



State of Alaska Local Boundary Commission

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The Need to Reform State Laws Concerning Borough Incorporation and Annexation



Alaska State Constitutional
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Introduction

This year marks the 40th anniversary of the enactment of legislation to institute borough government in Alaska. Repeatedly throughout the past 40 years, an array of public interest groups, local government experts, State and local officials, and citizens have pointed out serious shortcomings in the manner in which the borough concept has been implemented.

In response to growing difficulties resulting from those shortcomings, the Local Boundary Commission is proposing remedial legislation. The proposed legislation would:

- eliminate certain disincentives to the incorporation of new boroughs;
- implement incentives for borough incorporation and annexation; and
- facilitate borough incorporation and annexation of unorganized areas that have the resources to support borough government.

The legislation proposed by the Commission will address the following issues:

- **Alaskans Treated Unequally.** Citizens of municipal school districts in Alaska must make substantial financial contributions in support of schools while all others have no such responsibility.
- **No Rational Basis for Unequal Treatment.** There is no legitimate public policy basis for the disparate treatment of Alaskans noted above. While some unorganized regions are poor, others have resources that are superior to areas that long ago accepted local responsibility for schools.
- **Lack of Local Authority to Fund Education.** Regional educational attendance areas (REAA) are instrumentalities of the State of Alaska. REAA residents depend on the State for educational services. When funds are needed for new schools, major capital improvements, or increased operational funding, REAA residents must look to the State of Alaska, which has exclusive responsibility for such matters.
- **Unorganized Regions Unique to Alaska.** Alaska is the only state that is not organized at the regional level into counties or their equivalent. Alaska is also unique among state governments in the extent to which it assumes responsibility for local services.

- **Unorganized Borough Sustains Inefficient Service Delivery.** Essential services are delivered in the unorganized borough in a highly fragmented manner. This perpetuates inefficient and ineffective governmental operations.
- **State Fiscal Policies Encourage Avoidance of Local Responsibility.** The State continues to shoulder the burden for education and plating services in communities that decline to accept local responsibility, even though many such communities have ample resources. At the same time, the State of Alaska has dramatically reduced financial aid to communities that have assumed local responsibility for services.
- **Unorganized Borough Impedes Development.** The lack of regional government has hindered economic and social development in unorganized areas.
- **Overpowering Borough Disincentives.** The deterrents in State law to form boroughs are so pervasive and so overwhelming that they impede successful incorporation of new borough governments.
- **Procedures Stifle Incorporation.** The process for incorporation of new boroughs actually thwarts local initiative in certain cases. For example, by requiring each of two different classes of voters to initiate incorporation (those within city school districts and those outside city school districts) a relatively small number of voters may block local efforts to incorporate.
- **System Promotes Flawed Boundaries.** Forming boroughs under the current ad hoc and voluntary basis has led to compromises with regard to ideal municipal boundaries. In some cases, boroughs have sought to draw boundaries to maximize their financial and political resources to the detriment of adjacent communities.

The Local Boundary Commission takes the view that timely attention to these matters is warranted. Details about the problems and the Commission's proposed legislative solutions follow.

Background

¹ *Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d 92, 101 (Alaska 1974).

² Alaska Municipal League, *AML Issue Paper: Municipal Government in Alaska*, (printed from the Alaska Municipal League's Internet site at: <http://www.akmunileague.org/whitepaper.htm>), page 2.

³ Victor Fischer, *Alaska's Constitutional Convention*, 1975, page 119.

The Local Boundary Commission is one of five State boards created under Alaska's Constitution. Its duties include reviewing proposals for borough incorporation and annexation. Additionally, the Commission has the responsibility under AS 44.33.812 to make studies of "local government boundary problems." The Commission considers the lack of a strong State policy promot-

ing the extension of borough government to be the most pressing "local government boundary problem" facing Alaska.

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

– Alaska Municipal League

The Commission considers the natural development of government in the unorganized borough to be

stymied. Alaska's Constitution encourages the extension of borough government.¹ Yet, present circumstances have led the Alaska Municipal League to take the position that, "The state has failed to continue the evolution of local government directed by the Constitution."²

The Local Boundary Commission joins others that have previously expressed a preference for voluntary extension of borough government. However, many of those have also taken the position that the State should compel the extension of borough government in regions capable of supporting boroughs if citizens choose not to organize voluntarily. For example, the constitutional convention delegates who wrote the local government provisions of Alaska's Constitution held the view that creation of boroughs should be compulsory, with provision for local initiative.³



Local Government Committee of the Alaska Constitutional Convention, February 1956

Several who have favored voluntary incorporation have also acknowledged that, to be successful, such an approach requires adequate incentives to encourage incorporation. Unfortunately, current law has many provisions that act as disincentives to borough formation and annexation. However, if the disincentives were removed, it is unlikely that the State still could provide sufficient inducements to motivate all of its citizens to incorporate boroughs voluntarily.

Alaska's "Task Force on Governmental Roles", established by the 1991 Legislature to define Federal, State, and local relationships in the delivery of public services, "stopped short of endorsing mandatory borough formation legislation but agreed that continued formation of additional borough governments should be a *primary* state policy goal."⁴ (emphasis added) However, instead of promoting borough formation, State policy has actually continued to regress in that arena since the 1991 Task Force study.⁵

Citizens and local officials in some areas have become frustrated over procedural and policy impediments to borough formation. For example, before any laws had been written concerning borough government in Alaska, residents of Cordova who attended a January 6, 1960 meeting of the Local Boundary Commission at the Cordova High School Auditorium expressed an immediate need for a Prince William Sound borough.

A clear majority recommended that borough boundaries in this area include Prince William Sound, east to the Canadian border, south along the border to Yakutat, then west to Prince William Sound: that this area be unorganized until borough standards are established so that a decision on a "home rule" or so-called "general law" boroughs (sic) can be made. (emphasis added) They felt that although they are probably not ready for "home rule" at this time, there is a real need for organized borough government in this area as soon as possible. (emphasis added)

There is a definite feeling of tie-in with all of Prince William Sound, the "highway communities" and the Copper River Valley when that road is finished. They definitely desire that the fishing areas on the west side of Prince William Sound be included in this area. Yakutat should be included if such is the wish of that community.⁶

Despite the aspiration among Cordova residents for a Prince William Sound Borough in 1960, such a borough, of course, has yet to form. However, current officials of the City of Cordova

⁴ Brad Pierce, Governor's Office of Management and Budget, and the Alaska Municipal League, *Final Report: Task Force on Governmental Roles*, July 10, 1992, page 15.

⁵ The Local Boundary Commission has chronicled an extensive and growing list of borough disincentives in its annual reports to the Legislature since the 1980s. Most recently this issue was addressed on pages 38-41 of the Commission's report to the 2001 Legislature. That report is available on the Internet at: http://www.dced.state.ak.us/mra/LBC/pubs/2000_LBC_Annual_Rpt.pdf

⁶ Local Boundary Commission, *First Report to the Second Session of the First Alaska State Legislature*, February 2, 1960, page 2-4.

"They felt . . . there is a real need for organized borough government in this area as soon as possible." – Local Boundary Commission, commenting on January 6, 1960 meeting with Cordova residents

⁷ Zeine, Ed, Mayor of the City of Cordova, letter to the Chairman of the Local Boundary Commission, December 20, 1999.

⁸ City of Cordova, *Proposal for Reform of State Law Regarding Borough Formation*, December 1999.

⁹ City of Cordova *Resolution 12-99-83*.

¹⁰ See comments by Thomas Morehouse and Victor Fischer in *Borough Government in Alaska*, page 73, former Governor Jay Hammond in *Tales of Alaska's Bush Rat Governor*, page 149; John Rader in *The Metropolitan Experiment in Alaska – A Study of Borough Government*, page 91; Thomas A. Morehouse, et al., *Alaska's Urban and Rural Governments*, page 43; House Research Agency in *A New Mandatory Borough Act: Local Education Costs and Potential Revenues of Newly Created Boroughs*, page 14; and City of Cordova in *Proposal for Reform of State Law Regarding Borough Formation*, December 1999.

¹¹ *Mobil Oil Corporation v. Local Boundary Commission*, *supra*, 98.

continue to recognize the need for a borough government. They cite procedures established under the Borough Act of 1961 as a principal reason for the lack of a Prince William Sound borough. Dissatisfaction with the status quo is evident in the following recent comments from Ed Zeine, Mayor of Cordova:

The City of Cordova and many other smaller Alaska cities have been frustrated in previous attempts to establish borough governments. The current process is cumbersome and self-defeating.⁷

In December of 1999, circumstances led the City of Cordova to propose legislation that is similar to the Commission's current proposal for reform of State law regarding borough incorporation and annexation.⁸ The Cordova City Council adopted a formal resolution providing as follows:

. . . the City Council of Cordova, Alaska, hereby encourages the executive and legislative branches of the government of the State of Alaska to review and amend the borough formation process, and offers the paper "Proposal for the Reform of State Law Regarding Borough Formation" as a starting point for the process of change.⁹

Several respected Alaskans and institutions have concluded – some as far back as the early 1960s – that it is naive to assume that the voluntary approach to borough formation will succeed except in rare instances.¹⁰ The test of time has clearly proven them to be correct. During the past four decades, boroughs have formed voluntarily in areas that encompass only four percent of Alaskans. In contrast, eighty-three percent of Alaskans live in organized boroughs formed in a matter of a few months under the 1963 Mandatory Borough Act. The remaining thirteen percent live in the unorganized borough. Stated in other terms, ninety-six percent of Alaskans live in regions of the state that have not embraced borough government voluntarily.

Boroughs are adaptable to both rural and urban areas.¹¹ More than one-third of Alaska's organized boroughs encompass areas that are *exclusively* rural (Bristol Bay, North Slope, Northwest Arctic, Aleutians East, Lake & Peninsula, and Yakutat). Another one-third of the boroughs include a number of rural communities (Kodiak Island, Kenai Peninsula, Haines, Ketchikan, Matanuska-Susitna, and Denali).

