminary Report accepted the declaration of the three respondents concerning the effect of consolidation upon the City's bed tax. However, upon further reflection and consultation with the State Attorney General's Office, DCED recognizes that the assertion by the respondents regarding the matter was incorrect. Mr. Lowell was correct in his characterization of the matter in the Petitioners' Reply Brief.

As noted previously, State law (AS 29.06.160) provides that, "After merger or consolidation, the ordinances, resolutions, regulations, procedures, and orders of the former municipalities remain in force in their respective territories until superseded by the action of the new municipality." Thus, upon consolidation, the City's 8% bed tax becomes an 8% bed tax levied on a service area basis within the Urban Service Area. The

proceeds of that bed tax are reserved for service area functions. This allows (in fact, requires) the continuation of the status quo with regard to the allocation of proceeds from the bed tax levies.

Don Lowell Comment # 6

The Petitioners request that DCED clarify the issue of errors in the transition plan in order that the LBC may make remedial amendments to the petition.

DCED Response

Part 3 of this Final Report includes specific recommendations for the amendment of the petition by the LBC to remedy identified errors in the transition plan and the plan for the election of the new assembly.

Don Lowell Comment # 7

The Municipality of Fairbanks should be designated as Trustee for the present City of Fairbanks Permanent Fund and for the City of Fairbanks Techite proceeds.

Presently, the City of Fairbanks Permanent Fund is subject to the terms and conditions of Section 8.8 of the Home Rule Charter of the City of Fairbanks. If consolidation occurs, the new Municipality of Fairbanks will have a duty to comply with the terms and conditions of the Section 8.8 of the Home Rule Charter of the City of Fairbanks (see AS 29.06.150 and AS 29.06.160). In other words, just because the City of Fairbanks will be dissolved through consolidation, the terms and conditions governing the Permanent Fund will not lapse. The new consolidated borough will be obligated to follow the terms and conditions set out in Section 8.8 of the Charter. The same would hold true for any formal arrangements governing the use of the Techite proceeds.

On pages 73 and 74 of the Preliminary Report, DCED cited several express or implicit provisions in current State law that allow or require the dedication of funds for a particular service area (or other jurisdictional unit of a borough) where those funds were generated in that service area (or other unit of a borough). Dedication of the Permanent Fund for the Urban Service Area in the proposed Municipality of Fairbanks would be consistent with those State laws. Any other course would not be consistent with the principles set out in those laws and with the provisions of AS 29.06.150 and AS 29.06.160 cited above.

Sec. 8.8. City of Fairbanks Permanent Fund.

(a) A permanent fund is hereby created from the proceeds of the sale of municipal property and assets.

(b) The permanent fund shall be managed by the city finance director under the oversight of a three (3) person fund review board, appointed by the mayor and confirmed by the council, with the following conditions:

- (1) The principal of the fund shall be invested in such types of income producing investments as shall be specifically designated by ordinance. Income derived from investment of permanent fund principal shall be used to provide funding for capital and operating expenses of the city and for reinvestment in the fund. Unappropriated or unencumbered balances of income remaining at the close of each fiscal year are transferred to fund principal.
- (2) The principal, or a portion of the principal, may only be used for purposes approved by seventy (70) percent of the qualified voters voting on a ballot proposition in a regular election.
- (3) The earnings of the permanent fund available for appropriation by the council shall be limited to three million six hundred thousand dollars (\$3.6 million) in the first year, and adjusted each year by the annual inflation rate as determined by the Anchorage CPI index; and an additional amount not to exceed fifteen (15) percent of the total earnings from the prior year shall be available for capital projects and equipment.
- (4) No city funds shall be expended to influence future decisions to be made by voters regarding the fund's principal.

(Ord. No. 5292, § 1, 7-22-1996/10-8-1996)

Don Lowell Comment # 8

The Petitioners encourage the resolution of issues raised in Appendix F of the Preliminary Report regarding the nature of the consolidation election to be resolved in a manner that provides for straightforward election on the matter.

DCED Response

The previously noted March 15, 2001 opinion of the State Attorney General's Office indicates that it is neither necessary nor appropriate to present separate propositions regarding matters such as the creation of the Urban Service Area, the retention of existing taxes, or the assumption of areawide powers such as solid waste collection. Therefore, if the LBC approves the consolidation proposal, a single proposition on the matter will be placed before the areawide voters of the Fairbanks North Star Borough.

As noted previously, a copy of the opinion from the Attorney General's Office is included as Appendix D of this Final Report.

Bonnie Williams

Bonnie Williams is a resident of the Fairbanks North Star Borough and member of the FNSB Assembly. She wrote a nine-page letter commenting on DCED's Preliminary Report. Her comments are summarized in the shaded areas below. DCED offers a response to each of her principal comments.

Bonnie Williams Comment # 1

"The supportive information, in a few instances, was a bit weak." DCED reached the conclusion that the FNSB has a well integrated and interrelated population "because an earlier report had had reached such a conclusion."

DCED Response

The correspondent misconstrues the basis for DCED's conclusion that the population of the FNSB is well integrated and interrelated socially, culturally, and economically. The correspondent incorrectly characterizes the 1996 formal conclusion by the Local Boundary Commission regarding precisely the same legal standard at issue here as merely "an earlier report."

The Commission's 1996 conclusion is far more significant than some unidentified "earlier report." The Local Boundary Commission is the quasi-judicial board established under Alaska's Constitution to render judgments whether the standards governing the creation and alteration of municipal governments in Alaska (including consolidation) are satisfied. While the Commission's determinations are subject to judicial appeal, Alaska's Supreme Court has invariably deferred to the Commission's conclusions regarding the satisfaction of standards as long as those conclusions have a reasonable foundation. Therefore, the 1996 formal conclusion by the Local Boundary Commission regarding this standard is relevant and significant in the current proceeding,

It is noteworthy that a majority of the current members of the Local Boundary Commission were members of the Commission when the 1996 determination in question was made. Further, the Commission's 1996 determination was consistent with the formal position taken at the time by the FNSB.

Moreover, the FNSB's responsive brief in the current consolidation proceedings maintains the same view regarding the standard at issue that was expressed by the Borough in 1996. Specifically, the FNSB's contemporary responsive brief states, "The population of the area is interrelated and integrated as to its social, cultural, and economic activities, and it is large and stable enough to support borough government." (See FNSB responsive brief, page 12.)

