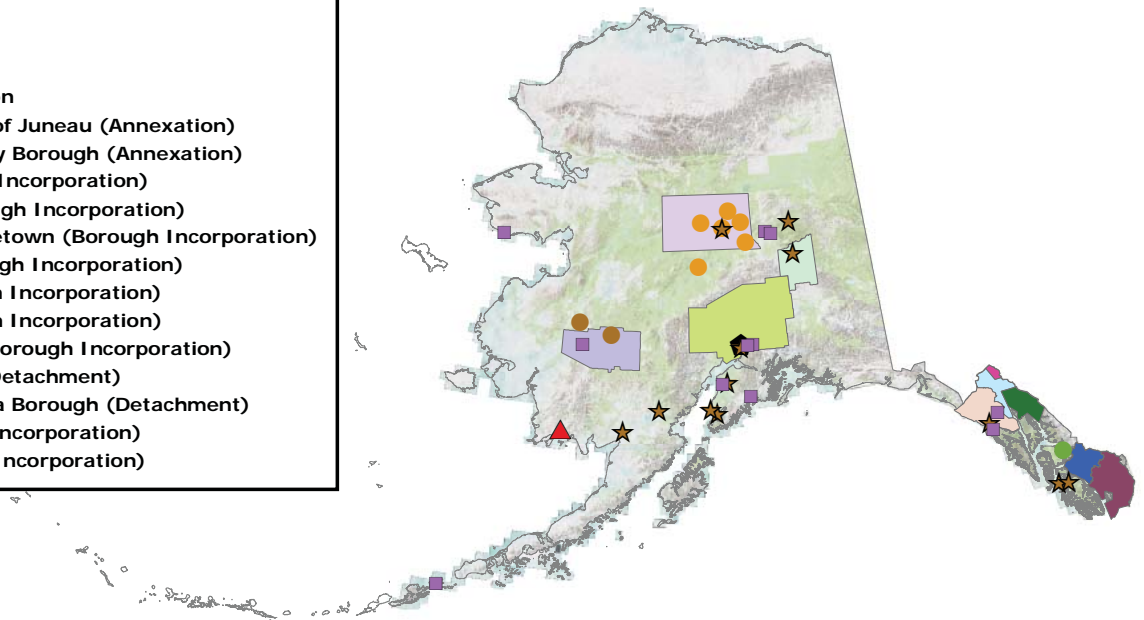
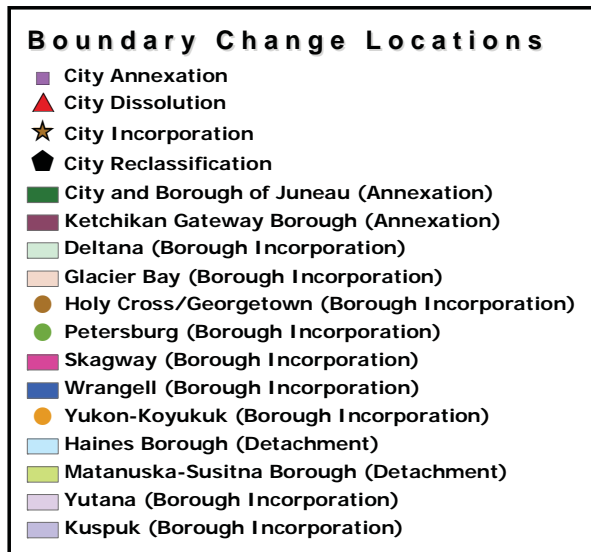


Report of the Alaska Local Boundary Commission to the First Session of the Twenty-Sixth Alaska State Legislature

February 2009



Kermit Ketchum, Chairman
Georgianna Zimmerle, First Judicial District
Robert Harcharek, Second Judicial District
Lynn Chrystal, Third Judicial District
Lavell Wilson, Fourth Judicial District



Local Boundary Commission
550 West Seventh Avenue, Suite 1770
Anchorage, Alaska 99501
Phone: 907-269-4580
Fax: 907-269-4539

The Local Boundary Commission complies with Title II of the Americans with Disabilities Act of 1990. Upon request, this report will be made available in large print or other accessible formats. Requests for such should be directed to the Local Boundary Commission staff at 907-269-4560. This report is also available on the Local Boundary Commission's website at:

<http://www.commerce.state.ak.us/dcra/lbc/lbc.htm>

Graphic Illustration Only

The maps included in this publication are intended to be used as general reference guides only. Source documents remain the official record and should be reviewed to determine the accuracy of the illustration.



State of Alaska Local Boundary Commission

550 West Seventh Avenue, Suite 1770 • Anchorage, Alaska 99501
Telephone: 907-269-4501 • Fax 907-269-4539

LETTER FROM THE COMMISSIONERS

January 2009

Dear Members of the Alaska Legislature:

As members of the Local Boundary Commission (LBC) we are pleased to present our Commission's Annual Report to the First Session of the Twenty-Sixth Alaska State Legislature. This month marks the 50th anniversary of Alaska's statehood. We ask that the Legislature consider local boundary matters that have remained in issue since statehood.

This report provides a brief background on the LBC; describes activities of the Commission and its staff during 2007 and 2008; and discusses public policy issues of particular interest to the Commission, including

- 1. Developing adequate incentives to encourage borough formation and annexation to existing boroughs.**
- 2. Informing the Legislature and Alaskan citizens about the Commission's role and duties.**
- 3. The financial inequity of education funding for municipalities and their school districts.**

These public policy issues impact Alaska's ability to structure and launch local governments that meet a multi-cultural population's needs and that contribute to the state's social and economic health. These issues have been before the Alaska Legislature since statehood. They are as important today as they were 50 years ago. The LBC is eager to work collaboratively with the Alaska Legislature to address these issues and help shape our state's future municipal landscape.

Very truly yours,

The Local Boundary Commission


Kermit L. Ketchum, Chair


Robert Harcharek, Commissioner


Lavell Wilson, Commissioner


Georgianna Zimmerle, Commissioner


Lynn Chrystal, Commissioner

Contents

Chapter 1: Background.....	1
Local Boundary Commission	1
Commission Procedures	13
Overview of Municipal Government in Alaska.....	16
Chapter 2: Activities and Developments	20
Section I. City Incorporation	20
Section II. City Annexation	29
Section III. City Dissolution	40
Section IV. City Reclassification	41
Section V. Borough Incorporation.....	42
Section VI. Borough Annexation	53
Section VII. Borough Detachment.....	59
Section VIII. Special Projects	62
Section IX. Litigation Involving the LBC	65
Chapter 3: Public Policy Issues.....	67
(1) Recommendation: Inducements for Borough Incorporation and Annexation	67
(2) Recommendation: Legislative Conducted Worksessions Addressing Boundary Change Issues	69
(3) Recommendation: Legislative Repeal or Mitigation on State Tax on Municipal School Districts.....	70
Appendix A.....	A-1
Appendix B.....	B-1
Appendix C	C-1

Chapter 1: Background

Local Boundary Commission

Constitutional Foundation of the Commission

The framers of the Alaska Constitution adopted the principle that, “unless a grave need existed, no agency, department, commission, or other body should be specified in the constitution.”¹ The framers recognized that a “grave need” existed when it came to establishing and altering municipal governments by providing for the creation of the Local Boundary Commission (LBC or Commission) in article X, section 12 of the Alaska Constitution.² The LBC is one of only five State boards or commissions established in the Constitution, among a current total of approximately 120 active boards and commissions.



Alaska Constitutional Convention, 1956

-
- 1 Victor Fischer, *Alaska's Constitutional Convention*, 1975, p. 124.
 - 2 Article X, section 12 states, “A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the Legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.”

The Alaska Supreme Court characterized the framers' purpose in creating the LBC as follows:

An examination of the relevant minutes of [the Local Government Committee of the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee: "... lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third party, arguments for and against boundary change can be analyzed objectively."

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

Nature of the Commission

Boards and commissions frequently are classified as quasi-legislative, quasi-executive, or quasi-judicial, based on their functions within the separation-of-powers scheme of the Constitution. The LBC has attributes of all three.

Quasi-Executive

Article X, section 12 of the Alaska Constitution provides that the LBC, "*shall* be established by law in the executive branch of the state government." (Emphasis added.) The duty of the LBC under AS 44.33.812(a)(1) to "make studies of local government boundary problems" is one example of the quasi-executive nature of the LBC.

Quasi-Legislative

In 1974, 1976, and again in 1993, the Alaska Supreme Court stated that the Constitution of the State of Alaska delegates legislative authority to the LBC to make fundamental public policy decisions, thus conferring quasi-legislative status upon the LBC. Specifically, the Court stated:

[T]he Local Boundary Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate. *Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions.* [Emphasis added.] Accordingly, acceptance

of the incorporation petition should be affirmed if we perceive in the record a reasonable basis of support for the Commission's reading of the standards and its evaluation of the evidence.

Mobil Oil Corp. v. Local Boundary Com'n, 518 P.2d 92, 98-99 (Alaska 1974) (emphasis added). See also *Moore v. State*, 553 P.2d 8, n. 20 at 36 (Alaska 1976); and *Valleys Borough Support v. Local Boundary Com'n*, 863 P.2d 232, 234 (Alaska 1993).

The LBC carries out under AS 44.33.812(a)(2) another quasi-legislative duty, when it adopts "regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution. . . ." See *U.S. Smelting, Refining & Min. Co. v. Local Boundary Com'n*, 489 P.2d 140 (Alaska 1971), discussing application of due-process requirements to develop boundary change standards and procedures in Commission proceedings.



Local Boundary Commission listening to testimony at a recent hearing.

Quasi-Judicial

Although it is part of the executive branch and exercises delegated legislative authority, the LBC also has a quasi-judicial nature. In particular, the LBC has a mandate to apply pre-established standards to facts, to hold hearings, and to follow due process in conducting hearings and ruling on petitions.

The quasi-judicial nature of the LBC requires that there be a reasonable basis of support for the LBC's reading of the standards and its evaluation of the evidence, even though the quasi-legislative nature of the LBC provides it with considerable discretion in the application of those standards and the weighing of evidence.

Duties and Functions of the LBC

The LBC acts on proposals for seven different municipal boundary changes. These are:

- ◆ incorporation of municipalities;³
- ◆ annexation to municipalities;
- ◆ merger of municipalities;
- ◆ consolidation of municipalities;
- ◆ detachment from municipalities;
- ◆ dissolution of municipalities; and
- ◆ reclassification of city governments.

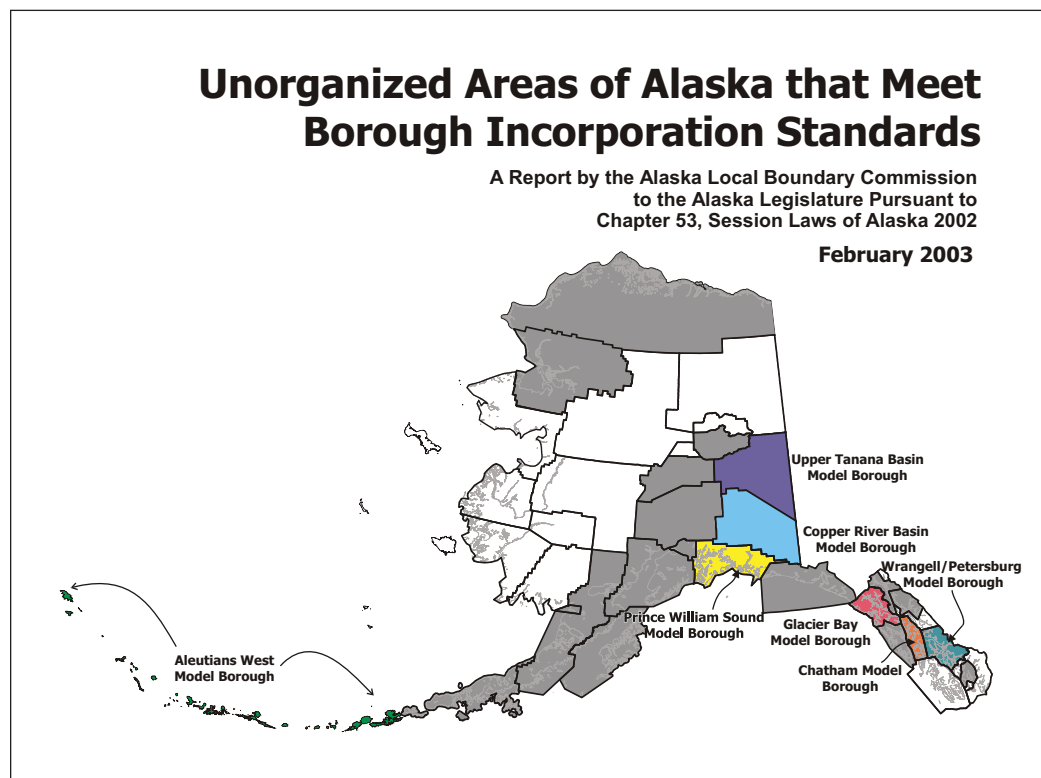
In addition to the above, the LBC has a continuing obligation under statutory law to:

- ◆ make studies of local government boundary problems; and
- ◆ adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution.

3 The term "municipalities" includes both city governments and borough governments.

The LBC may make recommendations to the Legislature concerning boundary changes under article X, section 12 of the Alaska Constitution.

Further, the LBC is routinely assigned duties by the Legislature. For example, in February 2003, the LBC produced the 216-page report entitled *Unorganized Areas of Alaska That Meet Borough Incorporation Standards*. That report was prepared in response to the directive in section 3, chapter 53, SLA 2002. In February 2004, the LBC and Department of Education and Early Development published a 330-page joint report entitled *School Consolidation: Public Policy Considerations and a Review of Opportunities for Consolidation*. That report was prepared in response to the duty assigned in section 1, chapter 83, SLA 2003. The 2004 Legislature called for "a Local Boundary Commission project to consider options for forming a separate local government, independent of the Municipality of Anchorage, for the community of Eagle River" (section 48, chapter 159, SLA 2004).



LBC Decisions Must Have a Reasonable Basis and Must Be Arrived at Properly

LBC decisions regarding petitions that come before it must have a reasonable basis. That is, both the LBC's interpretation of the applicable legal standards and its evaluation of the evidence in the proceeding must have a rational foundation.⁴ The LBC must, of course, proceed within its jurisdiction; conduct a fair hearing; and avoid any prejudicial abuse of discretion. Abuse of discretion occurs if the LBC has not proceeded in the manner required by law or if its decision is not supported by the evidence.

Limitations on Direct Communications with the LBC

When the LBC acts on a petition for a municipal boundary change, it does so in a quasi-judicial capacity. LBC proceedings regarding a municipal boundary change must be conducted in a manner that upholds the right of everyone to due process and equal protection. Ensuring that communications with the LBC concerning municipal boundary proposals are conducted openly and publicly preserves those rights. To regulate communications, the LBC adopted 3 AAC 110.500(b) which expressly prohibits private (*ex parte*) contact between the LBC and any individual, other than its staff, except during a public meeting called to address a municipal boundary proposal. The limitation takes effect upon the filing of a petition and remains

4 See *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1241 (Alaska 1995). When an administrative decision involves expertise regarding either complex subject matter or fundamental policy formulation, the court defers to the decision if it has a reasonable basis; *Lake and Peninsula Borough v. Local Boundary Commission*, 885 P.2d 1059, 1062 (Alaska 1994); *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 97-9 (Alaska 1974). Where an agency action involves formulation of a fundamental policy the appropriate standard on review is whether the agency action has a reasonable basis; LBC exercises delegated legislative authority to reach basic policy decisions; acceptance of the incorporation petition should be affirmed if the court perceives in the record a reasonable basis of support for the LBC's reading of the standards and its evaluation of the evidence; *Rose v. Commercial Fisheries Entry Comm'n*, 647 P.2d 154, 161 (Alaska 1982) (review of agency's exercise of its discretionary authority is made under the reasonable basis standard) cited in *Stosh's I/M v. Fairbanks North Star Borough*, 12 P.3d 1180, 1183, nn. 7 and 8 (Alaska 2000); see also *Matanuska-Susitna Borough v. Hammond*, 726 P.2d 166, 175-76 (Alaska 1986).

in place through the last date available for the Commission to reconsider a decision. If a decision of the LBC is appealed to the court, the limitation on *ex parte* contact is extended throughout the appeal in the event the court requires additional consideration by the LBC.