Eben Hopson, first Mayor of the North Slope Borough, promoted borough formation as a means to advance the social and economic well-being of North Slope residents. Additionally, he saw

the North Slope Borough as a means to preserve and protect the Inupiat culture and language and to establish local control and self-determination.¹²

A report prepared for the Alaska Federation of Natives in 1999 noted that boroughs have the capacity that other organizations lack to address particular needs of Native communities:

In many Native communities, neither tribal government nor [city] status provides the powers or jurisdiction necessary to control land uses and protect subsistence fish and wildlife habitat in the much larger area surrounding the community. Also, developments in the surrounding area are outside the taxing powers of these local governments. One solution to these problems is to create an areawide or regional borough government under state law in order to bring these lands under local governmental jurisdiction. In addition to land use planning and control and tax powers, borough government also can localize control of public education. These are all mandatory powers of borough government.¹³

The Alaska Municipal League takes the following view concerning the suitability of boroughs in predominantly Native areas:

Borough government can be a valuable tool for local self-determination that allows municipal and tribal government/organizations to co-exist successfully while resources are maximized.¹⁴

Several existing boroughs are inhabited predominantly by Natives. These include the Aleutians East Borough, Lake and Peninsula Borough, North Slope Borough, Northwest Arctic Borough, and the City and Borough of Yakutat. Other existing boroughs include significant Native populations. At present, one-third of the villages recognized by the Bureau of Indian Affairs are within organized boroughs.¹⁵

It is unlikely that regions in the unorganized borough – those inhabited predominantly by non-Natives as well as those inhabited predominately by Natives – will form boroughs voluntarily under the present circumstances. In an effort to resolve the conflict between the constitutional goal of “maximum local self-government with a minimum of local government units”, and the near absence of local initiative, the Local Boundary Commission urges reform of State law concerning boroughs. Specifically, the Commission supports procedures wherein the State would take the initiative to extend borough government to those areas that have the human and financial resources needed to support boroughs.

The Commission’s suggested reform proposes roles for both the executive and legislative branches of State government, including the Commission itself, to determine whether regions of the

¹² Thomas Morehouse, et al., *Alaska’s Urban and Rural Governments*, 1984, page 144.

¹³ Cornell, Stephen, et al., *The Economic Resource Group, Inc.; and Victor Fischer and Thomas Morehouse, Institute of Social and Economic Research, University of Alaska, Anchorage. Achieving Alaska Native Self-Governance: Toward Implementation of the Alaska Natives Commission Report*, May 1999, page 44.

¹⁴ Alaska Municipal League, *supra.*, page 4.

¹⁵ Cornell, et al., *supra.*, Appendix A lists 223 BIA-recognized villages, 72 of which are within organized boroughs.

¹⁶ See Thomas A. Morehouse and Victor Fischer; *Borough Government in Alaska*; 1971, pages 43 – 46.

unorganized borough have adequate human and financial resources to support borough government. The proposed process is patterned after the method established in Alaska's Constitution for review of municipal boundary changes by the Commission and Legislature. That system has been in place since 1959 and has been used extensively throughout both rural and urban parts of Alaska.

Section 1 of this policy paper provides a more detailed discussion of the fundamental public policy issues that compel attention to this matter. Section 2 includes a copy of the remedial legislation proposed by the Local Boundary Commission. Section 3 provides a sectional analysis of the legislation, a timeline to illustrate how the proposed process would be implemented, and a summary of the standards for borough incorporation. Lastly, Section 4 offers background information concerning the Local Boundary Commission.

Section 1.

Discussion of the need for reform.

This section of the policy statement outlines reasons why the Local Boundary Commission advocates the extension of borough government to unorganized regions of Alaska that possess the human and financial resources to operate borough government. Further details on these topics are available from the Commission upon request.

A. Boroughs are Alaska's fundamental political subdivision for delivery of municipal services, yet the State has never established a rational basis for the creation of new boroughs or the expansion of existing boroughs.

Boroughs were conceived as the fundamental political subdivision of the State of Alaska through which municipal services would be delivered.¹⁶ The failure of the policy to establish boroughs through voluntary efforts in the early years of statehood led John Rader – Alaska's first State Attorney General and former legislator

"The greatest unresolved political problem of the State was the matter of boroughs." –
John Rader, Alaska's first State Attorney General and former legislator

sentatives – to the conclusion in 1963 that “the greatest unresolved political problem of the State was the matter of boroughs.”¹⁷

Given the critical role of borough governments in the delivery of fundamental services, it is remarkable that the State has never developed an ordered process to determine when areas of Alaska should be compelled to organize boroughs if local citizens decline to take initiative. In the Commission’s view, financial capacity and adequacy of human resources are appropriate criteria upon which to base determinations concerning whether boroughs should be required to form in particular regions.

For the past 40 years, with one brief exception, the State has delegated to local citizens decisions as to whether boroughs should be organized. Given the lack of incentives to form boroughs, it is not surprising that few regions have chosen to voluntarily take on the responsibility for borough government.

The exception referred to in the preceding paragraph was, of course, the 1963 Mandatory Borough Act. That act compelled the formation of boroughs encompassing Ketchikan, Sitka, Juneau, Kodiak Island, Kenai Peninsula, Anchorage, Matanuska-Susitna valleys, and Fairbanks.¹⁸ Today, those eight boroughs encompass eighty-three percent of the state’s population. The 1963 Mandatory Borough Act was the product of a bipartisan legislative effort that was supported by Governor Egan. John Rader, author of the 1963 Mandatory Borough Act, characterized the impetus for action as follows:

In striving to form viable units of local self-government, the people of Alaska have used the courts, the executive branch of their Territorial Government, and the local subdivisions themselves. It was only after a series of repeated failures that in 1963 the State legislature finally exercised the authority which had previously been delegated to others.¹⁹

In today’s light, Mr. Rader’s statement is overly broad. The 1963 Mandatory Borough Act was applied only to eight particular regions of Alaska. Although an understanding had reportedly been reached among legislators prior to approval of the 1963 Mandatory Borough Act that there would be subsequent legislation to compel other areas to form boroughs, the exercise of the State’s authority to form boroughs was utilized only in that single instance.²⁰ The State subsequently returned to its prior policy which Mr. Rader characterized as an ineffective delegation of responsibility for formation of boroughs.

¹⁷ Ronald C. Cease and Jerome R. Saroff; eds., *The Metropolitan Experiment in Alaska: A Study of Borough Government*, 1968, page 93.

¹⁸ The bill originally included other areas that were subsequently omitted in order to win passage of the Mandatory Borough Act. Moreover, an area exceeding 11,000 square miles was detached from the Fairbanks North Star Borough shortly after it was formed under the Mandatory Borough Act. The detached area included much of what today comprises the Delta Greely Regional Educational Attendance Area and the Alaska Gateway Regional Educational Attendance Area. Those areas were detached not because they lacked the resources needed to support borough government, but because they lacked sufficient ties to the Fairbanks North Star Borough.

¹⁹ Cease and Saroff, *supra.*, page 81.

²⁰ Clem Tillion, a member of the 1963 State House of Representatives, indicated that the 1963 Mandatory Borough Act was

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approved by the Legislature with the understanding that other unorganized areas would be compelled to organize by subsequent legislatures. (Personal communication with Local Boundary Commission staff, April 28, 2000).

- ²¹ Gerald A. McBeath and Thomas A. Morehouse; eds., *Alaska State Government and Politics*, 1987, page 44.

Victor Fischer, constitutional convention delegate and Secretary to the Convention's Committee on Local Government reflected in 1987 that, "Despite the constitutional convention's emphasis on state leadership in establishing the borough system, governors and legislatures have been reluctant to create boroughs, largely because of frequent local opposition to establishment of another level of government."²¹

"Despite the constitutional convention's emphasis on state leadership in establishing the borough system, governors and legislatures have been reluctant to create boroughs, largely because of frequent local opposition to establishment of another level of government." – Victor Fischer, Constitutional Convention Delegate and Secretary to the Committee on Local Government

As noted earlier, the Commission takes the view that financial capacity is an appropriate criterion for deciding whether regions should organize as boroughs. The Commission recognizes that certain areas of the unorganized borough may have limited fiscal capacities – places where there are few jobs, marginal tax bases, and undeveloped economies. Still, even in certain communities with such characteristics, citizens have taken on local responsibility for the same duties and obligations imposed on organized boroughs by State law. For example, citizens of Galena, Hoonah, Hydaburg, Kake, Nenana, Pelican, St. Mary's, and Tanana all operate first class cities in the unorganized borough that have duties to provide services and to make local contributions in support of education identical to those required of organized boroughs. Yet, more prosperous communities such as Gustavus, Tok, Glennallen, Delta Junction, and Bethel bear no financial responsibility for education. A comparison of economic characteristics of certain of these communities is provided in Table 1 on page 12.

Although not typical of homes either in organized boroughs or the unorganized borough, these homes in Gustavus are outside any municipal tax jurisdiction and are also outside a school district with local financial responsibilities.



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Regional statistics suggest that there are a number of areas in the unorganized borough that enjoy relatively strong economies. For example:

- Seven of the eleven (64%) census areas in the unorganized borough had per capita personal incomes in 1998 that were greater than that of the Matanuska-Susitna Borough and the Lake and Peninsula Borough. (See Appendix A-1.) The Matanuska-Susitna Borough is Alaska's third most populous municipal government and was one of the eight regions organized under the 1963 Mandatory Borough Act.²²
- 1998 local employment per 1000 residents was higher in three of eleven (27%) census areas of the unorganized borough than it was in eight of the sixteen (50%) of the organized boroughs in Alaska.²³ (See Appendix A-2.)
- Per capita earnings from local employment in Alaska were higher during 1998 in three of the eleven census areas of the unorganized borough than they were in ten of the sixteen (62.5%) organized boroughs in Alaska.²⁴ (See Appendix A-3.)
- June 2000 employment statistics show that more than half of the census areas in the unorganized borough had lower unemployment rates than the Kodiak Island Borough, North Slope Borough, Northwest Arctic Borough, Yakutat Borough, Bristol Bay Borough, and the Lake and Peninsula Borough.²⁵
- Previous borough studies have concluded that many regions of the unorganized borough have the capacity to support organized boroughs.²⁶

As is the case with regard to financial capacity, there are indications that many regions of the unorganized borough have human resources sufficient to operate borough governments. Consider, for example:

- The 1999 population of the unorganized borough was 35% greater than the *combined* 1999 populations of eleven of the sixteen (69%) organized boroughs in Alaska.
- The 1999 population of the unorganized borough was 20% greater than the *combined* populations of seven of the eight organized boroughs formed under the 1963 Mandatory Borough Act at the time of incorporation.