Contrary to the suggestion by the correspondent, DCED did not rely exclusively on the Commission's 1996 conclusion or the FNSB's views in reaching its conclusion in this instance. DCED's analysis of the standard comprises three pages in the Preliminary Report (pages 48 – 50). DCED expressed the view that since the current FNSB boundaries have been in place since 1983, it is reasonable to assert that there is a strong presumption that the population standard is met. DCED also discussed other relevant information regarding the standard. This included the number and nature of communities in the FNSB and the size and stability of its population.

DCED certainly could have offered further evidence of the social, cultural, and economic interrelationships and integration of the FNSB population. Frankly, however, the need for additional evidence on the point did not seem necessary when the Preliminary Report was written in December of last year, nor does it seem necessary today.

Bonnie Williams Comment # 2

Reference to other consolidated local governments in the United States was offered as proof by DCED that consolidation is a reasonable action. "No research or information was provided on the critical difference between our communities and these others."

DCED Response

Contrary to the correspondent's assertion, DCED did not address consolidation of local governments in other states in an effort to 'prove that consolidation of local governments in Fairbanks is a reasonable action.' Since, as the report notes, only one percent of the county (or county equivalent) governments in the nation are consolidated, that would hardly seem to be evidence of the nature that the correspondent suggests that DCED was attempting to provide.

DCED's report addressed the issue of consolidation in the broad context of the local government structure in Alaska as compared to the rest of the nation. It was DCED's intention to show that Alaska, with its modern and innovative constitutional provisions regarding local government, was a leader among states regarding the extent to which regional governments have consolidated. DCED's report noted that two-thirds of the states have no consolidated regional governments. In contrast, Alaska has the greatest percentage of consolidated regional governments in the nation. Thirty-one percent of Alaska's organized boroughs are wholly consolidated. If the three pending proposals for consolidation are approved, the number of wholly or substantially consolidated boroughs in Alaska will rise to fifty percent.

Bonnie Williams Comment # 3

"On page 71 regarding social security . . . the conclusion is meaningless." The report "is entirely devoid of any understanding of the impact such a change [in Social Security coverage] would make upon the affected employees."

DCED Response

What the correspondent incorrectly describes as a 'meaningless conclusion by DCED' was, in fact, clearly labeled in DCED's Preliminary Report as a summary of views expressed by the FNSB.

The correspondent's comment that DCED's report is "entirely devoid of any understanding of the impact of such a change would make upon affected employees" is unwarranted.

DCED addressed the effects of consolidation on pages 72 – 75 of its Preliminary Report. The report included the statement that the consolidation would certainly "present a broad range of challenges and complications." DCED indicated that such challenges and complications would be similar to those that occurred when local governments in Anchorage unified. DCED's Preliminary Report also included a fourteen-page account of the effects of unification in Anchorage. That account addressed issues such as employee attitudes and morale, management styles and philosophy, personnel and labor relations, and other relevant topics.

Bonnie Williams Comment # 4

"After consolidation the city portion [of State Revenue Sharing] would simply be a part of the whole, unidentifiable and inseparable. The new municipality would have to use these merged funds for the good of the whole.

The consequence of this fact is that there would therefore be less money available for the operation of the various services of the proposed Urban Service Area and that therefore, Urban Service Area property taxes would have to rise or expenditures be lowered."

DCED Response

The correspondent is wrong about the effects of consolidation on Municipal Revenue Sharing. The City of Fairbanks receives State Revenue Sharing under two components. The first is the tax equalization component. AS 29.60.050 restricts the use of the tax equalization component funding as follows, "An equalization entitlement generated by the tax levy of a taxing unit may be used only for authorized expenditures of that taxing unit . . ." The term "taxing unit" is defined by AS 29.60.080 to include a service area.

In Fiscal Year 2001, the City of Fairbanks received \$131,834 under the tax equalization component of the State Revenue Sharing program. 81.75% of the equalization funding received by the City was the result of taxes levied by the City. If the same occurred in the Urban Service Area, then at least 81.75% of the funding must be spent only for authorized expenditures of that service area. Of course, nothing would prohibit the remaining 18.25% from also being spent for the exclusive benefit of the service area.

The second component relates to road maintenance and health facilities funding. In Fiscal Year 2001, the City of Fairbanks received \$46,678 in State Revenue Sharing based on the extent of the City's road maintenance responsibilities. 3 AAC 130.052(4) states that

If the applicant is a borough that provides road maintenance services by service area, the applicant must agree to allocate the amount the applicant receives under AS 29.60.110, including the cost-of-living differential allowed under AS 29.60.160, for road maintenance within a service area, to that service area.

Thus, the law provides that all funds derived from the maintenance of roads on a service area basis in the proposed Urban Service Area must be allocated for the benefit of that service area.

In Fiscal Year 2001, the City of Fairbanks received \$86,946 in funding for health facilities. AS 29.60.120(c) provides that money received under this component must be used only for health services or operation and maintenance of health facilities.

Bonnie Williams Comment # 5

DCED "makes the assumption that it is in the State's best interest to consolidate local governments. The logical end conclusion of this would be to consolidate until there is a single local government for all of Alaska. Is it the contention of the Local Boundary Commission that in fact, a single monster local government would be in the best interest of the State?"

DCED Response

DCED did not make an "assumption" regarding this issue, but, instead reached a conclusion based on facts addressed on pages 66 – 70 of its Preliminary Report. DCED noted therein that the principles guiding the LBC's determinations of the State's best interest are based on the application of relevant constitutional provisions. Those provisions favor minimum numbers of local governments, as addressed on pages 34 – 41 of DCED's Preliminary Report. For example, DCED noted on page 35 that the constitutional founders "viewed the long-term relationships between the borough and the city as a gradual evolution to unified government." DCED noted further on page 37, that the Alaska Supreme Court has held that "... unification is consistent with the purpose expressed in Article X, section 1 of minimizing the number of local government units." Additionally, DCED noted on page 39 that the Task Force on Government Roles, established by the State Legislature in 1991 at the request of the Alaska Municipal League, concluded that, "Unification of borough and city administrations should be encouraged wherever possible for more efficient and cost-effective service delivery."