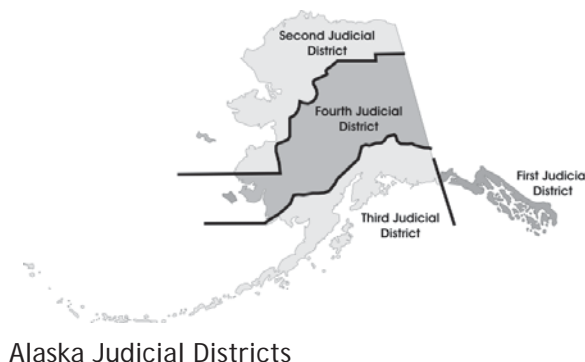
In that regard, all communications with the Commission must be submitted through staff to the Commission. The LBC staff may be contacted at the following address, telephone number, facsimile number, or e-mail address:

Local Boundary Commission Staff
550 West Seventh Avenue, Suite 1770
Anchorage, Alaska 99501-3510
Telephone: (907) 269-4559
Fax: (907) 269-4539
Alternate fax: (907) 269-4563
brent.williams@alaska.gov

LBC Membership

The LBC is an autonomous commission. The governor appoints LBC members for five-year overlapping terms (AS 44.33.810). Notwithstanding the prescribed length of their terms, however, members of the LBC serve at the pleasure of the governor (AS 39.05.060(d)).

The LBC is comprised of five members. One member is appointed from each of Alaska's four judicial districts. The fifth member is appointed from the state at-large and serves as chair of the LBC.



Alaska Judicial Districts

State law provides that LBC members must be appointed "on the basis of interest in public affairs, good judgment, knowledge and ability in the field of action of the department for which appointed, and with a view to providing diversity of interest and points of view in the membership." (AS 39.05.060(b)).

LBC members receive no pay for their service. They are entitled, however, to reimbursement of travel expenses and per diem authorized for members of boards and commissions under AS 39.20.180.

The following is a biographical summary of the current members of the LBC.

Kermit L. Ketchum, Chair, At-Large Appointment.



On June 25, 2007, Governor Palin appointed Kermit L. Ketchum as Chair of the LBC, effective July 1, 2007. Commissioner Ketchum succeeds Darroll Hargraves, who retired effective June 30, 2007. Commissioner Ketchum is a resident of the greater Wasilla area in the Matanuska-Susitna Borough.

He received his bachelor's degree in business administration and has undertaken graduate studies in computer science. Commissioner Ketchum served 21 years in the U.S. Air Force, retiring in 1976. He subsequently worked for the University of Alaska Matanuska-Susitna College from 1976 to 1997 and was a computer science associate professor from 1987 to 1997. In 2008, he was reappointed by Governor Palin for a five-year term ending January 31, 2013.

Georgianna Zimmerle, First Judicial District, Ketchikan.



Commissioner Zimmerle is a life-long resident of Ketchikan. She earned an Associate of Arts degree from the University of Alaska in May 1985. Commissioner Zimmerle was appointed to the LBC on March 25, 2003, and was reappointed to her second term in January 2006. An Alaska Native, Commissioner Zimmerle is a Tlingit of the Raven moiety and her Indian name is JEEX-GA-TEET'. She is also Haida from her paternal family. Commissioner Zimmerle worked for the Ketchikan Gateway Borough for 27 years, serving five years as the borough manager and 22 years in the borough clerk's office. Commissioner

Zimmerle served as the general manager of Ketchikan Indian Community for 2-½ years. She is currently retired and working part-time for Tongass Federal Credit Union. Her current term on the LBC ends January 31, 2011.

Robert “Bob” Harcharek, Vice-Chair, Second Judicial



District, Barrow. Commissioner Harcharek was appointed to the LBC on July 18, 2002 by then-Governor Knowles. Governor Murkowski reappointed him to the LBC on March 24, 2004. In April 2007, his fellow commissioners elected him Vice-Chair of the Commission. Dr. Harcharek has lived and worked on the North Slope for more than 30 years. He earned a Ph.D. in

International and Development Education from the University of Pittsburgh in 1977. He served as a member of the Barrow City Council for fifteen years since 1993 and is currently Mayor Pro Tempore and Chief Administrative Officer for the City of Barrow. Dr. Harcharek recently retired from the North Slope Borough as the Community and Capital Improvement Projects (CIP) Planner for the Department of Public Works. In his twenty-four years of employment with the North Slope Borough, Dr. Harcharek has served as North Slope Borough Senior Planner and Social Science Researcher, CIP and Economic Development Planner, Community Affairs Coordinator for the North Slope Borough Department of Public Safety, Director of the North Slope Higher Education Center (now known as Ilisagvik College), and Socio-cultural Scientist for the North Slope Borough Department of Wildlife Management. Prior to that, he served as Director of Technical Assistance for Upkeagvik Inupiat Corporation, and Dean of the Inupiat University of the Arctic. Commissioner Harcharek served for three years as a Peace Corps volunteer in Thailand and was also a Fulbright-Hays Professor of Multicultural Development in Thailand. He has served as a member of numerous boards of directors, including the North Slope Borough Board of Education, the Alaska Association of School Boards, the Alaska School Activities Association and the Northern Justice Society. His current term on the LBC ends January 31, 2009.

Lynn Chrystal, Third Judicial District, Valdez.

Governor Palin appointed Lynn Chrystal to the Local Boundary Commission as the member from the Third Judicial District, effective March 27, 2007. Mr. Chrystal is a former mayor and member of the City Council of the City of Valdez. He has lived in Valdez for the past 32 years. Mr. Chrystal retired in 2002 from the federal government after four years in the Air Force and

36 years with the National Weather Service. He has worked in Tin City, Barrow, Yakutat, and Valdez. He has served on the boards of several civic groups and other organizations including the Resource Development Council, Pioneers of Alaska, and Copper Valley Electric Cooperative. Commissioner Chrystal is retired but teaches on a substitute basis at Valdez schools. His current term on the LBC ends January 31, 2012.

Lavell Wilson, Fourth Judicial District.

Lavell Wilson, a resident of Tok, serves the Fourth Judicial District. Governor Palin appointed him to the Commission on June 4, 2007.

Commissioner Wilson is a former member of the State House of Representatives, serving the area outside of the Fairbanks North Star Borough in the Eighth State Legislature. He moved to Alaska in 1949 and has lived in the

Northway/Tok area since then. Commissioner Wilson attended the University of Alaska Fairbanks and Brigham Young University. Commissioner Wilson worked as a licensed aircraft mechanic, commercial pilot, and flight instructor for 40 Mile Air from 1981-1995, retiring as the company's chief pilot and office manager. Mr. Wilson became a licensed big game guide in 1963. He has also worked as a surveyor, teamster, and construction laborer, retiring from the Operating Engineer's Local 302 in Fairbanks. As a member of Local 302, he worked for 12 years on the U.S. Air Force's White Alice system, the ballistic missile defense site at Clear, and the radar site at Cape Newenham. He has also taught a course at the University of Alaska for the past few years on the history of the Upper Tanana Valley. His current term on the LBC ends January 31, 2010.

Constitutional Origin of the Local Government Agency

As previously noted, the framers of Alaska's Constitution followed a principle that no specific agency, department, board, or commission would be named in the Constitution "unless a grave need existed". The framers provided for a local boundary commission in article X, section 12. Also, the framers provided for only one State agency or department – the local government agency mandated by article X, section 14 to advise and assist local governments.⁵ The constitutional standing granted to the LBC and the local government agency reflects the framers' strong conviction that successful implementation of the local government principles laid out in the Constitution depended, in large part, upon those two entities.

The framers recognized that deviating from the constitutional framework for local government would significantly and detrimentally impact the constitutional policy of maximum local self-government. Further, they recognized that failing to properly implement the constitutional principles would result in disorder and inefficiency in local service delivery.

The duty to serve as the constitutional local government agency is presently delegated to Commerce.⁶

Commerce Serves as Staff to the LBC

The Alaska Department of Commerce, Community, and Economic Development (Commerce), Division of Community and Regional Affairs (DCRA) carries out the duty to advise and assist local governments. DCRA staff also serves as staff to the LBC pursuant to AS 44.33.020(a)(4).

5 Article X, section 14 states, "An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law."

6 AS 44.33.020(a)(1) provides that Commerce "shall (1) advise and assist local governments."

Commerce is required by 3 AAC 110.530⁷ to investigate and analyze each boundary-change proposal and to make recommendations regarding such to the LBC. As previously noted, LBC decisions must have a reasonable basis (i.e., a proper interpretation of the applicable legal standards and a rational application of those standards to the evidence in the proceeding). Accordingly, Commerce adopts the same standard for itself in developing recommendations regarding matters pending before the LBC. That is, the LBC staff is committed to developing its recommendations to the LBC based on a proper interpretation of the applicable legal standards and a rational application of those standards to the evidence in the proceeding. The LBC staff takes the view that due process is best served by providing the LBC with a thorough, credible, and objective analysis of every municipal boundary proposal.

Commerce's commissioner, deputy commissioner, and the DCRA director provide policy direction concerning recommendations to the LBC.

The recommendations of the LBC staff are not binding on the LBC. The LBC is an autonomous commission. While the Commission is not obligated to follow the recommendations of the LBC staff, it has, nonetheless, historically considered Commerce's analyses and recommendations to be critical components of the evidence in municipal boundary proceedings. Of course, the LBC considers the entire record when it renders a decision.

The LBC staff also delivers technical assistance to municipalities; residents of areas impacted by existing or potential petitions for creating or altering municipal governments; petitioners; respondents; agencies; and others.

Types of assistance provided by the LBC staff include:

- ◆ conducting feasibility and policy analysis of proposals for incorporation or alteration of municipalities;
- ◆ responding to legislative and other governmental inquiries relating to issues on municipal government;
- ◆ conducting informational meetings;

⁷ Also see AS 29.04.040, AS 29.05.080, AS 29.06.110; and AS 29.06.480 - 29.06.490.

- ◆ providing technical support during Commission hearings and other meetings;
- ◆ drafting LBC decisional statements;
- ◆ implementing LBC decisions;
- ◆ certifying municipal boundary changes;
- ◆ maintaining incorporation and boundary records for each of Alaska's municipal governments;
- ◆ coordinating, scheduling, and overseeing public meetings and hearings for the LBC;
- ◆ developing orientation materials and providing training for new LBC members;
- ◆ maintaining and preserving LBC records in accordance with the State's public records laws; and
- ◆ developing and updating forms and related materials for use in municipal incorporation or alteration.

Commission Procedures

Procedures for establishing and altering municipal boundaries and for reclassifying cities are designed to secure the reasonable, timely, and inexpensive determination of every proposal to come before the Commission. The procedures are also intended to ensure that decisions of the Commission are based on analysis of the facts and the applicable legal standards, with due consideration of the positions of interested parties. The procedures include extensive public notice and opportunity to comment, thorough study, public informational meetings, public hearings, a decisional meeting of the Commission, and opportunity for reconsideration by the Commission. A summary of the procedures follows.

Preparing and Filing a Petition

The LBC staff offers technical assistance, sample materials, and petition forms to prospective petitioners. The technical assistance may include feasibility and policy analysis of prospective proposals. LBC staff routinely advises petitioners

to submit petitions in draft form in order that potential technical deficiencies relating to petition form and content may be identified and corrected prior to circulating the petition for voter signatures or formal adoption by a municipal government sponsor.

Once a formal petition is prepared, it is submitted to LBC staff for technical review. If the petition contains all the information required by law, the LBC staff accepts the petition for filing.

Public Notice and Public Review

Once a petition is accepted for filing, extensive public notice is given. Interested parties are given at least seven weeks to submit responsive briefs and comments supporting or opposing a petition. The petitioner is provided at least two weeks to file one brief in reply to responsive briefs.

Analysis

Following the public comment period, the LBC staff analyzes the petition, responsive briefs, written comments, the reply brief, and other materials as part of its investigation. The petitioner and the LBC staff may conduct informational meetings. At the conclusion of its investigation, the LBC staff issues a preliminary report for public review and comment. The report includes a formal recommendation to the LBC for action on the petition.

The preliminary report is typically circulated for public review and comment for a minimum of four weeks. After reviewing the comments on its report, the LBC staff issues its final report. The final report typically discusses comments received on the preliminary report and notes any changes to the LBC staff's recommendations to the Commission. The final report must be issued at least three weeks prior to the Commission's public hearing on the proposal.

Commission Review of Materials and Public Hearings

Members of the LBC review the petition, responsive briefs, written comments, reply briefs, and the LBC staff reports. If circumstances permit, LBC members also tour the area at issue prior to the hearing in order to gain a better understanding of the area. Following extensive public notice, the LBC conducts at least one hearing in or near the affected area or territory. The Commission must act on the petition within ninety days of its final public hearing.

The LBC may take any one of the following actions:

- ◆ approve the petition as presented;
- ◆ amend the petition (e.g., expand or contract the proposed boundaries);
- ◆ impose conditions on approval of the petition (e.g., voter approval of a proposition authorizing the levy of taxes to ensure financial viability); or
- ◆ deny the petition.

While the law allows the Commission ninety days following its last hearing on a petition to reach a decision, the LBC typically renders its decision within a few days of the hearing. Within thirty days of announcing its decision, the LBC must adopt a written statement setting out the basis for its decision. Copies of the decisional statement are provided to the petitioner, respondents, and others who request it. At that point, the decision becomes final but is subject to reconsideration. Any party may ask the LBC to reconsider its decision. Such requests must be filed within 18 days of the date that the decision becomes final. If the LBC does not approve a request for reconsideration within thirty days of the date that the decision became final, the request for reconsideration is automatically denied.

Implementation

If the LBC approves a petition, the proposal is typically subject to approval by voters or the Legislature. A petition that has been granted by the Commission takes effect upon the satisfaction of any stipulations imposed by the Commission. The action must

also receive favorable review under the Federal Voting Rights Act. The LBC staff provides assistance with Voting Rights Act matters.

Overview of Municipal Government in Alaska

State law provides for two types of municipalities: city governments and organized boroughs. City governments are community-level municipalities and organized boroughs are regional-level municipalities. Regions of Alaska not located within an organized borough constitute a single unorganized borough.

There are three classifications of city governments:

- ◆ home rule;
- ◆ first class;
- ◆ second class.