²² U.S. Department of Commerce, Bureau of Economic Analysis, *Personal Income and Per Capita Personal Income by County, 1996-98, Alaska* (printed from the Internet at http://www.bea.doc.gov/bea/regional/reis/scb/svy_ak.htm)

²³ Per capita employment figures were extrapolated from data published by Alaska Department of Labor and Workforce Development (ADLWD). Employment data from 1998 Employment & Earnings Summary Report, ADLWD, February 2000; population data from ADLWD website at <http://www.labor.state.ak.us/research/pop/ca2.htm>)

²⁴ *Ibid.*

²⁵ Source: Alaska Department of Labor and Workforce Development. *Labor Force by Region and Census Area*, printed from the Internet at <http://www.labor.state.ak.us/news/news01-06.htm>

²⁶ Alaska Department of Community and Regional Affairs. *Synopsis of Borough Feasibility Studies*

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*Conducted During
1988 and 1989:
Copper River Basin,
Lower Yukon Region,
Delta Greely Region,
Northwest Bristol Bay
Region, Denali
Region, Southwest
Region/Dillingham
Area, Chatham
Region, Yukon-
Koyukuk Region,
Prince William Sound
Region, and Western
Aleutians Region,
September 1989.*

²⁷ 52,702 of the 82,809 residents in the unorganized borough live outside home rule and first class cities (1999 population data from the Alaska Department of Community and Economic Development).

- More than one-third of Alaska's organized borough governments have successfully operated with fewer than 2,500 residents. One borough has fewer than 750 residents.
- Education, the most important service offered by boroughs, has long been under local control in all areas of the unorganized borough through REAAs and city school districts. Education is one of just three services required of boroughs.

Conclusion. Significant distinctions exist with regard to the delivery of essential local services for Alaskans in boroughs vis-à-vis Alaskans in unorganized areas. Those distinctions lack an equitable basis in terms of the most fundamental criteria – financial and human capacity. Some unorganized areas appear to have financial and human resources that are superior to such resources in areas that were earlier compelled to form boroughs. These discrepancies run counter to Article I, Section 1 of Alaska's Constitution and to the intent of the framers of Alaska's Constitution regarding the formation of organized boroughs.

The reform proposed by the Local Boundary Commission would establish an equitable basis for deciding, on the merits and according to standards now in law, which areas of Alaska might be included within new or existing organized boroughs.

B. There is a lack of local responsibility for education and platting services in most of the unorganized borough.

Residents of the unorganized borough outside home rule and first class cities have no obligation under State law to support fundamental services such as public education and platting. (See Appendix A-4.) Residents of those areas comprise two-thirds of the population of the unorganized borough. The number of people living in the unorganized borough outside of home rule and first class cities is nearly equivalent to the population of the Matanuska-Susitna Borough, Alaska's third most populous municipal government.²⁷

A 1991 study of Alaska's education foundation funding formula raised fundamental public policy concerns stemming from the absence of local responsibility:

Another serious drawback with full state funding is that it provides no incentive for schools to reduce costs when they can do so without reducing the quality of education. Local taxpayers elect local school boards, mayors, and assembly members who make decisions about school budgets. If local taxpayers pay the same minimum amount for education

regardless of the size of their school district's budget – as is the case with the current Alaska required local effort provisions – there is no incentive for schools to reduce costs.²⁸

“Another serious drawback with full state funding is that it provides no incentive for schools to reduce costs when they can do so without reducing the quality of education.” – Institute of Social and Economic Research, University of Alaska

²⁸ Matthew Berman and Eric Larson, Institute of Social and Economic Research, University of Alaska, *Education Equity and Taxpayer Equity: A Review of the Alaska Public School Foundation Funding Program*, 1991, page 89.

In contrast to residents of regional educational attendance areas, all other Alaskans are legally obliged to provide financial support for local public education. Thus, Alaskans living in the state's sixteen organized boroughs and eighteen of the ninety-six city governments in the unorganized borough have financial responsibility for operation of local schools. (See Appendices A-5 and A-6.) In Fiscal Year 2000, that obligation amounted to approximately \$144 million. The required local contributions of municipal school districts in effect reduce the level of education funding that the State would otherwise be obligated to provide. The State has chosen to bear the burden for fundamental services in two-thirds of the unorganized borough, again, without regard for local fiscal capacity or human resources. Table 1 emphasizes the lack of a rational basis in terms of fiscal capacity for the disparate treatment of Alaskans. Comparisons are made in each of three regions of Alaska between a community that is obligated by State law to provide education and plating services and one that is not.

TABLE 1
COMPARISON OF SELECTED COMMUNITIES IN THREE REGIONS OF THE UNORGANIZED BOROUGH

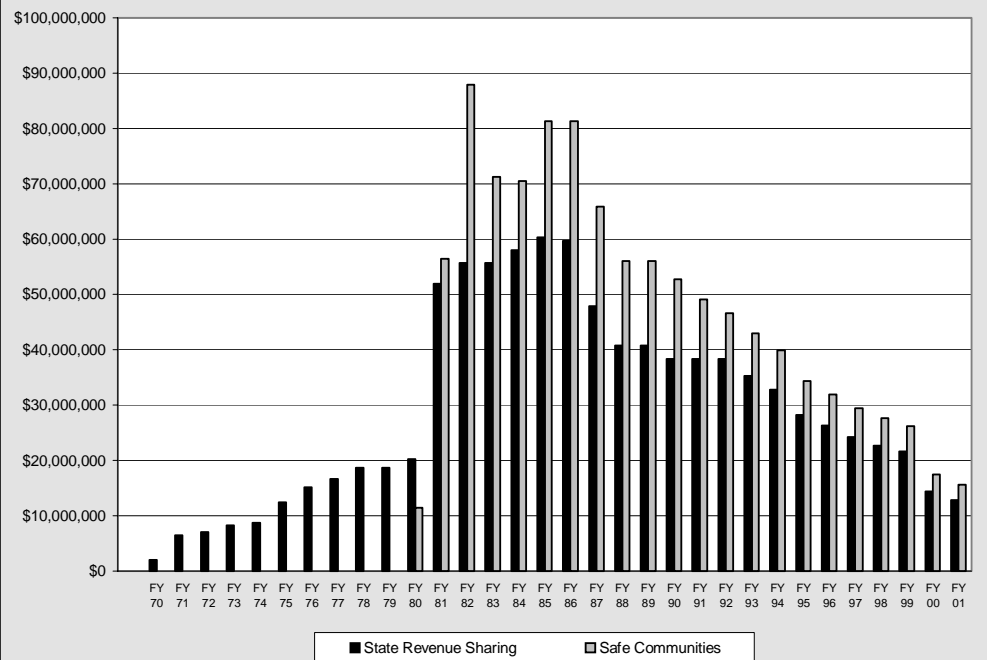
	Southeast Alaska		Interior Alaska		Western Alaska	
Characteristic	Gustavus	Hydaburg	Tok	Tanana	Bethel	St. Mary's
Municipal Status	Unincorporated	First class city	Unincorporated	First class city	Second class city	First class city
Local Responsibility for Schools	No	Yes	No	Yes	No	Yes
1999 Population	377	369	1,235	301	5,741	475
Predominant Population (1990)	96% Caucasian	87% Native American	86% Caucasian	76% Native American	60% Native American	82% Native American
1990 Median Family Income	\$43,750	\$22,639	\$32,039	\$24,375	\$45,203	\$29,583
1990 Employment per 100 Residents	48	27	40	32	43	34
1990 Unemployment	4.6%	21.8%	20.3%	21.8%	9.0%	19.2%

²⁹ Bill Rolfzen, Alaska Department of Community and Economic Development. Note: data for Fiscal Years 1970 – 1979 do not include gross business receipts taxes shared by the State with municipalities. When the gross business receipts tax was repealed, the Municipal Assistance Program was instituted to replace revenues that would otherwise be lost for municipal governments. Thus, the revenues shown in the table for Fiscal Years 1970 – 1979 are underreported.

³⁰ Governor's Office of Management and Budget and the Alaska Municipal League, *supra*, page 15.

The inequity of the current system has been exacerbated by a reduction of more than 80% in general financial aid from the State to all municipalities since the peak level of funding in Fiscal Year 1982. Table 2 depicts general financial aid to local governments in Alaska since the inception of the State revenue sharing program in Fiscal Year 1970.²⁹

Table 2 – Funding History of State Revenue Sharing and Safe Communities Programs



The State could, of course, impose taxes on unorganized areas. In fact, the previously noted 1991 Task Force on Governmental Roles took the position that “the inequity in tax burden between residents of municipalities and residents of the unorganized borough is better addressed via state fiscal policies (taxes, shared revenue programs, education foundation funding and municipal grants) than by imposing areawide government on people who do not want it.”³⁰ The Commission notes that there were a number of attempts to levy taxes on unorganized areas following the report of the Task Force. However, every attempt met intense opposition from residents of unorganized areas and none was implemented.

In a 1981 study of service delivery in the unorganized borough by the former Alaska Department of Community and Regional Affairs, Dr. John J. Kirlin characterized the situation as follows:

“... the present system encourages dependence.”

– Dr. John J. Kirlin

... the present system encourages dependence. Inhabitants of the unorganized borough are encouraged to be supplicants and clients of service-delivery structures, and largely spectators upon the political life of the

State. They are not citizens effectively participating in the governance of the policy. Moreover, this system is not supportive of native cultures and effectively requires natives to submerge or abandon traditional cultural values in order to participate in the State's politics.³¹

Conclusion. Tension clearly exists between the circumstances described herein and two key provisions in Alaska's Constitution. The first is Article I, Section 1, which provides, in relevant part, “that all persons are equal and are entitled to equal rights, opportunities, and protection under the law; and that *all persons have corresponding obligations to the people and to the State.*” (emphasis added) The second is Article X, Section 6 which provides in relevant part, “The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, *allowing for maximum local participation and responsibility.*” (emphasis added)

The reform proposed by the Local Boundary Commission would extend responsibility for fundamental services to those presently unorganized areas that can afford to assume such responsibility.

C. The lack of organized boroughs has resulted in a highly fragmented structure for the delivery of public services.

Organized boroughs are the keystones for the delivery of efficient and effective municipal services. Organized boroughs deliver fundamental services such as education and platting on an areawide basis. In contrast, education services are delivered in the unorganized borough in a highly fragmented manner through a combination of service areas and cities. Consequently, although the unorganized borough has just thirteen percent of Alaska's population, it encompasses seventy percent of its school districts.

More than one-third of the school districts in the unorganized borough have fewer than 250 students. That figure was established by the State as the minimum threshold fifteen years ago for new school districts.³² Moreover, one-third of the school districts in the unorganized borough required waivers for FY 2000 from the State Board of Education regarding the requirement that at least 65 percent of operating funds must be budgeted for instruction.