The correspondent asks whether it is the Local Boundary Commission's contention that "a single monster local government would be in the best interest of the State." Notwithstanding the rhetorical nature of the question, a response is warranted. The correspondent mischaracterizes views expressed by DCED as those of the LBC. As noted in the Preliminary Report, DCED and the LBC are independent of each other regarding such determinations.

While the correspondent asserts that "the logical end conclusion" of the minimum local governments clause is to create a single local government encompassing the entire state, the assertion ignores other fundamental provisions of law. Among them is Article X,

Section 3 of Alaska's Constitution which provides that, "Each borough shall embrace an area and population with common interests to the maximum degree possible."

Bonnie Williams Comment # 6

"While the authors of the State Constitution sought to provide, allow for and encourage local government consolidation, was their intent an unrestrained desire, and if so, is it necessary for us to blindly follow their wishes, without superimposing our own wisdom?"

DCED Response

It is unclear to whom the correspondent is referring when she writes about "superimposing *our own wisdom*" (emphasis added). The correspondent notes in her letter that the views she expresses are personal and do not "represent the voice, opinion or position of the Assembly as a whole, or of the borough administration."

DCED never suggested that the intent of the constitutional convention delegates was an "unrestrained desire" for consolidation. The delegates stipulated in Article X, Section 3 of the Constitution that methods for consolidation must be established by the legislature. Those methods allow a petition to be initiated by the voters. In this particular case, more than 4,000 local voters signed the petition.

The law also provides for analysis of the proposal by DCED, a public hearing, and a determination by the LBC whether applicable standards are met. If the Commission concludes that the standards are met and if the Commission approves the petition, consolidation is then subject to a vote among the residents of the borough. The process established in law seems to be a reasonable and traditional manner for determining the will of the voters.

Bonnie Williams Comment # 7

"Population density is important [in considering the merits of consolidation], as is the total physical size of a governmental entity." The correspondent then compares the FNSB to certain of the consolidated governments in the nation listed in DCED's Preliminary Report. Those were San Francisco, New Orleans, and Kansas City.

DCED Response

The correspondent asserts that "population density is important" with regard to the pending consolidation proposal, but does not explain the basis for the assertion. Population density is not a standard or factor identified in the law for consideration in this pending consolidation proceeding.¹³

¹³ Population density is relevant for consideration in city incorporation and city annexation proceedings (see 3 AAC 110.040(a)(2), 3 AAC 110.100(3), 3 AAC 110.130(a)(2), and 3 AAC 110.920(a)(1)). However, standards for city incorporation and annexation do not apply to the pending consolidation proposal. 3 AAC 110.060(a) lists "population density *patterns*" (emphasis added) among six factors which the LBC *may* consider in determining whether the boundaries of a proposed borough conform generally to natural geography, and include all land and water necessary to provide the full development of essential borough services on an efficient, cost-effective level.

Moreover, the correspondent's comparisons of the population densities of governments in other states are selective. She notes, for example, that the consolidated government of San Francisco has a population density of 15,602.5 persons per square mile, while the FNSB has a population density of only 11.42 persons per square mile. However, there is no mention that the consolidated government of Anaconda – Deer Lodge County, Montana has a population density quite similar to that of the FNSB (13.2 residents per square mile).

Population densities of unified or consolidated boroughs in Alaska are listed in Table 4. Figures for the Haines Borough, Ketchikan Gateway Borough, and FNSB (all of which are subject to pending consolidation proposals) are also included.

Table 4 Population Densities - Existing & Proposed Unified/Consolidated Boroughs	
Borough	Persons per Square Mile
Municipality of Anchorage	134.77
Fairbanks North Star Borough	11.28
City and Borough of Juneau	9.63
Ketchikan Gateway Borough	7.99
City and Borough of Sitka	1.94
Bristol Bay Borough	1.44
Haines Borough	0.92
City and Borough of Yakutat	0.08

As is the case on the national level, Table 4 demonstrates that the population densities of existing and proposed consolidated governments in Alaska vary considerably.

As noted earlier, the correspondent also asserts that “the physical size of a governmental entity” is important in considering the merits of a consolidation proposal. She stresses that the “FNSB *is the size of a state, not of a metropolitan area*” (emphasis original).

DCED does not consider the size of a borough to be significant in terms of judging the merits of a consolidation proposal. Here again, there are no specific borough consolidation standards or factors in existing law relating to geographic size. State law favors boroughs that encompass large, natural regions.

While the FNSB is indeed larger than some states in the nation, it is not particularly large in comparison to other existing organized boroughs in Alaska. The North Slope Borough, Alaska's largest organized borough is nearly 13 times larger than the FNSB. Table 5 ranks each of Alaska's 16 organized boroughs in terms of its geographic size.

Table 5
Geographic Size of Alaska's Sixteen Organized Boroughs

Borough	Size in Square Mile
North Slope Borough	94,770
Northwest Arctic Borough	39,150
Lake and Peninsula Borough	29,560
Matanuska-Susitna Borough	25,260
Kenai Peninsula Borough	21,330
Aleutians East Borough	15,020
Denali Borough	12,610
Kodiak Island Borough	12,150
City and Borough of Yakutat	9,251
Fairbanks North Star Borough	7,430
City and Borough of Sitka	4,530
City and Borough of Juneau	3,248
Haines Borough	2,730
Municipality of Anchorage	1,940
Ketchikan Gateway Borough	1,752
Bristol Bay Borough	850

Bonnie Williams Comment # 8

"We need to move beyond a mindless mantra of adhering to the guidance of the constitutional authors and consider how [the] application of [a constitutional policy encouraging consolidation] would impact local people. . . .

. . . Historically, from the time of Hammurabi onward, human response to the creation of cities and the consequent intense population density has been to create a city government – to rule, regulate and control the conditions that arise when hundreds or thousands of people are compressed into a small square mileage."

DCED rejects the correspondent's apparent premise that because humans have formed city governments over the past 39 centuries "to rule, regulate and control conditions" that somehow consolidation of the City of Fairbanks and the FNSB must, therefore, be unwise or unwarranted.¹⁴

The correspondent's reference to "a mindless mantra of adhering to the guidance of the constitutional authors" is apparently made with respect to DCED's review of the constitutional principles relating to consolidation. Laws governing consolidation of local governments in Alaska specifically require that consideration be given to "standards under the state constitution" (AS 29.06.130). It is essential, therefore, that those standards be fully understood and properly examined.