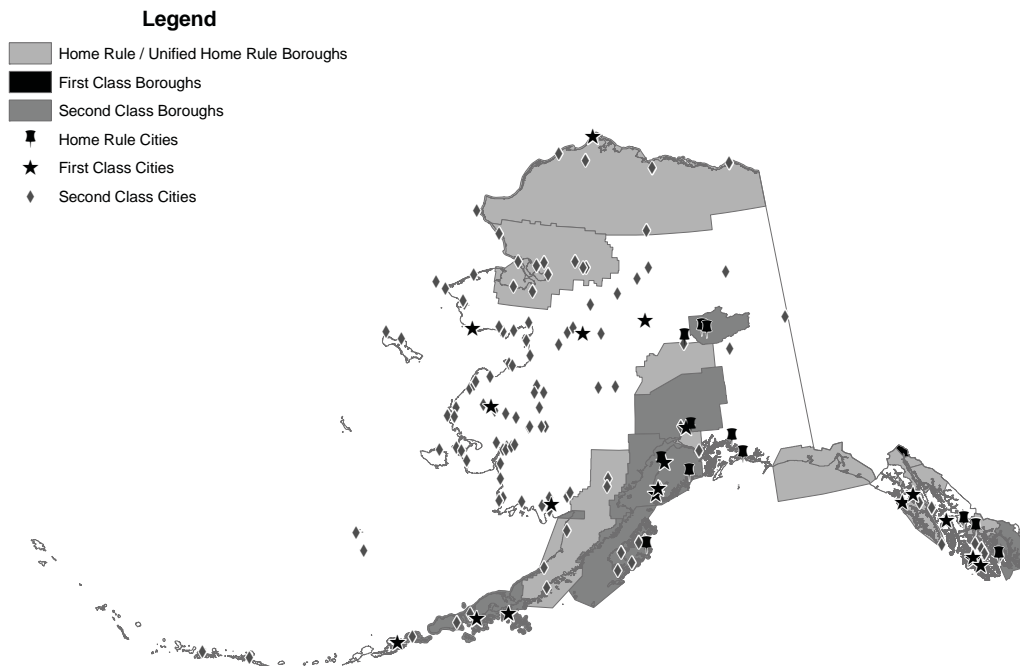


Figure 1-1. Municipal Classifications in the State of Alaska

The powers and duties of a city government vary both with its particular classification and whether it is located within an organized borough. The most fundamental distinction among city governments is that home rule and first class city governments in the unorganized borough must provide for education, planning, platting, and land use regulation. Other city governments are not permitted to exercise education powers. Second class cities in the unorganized borough are permitted, but not required, to exercise planning, platting, and land-use regulation. Any city within an organized borough may, upon delegation of authority by the organized borough in which it is located, exercise planning, platting, and land-use regulation.

Alaska law provides the following four classes of organized boroughs:

- ◆ home rule;
- ◆ first class;
- ◆ second class
- ◆ third class (State law prohibits the creation of new third class boroughs).

By law, every organized borough must exercise the following two powers areawide:

- ◆ public education;
- ◆ tax assessment and collection where municipal taxes are levied.

Further, State law requires that every organized borough, except third class boroughs, provide the following three additional areawide powers:

- ◆ planning;
- ◆ platting;
- ◆ land use regulation.



Anchorage "City Hall." Anchorage is a Unified Home rule Borough.

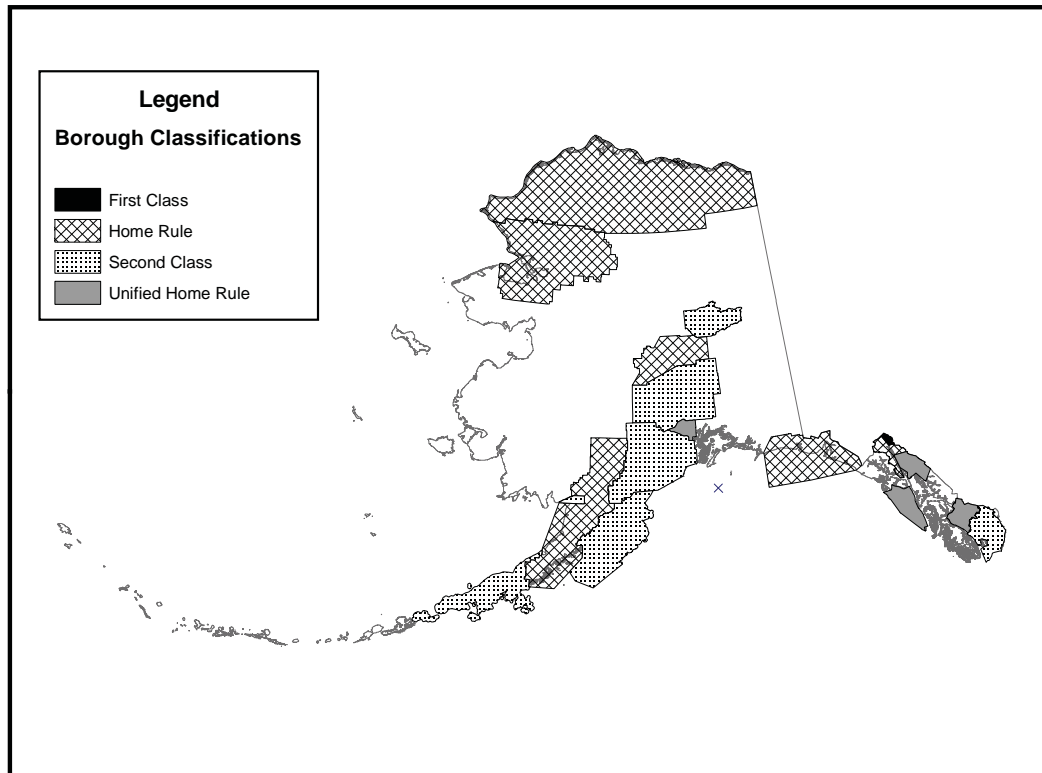


Figure 1-2. Borough Classifications

Home rule boroughs have charters (constitutions). Article X, section 11, of the Alaska Constitution provides that home rule boroughs, "may exercise all legislative powers not prohibited by law or by charter." In other words, the assembly of a home rule borough has any power that is constitutionally available to the Alaska Legislature, provided the power is not prohibited by Alaska law or by the borough charter. AS 29.10.200 lists 61 specific limitations on home rule municipalities found in Title 29 of the Alaska Statutes.

Home rule boroughs are the most popular form of organized borough in Alaska, followed closely by second class boroughs.

General law boroughs (first, second, and third class) derive their powers exclusively from statutes. Still, statutes grant general law boroughs the ability to assume a very broad array of powers.

Alaska also has unified municipalities.⁸ Simply stated, a unified municipality is a home rule borough that can have no city governments within it. At the time a unified municipality is formed, all city governments within the unified municipality are automatically dissolved and none can ever form again.

There are four unified municipalities in Alaska:

- ◆ City and Borough of Juneau;
- ◆ City and Borough of Sitka;
- ◆ Municipality of Anchorage; and
- ◆ City and Borough of Wrangell.

There are three other organized boroughs in Alaska that also have no city governments within them. They are the Bristol Bay Borough, the Haines Borough, and the City and Borough of Yakutat. As such, city governments could legally be formed in those boroughs.

8 A unified municipality is defined as a borough by 3 AAC 110.990(1). Further, the Legislature consistently characterizes unified municipalities as boroughs. For example, the statutes use the same standards for borough incorporation as they do for incorporation of a unified municipality (AS 29.05.031). By contrast, the Legislature has established separate standards for incorporation of a city (AS 29.05.011). Another example is found in the fact that newly formed unified municipalities and boroughs are entitled to identical organization grants and transitional assistance (AS 29.05.190; 29.05.210), whereas newly formed cities are entitled to different organization grants (AS 29.05.180). Additionally, all four of the existing unified municipalities recognize themselves as boroughs in that each is governed by an assembly. Article X, section 4 of the Alaska Constitution reserves the term "assembly" for the governing body of a borough, whereas article X, section 8 of the Alaska Constitution reserves the term "council" for the governing body of a city.

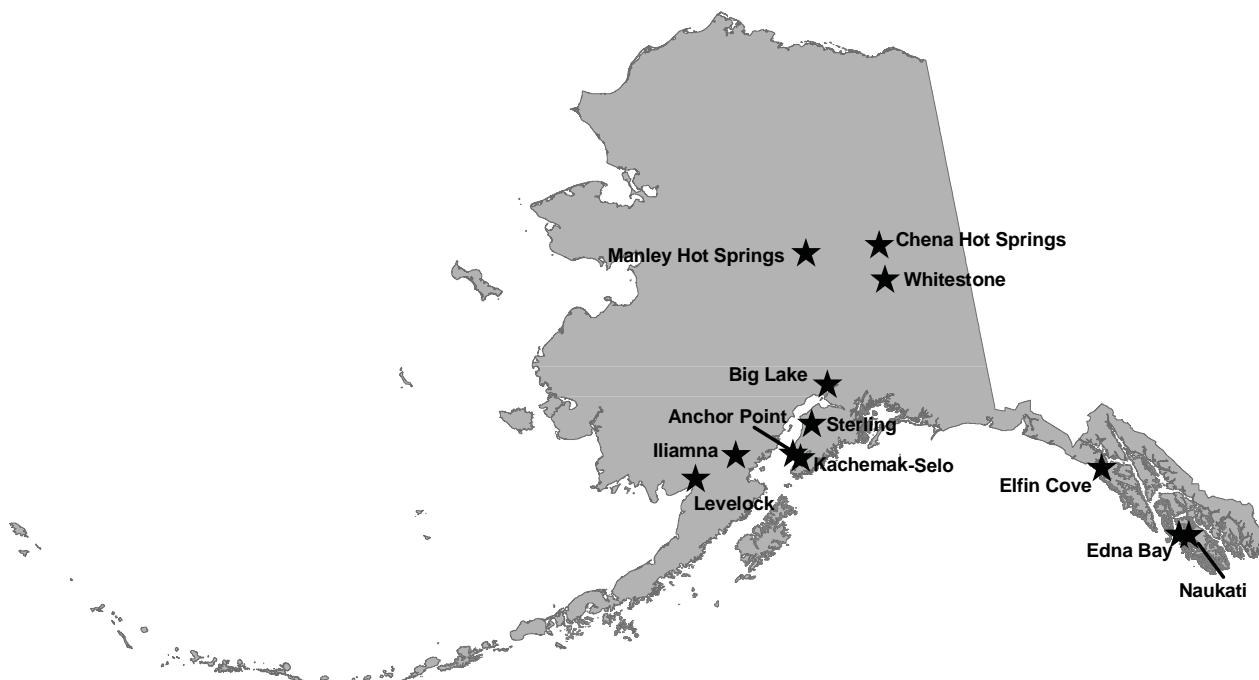
Chapter 2: Activities and Developments

Due to workload constraints, the LBC was unable to submit an annual report to the Legislature in 2007. Therefore, this report represents boundary-change activities for 2007 through 2008. If there was no action on a particular type of boundary change; e.g., consolidation, that type is not addressed.

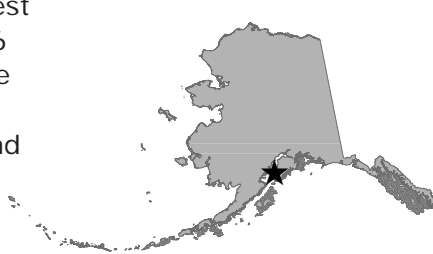
Section I. City Incorporation

City incorporation activities occurred in the following localities during 2007 and 2008:

- ★ Anchor Point;
- ★ Big Lake;
- ★ Chena Hot Springs;
- ★ Edna Bay;
- ★ Elfin Cove;
- ★ Iliamna;
- ★ Kachemak-Selo;
- ★ Levelock;
- ★ Manley Hot Springs;
- ★ Naukati;
- ★ Sterling; and
- ★ Whitestone.



Anchor Point

Location:	Anchor Point is located on the Kenai Peninsula at the junction of the Anchor River and its north fork, 14 miles northwest of Homer. It lies at mile 156 of the Sterling Highway. The community encompasses 90.8 square miles of land and 0.1 square miles of water.	
Population:	1,814	
City Classification:	Unincorporated	
Borough:	Kenai Peninsula Borough	
School District	Kenai Peninsula Borough	

Anchor Point residents have shown an interest in pursuing city incorporation and indicated they were developing a petition to incorporate as a second class city. The proponents of incorporation cited the substantial growth of the community – a four fold increase in ten years. In particular, the need for expansion of the community water system and establishment of a sewer

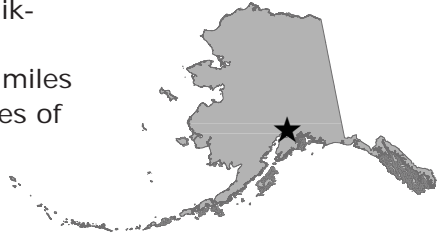
system were cited as reasons to incorporate. Other needs cited by city proponents include a community center, new library, senior housing, and expansion of the health clinic. A

petition to incorporate Anchor Point as a city has not yet been submitted to the LBC.



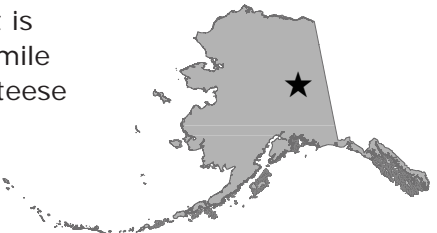
Anchor Point

Big Lake

Location:	Big Lake is a community on the shore of Big Lake, 13 miles southwest of Wasilla, in the Chugach Mountains. It lies adjacent to Houston and Knik-Fairview. The community encompasses 131.9 square miles of land and 12.9 square miles of water.	
Population:	3,166	
City Classification:	Unincorporated	
Borough:	Matanuska-Susitna Borough	
School District	Matanuska-Susitna Borough	

In August 2008, Big Lake residents requested that LBC staff hold an informational meeting in the community to inform the residents about incorporating as a second class city. A meeting will be scheduled in the near future.


Chena Hot Springs

Location:	Chena Hot Springs is a hot-spring resort and community 56.5 miles northeast of Fairbanks, Alaska, near the Chena River State Recreation Area. The resort is situated at the end of a 60-mile (96 km) spur road off the Steese Highway.	
Population:	50	
City Classification:	Unincorporated	
Borough:	Fairbanks North Star Borough	
School District	Fairbanks North Star Borough	

LBC staff responded to an inquiry from a Chena Hot Springs resident about a proposal to incorporate Chena Hot Springs as a city government. The resident suggested that interest in city incorporation stemmed from the desire to obtain state general revenue sharing funds and to provide enhanced services such as fire protection. The individual estimated the population of


Chena Hot Springs to be about 50 full-time residents. Chena Hot Springs is not listed in the "Online Community Database" maintained by DCRA.

Edna Bay

Location:	Edna Bay is located on the southeast coast of Kosciusko Island, northwest of Prince of Wales Island, in southeast Alaska. It lies 90 miles northwest of Ketchikan. The community encompasses 56 square miles of land and 2.8 square miles of water.	
Population:	43	
City Classification:	Unincorporated	
Borough:	Unorganized	
School District	Southeast Island REAA	

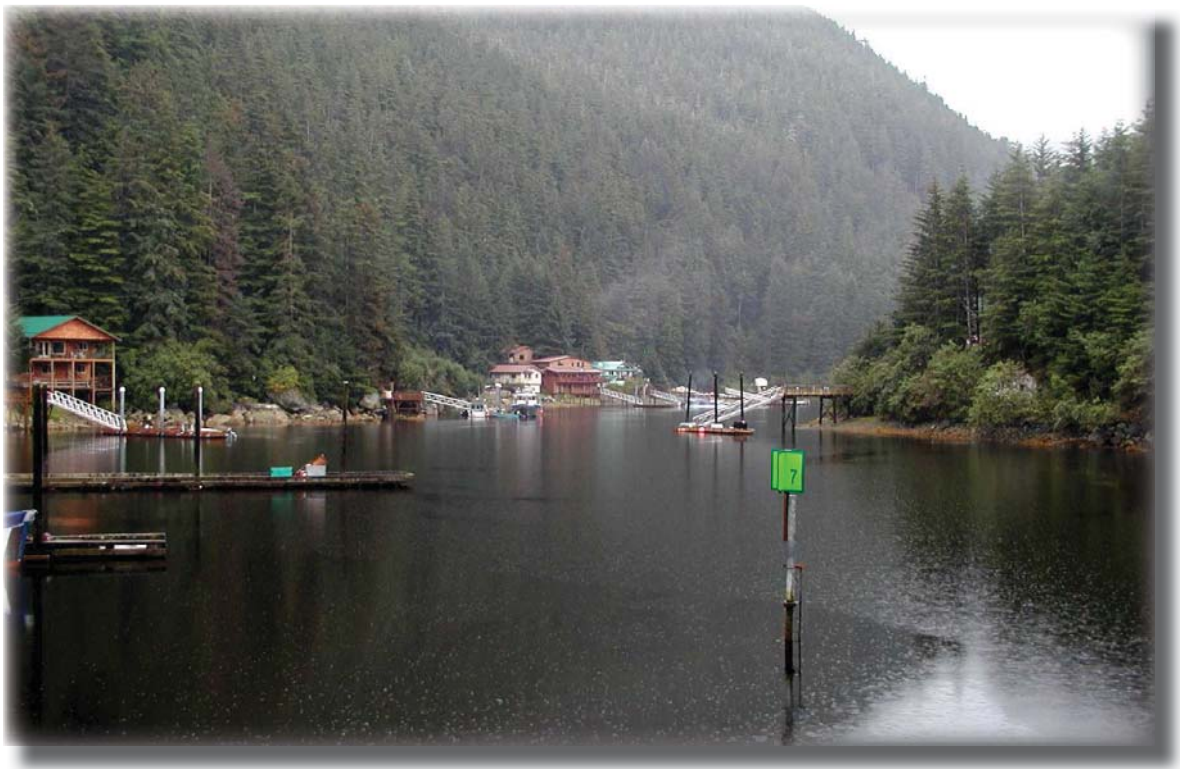
LBC staff received requests from an Edna Bay resident requesting Staff to attend a presentation in Edna Bay regarding incorporating as a second class city. The resident was mailed a packet of information regarding the city incorporation process and encouraged to prepare questions for LBC staff. An informational meeting in the community will be scheduled in the very near future.