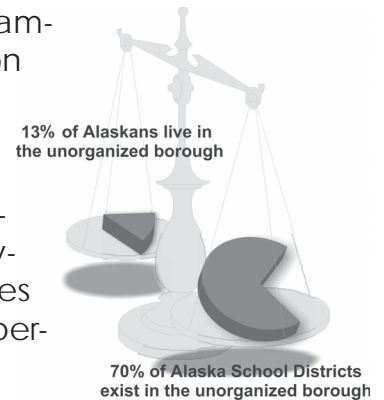
³¹ Alaska Department of Community and Regional Affairs. *Problems and Possibilities for Service Delivery and Government in the Alaska Unorganized Borough*, September 1981, page 54.

³² AS 14.12.025.

³³ Alaska Municipal League, *supra*, page 3.

³⁴ Alaska Department of Community and Regional Affairs, *supra*, page 54.

In organized boroughs, citizens tend to streamline municipal government through unification or consolidation. In 1970, half of the people who lived in organized boroughs also lived in city governments. Today, the figure stands at just eighteen percent. Approval of pending proposals for consolidation of local governments in Fairbanks, Ketchikan, and Haines would reduce that figure to less than ten percent.



In contrast, more than three-quarters of unorganized borough residents live in city governments where no regional municipal structure is available. Here again, with only 13% of the state's population, the unorganized borough has a disproportionately high number (66%) of the city governments in Alaska.

The Alaska Municipal League offered the following characterization of the manner in which services are delivered in the unorganized borough:

Local services are currently provided by the state and a patchwork of over 400 separate municipal governments, non-profit corporations, regional school attendance areas, tribal governments, etc. Current service delivery is neither inexpensive or efficient, due to the lack of coordinated service delivery. Therefore, borough government would not be new and could be less expensive and more efficient than the "system" now in place.³³

In the previously referenced 1981 study of the unorganized borough, Dr. John J. Kirlin characterized the current structure as follows:

To assert that the present situation is a "worst case" scenario is not comforting to those seeking to make this system effective, but it may well be accurate. The label is warranted as much for the incapacity for future development of the present system or for its current dysfunctions. This system has extremely limited capacity to develop and implement policies; it has even less capacity to "learn" (that is, to discern preferable institutions and policies) and to change. Moreover, the very existence of this complex, jury-rigged non-system provides disincentives

"To assert that the present situation is a 'worst case' scenario is not comforting to those seeking to make this system effective, but it may well be accurate." – Dr. John J. Kirlin

to change, including decreases in state and federal funding if incorporation occurs. The present system is also apparently expensive to operate and does not succeed in delivery of needed services to many inhabitants of the unorganized borough. Alternative systems may not be less expensive, but the present situation can hardly be defended as economical.³⁴

In terms of the natural evolution of local governments and the constitutional policy of minimum numbers of local governments, it is noteworthy that the 1991 Task Force on Governmental Roles endorsed the unification and consolidation of cities and organized boroughs "wherever possible to provide for more efficient and cost-effective service delivery."³⁵

Conclusion. The absence of organized boroughs throughout Alaska has led to a proliferation of governmental and quasi-governmental organizations in the unorganized borough. The reform proposed by the Local Boundary Commission would create the foundation to promote greater efficiency and effectiveness in the delivery of services in the area currently encompassing the unorganized borough.

D. The lack of regional government has hindered social and economic development in unorganized areas.

Most, if not all, organized boroughs successfully engage in economic development activities. Examples include promotion of the visitor industry in Anchorage through bed taxes, development of port facilities at Point Mackenzie by the Matanuska-Susitna Borough, and support for a trans-Alaska natural gas pipeline by the Fairbanks North Star Borough and North Slope Borough.

Boroughs also play a key role in economic development in rural areas. A study conducted last year concerning fisheries in the

"... borough governments in rural Alaska are often the largest employer and serve as the economic engine for the area." – Northern Economics, Inc.

Bristol Bay region stressed that "... borough governments in rural Alaska are often the largest employer

and serve as the economic engine for the area."³⁶ The Lake and Peninsula Borough describes its economic development activities as follows:

The Borough provides a variety of planning functions related to community and economic development. Such functions include grant writing and management, technical assistance on local government and development issues, general assistance in community planning, assistance with planning for and financing capital projects, and general economic development assistance; especially in the areas of fisheries and tourism.

³⁵ Governor's Office of Management and Budget and the Alaska Municipal League. *supra*, page 15.

³⁶ Northern Economics, Inc., in association with KEA Environmental Inc., and HDR Alaska, Inc. *Impacts of the 1997-1998 Bristol Bay Fishing Disasters*, June 1999, page ES-4.

³⁷ Alaska Commission on Rural Governance and Empowerment, *Final Report to the Governor*, June 1999, page 65.

³⁸ *Ibid.*, page 72.

Moreover, boroughs can also be effective advocates in the promotion of public policies that benefit local economies. For example, the Aleutians East Borough operates a Natural Resources Department to provide residents of the Borough with representation before various fishery advisory and management bodies. It also assists in the development and implementation of scientific efforts and regulations regarding commercial fisheries in the region.

Organized boroughs also have the legal capacity to issue bonds to finance economic development projects such as roads, docks, and airports. The Aleutians East Borough has secured an estimated \$100 million for capital improvements since its incorporation in 1987. Local funds raised through the sale of bonds were leveraged to obtain State and Federal funding for a variety of capital projects in the Aleutians East Borough.

Further, organized boroughs can also provide stable and predictable political environments that encourage economic development. For example, the incorporation of the Northwest Arctic Borough was a key to opening the Red Dog zinc mine. Today, the Red Dog mine provides hundreds of jobs to residents of the Northwest Arctic Borough.

In addition to economic development, boroughs can provide the jurisdictional basis for addressing social issues. For example, there is no mechanism to provide for alcohol control on a regional basis in the unorganized borough. However, the law allows voters in organized boroughs to establish areawide alcohol controls.

The Alaska Commission on Rural Governance and Empowerment recognized the existence of "a range of land-based jurisdictional issues involving alcohol and other substance abuse control, economic development, environmental management and local governance innovation" in rural Alaska.³⁷

"The State of Alaska must invest in its future by ensuring that a strong, stable, and accountable unit of State government carries out rural development functions." – Alaska Commission on Rural Governance and Empowerment

The Rural Governance Commission also concluded that, "The State of Alaska must invest in its future by ensuring that a strong, stable, and accountable unit of State government carries out rural development functions."³⁸ While the Local Boundary Com-

mission does not view that statement as an endorsement for borough government, boroughs certainly possess the characteristics listed.

Conclusion. The reform proposed by the Local Boundary Commission would offer important tools for economic development and social reform in areas that today remain unorganized.

E. The current system is inequitable.

The 1961 Legislature mandated that every organized borough must operate a system of public schools. In doing so, the State delegated its constitutional duty for operation of schools within those boroughs to those boroughs.

Two years later, the State mandated that eight specific regions of Alaska form boroughs. The 1963 mandate to form boroughs

"No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation." – 1963

Alaska Legislature and Governor Egan

was tempered with the promise that organized boroughs would continue to receive the same levels of funding as unorganized areas. The 1963 Mandatory Borough Act provided that: "No

area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation."³⁹

However, the commitment for equal funding was short lived. Requirements by the State for local contributions in support of schools on the part of municipal school districts reduced levels of State aid to borough school districts. Initially, the disparate treatment was small in relative terms – single digit reductions in the percentage of State education foundation aid. However, in 1987, following the dramatic reduction in State oil revenues, the State imposed far deeper cuts.⁴⁰ Today, the financial burden of the boroughs' required contribution to local education amounts to \$135 million *annually*.

The local taxpayer disenchantment that prompted the recently defeated statewide local property tax cap initiative stemmed in part from significant increases in city and borough property taxes to offset previously-noted reductions in State funding for local

³⁹ Section 1, Chapter 52, *Session Laws of Alaska*, 1963.

⁴⁰ A brief history of education funding in Alaska is provided in *Education Equity and Taxpayer Equity: A Review of the Alaska Public School Foundation Funding Program*, Institute of Social and Economic Research, University of Alaska, 1991, pages 26-27 and 75-76.

⁴¹ Source: Laura Walters, Research Analyst, Alaska Department of Community and Economic Development.

⁴² AS 14.11.008 provides that a municipal school district with a full value per ADM (average daily membership of students) ranging from \$1 - \$100,000 must contribute 5%. Municipal districts in the range of \$100,001 - \$200,000 must contribute 10%, those ranging from \$200,001 - \$600,000 must contribute 30%; and those with a full value per ADM in excess of \$600,000 must contribute 35% of the cost.

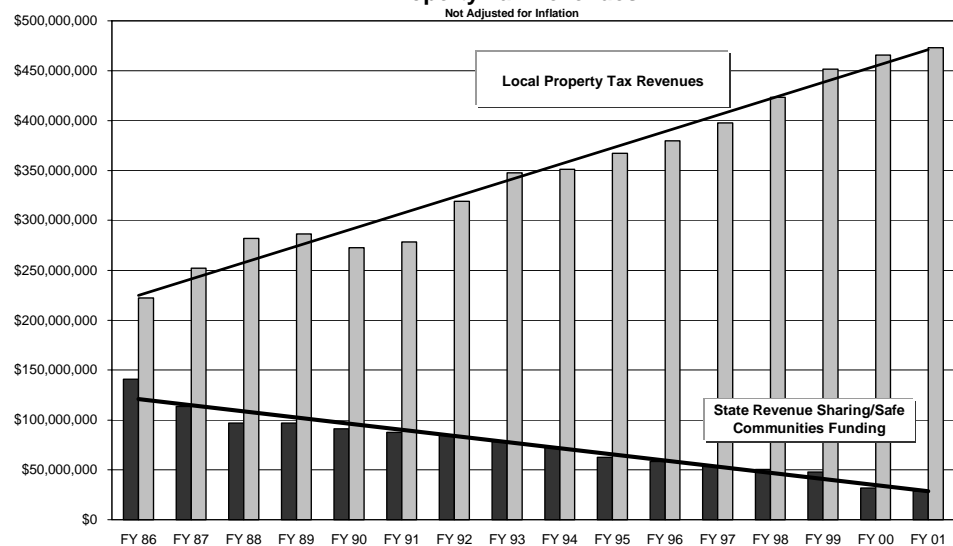
⁴³ Counted among those who are compelled to support fundamental services are residents of organized boroughs, home rule cities in the unorganized borough, and first class cities in the unorganized borough.

governments. Concerns over taxpayer equity also likely played a role. Table 3 below compares increases in property taxes and the reductions in State revenue sharing and safe communities funding since Fiscal Year 1986.⁴¹

Another example of inequity is found in the State's grant programs for construction, rehabilitation, and improvement of schools. Municipal school districts are required to contribute a share of the cost of grant projects ranging from a minimum of five percent to a maximum of thirty-five percent, depending on their fiscal capacity. However, regional educational attendance areas are required to contribute only two percent regardless of the fiscal capacity of the region. Thus, the poorest municipal school districts in Alaska are required to contribute 2½ times the level required from the most prosperous regional educational attendance areas.⁴²

Conclusion. The Commission considers it significant that 85 of

Table 3 - State Revenue Sharing/Safe Communities Funding Versus Local Property Tax Revenues



every 1,000 Alaskans – more than one in twelve — receives fundamental public services at no cost, *without regard to fiscal capacity*, while all others are compelled to pay for the same services.⁴³ The 1991 Task Force on Governmental Roles noted that, "The inequity in tax burden between residents of first class cities and general law boroughs and those residing in unorganized areas is a perennial area of conflict in Alaska politics."