References to King Hammurabi or even contemporary local government structures in other states in the nation are irrelevant to consideration of the pending consolidation proposal. It is abundantly clear that the delegates to Alaska's constitutional convention discarded the local government structure found in other states.

¹⁴ The foundation of American municipal government was not laid by Hammurabi, the 18th century B.C. king of Babylon, but rather by the English some 3,500 years later. (See *McQuillin Mun Corp* §1.08 [3rd Ed]).

Being the most modern state governments, Alaska and Hawaii had the opportunity to discover and avoid the mistakes of all of the other states. The constitutional convention's Committee on Local Government took maximum advantage of this fact when it met more than forty-four times between November 15, 1955 and January 18, 1956 to invent the structure for local government in Alaska.

The Committee on Local Government enjoyed one other critical advantage in designing Alaska's system of local government – under territorial law (and before), Alaska's local government system was quite rudimentary. There were only about 30 city governments and no regional governments. This circumstance allowed the Committee on Local Government to be innovative. The result was a fresh approach to local government in which boroughs were the cornerstone for the delivery of municipal services in rural and urban areas. Moreover, the Constitution promotes the consolidation of local governments.

David Shewfelt

Mr. Shewfelt wrote a one-page e-mail note commenting on DCED's Preliminary Report. His principal comments are summarized in the shaded areas below. DCED's response follows each set of comments.

David Shewfelt Comment # 1

How we can preserve a police department in a service area?

DCED Response

Other borough governments in Alaska, notably Anchorage and Juneau, provide municipal police service on a service area basis. Moreover, boroughs in Ketchikan and Haines, which are also the subject of pending consolidation proposals, are utilizing the same "police service area in the former city" approach as proposed in the Fairbanks consolidation petition.

David Shewfelt Comment # 2

Would we lose all the present city criminal codes?

DCED Response

If the proposed consolidation occurs, the City of Fairbanks Code of Ordinances would remain in effect (but only in the Urban Service Area) unless repealed. Boroughs can adopt particular codes for service areas. State law allows a borough to exercise in a service area any power not otherwise prohibited by law.

David Shewfelt Comment # 3

The police would become employees of the Borough. Would the state still provide police services to the borough outside the present city?

DCED Response

Upon consolidation, Fairbanks police department employees would indeed become employees of the consolidated borough who are paid from service area funds. Police in Anchorage, Juneau, Sitka, North Slope and Bristol Bay boroughs are employed by those borough governments. Similarly, police in Haines and Ketchikan would become employees of their respective boroughs if pending consolidation proposals relating to those communities are approved.

Police service is a discretionary municipal power in Alaska. The State does not require any city or borough government to provide police service. Therefore, it is no more valid to assert that "a service area could opt not to have a police force and request the AST to expand their services to make up for the loss of city police" than it would be to say that "the City of Fairbanks could choose not to have a police force and request the AST to expand their services to make up for the loss of city police."

The Commissioner of the Alaska Department of Public Safety confirmed in 1998 that consolidation would not alter provision of Alaska State Trooper services.

David Shewfelt Comment # 4

"If we are going to have consolidation it should include North Pole and be a first class Borough."

DCED Response

The Petitioners excluded the City of North Pole from the consolidation proposal, in part, because voters have twice rejected borough-wide unification propositions. Consolidation allows the flexibility to leave certain existing municipalities in place. The Petitioners' principal objective was to consolidate local governments serving the greater Fairbanks area. Consolidation proponents in Ketchikan are following a comparable approach given that the City of Saxman is excluded from the Ketchikan consolidation proposal.

Regarding the correspondent's preference for a first class borough, DCED notes that the first class borough is the least popular form of borough government in Alaska. There are no first class boroughs currently in existence in Alaska. That circumstance is probably due to the fact that a first class borough gives significant authority to the assembly to institute new services and powers without voter approval.

The Petitioners chose to consolidate as a second class borough government. Residents of the FNSB are certainly most familiar with that form of borough government.

David Shewfelt Comment # 5

"To go from a home rule city to a second class borough is the wrong thing to do."

DCED Response

This issue has been addressed extensively in the Preliminary Report and earlier in this Final Report. DCED concludes that the Petitioners' choice to seek the formation of a general law borough is entirely reasonable.

David Shewfelt Comment # 6

"This Borough is very diverse, ranging from very rural to very urban. The separate governments serve the different needs quite well."

DCED Response

Most boroughs in Alaska include widely diverse areas – both rural and urban. Three of Alaska's sixteen organized boroughs are unified (Juneau, Sitka, and Anchorage); two others are effectively consolidated (Bristol Bay and Yakutat). Three others have pending proposals for consolidation (Fairbanks, Ketchikan, and Haines).

David Shewfelt Comment # 7

"The real prize in this deal is the City of Fairbanks 85 million in the bank. That's the driving force in this action."

DCED Response

As addressed in DCED's response to "Don Lowell Comment # 7" the Municipality of Fairbanks would be obligated to comply with the current terms and conditions of Section 8.8 of the Home Rule Charter of the City of Fairbanks. The City of Fairbanks Permanent Fund is now, and always should be, reserved for the benefit of the citizens and property owners within what today is defined as the City of Fairbanks.

Garry Hutchison

Garry Hutchison wrote a one-page e-mail offering comments on DCED's Preliminary Report. Mr. Hutchison's principal comments are summarized below in the shaded areas. DCED's responses follow.

Garry Hutchison Comment # 1

"... the consolidation should not go forward unless the City residents have the right to elect their service area commissioners. If a change in state law is required, then that should occur first and the consolidation petition modified appropriately. Otherwise, this thing will surely fail. Does anyone think that the residents of the City of Fairbanks will allow themselves to be disenfranchised, by giving up the right to elect the individuals that establish service levels and tax rates in favor of a slate appointed by the Borough Assembly?"