Elfin Cove

Location:	Elfin Cove lies on the northern shore of Chichagof Island approximately 70 miles by air, and 85 miles by boat, west of Juneau and 33 miles west of Hoonah. The community encompasses 10.7 square miles of land and 0.1 square miles of water.	
Population:	21	
City Classification:	Unincorporated	
Borough:	Unorganized	
School District	Chatham REAA	


In 2007, LBC staff responded to an inquiry about city incorporation from a representative of the Community of Elfin Cove Non-profit Corporation. The individual inquiring expressed confidence that Elfin Cove has ample fiscal resources to support local government through taxes on local lodges and/or property. There are several lodges in Elfin Cove, most of which bill themselves as world-class or "elite." One lodge can accommodate 25 guests, and another has an 18-guest capacity. Several other lodges in the community can accommodate smaller numbers of guests. Rates for fishing packages typically average over \$700 per day, per guest.

Elfin Cove population fluctuates between 200 residents in the summer down to 21 residents in the winter. The state demographer estimated the 2006 population of Elfin Cove at 25 residents and the 2007 population at 21 individuals. State law requires the greater of a minimum of 25 resident registered voters, or 15 percent of the voters in the proposed city to petition for incorporation as a second class city (AS 29.05.060(12)).



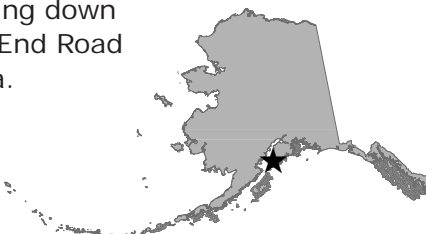
Elfin Cove

Iliamna

Location:	Iliamna is located on the northwest side of Iliamna Lake, 225 miles southwest of Anchorage. It is near the Lake Clark Park and Preserve. The community encompasses 35.9 square miles of land and 0.6 square miles of water.	
Population:	93	
City Classification:	Unincorporated	
Borough:	Lake and Peninsula Borough	
School District	Lake and Peninsula Borough	

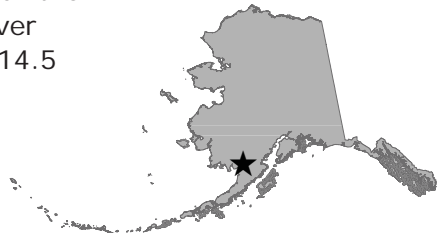
For the past several years, Iliamna has explored several ways to improve local-service delivery for Iliamna residents. Residents have made inquiries regarding incorporating as a city and/or a borough. An individual has also inquired as to annexation of an existing city. LBC staff continue to provide resources as requested.

Kachemak-Selo

Location:	Kachemak-Selo is situated on Kachemak Bay at the base of a high bluff on an alluvial fan at the mouth of Swift Creek. The community is accessible by a narrow switchback trail extending down the bluff from the east of East End Road at the lower end of Voznesenka.	
Population:	120	
City Classification:	Unincorporated	
Borough:	Kenai Peninsula Borough	
School District	Kenai Peninsula Borough	

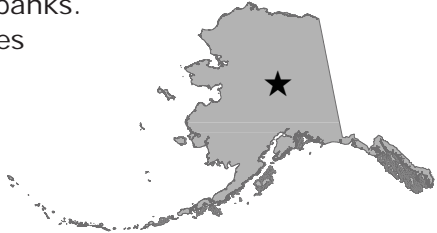
In December 2007, LBC staff responded to inquiries from a resident of Kachemak-Selo regarding incorporating as a second class city. The community largely depends upon commercial fishing. Residents estimate about 120 individuals live in Kachemak-Selo. It is unknown how many residents are registered voters. State law requires the greater of a minimum of 25 registered voters or 15 percent of the voters in the proposed city to petition for incorporation as a second class city.

Levelock

Location:	Levelock is located on the west bank of the Kvichak River, 10 miles inland from Kvichak Bay. It lies 40 miles north of Naknek and 278 air miles southwest of Anchorage. It is located near the Alagnak Wild and Scenic River Corridor and encompasses 14.5 square miles of land.	
Population:	71	
City Classification:	Unincorporated	
Borough:	Lake and Peninsula Borough	
School District	Lake and Peninsula Borough	


On behalf of Levelock residents, the municipal clerk for the Lake and Peninsula Borough requested a petition form for second class city incorporation in an organized borough, using the local-option method. The borough official indicated local interest in city government stems from the prospect of a city tax on commercial fishing residents. A petition has not been submitted to the LBC at this time.

Manley Hot Springs

Location:	Manley Hot Springs is located about 5 miles north of the Tanana River on Hot Springs Slough, at the end of the Elliott Highway, 160 road miles west of Fairbanks. The community encompasses 54.3 square miles of land.	
Population:	72	
City Classification:	Unincorporated	
Borough:	Unorganized	
School District	Yukon-Koyukuk REAA	


Residents of Manley Hot Springs expressed interest in city incorporation and requested information regarding the process and steps of this type of governmental change. General information about city incorporation was provided to the community.

Naukati

Location:	Naukati is located on the west coast of Prince of Wales Island in Southeast Alaska. The community encompasses 4.8 square miles of land and 0.2 square miles of water. It was a logging camp at one time but later was settled as an Alaska Department of Natural Resources land disposal site.	
Population:	131	
City Classification:	Unincorporated	
Borough:	Unorganized Borough	
School District	Southeast Island REAA	

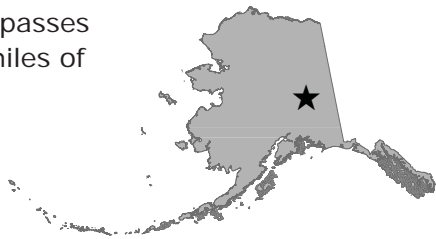
In 2006, the LBC approved a petition, with amendments, that sought incorporation of Naukati as a second class city. However, the voters of Naukati rejected the proposal to form a city government. In 2008, residents have indicated they are reviving efforts to become a second class city, asserting this is an appropriate time to try again.

Sterling

Location:	Sterling is located on the Sterling Highway at the junction of the Moose and Kenai Rivers, 18 miles east of the City of Kenai. The community encompasses 77.3 square miles of land and 2.1 square miles of water.	
Population:	5,123	
City Classification:	Unincorporated	
Borough:	Kenai Peninsula Borough	
School District	Kenai Peninsula Borough	

In May 2007, LBC staff responded to an inquiry from a Sterling resident who is exploring the prospect of city incorporation on behalf of a group of local residents. LBC staff provided the individual with information about the standards and procedures for city incorporation.

Whitestone

Location:	Whitestone is 8 miles northwest of Delta Junction, on the western side of the Delta and Tanana Rivers. Whitestone encompasses approximated 10-square miles of area.	
Population:	200	
City Classification:	Unincorporated	
Borough:	Unorganized Borough	
School District:	Delta/Greely REAA	

In 2007, the president of the Whitestone Community Association asked about the requirements for Whitestone's obtaining second class city status. A cursory analysis indicates that Whitestone would meet the requirements for a second class city. Assets in the community are worth between \$15 and \$20 million and include a power plant and communications center, a landfill with an incinerator,

bulk fuel facility, a K-12 private school with approximately 80 students, softball and soccer fields, boat dock, church, businesses, private homes and multi-family housing units with septic systems and full plumbing; dirt



Aerial view of the Whitestone area

and gravel roads, electricity and phone services are provided and maintained by community volunteers. Whitestone has wireless internet, high-speed internet, and cable. In the summer, access is by boat on the Tanana River. Four to six months of the year, access is by an ice road crossing the frozen Delta River about one mile upstream of the Tanana River.

Section II. City Annexation

In 2007, the LBC approved two local-option city annexations, 1.722 acres to the City of Soldotna and 134.5 acres to the City of Wasilla.


In 2007 and 2008, city annexation activities also occurred in the following locations:

- | | |
|----------------------|--------------------|
| ★ City of Akutan | ★ City of Palmer |
| ★ City of Aniak | ★ City of Pelican |
| ★ City of Fairbanks | ★ City of Seward |
| ★ City of Gustavus | ★ City of Soldotna |
| ★ City of Nome | ★ City of Wasilla |
| ★ City of North Pole | |



Akutan

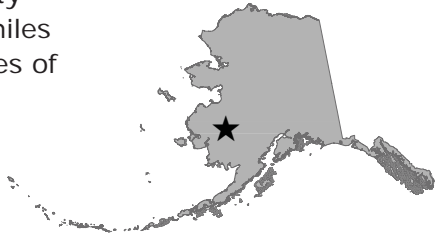
Location:	Akutan is located on Akutan Island in the eastern Aleutians, one of the Krenitzin Islands of the Fox Island group. It is 35 miles east of Unalaska and 766 air miles southwest of Anchorage. The city encompasses 14 square miles of land and 4.9 square miles of water. Akutan has an estimated population of 859 persons, of whom approximately 75 are year-round residents. The majority of the population is transient fish processing workers that live in group quarters.
Population:	859
City Classification:	Second class
Borough:	Aleutian East Borough
School District	Aleutian East Borough



In July 2007, LBC staff responded to questions from the Akutan city administrator regarding annexing territory on the neighboring island of Akun. The city acquired land on Akun where a new airport is being constructed by the state. The city indicated a desire to annex the territory in order to provide services and to generate tax revenue. The city administrator requested information on annexation and a meeting with staff to discuss annexation issues and procedures. LBC staff met for approximately two hours with the administrator to discuss the annexation plans. The airport would be accessed by hovercraft operating between Akutan and Akun islands. The planned hovercraft base on Akun Island is also included in the territory being contemplated for annexation.

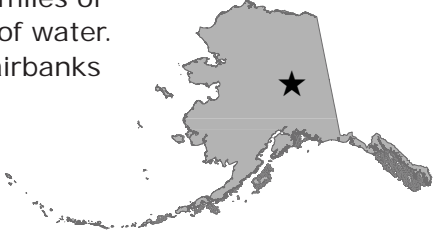
In February 2008, Staff responded to additional inquiries from a consultant of the City of Akutan regarding annexation by various methods; e.g., city ordinance or petition signed by all the voters and property owners in the territory proposed for annexation. LBC staff provided the consultant with an updated petition form and additional materials.

Aniak

Location:	Aniak is located on the south bank of the Kuskokwim River at the head of Aniak Slough, 59 miles southeast of Russian Mission in the Yukon-Kuskokwim Delta. It lies 92 air miles northeast of Bethel and 317 miles west of Anchorage. The city encompasses 6.5 square miles of land and 2.3 square miles of water.	
Population:	506	
City Classification:	Second class	
Borough:	Unorganized	
School District	Kuspuk REAA	

In January 2007, the manager of the City of Aniak expressed interest in annexing a developed area adjoining the existing boundaries of the city. LBC staff provided the city manger with background information about annexation methods and their standards and procedures.

Fairbanks

Location:	Fairbanks is located in the heart of Alaska's Interior on the banks of the Chena River in the Tanana Valley. By air, Fairbanks is 45 minutes from Anchorage and 3 hours from Seattle. It lies 358 road miles north of Anchorage. The city encompasses 31.9 square miles of land and 0.8 square miles of water. Fairbanks lies within the Fairbanks North Star Borough.	
Population:	31,639	
City Classification:	Home rule	
Borough:	Fairbanks North Star Borough	
School District	Fairbanks North Star Borough	

In February 2008, the Fairbanks City Council passed a resolution to annex two different territories, one immediately adjacent to the city (Fred Meyer store) and the other an enclave area in the city. The city held a public hearing on the legislative review annexation proposal on November 24, 2008. LBC staff received the city's petition on December 10, 2008. Staff completed a technical review of the petition under 3 AAC 110.440 by January 26, 2009.

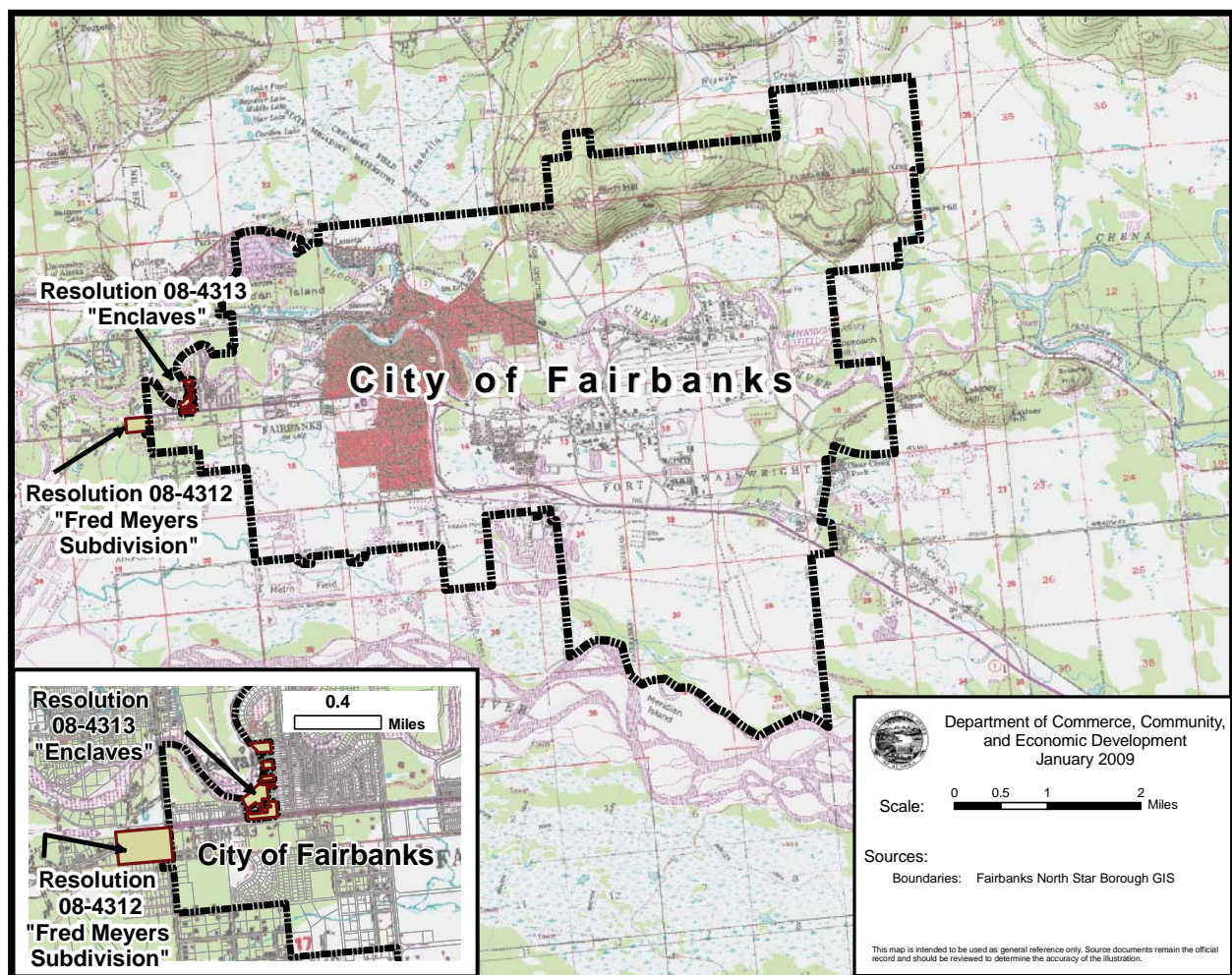



Figure 2-3. Proposed areas for annexation by the City of Fairbanks

Gustavus

Location:	Gustavus lies on the north shore of Icy Passage at the mouth of the Salmon River, 48 air miles northwest of Juneau in the St. Elias Mountains. It is bordered by Glacier Bay National Park and Preserve on three sides and the waters of Icy Passage on the south. Glacier Bay Park is 3.3 million acres and offers 16 tidewater glaciers. The city encompasses 29.2 square miles of land and 10 square miles of water.	
Population:	442	
City Classification:	Second class	
Borough:	Unorganized	
School District	Chatham REAA	

The City of Gustavus expressed an interest in annexing the Falls Creek hydro facility. The facility is approximately five miles from the city's boundaries. This territory was not included in the city's 2003 incorporation proposal because of a restriction expressed in a 1997 LBC decision regarding the city's then proposed incorporation. At that time, the LBC concluded that development of a hydroelectric facility had not been adequately demonstrated to warrant inclusion the proposed boundaries. The decision went on to say that annexation of the territory could be pursued if development of the hydro facility was imminent. That facility was scheduled to go online in late 2008. LBC staff has provided city officials with petition forms and other materials. LBC staff anticipates receiving an annexation petition from the city in the near future.