The reform proposed by the Local Boundary Commission would alleviate the inequity described herein.

Conclusion.

As noted in the Introduction, many public interest groups, local government experts, public officials, and citizens have pointed out serious shortcomings over the past 40 years regarding the manner in which the borough concept has been implemented in Alaska. Yet, with the exception of the 1963 Mandatory Borough Act, efforts to implement the constitutional policy promoting formation of boroughs have been generally ineffectual. In fact, since 1963 the State has steadily regressed in terms of promoting the formation of organized boroughs.

On the 40th anniversary of the enactment of legislation intended to implement the borough concept, the Commission urges timely consideration of the reform proposed by the Local Boundary Commission.

Opportunity costs resulting from continuation of the unorganized borough as it is presently configured continue to mount while the capacity of Alaska to support systemic inefficiency in its municipal government framework continues to erode. The Commission urges the Legislature and Governor to take action to resolve this chronic public policy issue.

Section 2. Proposed Legislation

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE – FIRST SESSION

BY

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 **“An Act relating to the determination of full and true value of taxable municipal**
2 **property for purposes of certain programs; and relating to incorporation of**
3 **second class boroughs in the unorganized borough, and to annexation of**
4 **portions of the unorganized borough to boroughs and unified municipalities.”**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 ***Section 1.** AS 14.17.510(a) is amended to read:

7 (a) To determine the amount of required local contribution under AS
8 14.17.410(b)(2) and to aid the department and the legislature in planning, the
9 Department of Community and Economic Development, in consultation with
10 the assessor for each district in a city or borough, shall determine the full and
11 true value of the taxable real and personal property in each district in a city or
12 borough. If there is no local assessor or current local assessment for a city or

-1-

New Text Underlined [DELETED TEXT BRACKETED]

1 borough school district, then the Department of Community and Economic
2 Development shall make the determination of full and true value from
3 information available. In making the determination, the Department of
4 Community and Economic Development shall be guided by AS 29.45.110.
5 However, the full and true value of taxable real and personal property in
6 any area detached shall be excluded from the determination of the full and
7 true property value of the municipality from which the property was
8 detached for the two years immediately preceding the effective date of the
9 detachment. In making the determination for a municipality that is a
10 school district or for a city that is within a borough school district, the
11 assessed value of property taxable under AS 43.56 shall be excluded if a
12 municipal tax is not levied under AS 29.45.080 in that school district. The
13 determination of full and true value shall be made by October 1 and sent by
14 certified mail, return receipt requested, on or before that date to the president of
15 the school board in each city or borough school district. Duplicate copies shall
16 be sent to the commissioner. The governing body of a city or borough that is a
17 school district may obtain judicial review of the determination. The superior
18 court may modify the determination of the Department of Community and
19 Economic Development only upon a finding of abuse of discretion or upon a
20 finding that there is no substantial evidence to support the determination.

21 *Sec. 2. AS 44.33 is amended by adding a new section to article 11 to read:

22 **Sec. 44.33.830. Incorporation or annexation of unorganized areas.**

23 (a) In addition to other methods for incorporation and annexation provided by
24 law, an area of the unorganized borough may be incorporated as a second
25 class borough or annexed to an existing borough or unified municipality under
26 (b) – (f) of this section. AS 44.33.814 – 44.33.828 apply to actions taken by
27 the commission under this section.

1 (b) The Department of Community and Economic Development shall
2 determine which areas of the unorganized borough reasonably appear to
3 satisfy standards for borough incorporation or for annexation to an existing
4 borough or unified municipality. By September 30 of each year, the
5 department shall present to the Local Boundary Commission a list of those
6 areas that reasonable appear to satisfy standards for borough incorporation or
7 for annexation to an existing borough or unified municipality, together with
8 the department's analysis supporting its conclusions regarding the
9 incorporation or annexation standards for each of the areas. By November 30
10 of each year, the commission shall select areas from the list provided by the
11 department that the commission determines may warrant incorporation or
12 annexation. By March 31 of the following year, the department shall prepare
13 a petition for borough incorporation or for annexation of each of the areas
14 selected by the commission. The department shall conduct at least one public
15 meeting in each area for the purpose of gathering information needed to
16 prepare the petition. The department shall provide public notice when the
17 petition has been prepared, make copies of the petition available, and provide
18 any interested person with the opportunity to submit written comments on the
19 petition. After considering the comments, the department may amend the
20 petition. The department shall file the original petition or, if amended, the
21 amended petition with the commission.

22 (c) Upon receipt of a petition filed under (b) of this section, the Local
23 Boundary Commission shall hold at least one public hearing in or near the
24 area proposed for incorporation or annexation. Following the hearing, the
25 commission may amend the petition and may impose conditions on the
26 incorporation or annexation. If the commission determines that the
27 incorporation or annexation meets applicable standards under the state
28 constitution as well as those established by law and commission regulation,
29 and is in the best interests of the state, it may accept the petition. Otherwise, it

1 shall reject the petition. Each incorporation or annexation approved by the
2 commission shall be submitted to the legislature under AS 44.33.828 and
3 takes effect as provided in that section.

4 (d) Regulations of the Local Boundary Commission filed under
5 authority of other provisions of law that apply to incorporation and annexation
6 petitions and that deal with the form and content of petitions, public notice of
7 the filing of petitions, service of petitions, opportunity to file responsive
8 briefs, amendment of petitions, notice and conduct of hearings, conduct of
9 decisional sessions, and reconsideration apply to the preparation and
10 consideration of petitions under this section to the extent they may be applied
11 without conflicting with this section. The Local Boundary Commission may
12 adopt regulations providing additional standards and procedures for
13 incorporations or boundary changes under this section and to carry out the
14 purposes of this section.

15 (e) When a proposal for incorporation of an area under this section
16 becomes effective, the Local Boundary Commission shall immediately notify
17 the director of elections. Within 30 days after notification, the director of
18 elections shall order an election in the area for initial borough officials. The
19 election shall be held under AS 29.05.120 not less than 30 nor more than 90
20 days after the date of the election order. The election order must specify the
21 dates during which nomination petitions for election of initial officials may be
22 filed. AS 29.05.130 – 29.05.150, 29.05.190 – 29.05.210, and AS 29.65.030
23 apply to boroughs incorporated under this section.

24 (f) When a proposal under this section for annexation of an area in the
25 unorganized borough becomes effective, the borough or unified municipality
26 to which the area is annexed shall receive an additional general grant land
27 entitlement equal to 10 percent of the maximum total acreage of vacant,

1 unappropriated, unreserved land within the boundaries of the area annexed.
2 Additional general grant land entitlements under this subsection are subject to
3 AS 29.65.030 – 29.65.140 to the extent that those provisions can be made
4 applicable. The borough or unified municipality to which the area is annexed
5 is also entitled to an organization grant under AS 29.05.190, and, for purposes
6 of applying that section, the effective date of the annexation shall be treated as
7 though it were the date of incorporation.

8

Section 3.

Sectional Analysis

Proposed Legislation for an Act

Entitled

"An Act relating to the determination of full and true value of taxable municipal property for purposes of certain programs; and relating to incorporation of second class boroughs in the unorganized borough, and to annexation of portions of the unorganized borough to boroughs and unified municipalities."

Overview. The principal purpose of the proposed legislation is to establish a process under which the State of Alaska will systematically initiate proceedings for borough incorporation and annexation in portions of the unorganized borough that have the human and financial resources necessary to support the extension of borough government. Additionally, the proposed legislation would diminish certain deterrents to the extension of borough government, and add incentives for borough incorporation and annexation. It also resolves an inequity in education funding that arises in rare instances where territory is detached from a municipal school district.

Section 1.

Under current law, if an area is detached from an organized borough, home rule city in the unorganized borough, or first class city in the unorganized borough which is subject to the 4-mill equivalent local contribution in support of schools required by AS 14.17.410(b)(2), that contribution will, for two years following detachment, be based on property values that include the detached territory. The proposed legislation would eliminate that inequity.

Provisions in Section one also eliminate a major disincentive to borough formation in certain regions of Alaska. In less developed parts of Alaska, property taxes are not necessarily the most practical or preferred means of generating municipal revenue. This is evidenced by the fact that four of the last five organized boroughs formed in Alaska do not levy property taxes. Those four boroughs comprise twenty-five percent of all organized boroughs in Alaska.

⁴⁴ AS 14.17.410(b)(2) provides that “the required local contribution of a city or borough school district is the equivalent of a four mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year, as determined by the Department of Community and Economic Development under AS 14.17.510 and AS 29.45.110, not to exceed 45 percent of a district’s basic need for the preceding fiscal year as determined under (1) of this section.” Since the value of the trans-Alaska Oil Pipeline is so substantial, the inclusion of portions of the Pipeline within an organized borough increases that borough’s local contribution for schools required under AS 14.17.410 to an extent that the only practical way for the borough to meet that requirement is to levy a property tax.

However, current laws governing education funding effectively dictate that any organized borough encompassing substantial oil and gas exploration, production, and pipeline transportation properties such as the trans-Alaska Oil Pipeline must levy a property tax.⁴⁴ Many residents in unorganized areas along the trans-Alaska Oil Pipeline view the inexorable need for a property tax as a significant disincentive to borough formation.