DCED Response

State law (AS 29.35.460) allows, but does not require, the assembly of a general law borough to provide for an elected service area board. DCED considers this issue to be a political judgement. The predominant views of the residents of one region of the state may differ from the views of others on such matters. For example, the unified home rule Municipality of Anchorage (MOA) operates approximately 61 service areas. Among these is a service area called "City Service Area" with boundaries identical to the boundaries of

the former City of Anchorage with service area functions similar to those of the former City of Anchorage. The MOA City Service Area does not have an elected service area board, although 21 other MOA service areas have elected boards. It is noteworthy that all of the 21 MOA service areas with elected service area boards have either a single-purpose or narrow purposes. For example 18 of the 21 Anchorage service areas with elected boards were established as "limited road service areas."

The pending proposal for a consolidated home rule borough in Ketchikan includes charter provisions (Section 12.05) similar to State law (AS 29.35.460) that permit, but do not mandate, an elected service area board. The Petitioner, (City of Ketchikan) does not anticipate an elected service area board for the service area that would replace the City of Ketchikan if the proposed consolidation occurs.

The proposed home rule borough in Haines includes charter provisions (section 12.04) similar to State law (AS 29.35.460) that permits, but does not mandate, an elected service area board. Again, the Petitioner (City of Haines) would not necessarily have an elected service area board for the service area that would replace the City of Haines if the proposed consolidation occurs.

Garry Hutchison Comment # 2

"...the consolidation petition should require approval by a majority of City voters. This vote by the City of Fairbanks could occur prior to the Borough-wide vote or at the same time. Otherwise, the consolidation would be a "take-over", assuming the majority of Borough voters approve it."

DCED Response

The issue of consolidation is decided by an areawide election. The characterization of matters decided by areawide elections as a "take-over" is no more fair or suitable than to say that any areawide election of the FNSB or any other borough in Alaska is inappropriate for the same reasons.

Ron Kovalik

Mr. Kovalik wrote a six-page letter expressing opposition to the consolidation proposal. Mr. Kovalik's principal comments are summarized below in the shaded areas. DCED's responses follow.

Ron Kovalik Comment # 1

"If there were 300,000 people living in this borough there might be enough of a base to pay for all these expanded powers. Why do you want to support and encourage a scheme that promotes more government, bigger government, more people on the payroll, and more expensive government?"

DCED Response

The correspondent's comments are not so much remarks about DCED's Preliminary Report as they are an expression of a personal opinion about the effects of consolidation. As noted in the Preliminary Report and earlier in this Final Report, the Petitioners propose no significant expansion of powers for the proposed Municipality of Fairbanks. Beyond dissolution of the City of Fairbanks and its reconstitution as the Borough Service Area, changes in the structure of local government in Fairbanks that would result from consolidation are quite limited.

Ron Kovalik Comment # 2

"How soon will this scheme force building permits and inspectors out into the borough hinterlands?"

DCED Response

Consolidation would not force building permits or inspectors into any area that is not currently subject to such.

Ron Kovalik Comment # 3

"The proposal was sent to: City, Boro (sic), and a long string of labor unions dependent on government jobs and contracts."

DCED Response

The process for petitioning for consolidation is both public and inclusive. Efforts are made to ensure that all individuals and organizations having an interest in a consolidation proposal are informed about the matter.

Ron Kovalik Comment # 4

"The City has police & fire fighting powers. The City contracts have 'no volunteer' clauses. Will the new borough have to get rid of all the volunteer firefighters and start hiring?"

DCED Response

Contracts and other requirements that currently apply exclusively to the City of Fairbanks (such as labor agreements with the alleged "no volunteer clauses") will not be extended beyond the Urban Service Area as a result of consolidation.

Ron Kovalik Comment # 5

"... if this scheme goes forward you can bet the State of Alaska will try to pull our the troopers and the D.O.T."

DCED Response

As noted in the response to Mr. Shewfelt's comments, the Commissioner of the Alaska Department of Public Safety confirmed in 1998 that consolidation would not alter provision

of Alaska State Trooper services. Similarly, there is no basis to assert that the State Department of Transportation and Public Facilities will reduce the extent of its services to the greater Fairbanks region as a result of consolidation.

Ron Kovalik Comment # 6

"How much balance, and what kind of checks-and-balances exist in a boro (sic) that is over 47% government dependent?"

DCED Response

It is unclear what the correspondent means by "government dependent." If he is referring to individuals employed by the Federal, State, and local governments, the most recent data from the Alaska Department of Labor and Workforce Development indicate that 10,254 residents of the FNSB were employed governments in 1998. That figure represented 31.7% of the 32,336 FNSB residents employed at that time. The level of government employment in the FNSB is somewhat higher than the statewide average of 26.26%. (Source: 1998 Employment and Earning Summary Report, published February, 2000.)

The somewhat higher level of government employment in the Fairbanks region is due to the significant number of University of Alaska and military employees in the area. There is no reason to believe that University of Alaska and military employees have any more favorable bias toward local government than other citizens of the greater Fairbanks area.

With respect to local government employment in the FNSB, the latest figures from the Department of Labor and Workforce Development indicate that local governments employed 80.5 individuals for every 1,000 workers in the FNSB during 1998. In comparison, local governments in the remainder of the state employed 125.6 individuals for every 1,000 workers during the same time period. In other words, local government employment (expressed in terms of the number of employees per 1,000 workers) in other parts of Alaska is *much* greater (56% higher) than it is in the FNSB.

Recommendations to the Local Boundary Commission

Having carefully considered the extensive comments on its Preliminary Report in this matter, DCED affirms its preliminary conclusion that all applicable standards for consolidation of the home rule City of Fairbanks and the second class Fairbanks North Star Borough are satisfied by the pending proposal and that the proposal is in the best interests of the State.

Based on the analysis and conclusions in the Preliminary Report and this Final Report, DCED makes the following four recommendations to the Local Boundary Commission.

1. That the Local Boundary Commission amend Section 7 on page two of the petition to add the following powers to be exercised on an areawide basis by the Municipality of Fairbanks:

- ◆ Fairbanks Health Center; and
- ◆ Cemeteries.

2. That the Local Boundary Commission amend Section C of Exhibit D of the petition concerning the election of the initial assembly members by substituting the following text:

C. Election.

Candidates for the assembly shall not be required to identify a specific seat by name in designating the office for which the candidate seeks election. The initial elected members of the assembly shall determine by lot the length of their terms of office so that a proportionate number of terms expire each year.