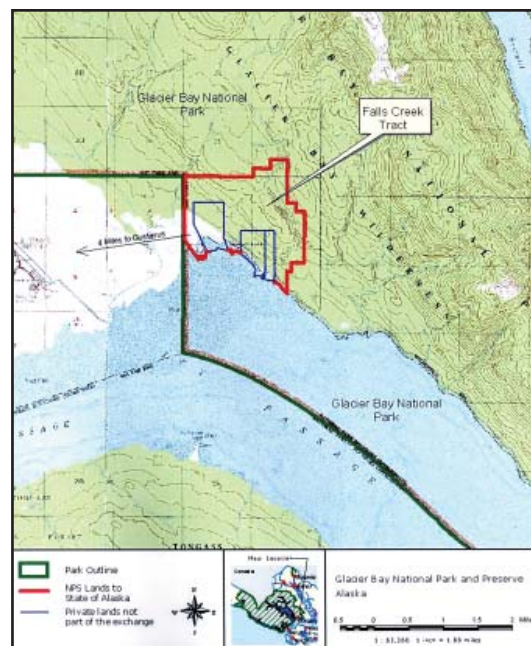




Figure 2-4. Falls Creek Hydro Facility area

Nome

Location:	Nome was built along the Bering Sea, on the south coast of the Seward Peninsula, facing Norton Sound. It lies 539 air miles northwest of Anchorage, a 75-minute flight. It lies 102 miles south of the Arctic Circle, and 161 miles east of Russia. The city encompasses 12.5 square miles of land and 9.1 square miles of water.	
Population:	3,497	
City Classification:	First class	
Borough:	Unorganized	
School District	Nome Public Schools	

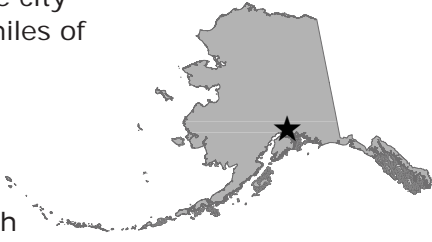
In 2007, Nome officials engaged the services of a contract planner to evaluate annexation costs and benefits. A city representative met with LBC staff to discuss an annexation proposal.

North Pole

Location:	North Pole is located 14 miles southeast of Fairbanks on the Richardson Highway. It lies 386 miles north of Anchorage. The area encompasses 4.2 square miles of land and 0.1 square miles of water.	
Population:	1,946	
City Classification:	Home rule	
Borough:	Fairbanks North Star Borough	
School District	Fairbanks North Star Borough	


The City of North Pole contemplates annexing approximately 10 acres of property. Petition forms and related materials were provided to the mayor. To date, no annexation petition by the city has been submitted to the LBC. The Fairbanks North Star Borough planning director indicated that a proposal is pending subdividing the property, which increases the need for city services such as water and sewer.

Palmer

Location:	Palmer is located in the center of the Matanuska Valley, 42 miles northeast of Anchorage on the Glenn Highway. The city encompasses 3.8 square miles of land.	
Population:	5,506	
City Classification:	Home rule	
Borough:	Matanuska-Susitna Borough	
School District	Matanuska-Susitna Borough	

In 2007, a consultant for the City of Palmer met with LBC staff to discuss technical aspects of the city's proposal to annex 5.73 square miles using the legislative review method. A public hearing was held in Palmer, and several individuals opposed the proposal. Following the hearing, the city council voted against pursuing an annexation at that time.

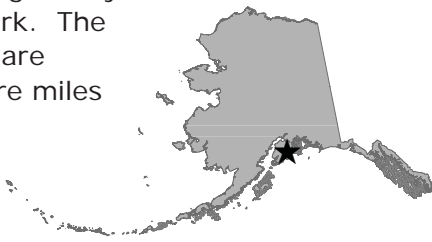
Pelican

Location:	Pelican is located on the northwest coast of Chichagof Island on Lisianski Inlet. It lies 80 miles north of Sitka and 70 miles west of Juneau. Most of the city is built on pilings over the tidelands. The city encompasses 0.6 square miles of land and 0.1 square miles of water.	
Population:	110	
City Classification:	First class	
Borough:	Unorganized	
School District	Pelican City Schools	

In February 2007, the Pelican mayor informed LBC staff of the city's interest in annexing Phonograph Cove and Sunnyside. Phonograph is located between 3 - 4 miles from the current city boundary, and Sunnyside is located approximately 1 mile from the city. In a newsletter published by the City of Pelican, several benefits of annexing were identified including: representation

and involvement in the political process, additional volunteers to serve on local committees, voting in city elections for qualified residents, sales tax and bed tax revenues, and land use planning for the Pelican Coastal Zone District. LBC staff provided the city with petition forms and related materials. A annexation petition has yet to be filed.

Seward

Location:	Seward is situated on Resurrection Bay on the east coast of the Kenai Peninsula, 125 highway miles south of Anchorage. It lies at the foot of Mount Marathon and is the gateway to Kenai Fjords National Park. The city encompasses 14.4 square miles of land and 7.1 square miles of water.	
Population:	2,661	
City Classification:	Home rule	
Borough:	Kenai Peninsula Borough	
School District	Kenai Peninsula Borough	




Seward

In June 2007, LBC staff provided information to the City of Seward Planning and Zoning Commission regarding the prospects of annexing the Bear Creek Fire Service Area and the Lowell Point Emergency Service Area. A previous study conducted by the city

shows that upwards of 2,000 individuals live in these service areas. Interest in annexation stems from a number of social, political, and fiscal issues.

Soldotna

Location:	Soldotna is on the Kenai Peninsula, 150 highway miles south of Anchorage, at the junction of the Sterling and Kenai Spur Highways. It lies 10 miles inland from Cook Inlet, and borders the Kenai River. The city encompasses 6.9 square miles of land and 0.5 square miles of water.	
Population:	3,983	
City Classification:	First class	
Borough:	Kenai Peninsula Borough	
School District:	Kenai Peninsula Borough	

In 2005, the City of Soldotna Planning and Zoning Commission conducted a series of public work sessions to examine the merits of annexation of four areas: the Funny River Road area, Kalifornsky Beach Road, Ridgeway, and the Skyview High School area. The Planning and Zoning Commission evaluated service impacts, land use, and city services currently provided to those areas. After a public process of some eighteen months, the




Figure 2-5. Area Annexed by the City of Soldotna

Planning and Zoning Commission voted on December 20, 2006, to recommend the city council consider a proposal annexing of all four areas. In 2007, LBC staff responded to multiple inquiries from an official of the city regarding existing and pending LBC regulations and other matters regarding legislative review annexation.

In January 2007, the Soldotna city manager submitted a request for the LBC to relax or suspend certain procedural regulations as authorized by 3 AAC 110.660. The request was granted, and a petition was filed in April 2007 to annex 1.722 acres using the local action method requiring agreement of all property owners and resident registered voters within the territory proposed for annexation. LBC staff completed the technical review of the petition in May 2007. Under 3 AAC 110.440, the petition was determined to be complete and in proper form. In June 2007, the Commission held a public hearing on the petition and unanimously approved the petition without amendment or condition. The Commission adopted LBC staff's May 24, 2007, report on the annexation proposal as its findings and conclusions.

Wasilla

Location:	Wasilla is located midway between the Matanuska and Susitna Valleys, on the George Parks Highway. It lies between Wasilla and Lucille Lakes, 43 miles north of Anchorage. The city encompasses 11.7 square miles of land and 0.7 square miles of water.	
Population:	7,028	
City Classification:	First class	
Borough:	Matanuska-Susitna Borough	
School District	Matanuska-Susitna Borough	

In July 2007, the City of Wasilla filed a petition to annex approximately 134.5 acres. The prospective annexation proposal sought annexation under the local action method under AS 29.06.040(c)(4), which requires that all property owners, and

all resident registered voters in the territory, formally request annexation from the city. The annexation petition encompassed four separate territories adjoining the city's existing boundaries.

In August 2007, LBC staff completed its technical review of the form and content of the petition. Following the review, the petition was accepted for filing. LBC staff published and distributed its 44-page report on the proposed annexation. One of the territories is the site of a 420,000 square foot commercial development that, when completed, is projected to generate nearly \$2.5 million annually in sales taxes for the city.

Staff concluded the proposal met all of the standards for annexation and recommended that the LBC approve the proposal. In September 2007, the LBC held a public hearing on the petition. At a subsequent public meeting, the Commission unanimously approved the petition and adopted a written statement of decision adopting that approval.

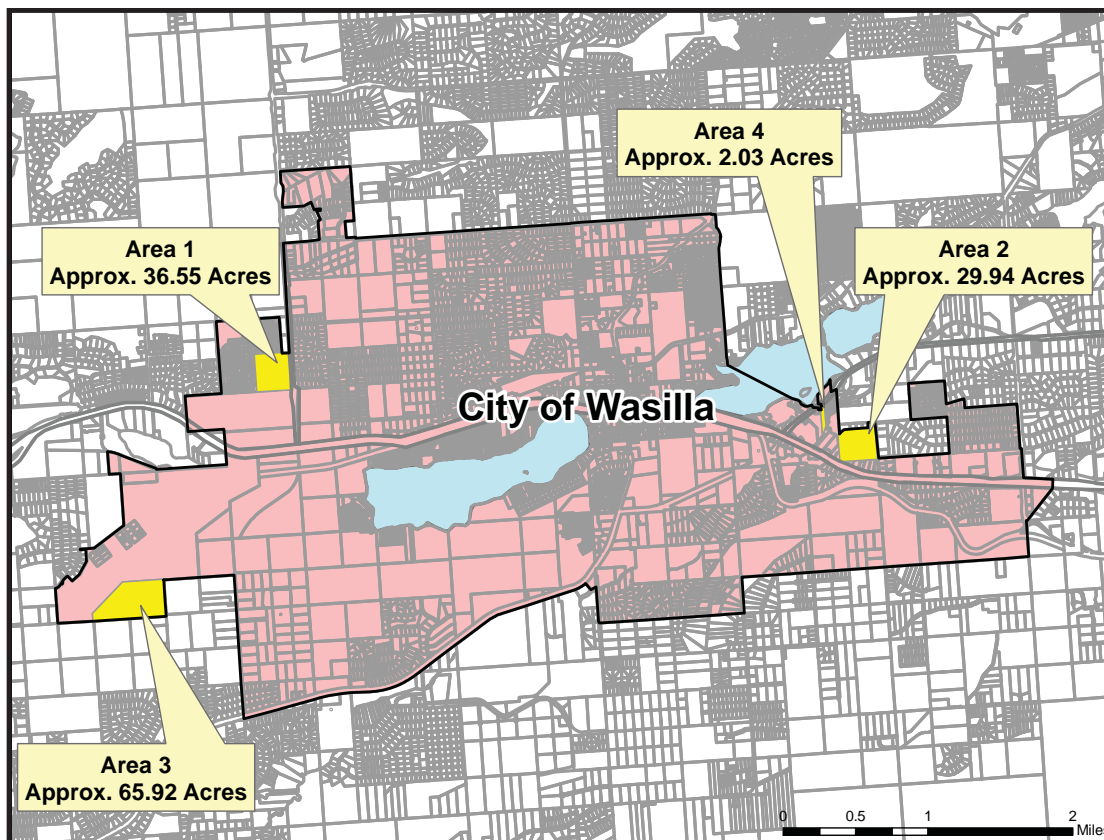



Figure 2-6. Areas annexed by the City of Wasilla in 2007

Section III. City Dissolution

In 2007, one city dissolution activity occurred. No related activities occurred in 2008.

Togiak

Location:	Togiak is located at the head of Togiak Bay, 67 miles west of Dillingham. It lies in Togiak National Wildlife Refuge and is the gateway to Walrus Island Game Sanctuary. The city encompasses 45.2 square miles of land and 183.3 square miles of water.	
Population:	787	
City Classification:	Second class	
Borough:	Unorganized	
School District	Southwest Region REAA	

In June 2007, residents of Togiak submitted a petition for dissolution of the City of Togiak. In July 2007, LBC staff completed technical review of the petition. In a letter to the petitioner's representative, LBC staff outlined 19 significant deficiencies in the petition and, after concurrence with the LBC Chair, returned the petition to the petitioner. No further action has been taken regarding dissolution of the city.




Togiak, Alaska

Section IV. City Reclassification

City reclassification activities occurred in 2007 through 2008.

Houston

Location:	Houston is located north of Wasilla in the Matanuska-Susitna Borough, 57 road miles north of Anchorage. It lies on the George Parks Highway, along the Little Susitna River. The city encompasses 22.4 square miles of land and 1.2 square miles of water.
Population:	1,588
City Classification:	Second class
Borough:	Matanuska-Susitna Borough
School District	Matanuska-Susitna Borough



LBC staff responded to a Houston city council member requesting information regarding city reclassification. Houston is a second class city, and the council member wanted information about reclassifying as home rule. LBC staff referred the council member to the Alaska Statutes requiring a city be a first class city before becoming a home rule city.