When a municipal government levies property taxes on the trans-Alaska Oil Pipeline or other oil and gas exploration, production and pipeline transportation properties, the proceeds from that tax are deducted from revenues that the State of Alaska would otherwise receive under AS 43.56.010. Thus, the State’s financial gains from including oil and gas properties in the local required contribution determinations for a municipality under AS 14.17.410 are offset by an equal loss in State taxes levied under AS 43.56 on oil and gas properties. Moreover, the State incurs a net financial loss when such municipalities invariably levy property taxes on oil and gas properties to meet costs beyond their required local contributions for schools. The certainty of adverse financial impacts to the State that would result from formation of more boroughs along the Pipeline has been a long-standing argument against borough incorporation by critics of such.

Section 1 of the proposed legislation is intended to address the borough disincentive and State fiscal policy issue noted above by eliminating provisions in law which effectively require that boroughs encompassing the trans-Alaska Oil Pipeline levy property taxes. Municipalities would retain the option of levying property taxes, however, they would not be effectively required to do so as they are now. Section 1 provides that if municipal property taxes are not levied within a municipal school district, the value of any oil and gas properties within the municipality shall be excluded from the determination of that municipality’s required local contribution for schools. The provision would apply to any home rule or first class city in the unorganized borough and to all municipalities within an organized borough (i.e., the borough and all cities within the borough). To take advantage of the alternative, neither a borough nor any city within that borough could levy property taxes on oil and gas properties.

In addition to determinations of local required contributions in support of schools, Section 1 applies the same principle for the identical reasons to other provisions in State law concerning municipalities. These consist of provisions relating to: (1) school district participation under AS 14.11.008 in grant programs for construction, rehabilitation, and improvement of schools and

education-related facilities; (2) supplementary public school funding floor under AS 14.17.490; and (3) determination of millage rate equivalents under AS 29.60.030 for municipal tax resource equalization entitlements.

Section 2.

As noted in the overview, this section establishes a process under which the State of Alaska will initiate proceedings for borough incorporation and annexation in portions of the unorganized borough that have the human and financial resources necessary to support the extension of borough government. A detailed analysis and explanation of each of the seven subsections of Section 2 follows.

Subsection (a).

This subsection provides that in addition to procedures for borough incorporation and annexation in existing law, incorporation of second class boroughs and annexation to existing boroughs (including unified municipalities) may occur as outlined under subsection (b) – (f) of Section 2.

Additionally, subsection (a) provides that existing State laws (AS 44.33.814 – 44.33.828) governing the Local Boundary Commission generally apply to actions taken by the commission under Section 2. Those existing laws relate to Local Boundary Commission meetings, hearings, minutes, records, notice of public hearings, quorum, approval of boundary changes, expenses, hearings on boundary changes, and effective dates of boundary changes.

Subsection (b).

This subsection requires that by September 30 of each year, the Alaska Department of Community and Economic Development (DCED) must provide the Local Boundary Commission with a list of areas that DCED concludes reasonably appear to satisfy standards for borough incorporation or for annexation to an existing borough or unified municipality. DCED must also provide the Commission with the department’s analysis supporting listings.

By November 30 of each year, the Commission must select areas from the list that the Commission determines may warrant incorporation or annexation.

By March 31 of the following year, DCED must prepare a petition for borough incorporation or for annexation of each of the areas selected by the Commission. In the course of preparing the petitions, DCED must conduct at least one public meeting in each area to gather information needed to prepare the petition.

DCED must provide public notice when a petition has been prepared. DCED must provide copies of the petition and must provide opportunity for the public to submit written comments on the petition.

After considering written comments on the petition, DCED may amend the petition. DCED must then file the original petition, or if amended, the amended petition, with the Local Boundary Commission.

Subsection (c).

After the Commission receives a petition, it must hold at least one public hearing in or near the area proposed for incorporation or annexation.

Following the hearing, the Commission may amend the petition and may impose conditions on the incorporation or annexation.

If the Commission determines that the incorporation or annexation meets applicable standards under the state constitution as well as those established by law and commission regulation, and is in the best interests of the state, it may accept the petition. Otherwise, it must reject the petition.

Each incorporation or annexation approved by the Commission must be submitted to the legislature during the first ten days of a regular legislative session. The legislature then has 45 days to review the incorporation or annexation. The incorporation or annexation is tacitly approved by the legislature unless both the House and Senate adopt a concurrent resolution rejecting the proposal within the 45-day review period. This is consistent with the process set out in Article X, Section 12 of Alaska's Constitution for municipal boundary changes recommended by the Commission.

Subsection (d).

This subsection provides that certain regulations adopted by the Local Boundary Commission apply to the preparation and consideration of petitions under Section 2 as long as they do not

conflict with Section 2. These consist of regulations dealing with the form and content of petitions, public notice of the filing of petitions, service of petitions, opportunity to file responsive briefs, amendment of petitions, notice and conduct of hearings, conduct of decisional sessions, and reconsideration. These regulations are found under 3 AAC 110.

Subsection (d) further provides that the Commission may adopt regulations providing additional standards and procedures for incorporations or boundary changes under Section 2 and to carry out the purposes of Section 2.

Subsection (e).

If a proposal for incorporation of a second class borough receives tacit approval from the legislature, the Commission must notify the State director of elections. Within 30 days, the director of election must order an election in the area for initial borough officials. The election must be held under AS 29.05.120 not less than 30 or more than 90 days after the date of the election order. The election order must specify the dates during which nomination petitions for election of initial officials may be filed.

Subsection (e) provides that other general laws governing borough incorporation apply to boroughs incorporated under Section 2. These consist of laws relating to integration of special districts and service areas (AS 29.05.130); transition (AS 29.05.140); challenge of legality (AS 29.05.150); organization grants (AS 29.05.190); organization grant fund (AS 29.05.200); transitional assistance to boroughs (AS 29.05.210); and land grants (AS 29.65.030).

Subsection (f).

This subsection provides two incentives for borough annexation. First, it extends land grants to boroughs that annex parts of the unorganized borough. Like grants for newly incorporated boroughs, the grant equals 10 percent of the total acreage of vacant, unappropriated, unreserved land within the boundaries of the portion of the unorganized borough that was annexed. Land grants are subject to general laws governing municipal land grants under AS 29.65.030 – 29.65.140 to the extent that those provisions can be made applicable.

Additionally, the borough to which an unorganized area is annexed is also entitled to an organization grant under AS 29.05.190.

Time Line for Incorporation or Annexation Under Proposed Legislation

By September 30 ↓	DCED lists prospective borough incorporations & annexations	New provision in law
By November 30 ↓	LBC selects proposals from DCED list	New provision in law
December 1 ↓	DCED conducts meetings in regions selected by LBC	Parallel provision in existing law [AS 29.05.080(a)]
	DCED prepares petitions	Parallel provision in existing law [AS 44.33.812(a)(3)]
	DCED provides public notice of petitions	Existing law (3 AAC 110.450)
	Interested persons allowed to comment on petitions	Existing law (3 AAC 110.480)
	Based on comments DCED may amend petitions	Existing law (3 AAC 110.540)
March 31 ↓	DCED files petitions with LBC	Existing law [3 AAC 110.440(c)]
April 1 ↓	Notice given of LBC hearings	Existing law (3 AAC 110.550)
	LBC conducts hearing in region	Existing law (AS 29.05.090)
	LBC approves, rejects, or amends/conditions/approves petitions	Existing law [AS 29.05.100(a)]
	LBC adopts written decisional statement for each petition	Existing law [3 AAC 110.570(f)]
	Interested parties may seek reconsideration of LBC decision	Existing law (3 AAC 110.580)
mid- January ↓	LBC files recommendations with Legislature	Parallel provision in existing law (Art. X, § 12, Ak. Const.)
	Legislature considers LBC recommendations for 45 days	Parallel provision in existing law (Art. X, § 12, Ak. Const.)
late-March ↓	Recommendations approved unless rejected	Parallel provision in existing law (Art. X, § 12, Ak. Const.)
	LBC notifies Division of Elections of approved boroughs	Existing law [AS 29.05.110(a)]
late –March to late-April ↓	Division of Elections orders election for initial borough officials	Existing law (AS 29.05.120)
by late-July	Division of Elections conducts elections for initial borough officials	Existing law (AS 29.05.120)

Summary of Standards for Borough Incorporation in Existing Law

Standards regarding the creation of organized boroughs are provided in Alaska's Constitution, statutes, and regulations. The standards are summarized below

- Borough incorporation is encouraged under Alaska's Constitution. (Art. X, § 1, Ak. Const.)
- All of Alaska must be divided into boroughs (organized or unorganized) with each embracing an area and population with common interests to the maximum degree possible. (Art. X, § 3, Ak. Const.)
- Alaska's Constitution favors larger boroughs in order to avoid the proliferation of small boroughs. (Art. X, § 1, Ak. Const.)
- Borough incorporation must be in the best interests of the state. (AS 29.05.100)
- Borough residents must be socially, culturally, and economically interrelated and integrated. [AS 29.05.031(a)(1); 3 AAC 110.045(a)-(b)]
- The population must be large and stable enough to support borough government. It is formally presumed that a borough will have at least 1,000 permanent residents. (AS 29.05.031(a)(1); 3 AAC 110.050)
- Boundaries must conform generally to natural geography and include all areas necessary for full development of municipal services. [AS 29.05.031(a)(2); 3 AAC 110.060(a)]
- Consideration must be given to model borough boundaries adopted by the Local Boundary Commission. [3 AAC 110.060(b)]
- Boundaries must conform to regional educational attendance area boundaries, unless the Local Boundary Commission allows otherwise. [3 AAC 110.060(c)]
- There must be adequate human and financial resources to provide borough services. (AS 29.05.031(a)(3); 3 AAC 110.055)
- There must be adequate facilities to allow the communication and exchange necessary for the development of integrated borough government. [AS 29.05.031(a)(4); 3 AAC 110.045(c)-(d)]

Section 4.

Biographical Information About the Local Boundary Commission

The Commission consists of five members appointed by the Governor for overlapping terms of five years. Members serve at the pleasure of the Governor. The Chairperson is appointed from the state at-large and one member is appointed from each of Alaska's four judicial districts. Members serve without compensation. Appointments to the Commission are made, "...on the basis of interest in public affairs, good judgment, knowledge and ability in the field ... and with a view to providing diversity of interest and points of view in the membership." (AS 39.05.060)

Information about current Commissioners follows.



Kevin Waring, a resident of Anchorage, has served on the Commission since July 15, 1996. He was appointed Chairperson on July 10, 1997. He was reappointed to a new term as Chairperson effective January 31, 1998. Commissioner Waring was one of the original division directors of the former

Alaska Department of Community and Regional Affairs (1973-1978). Between 1980 and the spring of 1998, he operated a planning/economics consulting firm in Anchorage. From the spring of 1998 until early 2000, Commissioner Waring was employed as manager of physical planning for the Municipality of Anchorage's Community Planning and Development Department. He has since returned to private consulting. Mr. Waring has been active on numerous Anchorage School District policy and planning committees. His current term on the LBC expires January 31, 2003.