3. That the Local Boundary Commission amend the following components of the Transition Plan, Exhibit I of the petition, to read as follows (proposed new text is underlined in bold type and proposed deleted text is capitalized and bracketed):

Municipal ordinances

The City of Fairbanks and the Fairbanks North Star Borough each have municipal laws or codes[,] which govern the activities of the two separate governments. All ordinances, resolutions, regulations, procedures, orders and rules of the former municipalities remain in force in their respective territories [EFFECT IN THE FORMER GOVERNMENTS WILL CONTINUE IN FULL FORCE AND EFFECT] until superseded by the new municipality. [THERE ARE] Several areas of duplication or conflict [OVERLAP] may [THAT WILL] need to be addressed [ELIMINATED] immediately, including the rules of

the governing body, the personnel ordinances, and ordinances relating to purchasing, finance and elections. [THE MAYOR, IN CONSULTATION WITH THE LAW DEPARTMENT, WILL REVIEW BOTH MUNICIPAL CODES AND DESIGNATE WHICH CODE OR INTERPRETATION APPLIES. THE DESIGNATION IS EFFECTIVE IMMEDIATELY AND WILL BE COMMUNICATED TO THE ASSEMBLY. THE DESIGNATION IS APPROVED UNLESS THE ASSEMBLY, WITHIN 21 DAYS, ADOPTS A CONTRARY INTERPRETATION BY RESOLUTION. THE NEW MUNICIPAL ASSEMBLY MAY ADOPT A NEW ORDINANCE TO ADDRESS SPECIFIC NEEDS OR CONFLICTS.]

Employees

The approval of the consolidation petition by the voters creates the new consolidated municipality. The election of the assembly and mayor will constitute the new municipal government. Employees of the former city and borough governments become employees of the new Municipality of Fairbanks. The Petitioners anticipate that most employee positions will be retained by the consolidated borough [UNAFFFECTED BY THE CONSOLIDATION]. The Petitioners believe that the city and borough will have a few overlapping or duplicate services and positions. Most all the duplication occurs at the upper administrative level of government. Any employees whose positions are eliminated by the plan of organization should [WILL] be eligible for reassignment to available positions for which they are qualified.

Except where otherwise necessitated by law (e.g., the automatic termination of the "218 Agreements" that provide for Social Security coverage for employees of the Borough, including the school district, the Petitioners intend that pension plans, retirement plans and other benefits for current employees under collective bargaining agreements, personnel rules, or other legal or contractual provisions, in effect on the date of ratification of the consolidation [WILL] not be changed nor diminished. Regarding Social Security coverage, the new Municipality of Fairbanks would have the option of enrolling in the Social Security system or "an alternate qualified plan." The new Municipality will inherit the existing union contracts. The Petitioners intend that the new Municipality[AND] shall continue to be governed under the Public Employees Relations Act, AS 23.40. Unionized employees in the city and borough are represented by different collective bargaining organizations. The re-negotiation of new union contracts or employee votes to change representation is not necessary for consolidation.

Executive Plan

The Petitioners urge the Mayor to submit to the new assembly, not later than thirty days after the new assembly and mayor are elected, [THE MAYOR WILL SUBMIT TO THE ASSEMBLY] a detailed plan or organization of the executive branch combining[. THE PLAN WILL COMBINE] the overlapping services of the former separate borough and city administrations. The Petitioners also urge the assembly to consider the Mayor's plan within 20 days of submittal. [PROPOSED PLAN WILL BECOME LAW 20 DAYS AFTER SUBMITTED UNLESS SOONER ADOPTED WITH OR WITHOUT AMENDMENT OR REJECTED BY THE ASSEMBLY. IF THE PROPOSED PLAN IS REJECTED, THE MAYOR SHALL SUBMIT AN ALTERNATE PLAN TO THE ASSEMBLY WITHIN 15 DAYS OF THE REJECTION. IF, WITHIN 20 DAYS OF SUBMISSION OF THE ALTERNATE PLAN, NO PLAN OF ORGANIZATION HAS BEEN ADOPTED BY THE ASSEMBLY, THE

**ALTERNATE PROPOSAL SUBMITTED BY THE MAYOR BECOMES LAW.
ALL PREEXISTING EXECUTIVE DEPARTMENTS WILL REMAIN IN
EXISTENCE, EXCEPT FOR THE CITY MAYOR'S OFFICE, UNTIL THE
MAYOR'S EXECUTIVE PLAN TAKES EFFECT.]**

- 4. That the Local Boundary Commission approve the amended Petition for Consolidation of the City of Fairbanks and the Fairbanks North Star Borough.**

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Members

Kevin Waring
Chairperson

Kathleen Wasserman
Vice-Chairperson
First Judicial District

Nancy Galstad
Member
Second Judicial District

Allan Tesche
Member
Third Judicial District

Ardith Lynch
Member
Fourth Judicial District



Appendix A

**State of Alaska
Local Boundary Commission (LBC)**

NOTICE OF PUBLIC HEARING

**REGARDING PROPOSAL TO CONSOLIDATE THE HOME RULE
CITY OF FAIRBANKS AND THE SECOND CLASS FAIRBANKS
NORTH STAR BOROUGH AS A NEW SECOND CLASS BOROUGH**

The LBC will conduct a public hearing as noted below to consider the consolidation of the City of Fairbanks (City) and the Fairbanks North Star Borough (FNSB) as proposed in the March 16, 2000 petition filed by voters of the City and FNSB.

**Hearing Date & Time: Saturday, April 7, 2001, beginning
at 1:00 p.m.**

**Hearing Location: Fairbanks North Star Borough Assembly
Chambers
809 Pioneer Road
Fairbanks, Alaska**

Other hearing sites may be established by teleconference.

The hearing will be conducted in accordance with 3 AAC 110.560. Immediately following the hearing, the LBC may conduct a decisional session on the matter in accordance with 3 AAC 110.570.