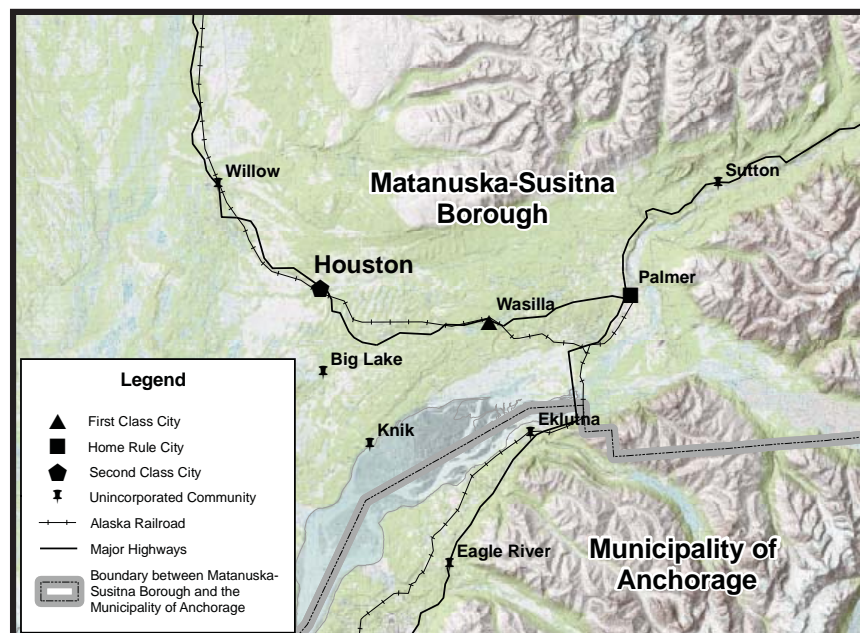


Figure 2-7. Houston area map

Section V. Borough Incorporation

Various activities regarding borough incorporation occurred in the state during 2007 - 2008. Those areas were:

- ★ Delta-Greely region (proposed Deltana Borough);
- ★ Eagle River-Chugiak;
- ★ Georgetown and Holy Cross;
- ★ Glacier Bay-Chatham region (Angoon, Elfin Cove, Kake, Hoonah, Pelican, Gustavus, and Tenakee Springs);
- ★ Middle Kuskokwim region (potential "Kuspuk Borough")
- ★ Greater Nenana and Tanana region (potential "Yutana Borough")
- ★ Petersburg;
- ★ Skagway;
- ★ Southeast Alaska;
- ★ Yukon Flats;
- ★ Yukon-Koyukuk; and
- ★ Wrangell.

Among those activities were formal proposals for borough incorporation in the Skagway, Wrangell, and the Delta-Greely regions. Eagle River-Chugiak, Glacier Bay-Chatham, Middle Kuskokwim, and Yukon Flats were the subject of formal borough feasibility studies. No formal petition proposals were filed as a result of the studies.

Angoon/Kake

Location:	<ol style="list-style-type: none"> Angoon is the only permanent settlement on Admiralty Island, located on the southwest coast at Kootznahoo Inlet. Angoon is 55 miles southwest of Juneau and 41 miles northeast of Sitka. The city encompasses 22.5 square miles of land and 16.1 square miles of water. Kake is located on the northwest coast of Kupreanof Island along Keku Strait, 38 air miles northwest of Petersburg, and 95 air miles southwest of Juneau. The City of Kake encompasses 8.2 square miles of land and 6.0 square miles of water
Population:	Angoon: 478 Kake: 563
City Classification:	Angoon: Second class Kake: First class
Borough:	Angoon & Kake: Unorganized
School District	Angoon: Chatham REAA Kake: Kake City Schools

In November 2007, the mayor of the City of Kake contacted the LBC staff to arrange a meeting to discuss borough formation. Due to LBC staff vacancy, a meeting date was unable to be scheduled at that time.

In February 2008, LBC staff reviewed a draft charter and appendix documents for a proposed Kake and Angoon home rule

borough. Staff made edits, checked for regulation and statutory compliance, and offered suggestions to strengthen the documents. It is unknown if Angoon and Kake are still interested in borough formation at this time.

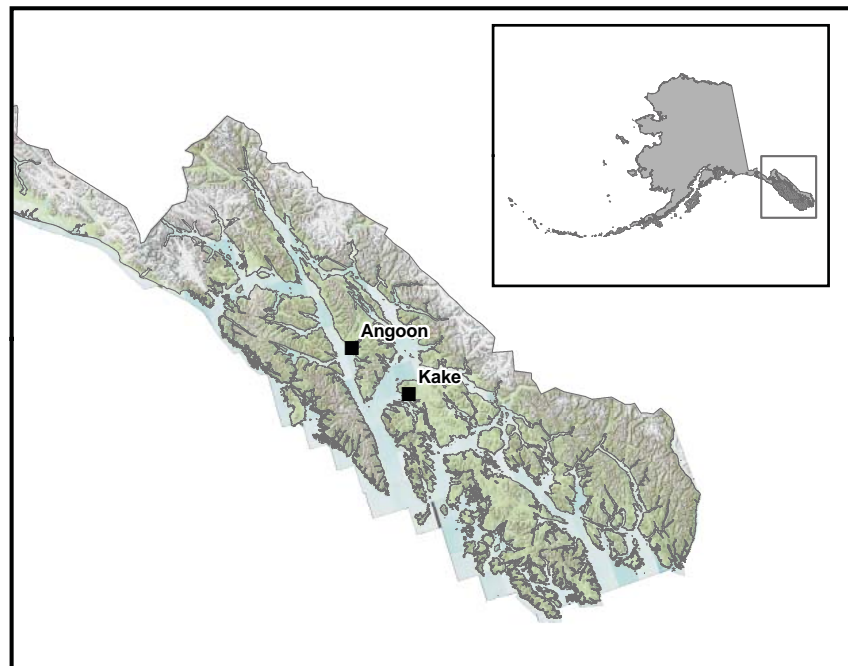


Figure 2-8. Angoon and Kake Location Map

Deltana

Location:	The proposed Deltana Borough mirrored the present boundaries of the Delta-Greely Regional Educational Attendance Area (REAA9), encompassing approximately 5,892 square miles. The proposal included the communities of Delta Junction, Whitestone, Deltana, and Healy Lake.
Population:	4,148
Borough Classification:	Home rule
Borough:	Unorganized
School District	Delta-Greely REAA

In March 2007, the Commission held a public hearing in Delta Junction on the proposed incorporation of a Deltana borough. LBC staff had previously issued preliminary and final reports recommending approving the incorporation petition.

Following the public hearing, the Commission held a decisional meeting at which it concluded that the petition met all applicable standards for borough incorporation and approved the Deltana borough incorporation proposal. Incorporation of the Deltana borough was subject to voter approval (including approval of a various taxes and an agreement with Teck-Pogo, Inc., for payment in lieu of taxes) and election of borough officials. The Commission issued its decisional statement approving the Deltana borough incorporation proposal in April 2007.

The State Division of Elections ordered the Deltana borough incorporation election to be conducted by mail and mailed ballots to all eligible area voters on July 30, 2007. On September 5, 2007, the state director of Elections certified the final results

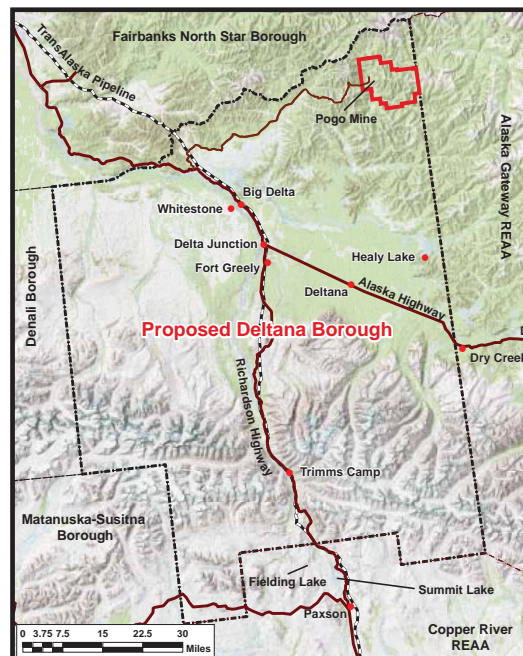


Figure 2-9. Proposed Deltana Borough

of the August 21, 2007 election. Of the 1,371 ballots cast, 1,242 (90.6 percent) opposed the proposition to form the new borough as well as related taxes and election of borough officials. The formation of a borough in the Delta region of the state was rejected by voters.

Several residents in the area also appealed the Commission's decision to superior court in Fairbanks, which is discussed in more detail in section XIV.

Greater Nenana and Tanana region (Yutana)

Several Interior residents visited Commerce in mid-March 2008 to obtain information on forming a borough in the interior of Alaska. It would encompass the communities of Nenana, Tanana, Minto, Manley Hot Springs, Minchumina, Rampart, and Stevens Village. The following week, an Interior resident interested in borough formation that included those communities requested incorporation information. That information could be

used to educate and to draft village resolutions supporting forming of an Interior home rule borough called the "Yutana Borough." LBC staff supplied the information and directed the resident to 2007 feasibility studies regarding economic and borough issues that could be used as examples. The resident intended to use the information to draft a request to the Legislature for a borough feasibility study funds.

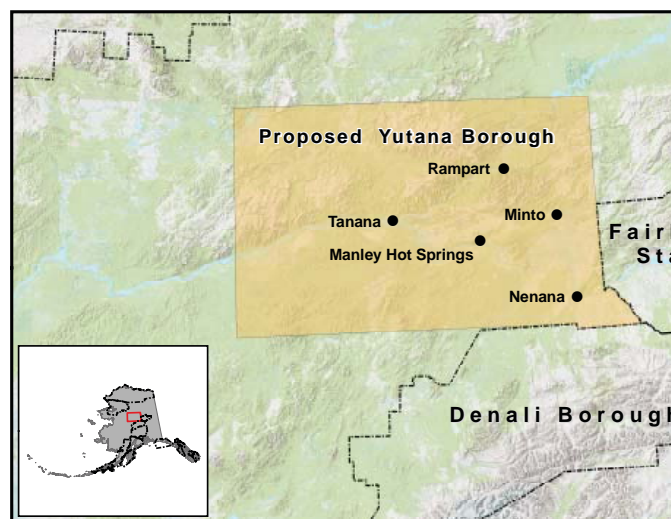


Figure 2-10. Proposed Yutana Borough

A consultant for the City of Tanana, working with the city manager of Tanana, drafted a letter requesting funding from the Legislature for a feasibility study concerning forming a proposed borough in the middle Tanana and Yukon River region. LBC staff provided digital samples of feasibility studies. LBC staff also provided the consultant with resolution samples from other incorporation petitions addressing the reasons for the requested boundary change.

Staff is unaware of any funding being provided for such studies in 2008, and no petition has yet been filed to form a borough.

Hoonah

Location:	Hoonah is a Tlingit community located on the northeast shore of Chichagof Island, 40 air miles west of Juneau. The city encompasses 6.6 square miles of land and 2.1 square miles of water.
Population:	861
City Classification:	First class
Borough:	Unorganized
School District	Hoonah City Schools

In January 2008, the first class city of Hoonah announced its intention to follow the example of the Lake and Peninsula Borough and form a non-unified home rule borough utilizing the Glacier Bay Model Borough Boundaries. Hoonah and the city of Gustavus asked LBC staff to attend an informational public meeting regarding borough incorporation.

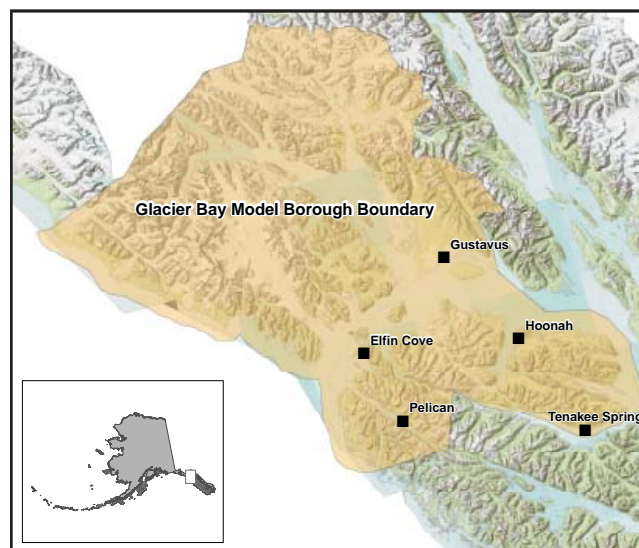


Figure 2-11. Glacier Bay Model Borough Boundary

On March 24, 2008, LBC staff presented a PowerPoint session on borough incorporation in the Juneau Assembly Chambers. City managers and mayors from various communities participated. The presentation listed and discussed the Commission's constitutional, statutory, and regulatory framework; the processes of organizing a borough; standards for incorporation; the petition process; and the form of a petition itself. The status of a petition is unknown at this time.

Middle Kuskokwim Region (Potential Kuspuk Borough)

In late 2006, a \$55,000 contract was awarded to prepare an economic feasibility study for forming a middle Kuskokwim region borough. The area to be studied followed the boundaries of the Kuspuk Regional Education Attendance Area and conformed to the Kuspuk Region Model Borough

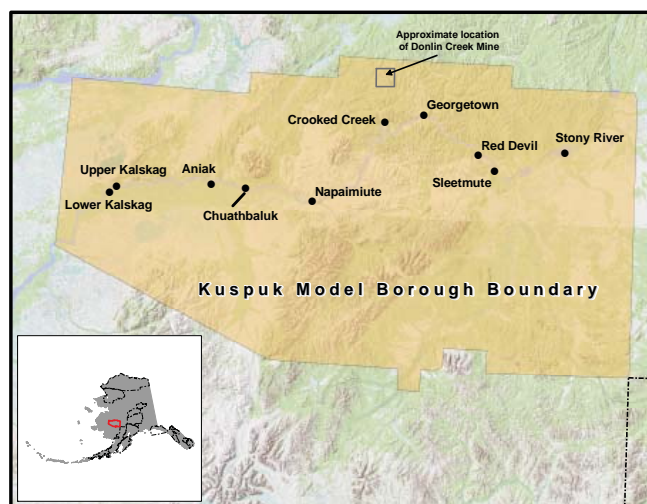


Figure 2-12. Kuspuk Model Borough Boundary

boundaries. A final report was due June 30, 2007. The study included consideration of the feasibility of borough formation both with and without the development of a mine at Donlin Creek.

In March, 2007, borough study issues were addressed. LBC staff responded to technical questions regarding educational funding for a prospective Kuspuk (Middle Kuskokwim) region borough. The analysis is part of a borough feasibility study, which was funded by the 2006 Legislature. LBC staff met three times with the consultant preparing the study. LBC staff reviewed and commented on education funding projections prepared by the Department of Education and Early Development (DEED).

The study was timely filed in mid-2007 and concluded that a borough is feasible only with Donlin Creek Mine online and a modest property tax or severance tax thereon would be used to fund borough operations. The report also concluded that other traditional sources of local government revenues such as a property, sales or accommodation taxes are inadequate to maintain borough operations in the area.

Petersburg

Location:	Petersburg is located on the northwest end of Mitkof Island, where the Wrangell Narrows meet Frederick Sound. It lies midway between Juneau and Ketchikan, about 120 miles from either community. The city encompasses 43.9 square miles of land and 2.2 square miles of water.
Population:	3,072
City Classification:	Home rule
Borough:	Unorganized
School District	Petersburg City Schools

The City of Petersburg expressed interest in filing a petition to incorporate a home rule borough encompassing Petersburg and surrounding area, approximately 4,450 square miles of land and water. The incorporation proposal also included dissolving the City of Petersburg. LBC staff had previously conducted a preliminary review of the petition in mid-October of 2007 and recommended certain amendments. LBC staff is awaiting the city's next course of action.