Kathleen S. Wasserman, a resident of Pelican, is the Vice-Chairperson of the Commission. She serves from Alaska's First Judicial District. She was first appointed to the Commission for an unexpired term on September 14, 1995. She was reappointed to a new term beginning January 31,

1996. Commissioner Wasserman also serves as the current Mayor of the City of Pelican. She is currently serves as the District 1 representative on the Alaska Municipal League Board of Directors and as Secretary/Treasurer for the Alaska Conference of Mayors. In the past, Commissioner Wasserman has served as a member of the Assembly of the City and Borough of Sitka and as

Mayor of the City of Kasaan. Additionally, she has served as president of the Southeast Island Regional Educational Attendance Area School Board. Commissioner Wasserman is self-employed. Her present term on the Commission expires January 31, 2001.



Nancy E. Galstad serves from the Second Judicial District. She was appointed to the LBC on September 14, 1995 and reappointed to a new term effective January 31, 1999. Formerly Special Assistant to the Commissioner of the Alaska Department of Labor, Ms. Galstad now serves as the Manager of the City of Kotzebue. She is currently Second Vice-President of the Alaska Municipal Managers' Association. Ms. Galstad was a member of the Alaska Safety Advisory Council for eight years and currently serves as Vice Chair of the Alaska Municipal League Joint Insurance Association. She also served as a member of the State's Task Force on Education Funding in 1995. Ms. Galstad's current term on the LBC expires January 31, 2004.



Allan Tesche serves from the Third Judicial District and is a resident of Anchorage. He was appointed to the LBC on July 10, 1997. In April 1999, Mr. Tesche was elected to the Assembly of the Municipality of Anchorage. In the past, Mr. Tesche has served as Deputy and Assistant Municipal Attorney in Anchorage and Borough Attorney for the Matanuska-Susitna Borough. He is a founder and past president of the Alaska Municipal Attorneys' Association and served as a member of the attorneys' committee which assisted the Alaska legislature in the 1985 revisions to the Municipal Code (AS 29). Mr. Tesche is a shareholder in the Anchorage law firm of Russell, Tesche, Wagg, Cooper & Gabbert, PC. Mr. Tesche's term on the Commission expires January 31, 2002.



Ardith Lynch serves from the Fourth Judicial District and lives in the greater Fairbanks area. She was appointed to the LBC on December 21, 1999. Ms. Lynch is the Borough Attorney for the Fairbanks North Star Borough. She has also worked for the State of Alaska as an Assistant Attorney General and as Deputy Director of the Child Support Enforcement Division. Ms. Lynch has served on the Board of Governors of the Alaska Bar Association and is a past president of the Alaska Municipal Attorneys' Association. Her term on the Commission expires December 21, 2004.

Appendix A

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Shaded areas identify seven regions in the unorganized borough with 1998 per capita personal income higher than those in the Matanuska-Susitna Borough and the Lake & Peninsula Borough



1998 Per Capita Personal Income

(Source: U.S. Commerce Department, Bureau of Economic Analysis)

Borough or Census Area	1998 Per Capita Personal Income
Bristol Bay Borough	\$43,439
City and Borough of Juneau	\$33,516
Municipality of Anchorage	\$32,659
Denali Borough	\$32,152
Ketchikan Gateway Borough	\$31,803
Haines Borough	\$30,059
North Slope Borough	\$29,271
City and Borough of Sitka	\$28,480
Aleutians West Census Area	\$28,356
Valdez-Cordova Census Area	\$28,256
City and Borough of Yakutat	\$27,352
Wrangell-Petersburg Census Area	\$25,983
Fairbanks North Star Borough	\$25,341
Kenai Peninsula Borough	\$25,120
Dillingham Census Area	\$25,046
Skagway-Hoonah-Angoon Census Area	\$24,086
Kodiak Island Borough	\$24,166
Aleutians East Borough	\$24,069
Southeast Fairbanks Census Area	\$21,614
Northwest Arctic Borough	\$20,700
Nome Census Area	\$20,508
Matanuska-Susitna Borough	\$18,752
Lake and Peninsula Borough	\$18,419
Prince of Wales – Outer Ketchikan Census	\$18,278
Yukon-Koyukuk Census Area	\$18,005
Bethel Census Area	\$17,524
Wade Hampton Census Area	\$12,684

Shaded areas identify three regions in the unorganized borough with 1998 local employment per 1,000 residents higher than those in eight organized boroughs



1998 Local Employment in Alaska

(Source: Alaska Department of Labor and Workforce Development)
(employment per 1,000 residents extrapolated by DCED)

Borough or Census Area	Total Employment	1998 Population	Employment Per 1,000 Residents
North Slope Borough	8,515	7,268	1,171.6
Denali Borough	1,732	1,868	927.2
Bristol Bay Borough	1,070	1,291	828.8
Aleutians East Borough	1,725	2,145	804.2
Aleutians West Census Area	3,439	5,346	643.3
Juneau Borough	16,460	30,021	548.3
Yakutat Borough	422	775	544.5
Ketchikan Gateway Borough	7,025	14,143	496.7
Anchorage, Municipality of	126,776	257,260	492.8
Dillingham Census Area	2,307	4,686	492.3
Valdez-Cordova Census Area	4,763	10,274	463.6
Sitka Borough	3,875	8,722	444.3
Kodiak Island Borough	5,737	13,716	418.3
Skagway-Hoonah-Angoon Census Area	1,521	3,642	417.6
Northwest Arctic Borough	2,735	6,817	401.2
Fairbanks North Star Borough	32,336	83,045	389.4
Haines Borough	933	2,461	379.1
Nome Census Area	3,525	9,341	377.4
Bethel Census Area	5,880	15,935	369.0
Lake and Peninsula Borough	662	1,842	359.4
Wrangell-Petersburg Census Area	2,543	7,165	354.9
Kenai Peninsula Borough	16,586	48,532	341.8
Prince of Wales-Outer Ketchikan Census	2,201	6,830	322.3
Yukon-Koyukuk Census Area	2,001	6,411	312.1
Wade Hampton Census Area	1,941	7,044	275.6
Southeast Fairbanks Census Area	1,634	6,349	257.4
Matanuska-Susitna Borough	11,368	54,153	209.9

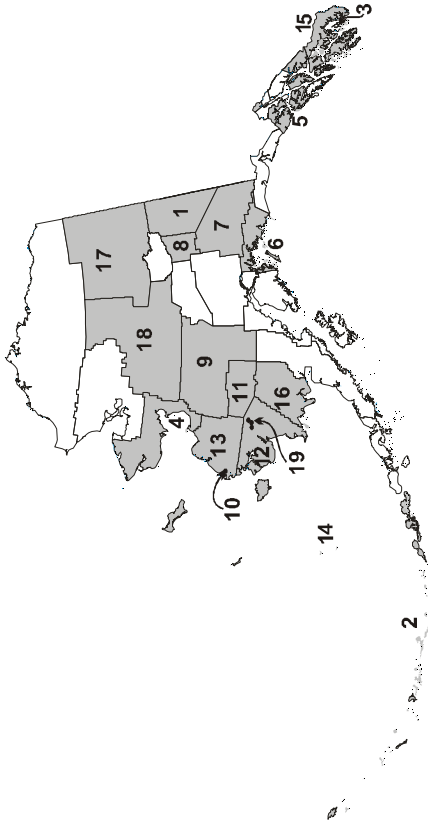
Shaded areas identify three regions in the unorganized borough with 1998 per capita earnings from local employment higher than those in ten organized boroughs



1998 Per Capita Earnings from Local Employment

(Source: Alaska Department of Labor and Workforce Development)
(employment per 1,000 residents extrapolated by DCED)

Region	1998 Earnings	1998 Population	1998 Per Capita Earnings
North Slope Borough	\$520,522,220	7,268	\$71,618
Nome Census Area	\$97,044,435	2,461	\$39,433
Denali Borough	\$55,286,386	1,868	\$29,597
Bristol Bay Borough	\$32,431,012	1,291	\$25,121
Aleutians West Census Area	\$108,882,321	5,346	\$20,367
Aleutians East Borough	\$41,027,273	2,145	\$19,127
Juneau Borough	\$531,813,449	30,021	\$17,715
Anchorage, Municipality of	\$4,487,741,618	257,260	\$17,444
Valdez-Cordova Census Area	\$177,367,744	10,274	\$17,264
Yakutat Borough	\$12,342,015	775	\$15,925
Ketchikan Gateway Borough	\$225,062,306	14,143	\$15,913
Northwest Arctic Borough	\$106,716,798	6,817	\$15,655
Dillingham Census Area	\$62,319,552	4,686	\$13,299
Sitka Borough	\$107,681,583	8,722	\$12,346
Fairbanks North Star Borough	\$993,377,321	83,045	\$11,962
Kodiak Island Borough	\$156,034,213	13,716	\$11,376
Skagway-Hoonah-Angoon Census Area	\$38,853,608	3,642	\$10,668
Kenai Peninsula Borough	\$498,373,187	48,532	\$10,269
Wrangell-Petersburg Census Area	\$70,592,857	7,165	\$9,852
Haines Borough	\$22,964,855	2,461	\$9,332
Bethel Census Area	\$145,680,722	15,935	\$9,142
Prince of Wales-Outer Ketchikan Census Area	\$62,291,076	6,830	\$9,120
Yukon-Koyukuk Census Area	\$54,484,780	6,411	\$8,499
Lake and Peninsula Borough	\$13,525,967	1,842	\$7,343
Southeast Fairbanks Census Area	\$45,337,691	6,349	\$7,141
Matanuska-Susitna Borough	\$311,684,727	54,153	\$5,756
Wade Hampton Census Area	\$34,879,176	7,044	\$4,952