Individuals with disabilities who need reasonable accommodations to participate at the hearing should contact LBC staff at (907) 269-4559 or TDD (907) 465-5437 by March 30, 2001. Questions regarding the consolidation proposal or the hearing may be directed to:

**LBC Staff
Department of Community and Economic Development
550 W. 7th Avenue, Suite 1770
Anchorage, Alaska 99501-3510
Telephone: (907) 269-4559
Fax: (907) 269-4539**

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Members

Kevin Waring
Chairperson
At-Large

Kathleen Wasserman
Vice-Chairperson
First Judicial District

Nancy Galstad
Member
Second Judicial District

Allan Tesche
Member
Third Judicial District

Ardith Lynch
Member
Fourth Judicial District



Appendix B

Agenda **Public Hearing** **Fairbanks Consolidation Petition**

1:00 p.m., April 7, 2001
Fairbanks North Star Borough Assembly Chambers

- I. Call to order
- II. Roll call & determination of quorum
- III. Approval of agenda
- IV. Comments by members of the Local Boundary Commission
- V. Comments by members of the public concerning matters **not** on the agenda
- VI. Public hearing on petition for consolidation of the City of Fairbanks and the Fairbanks North Star Borough
 - A. Summary of DCED's conclusions & recommendations
 - B. Petitioners' opening statement (limited to 10 minutes)
 - C. Respondents' opening statement(s) (if respondents make separate opening statements, they are limited to 3 minutes each; however, they may pool their allotted times)
 - i. Fairbanks North Star Borough
 - ii. City of Fairbanks
 - iii. Interior Taxpayers' Association, Inc.
 - D. Sworn testimony of witnesses with relevant expertise called by the Petitioners
 - E. Sworn testimony of witnesses with relevant expertise called by the respondents (respondents are encouraged to pool witnesses to avoid redundant testimony)
 - i. Fairbanks North Star Borough
 - ii. City of Fairbanks
 - iii. Interior Taxpayers' Association, Inc.
 - F. Sworn responsive testimony of witnesses called by the Petitioners
 - G. Period of public comment by interested persons (limited to 3 minutes per person)
 - H. Petitioners' closing statement (limited to 10 minutes)
 - I. Respondents' closing statement(s) (if respondents make separate closing statements, they are limited to 3 minutes each; however, they may pool their allotted times)
 - i. Fairbanks North Star Borough
 - ii. City of Fairbanks
 - iii. Interior Taxpayers' Association, Inc.
 - J. Petitioners' Reply (limited to 5 minutes)
- VII. Decisional session concerning the Fairbanks consolidation petition (optional)
- VIII. Comments from Commissioners and staff
- IX. Recess or Adjourn

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APPENDIX C

TIPS FOR EFFECTIVE PUBLIC COMMENT

If you plan to offer comments at the public hearing before the Local Boundary Commission (LBC) on the proposed consolidation of the City of Fairbanks and the Fairbanks North Star Borough, the following tips are offered to make your comments most effective.

1. Come prepared and informed. Plan your comments in advance. Prior to the hearing you may wish to review:

- ◆ the consolidation standards and procedures established in State law (see summary below);
- ◆ the consolidation petition; responsive briefs, and written comments on the petition,
- ◆ DCED's preliminary report, public comments on the preliminary report, and DCED's final report.

The above materials are available at the Noel Wien Library. With the exception of the final report which has not yet been issued, the documents are also available on the LBC web site at http://www.dced.state.ak.us/mra/LBC/Mrad_lbc.htm. When the final report is issued, it will be posted to the web site.

2. Provide relevant comments or testimony. The LBC's decision on the consolidation proposal will be based on standards established in law and applied to the facts of the proposal. Comments that address those standards will be most helpful to the LBC. In summary, the relevant standards relate to whether the proposed consolidated borough:

- ◆ promotes maximum local self-government;
- ◆ promotes a minimum of local government units;
- ◆ serves constitutional principles regarding preferred methods of service delivery (city governments vs. borough service areas)
- ◆ embraces an area and population with common interests to the maximum degree possible;
- ◆ includes a population large and stable enough to support the proposed borough government;
- ◆ has boundaries that conform generally to natural geography and include all areas necessary for full development of municipal services on an efficient, cost-effective level;
- ◆ has sufficient human and financial resources to operate a borough government;
- ◆ includes an area with transportation and communication facilities which allow communication and exchange necessary for development of integrated borough government;
- ◆ would deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin as a result of consolidation;
- ◆ would provide for an appropriate transition with respect to services, rights, powers, duties, assets, and liabilities of the former local governments; and
- ◆ serves the best interests of the State of Alaska;

3. Observe the rules.

- ◆ New written materials may not be filed at the hearing unless good cause for such is shown.
- ◆ Public comment will be limited to 3 minutes per speaker (does not apply to Petitioners' Representative and respondents) to ensure that the LBC will be able to hear from all persons who wish to speak. Please honor the time limits.

4. Avoid repetition. If an earlier speaker has addressed certain points to your satisfaction, you may wish to simply note that you agree with the earlier remarks, and then spend your allotted time on topics that have not yet been addressed.

Members

*Kevin Waring
Chairperson
At-Large*

*Kathleen Wasserman
Vice-Chairperson
First Judicial District*

*Nancy Galstad
Member
Second Judicial District*

*Allan Tesche
Member
Third Judicial District*

*Ardith Lynch
Member
Fourth Judicial District*



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Appendix D

MEMORANDUM

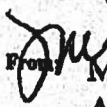
State of Alaska
Department of Law

To: Dan Bockhorst
LBC Staff Supervisor
Local Boundary Commission
Department of Community &
Economic Development

Date: March 15, 2001

File No.: 663-01-0082

Tel. No.: 465-3600

From:  Marjorie L. Vandor
Assistant Attorney General
Governmental Affairs -- Juneau

Re: Proposition to be placed
before voters regarding
Fairbanks consolidation
petition; AS 29.06.090 –
29.06.170

On behalf of the Local Boundary Commission, you have asked our opinion regarding which consolidation propositions must be placed before voters in the event the Local Boundary Commission (LBC) approves the pending petition for consolidation of the City of Fairbanks and the Fairbanks North Star Borough (FNSB).¹ The petition for consolidation at issue proposes to consolidate the existing home rule City of Fairbanks with the second class FNSB, to create a newly incorporated second class borough.² *Id* The petition provides for the City of Fairbanks to become an urban service area of the new borough. The city's home rule status and charter will dissolve.³

Under AS 29.06.150(b), assuming the petition for consolidation is approved by the LBC under AS 29.06.130 and the voters under AS 29.06.140, the newly incorporated municipality will succeed to the rights, powers, duties, assets, and liabilities of the consolidated municipalities. Further, under AS 29.05.160, after consolidation, the ordinances, resolutions, regulations, procedures, and orders of the former municipalities

¹ AS 29.71.800(6) reads: "consolidation" means dissolution of two or more municipalities and their incorporation as a new municipality.