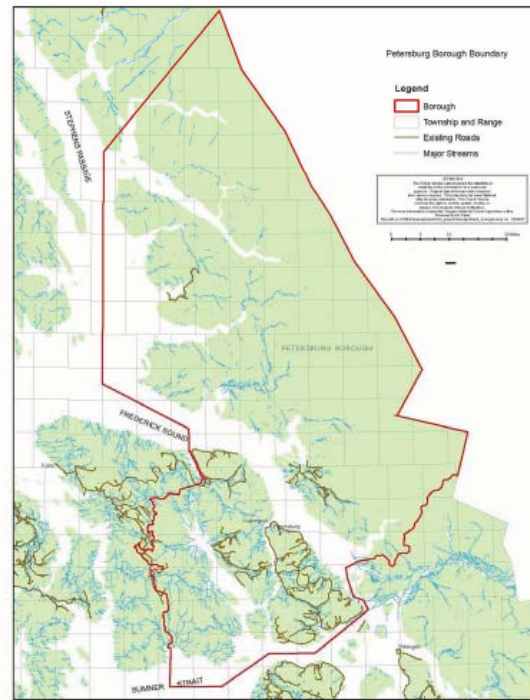


Figure 2-13. City of Petersburg proposed boundaries for a new borough

Skagway

Location:	Skagway is located 90 miles northeast of Juneau at the northernmost end of Lynn Canal, at the head of Taiya Inlet. The newly formed borough encompasses 452.4 square miles of land and 11.9 square miles of water.
Population:	846
Borough Classification:	First class
Borough:	Municipality of Skagway
School District:	Municipality of Skagway

In January 2007, the Commission issued its written statement regarding its December 2006 decision approving incorporation of a Skagway borough and dissolution of the City of Skagway. The Commission received two petitions

requesting reconsideration of its decision, but a majority of the Commission voted to not grant reconsideration. Following that action, the Commission notified the State Division of Elections that it needed to conduct an election on the incorporation/dissolution questions.

In March 2007, the State Division Elections issued an order and notice of election on the formation of the new Skagway borough and dissolution of the City of Skagway. The election was scheduled for June 5, 2007.

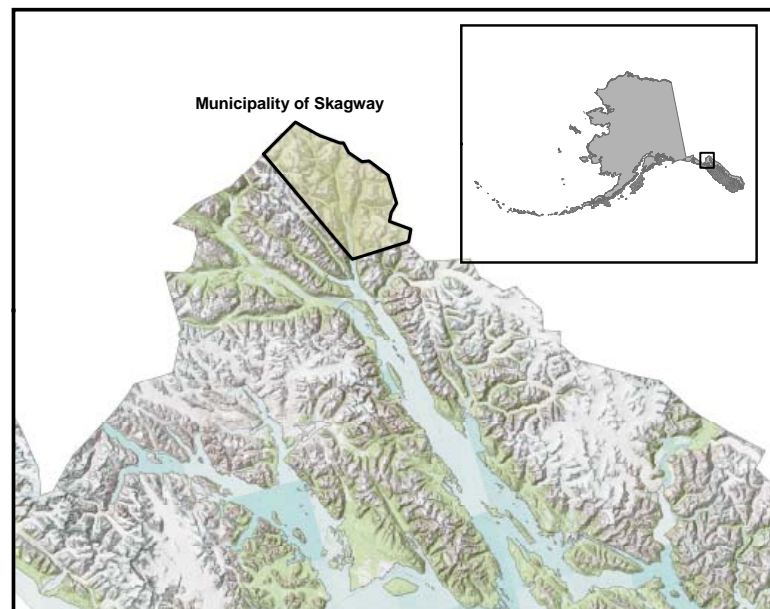


Figure 2-14. Location of the Municipality of Skagway

On June 20, 2007, the director of the State Division of Elections certified the results of the Skagway election. Voters approved the dissolution of the City of Skagway and formation of the Skagway borough by a margin of 444 to 23 (95 percent voter approval). Skagway voters also elected a mayor, six borough assembly members, and five school board members, all elected at large.

Commerce prepared a certificate of incorporation for the new borough and a certificate of dissolution for the City of Skagway. The Municipality of Skagway became the State's seventeenth borough.

Southeast Borough Developments

In May 2007, LBC staff responded to numerous questions from a Juneau attorney regarding borough incorporation. The attorney did not identify his client, but his inquiries included the issue of filing a competing petition for formation of a new borough in southeast Alaska.

Yukon-Koyukuk

In 2007, representatives from several communities including Nenana, Minto, Rampart, Manley Hot Springs, Tanana, and Minchumina expressed interest in borough government. LBC staff participated in a teleconference providing information and resources. In October 2008, at the request of the Yukon-Koyukuk school district superintendent, LBC staff attended a Yukon-Koyukuk School District board meeting in Anchorage. LBC

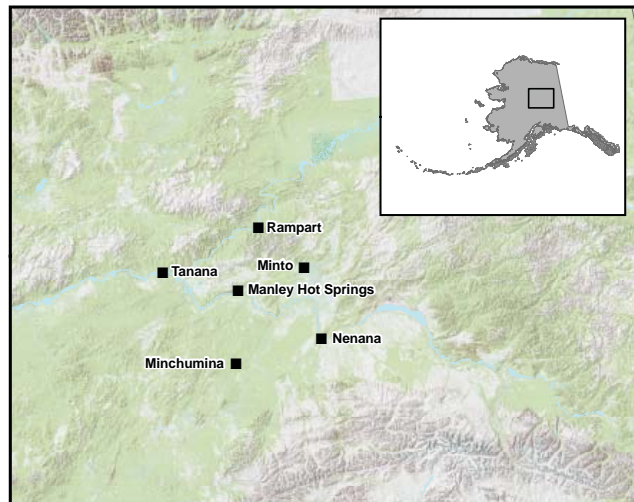


Figure 2-15. Location map for communities interested in a Yukon-Koyukuk borough

staff answered questions and provided several written resources including relevant statutes and regulations. A school board director expressed concern regarding the role of the school making inquiries into borough formation. The director felt the decision and inquiries into this matter should be left to the appropriate municipality or other community representatives.

Wrangell

Location:	The City and Borough of Wrangell is located on the northwest tip of Wrangell Island, 155 miles south of Juneau and 89 miles northwest of Ketchikan. It is near the mouth of the Stikine River, an historic trade route to the Canadian Interior. The borough encompasses 3,465 square miles of land and water.
Population:	2,062
Borough Classification:	Unified Home rule
Borough:	City and Borough of Wrangell
School District	City and Borough of Wrangell

In 2007, LBC staff completed preliminary and final reports on the petition filed in 2006 to incorporate a unified, home rule City and Borough of Wrangell. The petition proposed dissolution of the City of Wrangell and formation of a borough encompassing approximately 3,465 square miles, roughly the southern half of the Wrangell/Petersburg Model Borough. The petition also sought to include the Meyers Chuck/Union Bay area on the Cleveland Peninsula, which was then within the model borough boundaries of the Ketchikan Gateway Borough, and sought for annexation by the

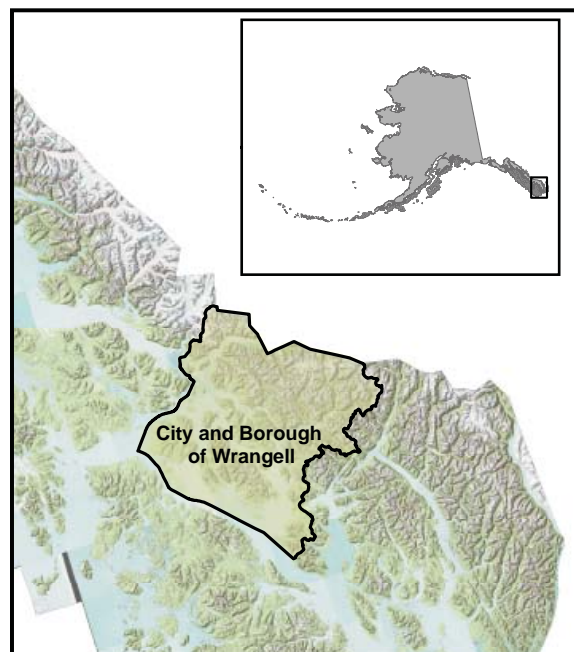


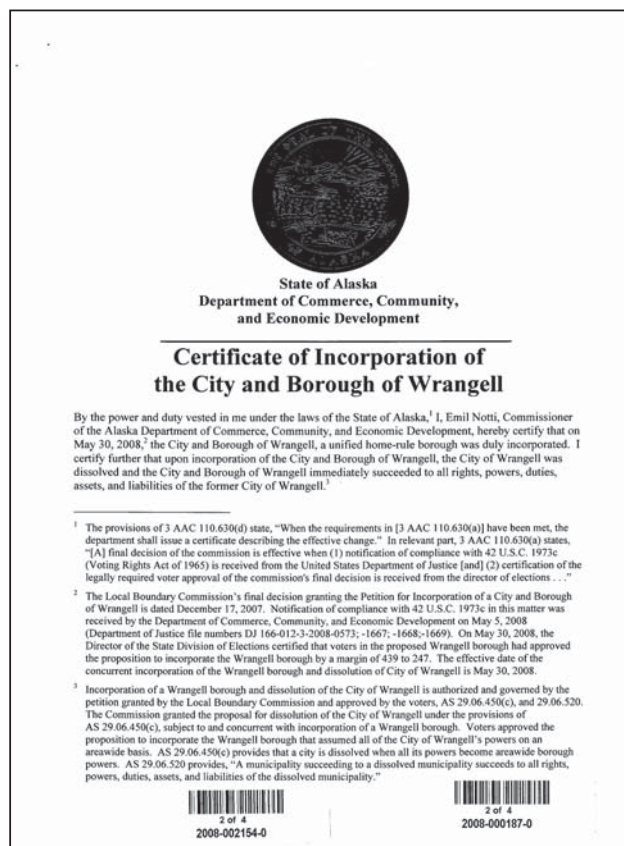
Figure 2-16. Location of the City and Borough of Wrangell

KGB in a petition pending before the Commission at the same time. Because of the Meyers Chuck/Union Bay overlap, the Commission determined that the two petition proposals should be heard concurrently.

The Commission held hearings on the Wrangell proposal in November 2007 and also toured the area proposed for borough incorporation. On November 7, 2007, the Commission convened in public meeting and approved the Wrangell borough incorporation as proposed by the petition. In doing so, the Commission effectively modified the KGB's model borough boundaries by removing the Meyers Chuck/Union Bay area. It also effectively modified the Wrangell/Petersburg Model Borough Boundaries.

In 2008, the State Division of Elections scheduled a by mail election by mail regarding the dissolution of the then existing City of Wrangell and the incorporation of the City and Borough of Wrangell. In April 2008, the election received preclearance by the U.S., Department of Justice under the federal Voting Rights Act of 1965. The election was held in May 2008, and the voters in the area approved the incorporation of the unified home rule borough by a vote of 284 to 154.

Commerce issued a certificate of incorporation for the City and Borough of Wrangell on May 30, 2008. Upon incorporation, the new borough received organization grant funds of \$500,000 from the state under



Recorded City and Borough of Wrangell
Certificate of Incorporation

AS 29.05.190. The new borough will receive the remaining \$100,000 in organization grant funds from the State in 2010. The new borough is also entitled to receive certain State lands under AS 29.65.030.

Section VI. Borough Annexation

Annexation activities occurred in the following boroughs during 2007 and 2008:

- ★ City and Borough of Juneau
- ★ Ketchikan Gateway Borough

Location:	Juneau is located on the mainland of Southeast, opposite Douglas Island. It lies 900 air miles northwest of Seattle and 577 air miles southeast of Anchorage. The area encompasses 2,716.7 sq. miles of land and 538.3 sq. miles of water.
Population:	30,317
Borough Classification:	Unified Home rule
Borough:	City and Borough of Juneau
School District	City and Borough of Juneau

City and Borough of Juneau

In 2006, it was reported that the mayor and assembly of the City and Borough of Juneau (CBJ) were considering a possible annexation. A committee of former assembly members and planning commissioner were appointed to gather input and recommend action. That committee submitted a final report to the CBJ in January 2007, recommending that the CBJ not file a petition to



Juneau

annex because it had determined that such action was neither

Location:	The Ketchikan Gateway Borough is located near the southernmost boundary of Alaska, in the Panhandle. It has two incorporated municipalities inside its boundaries: the City of Ketchikan and the City of Saxman. The area encompasses 6,262 square miles of land and water.
Population:	13,166
Borough Classification:	Second class
Borough:	Ketchikan Gateway Borough
School District	Ketchikan Gateway Borough

necessary nor warranted at that time. No annexation proposal by CBJ has been submitted.

Ketchikan Gateway Borough

In early 2007, LBC staff investigated and analyzed the 2006 legislative review petition submitted by the Ketchikan Gateway Borough (KGB) to annex approximately

4,701 square miles of land and water. The KGB petition included the area of Meyers Chuck/Union Bay. That area was also sought in the proposed Wrangell borough incorporation petition. That petition was being considered concurrently by the Commission. The KGB petition sought to annex all the area proposed in the KGB's model borough boundaries except for the area around

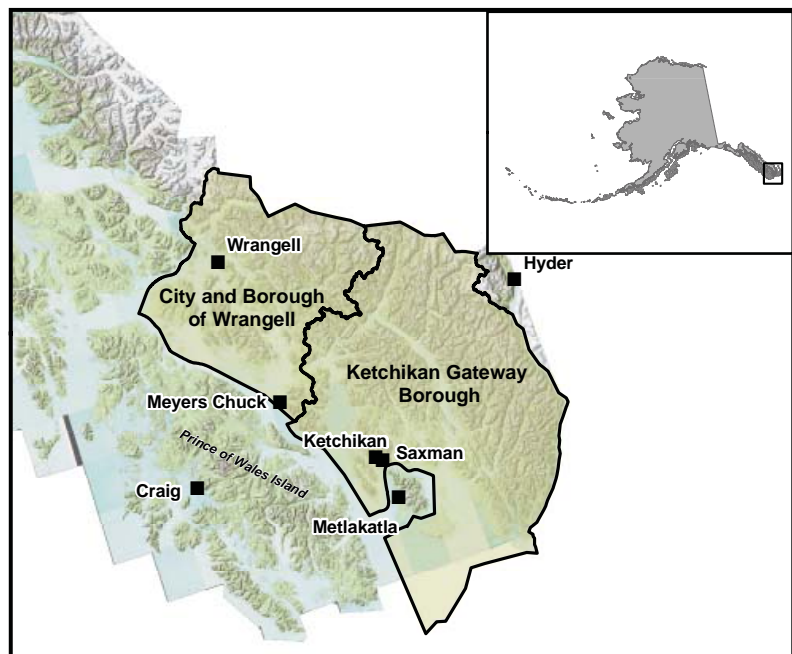


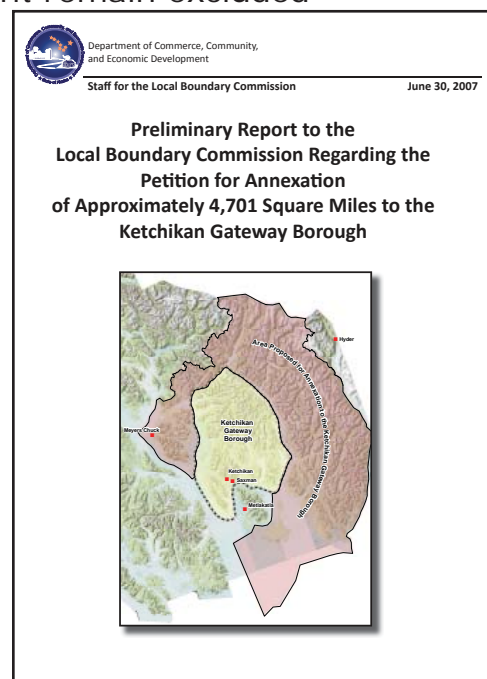
Figure 2-17. Locations of the parties and communities involved in the Ketchikan Gateway Borough annexation as approved by the Local Boundary Commission.

Hyder. The KGB petition proposed a short term exclusion of Hyder until transportation and communication opportunities were improved.