Regional Educational Attendance Areas

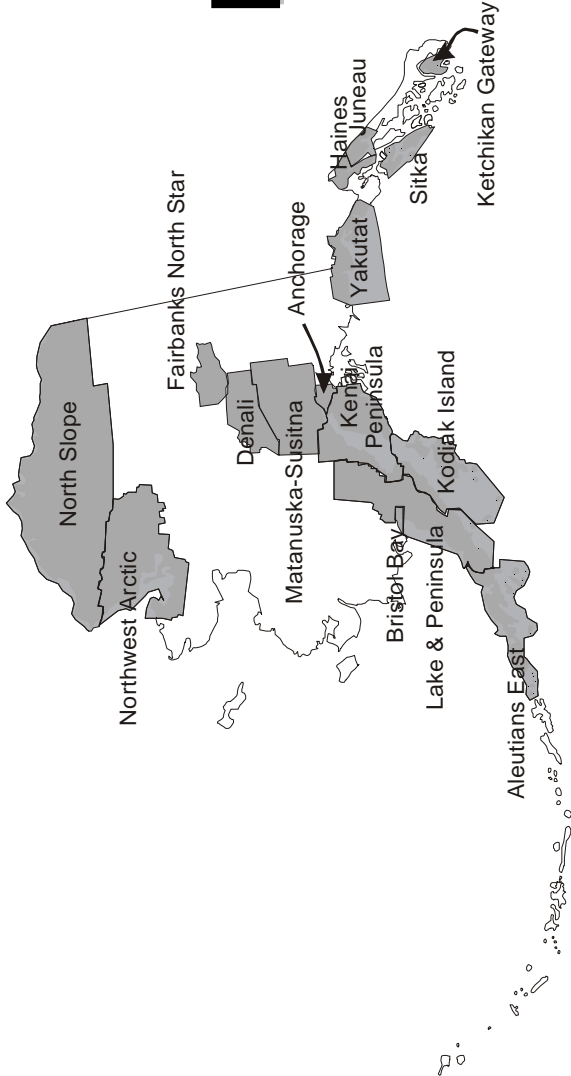
(excludes 18 home rule and first class cities in the unorganized borough)

(Based on information from the
Alaska Department of Education and Early Development)

District	1999 Enrollment	FY 1999 Audited Expenditures	Expenditures per Student – All Expenditures	FY 1999 Required Local Effort	Voluntary Additional FY 1999 Contributions	Expenditures per Student - State & Federal Funding Only
1. Alaska Gateway REAA	480	\$5,191,833	\$10,816.32	\$0	\$0	\$10,816.32
2. Aleutian Region REAA	79	\$1,318,555	\$16,690.57	\$0	\$0	\$16,690.57
3. Annette Island REAA	374	\$4,268,456	\$11,412.98	\$0	\$0	\$11,412.98
4. Bering Strait REAA	1864	\$25,248,054	\$13,545.09	\$0	\$0	\$13,545.09
5. Chatham REAA	248	\$2,988,420	\$12,050.08	\$0	\$0	\$12,050.08
6. Chugach REAA	166	\$1,997,541	\$12,033.38	\$0	\$0	\$12,033.38
7. Copper River REAA	745	\$5,888,245	\$7,903.68	\$0	\$0	\$7,903.68
8. Delta/Greely REAA	1107	\$7,004,552	\$6,327.51	\$0	\$0	\$6,327.51
9. Iditarod Area REAA	594	\$7,130,288	\$12,003.85	\$0	\$0	\$12,003.85
10. Kashunimuit REAA	300	\$3,004,401	\$10,014.67	\$0	\$0	\$10,014.67
11. Kuspuk REAA	497	\$6,777,351	\$13,636.52	\$0	\$0	\$13,636.52
12. Lower Kuskokwim REAA	3687	\$45,218,520	\$12,264.31	\$0	\$0	\$12,264.31
13. Lower Yukon REAA	1946	\$20,431,861	\$10,499.41	\$0	\$0	\$10,499.41
14. Pribilof REAA	160	\$2,164,574	\$13,528.59	\$0	\$0	\$13,528.59
15. Southeast Island REAA	298	\$3,644,951	\$12,231.38	\$0	\$0	\$12,231.38
16. Southwest Region REAA	745	\$10,388,823	\$13,944.73	\$0	\$0	\$13,944.73
17. Yukon Flats REAA	382	\$6,518,032	\$17,062.91	\$0	\$0	\$17,062.91
18. Yukon/Koyukuk REAA	556	\$8,182,436	\$14,716.61	\$0	\$0	\$14,716.61
19. Yupiit REAA	402	\$6,048,746	\$15,046.63	\$0	\$0	\$15,046.63
Total	14,630	\$173,415,639	\$11,853.43	\$0	\$0	\$11,853.43

Borough School Districts

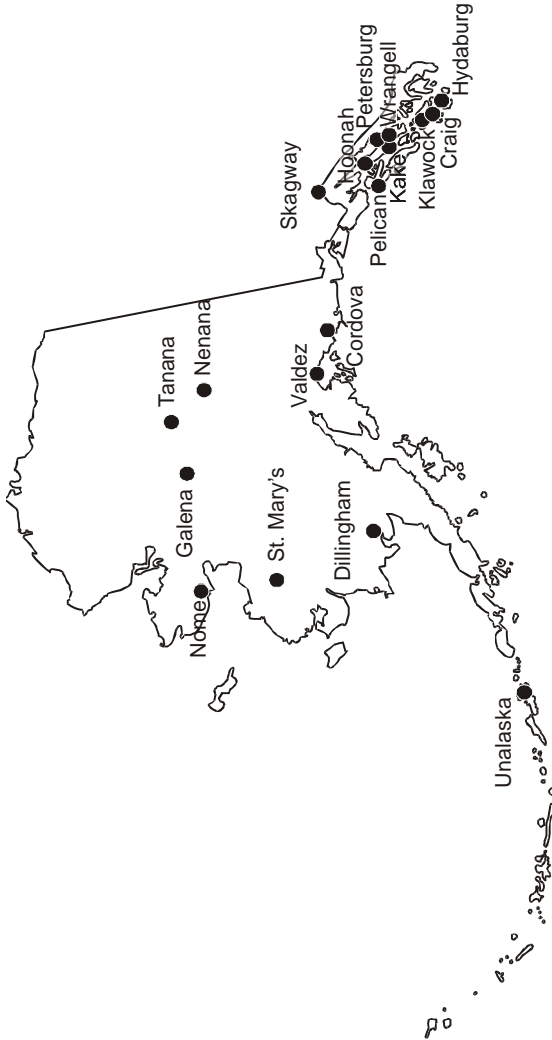
(Based on information from the
Alaska Department of Education and Early Development)



District	1999 Enrollment	FY 1999 Audited Expenditures	Expenditures per Student - All Expenditures	FY 1999 Required Local Effort	Voluntary Additional FY 1999 Contributions	Expenditures per Student - State & Federal Funding Only
Aleutians East	362	\$5,213,401	\$14,402	\$365,761	\$471,992	\$12,087
Anchorage	49,382	\$293,650,692	\$5,947	\$55,828,890	\$38,573,995	\$4,035
Bristol Bay	308	\$3,051,117	\$9,906	\$860,657	\$513,424	\$5,445
Denali	329	\$3,899,941	\$11,854	\$459,758	\$639,427	\$8,513
Fairbanks North Star	15,999	\$107,381,962	\$6,712	\$17,106,689	\$13,584,091	\$4,793
Haines	425	\$3,468,985	\$8,162	\$674,832	\$477,824	\$5,450
Juneau	5,699	\$37,041,180	\$6,500	\$9,380,326	\$6,445,574	\$3,723
Kenai Peninsula	10,225	\$73,237,898	\$7,163	\$15,751,444	\$13,725,341	\$4,280
Ketchikan Gateway	2,643	\$17,437,478	\$6,598	\$4,552,513	\$3,154,676	\$3,682
Kodiak Island	2,817	\$22,916,263	\$8,135	\$3,588,780	\$2,909,130	\$5,828
Lake and Peninsula	491	\$11,109,637	\$22,627	\$268,776	\$955,761	\$20,133
Matanuska-Susitna	12,735	\$84,155,364	\$6,608	\$9,922,903	\$13,917,154	\$4,736
North Slope	2,131	\$41,270,164	\$19,367	\$8,791,243	\$15,045,224	\$8,181
Northwest Arctic	2,192	\$25,844,110	\$11,790	\$1,484,493	\$1,010,427	\$10,652
Sitka	1,746	\$11,265,994	\$6,452	\$2,500,230	\$1,836,746	\$3,969
Yakutat	159	\$1,998,427	\$12,569	\$144,356	\$309,404	\$9,715
Totals	107,643	\$742,942,613	\$6,902	\$131,681,651	\$113,570,190	\$4,624

City School Districts

(Based on information from the
Alaska Department of Education and Early Development)



District	1999 Enrollment	FY 1999 Audited Expenditures	Expenditures per Student – All Expenditures	FY 1999 Required Local Effort	Voluntary Additional FY 1999 Contributions	Expenditures per Student - State & Federal Funding Only
City of Cordova	487	\$4,264,523	\$8,757	\$674,600	\$727,745	\$5,877
City of Craig	420	\$3,203,099	\$7,626	\$367,686	\$263,045	\$6,125
City of Dillingham	564	\$5,658,301	\$10,032	\$608,522	\$398,330	\$8,247
City of Galena	3,725	\$16,261,344	\$4,365	\$70,412	\$789,971	\$4,134
City of Hoonah	236	\$3,212,497	\$13,612	\$98,904	\$426,866	\$11,384
City of Hydaburg	108	\$1,768,547	\$16,375	\$23,809	\$8,254	\$16,079
City of Kake	166	\$2,115,154	\$12,742	\$69,431	\$160,254	\$11,358
City of Klawock	203	\$2,207,758	\$10,876	\$62,627	\$139,151	\$9,882
City of Nenana	1,005	\$2,670,749	\$2,657	\$66,968	\$20,013	\$2,571
City of Nome	774	\$6,845,554	\$8,844	\$626,146	\$588,874	\$7,275
City of Pelican	36	\$626,209	\$17,395	\$53,374	\$3,761	\$15,808
City of Petersburg	701	\$5,138,950	\$7,331	\$947,600	\$714,047	\$4,960
City of Saint Mary's	133	\$1,637,104	\$12,309	\$17,993	\$23,751	\$11,995
City of Skagway	133	\$1,484,376	\$11,161	\$525,021	\$131,689	\$6,223
City of Tanana	93	\$1,813,330	\$19,498	\$23,286	\$62,869	\$18,572
City of Unalaska	392	\$3,783,913	\$9,653	\$1,421,769	\$345,752	\$5,144
City of Valdez	868	\$8,044,695	\$9,268	\$2,616,877	\$1,439,010	\$4,595
City of Wrangell	505	\$3,897,032	\$7,717	\$651,476	\$750,914	\$4,940
Total	10,549	\$74,633,135	\$7,075	\$8,926,500	\$6,994,297	\$5,566