² See *Preliminary Report on the Proposal to Consolidate the City of Fairbanks and the Fairbanks North Star Borough* (Dec. 2000), pp. 1 – 2.

³ AS 29.06.170 provides that the provisions for merger and consolidation of municipalities apply to home rule and general law municipalities. Therefore, the charter of the city no longer would be viable if the City of Fairbanks is consolidated with FNSB to form the new second-class borough, Municipality of Fairbanks.

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Re: Fairbanks consolidation petition

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remain in force in their respective territories until superseded by the action of the new municipality.

The answers to your questions are governed by the provisions of AS 29.06.090-29.06.170. We will address each of your questions below.

Question No. 1: Must voters in the existing home rule City of Fairbanks (which is proposed to be reconstituted as the Urban Service Area of a new general law second class borough) also vote on propositions to authorize the new consolidated general law borough to

- levy in the Urban Service Area a 5% sales tax on liquor;
- levy in the Urban Service Area an 8% sales tax on tobacco; and
- exercise in the Urban Service Area the powers of fire protection, law enforcement, environmental services, building department, engineering department, and public works department?

Answer: With respect to the levy of the 5% sales tax on liquor and the 8% sales tax on tobacco, the answer is no. Under AS 29.06.160, current ordinances of each municipality involved in the consolidation that are in effect at the time of consolidation are to remain in force "in their respective territories" until superseded by the action of the new municipality. There is no distinction as to which municipality's ordinances stay in force during transition; both clearly do.

With respect to the city's tax ordinances, you ask is it relevant that the city enacted those tax ordinances by vote of the council rather than by vote of the citizens.⁴ AS 29.06.160 makes no exception or distinction as to which ordinances remain in force during transition and none should be inferred. The statute is clear on its face. See *U.S. v. Hanousek*, (C.A. 9 Alaska) 176 F.3d 1116, *cert. denied* 120 S.Ct. 860 (statutory interpretation begins with the plain language of the statute; if the language of the statute is clear, court need look no further than that language for determining the statute's meaning); *Gerber v. Juneau Bartlett Mem. Hosp*, 2 P.3d 74 (Alaska 1999) (where a statute's meaning appears clear and unambiguous, the party asserting a different meaning bears a corresponding heavy burden of demonstrating contrary legislative intent).

⁴ You point out that under AS 29.45.670 if sales tax ordinances are proposed in the future by the new municipality (assuming consolidation occurs), voter approval must be obtained to become effective.

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Therefore, according to AS 29.06.160, all ordinances of the City of Fairbanks, regardless of how those ordinances were initially passed (i.e., by council or vote of the citizens), remain in force in the area that is the City of Fairbanks through the transition period. See Vol. 6 *McQuillin Mun. Corp.* §21.27(3rd Ed) (where a consolidation of two or more municipal corporations is effected, each having its peculiar ordinance provisions, it is sometimes provided in the act of consolidation that the ordinances then in force shall remain in force within the limits of the territory for which they were enacted, until repealed by the consolidated entity). That is the process under Alaska law. AS 29.06.160.

With respect to your question as to whether voters in the existing home rule city (to become the Urban Service Area) must vote on propositions on the continued exercise of powers noted above, the answer is no. All of those powers listed were exercised by the City of Fairbanks prior to consolidation and, assuming consolidation is accomplished, the newly incorporated municipality will succeed to all of these listed powers by operation of law. See AS 29.06.150(b). No additional proposition duplicating these powers is necessary to be placed before the voters in order for the new municipality to have authority to exercise these powers.

Question No. 2: Must areawide voters authorize the borough to exercise the new areawide power of cemeteries?

Answer: The need for an answer to this question may be moot since we understand that you expect to be forthcoming a proposal to amend the petition for consolidation to provide for the areawide power of cemeteries to be exercised by the new municipality, the Municipality of Fairbanks.⁵ If the consolidation petition is so amended, then any issue as to whether this power is subject to a vote under AS 29.35.300 (b) and AS 29.35.330(c) as acquiring an "additional" areawide power by a second-class borough, becomes moot because the question will have already been placed before the voters (areawide) at the consolidation election.

Question No. 3: Must areawide voters authorize the borough to levy an areawide 8% bed tax?

Answer: No. This question need not be presented separately to the voters at the consolidation election in order for the current tax to continue in force. Similar to our answer to question No. 1 above, the areawide bed tax ordinance currently levied by the FNSB will remain in force in its current form until superseded by the new

⁵ We understand the City of Fairbanks currently exercises cemetery powers. Such power would transfer to the new municipality by virtue of AS 29.06.150(b).

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municipality. AS 29.06.160. We understand that under the current FNSB ordinance, the FNSB grants an exemption for hotel operators who pay a similar tax to the City of Fairbanks (which has its own 8% bed tax ordinance). With both taxes remaining in effect through transition by operation of law under AS 29.06.160, it will become an administrative function of the new municipality to work out the continued effect of both ordinances until they are superseded.

We also wish to point out that because a consolidation petition must be found to meet the standards of incorporation (AS 29.06.130(a)) and the LBC may amend the petition and may impose conditions on the consolidation as appropriate, it may be an option for the LBC to impose a condition to have the areawide bed tax question on the ballot as a condition of incorporation and effectively supersede the current tax ordinances (both FNSB and the City of Fairbanks) if it passes. Such an action would presumably eliminate the administrative burden for collection of the two taxes by the new municipality under AS 29.06.160 and having to continue to give effect to the exemption noted in the FNSB ordinance. However, we note that placing the areawide tax question on the ballot and conditioning the consolidation on its passage is unnecessary for the financial viability of the new municipality. The current taxes imposed by FNSB and the city would continue during transition without such a question on the consolidation ballot.

Finally, we stress that it is not legally required that the LBC condition the consolidation to eliminate an administrative burden for the new municipality or that a proposition to deal with an areawide bed tax (separate from the existing bed tax ordinances of the FNSB and the City of Fairbanks) be placed before the voters on the election ballot to effectuate the consolidation.

We hope this addresses your concerns. Please let us know if you need further clarification.

MLV:jn