There were three respondents in the KGB annexation proceeding: (1) the City of Wrangell; (2) Hyder resident Peter Caffall-Davis; and (3) the Metlakatla Indian Community. The City of Craig and the Prince of Wales Island Community Advisory Council (POWCAC) opposed the annexation for several reasons, including potential loss of funding through federal forest programs such as the Secure Rural Schools and Community Self-Determination Act of 2000, which had been funded with national forest receipts (NFRs) from 2002 - 2007.

In August 2007, LBC staff received a letter from the DEED regarding the KGB annexation proposal. DEED expressed concern that the Hyder enclave might remain excluded indefinitely. DEED acknowledged, however, the KGB's justification for temporarily excluding Hyder. DEED did not oppose the proposed annexation.

Following review and investigation of the petition, review of briefs and public comments, and applying the annexation procedures and standards, LBC staff issued its preliminary report⁹ recommending approving the petition. The preliminary report was published in mid-July 2007. Five sets of comments were filed in response to LBC staff's preliminary report and are part of the record. A letter filed in the Wrangell



⁹ The preliminary and final reports were authored by separate LBC staff. After publication of the preliminary report, the LBC staff who authored the report recused himself from further activities in the proceeding. A different staff member was assigned the case and the preparation of the final report.

borough incorporation proceeding by the U.S. Forest Service's Ketchikan-Misty Fjords Ranger District was considered relevant and added to the record.

LBC staff conducted an independent review and investigation of the entire KGB annexation record, and followed applicable borough annexation procedures and standards. LBC staff then concurred with the findings in the staff preliminary report. Staff recommended approving of the petition in its final report. Staff's final report of mid-October 2007.

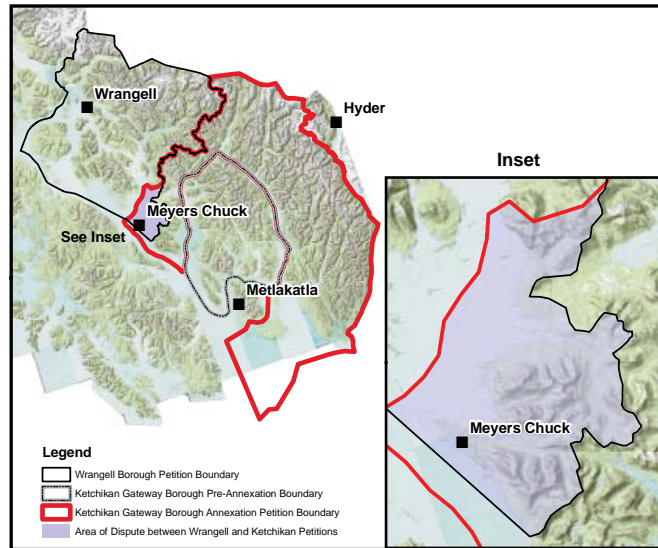


Figure 2-18. Location of boundary overlap between Wrangell and Ketchikan Petitions.

On November 6, 2007, the Commission held a public hearing in Ketchikan on the annexation petition. Four commissioners participated in the hearing.¹⁰ The KGB and the three respondents made opening statements, and the KGB, Metlakatla, and Wrangell presented sworn witness testimony. Approximately forty members of the public offered comments. The majority of public comment opposing the petition was based on two things: (1) including of the Meyers Chuck/Union Bay area in the KGB; and (2) the potential loss of funding through federal programs such as NFR.

The Commission convened in public meeting on November 7, 2007, to consider both the Wrangell borough incorporation and the KGB annexation petitions. At that meeting, the Commission first unanimously approved the Wrangell borough incorporation as proposed, including the Meyers Chuck/Union Bay area. That

¹⁰ Commissioner Georgianna Zimmerle, a Ketchikan resident, was recused from the proceeding.

decision, in essence, precluded the KGB from annexing that area and, in effect, amended the boundaries under consideration in the KGB petition.

The Commission then considered the KGB annexation petition, as amended, and determined it met the applicable standards under the State constitution and Commission regulations. The LBC determined that accepting the petition was in the best interests of the state. The Commission unanimously approved the annexation petition, as amended. However, in approving the petition, the Commission expressed concern with Hyder's enclave status. Therefore, in approving the amended KGB annexation petition, the Commission directed the KGB to file a petition within five years to annex the Hyder area. Further, the Commission encouraged the KGB to work toward developing communication, transportation, and economic ties between Hyder and the borough, including working with the state to help develop these ties. If such a petition is not filed within the five-year deadline, the Commission will direct Commerce to file such a petition.

On December 4, 2007, the Commission convened in public meeting to adopt a written decision approving the KGB annexation petition, to exclude the 191-square mile area of Meyers Chuck/ Union Bay. The written decision was issued on December 5, 2007.

In its decision, the Commission addressed the Hyder issue (set out above), as well as the NFR issue. In addressing NFR funding, the Commission included its endorsement of the 1999 Commission's rejection of the relevance of ephemeral financial considerations such as NFRs when considering the standards for borough formation or extension. The Commission agreed

STATE OF ALASKA

THE LOCAL BOUNDARY COMMISSION

Before Commissioners:

Kermit L. Ketchum, Chair
Robert Harcharek, Vice Chair
Lynn Chrystal
Lavell Wilson

In the Matter of the Petition by the **Ketchikan Gateway Borough** for Legislative-Review Annexation of Approximately 4,701 Square Miles to the Ketchikan Gateway Borough)
)
)
)
)
)

STATEMENT OF DECISION

I. BACKGROUND AND SUMMARY OF PROCEEDINGS

Before the Commission in this proceeding was a Petition filed by the Ketchikan Gateway Borough (KGB, Borough, or Petitioner) for legislative-review annexation of approximately 4,701 square miles.¹ A detailed history regarding this annexation proposal is contained in the Petition, Petitioner's Reply brief, and the reports issued by the Department of Commerce, Community, and Economic Development (DCCED). Therefore, only a brief summary will be set out here.

The area proposed for annexation lies entirely within Alaska's unorganized borough. The proposal generally extends the southern and eastern boundaries of the Borough to the Canadian border. The Petition also proposes to expand the Borough's

¹The vast majority (over 90 percent) of the land proposed for annexation is part of the Tongass National Forest and under federal ownership.

Statement of Decision – (12/5/07)
KGB Annexation Proposal
Page 1 of 32

with the 1999 Commission's assertion that these programs may, over time, operate in a significantly different manner or even no longer exist. "In contrast," the Commission stated, "the formation of a borough or the extension of a borough over a large area is a much more permanent action." The Commission noted both at its decisional session and in its written opinion, that the Commission is very sympathetic to the loss of NFRs but that such loss is not a bar to the development of boroughs or their extension. The Commission also addressed and overturned conclusions made by the 1999 Commission decision with regard to that Commission's reliance on and interpretation of model borough boundaries.

On January 23, 2008, the Commission presented the KGB annexation decision¹¹ to the Alaska Legislature for review, under the provisions of article X, section 12, of the Alaska Constitution and AS 29.06.040(b).¹² Under those provisions, a boundary change becomes effective 45 days after presentation to the Legislature or at the end of the session, whichever occurs earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The Commission's boundary change proposal approving the KGB annexation petition was not disapproved by the Legislature. The U.S. Department of Justice precleared the annexation on May 14, 2008, under Section 5 of the Voting Rights Act (28 C.F.R. 51.41).

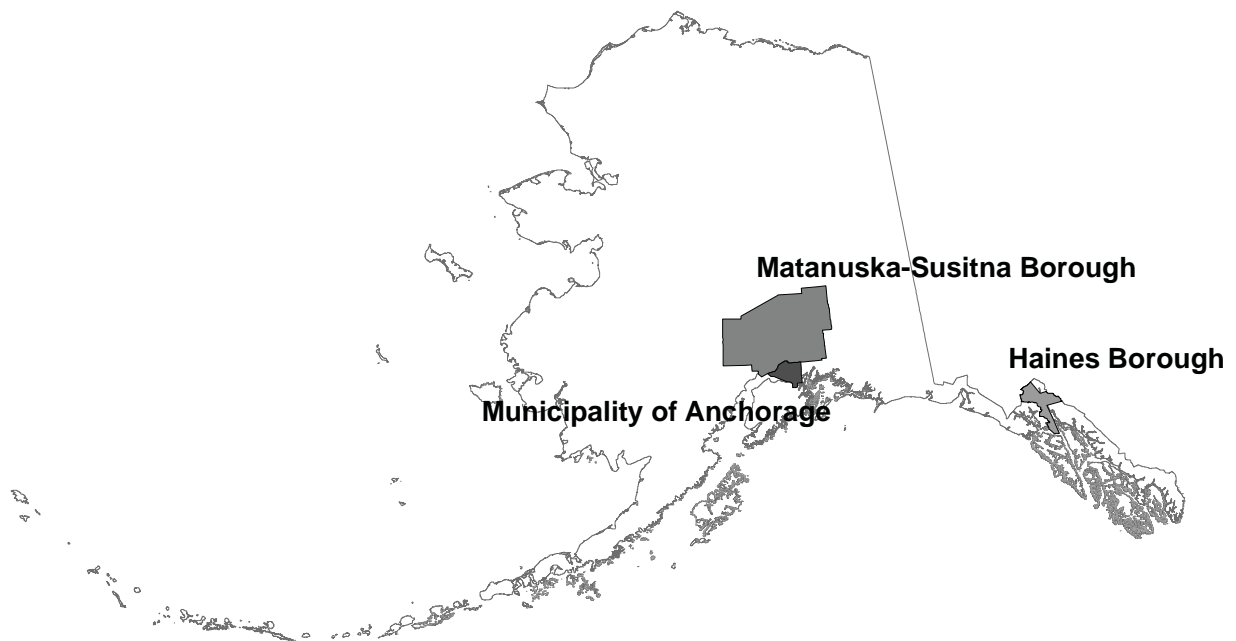
11 The City of Craig/POWCAC and others filed an appeal of the Commission's decision in Ketchikan Superior Court on January 3, 2008, and also sought a stay of the Commission's presentation of the boundary change to the Legislature. The Court denied the motion to stay.

12 Under the provisions of those laws, the Commission may present a proposed boundary change to the Legislature during the first ten days of a regular session. In 2008, the Legislature convened in regular session on January 15.


Section VII. Borough Detachment

Detachment activities occurred in the following boroughs during 2007 and 2008:

- ★ Matanuska-Susitna Borough (Big Lake)
- ★ Municipality of Anchorage (Eagle River)
- ★ Haines Borough




Big Lake

Location:	Big Lake is an unincorporated community on the shore of Big Lake, 13 miles southwest of Wasilla, in the Chugach Mountains. Big Lake is in the Matanuska-Susitna Borough and lies adjacent to Houston and Knik-Fairview. The community encompasses 131.9 square miles of land and 12.9 square miles of water.	
Population:	3,166	
City Classification:	Unincorporated	
Borough:	Matanuska-Susitna Borough	
School District:	Matanuska-Susitna Borough	

In July 2008, LBC staff answered questions from a caller exploring the possibility of detachment from the Matanuska-Susitna Borough. The caller stated that differences between rural and urban communities in the Matanuska-Susitna Borough make the borough's one-size-fits-all ordinances impractical. The caller was also stated he was exploring the possibility of moving the Matanuska-Susitna Borough seat from Palmer to a more populated area in the Matanuska-Susitna Valley.

Eagle River

Location:	Eagle River is located within the Municipality of Anchorage, between Fort Richardson and the Chugach State Park. The area north of Fort Richardson to the municipal boundary includes Eagle River, Chugiak, Birchwood, Peters Creek, Thunderbird Falls, and Eklutna.	
Population:	30,000	
City Classification:	Unincorporated	
Borough:	Municipality of Anchorage	
School District:	Municipality of Anchorage	

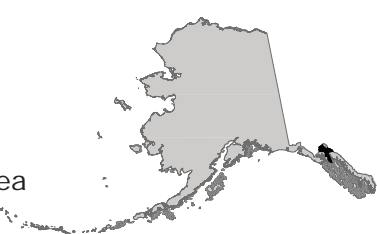
In March 2007, Northern Economics Inc., published a 100-page study of the fiscal feasibility of detaching the Eagle River/Chugiak area from the Municipality of Anchorage and forming a new borough. The report also addressed the fiscal effects

detachment would have on the residual Municipality of Anchorage. The study concluded that due to a greater property tax base in the remnant Anchorage area compared to the prospective Eagle River-Chugiak Borough, forming a borough would decrease the permissible level of funding for schools in the Eagle River-Chugiak area by as much as \$10.8 million annually and necessitate increasing property taxes by as much as 18 percent to maintain other current service levels. The study was funded by a 2006 legislative appropriation of \$87,500.

1		ITEMS	FUND
2	City of Wales - City Facilities Repair and	25,000	25,000
3	Maintenance <u>and Payment of 2005 and 2006</u>		
4	<u>Payroll Taxes, Penalties, and Interest to IRS</u>		
5	<u>and Department of Labor</u> (HD 39)		
6	* Sec. 46. HOUSE DISTRICT 40. Section 1, ch. 1, SSSLA 2002, page 78, lines 14 - 15, is		
7	amended to read:		
8		APPROPRIATION	OTHER
9		ITEMS	FUNDS
10	Kaktovik Old Cemetery Fencing <u>and</u>	10,000	10,000
11	<u>Other Community Projects (HD 40)</u>		
12	[(ED 37)]		
13	* Sec. 47. DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC		
14	DEVELOPMENT. (a) The unexpended and unobligated balance of the appropriation made in		
15	sec. 52(k), ch. 3, FSSLA 2005 (Wasilla, emergency generators for the sports complex -		
16	\$260,000) is reappropriated to the Department of Commerce, Community, and Economic		
17	Development for payment as a grant under AS 37.05.315 to the City of Wasilla for sports		
18	complex emergency generators and kitchen.		
19	(b) The sum of \$139,000 is appropriated from the general fund to the Department of		
20	Commerce, Community, and Economic Development, division of community advocacy, for		
21	studies to determine the economic feasibility and financial effect of separating the greater		
22	Eagle River - Chugiak region from the Municipality of Anchorage, to evaluate and		
23	recommend various alternatives and scenarios for the governmental structure of the separated		
24	region, to evaluate and recommend allocation of various assets currently shared by the		
25	Municipality of Anchorage and the area being considered for separation, and other studies the		
26	division of community advocacy may determine necessary to fully evaluate the alternatives.		
27	(c) The unexpended and unobligated general fund balance on June 30, 2007, not to		
28	exceed \$120,000, of the appropriation made in sec. 6(b), ch. 13, SLA 2006 (Arctic Power,		
29	education efforts to open the coastal plain of the Arctic National Wildlife Refuge - \$750,000)		
30	is reappropriated to the Department of Commerce, Community, and Economic Development		
31	for payment as a grant under AS 37.05.316 to Arctic Power for Alaska's energy education		

In 2007, the Legislature appropriated \$139,000 to determine the economic feasibility and financial effect of separating the greater Eagle River-Chugiak area from the Municipality of Anchorage; to evaluate and recommend various alternatives and scenarios for the governmental structure of the separated region; to evaluate and recommend allocation of various assets currently shared by the Municipality of Anchorage and the area being considered for separation; and for other studies the Commerce may determine are necessary to fully evaluate the alternatives. However, that appropriation was vetoed by the governor.

Haines Borough

Location:	Haines Borough is located on the shores of the Lynn Canal, between the Chilkoot and Chilkat Rivers, 80 air miles northwest of Juneau. It is just south of the Canadian border at British Columbia, 85 air miles north of Juneau and 600 air miles southeast of Anchorage and Fairbanks. By road, it is 775 miles from Anchorage. The area encompasses 2,343.7 square miles of land and 382.1 square miles of water.	
Population:	2,257	
Borough Classification:	Home rule	
Borough:	Haines Borough	
School District:	Haines Borough	

In April 2007, LBC staff received a request for a petition form for detachment from a borough. The caller indicated the detachment would involve the lower Chilkat Peninsula and Excursion Inlet from the Haines Borough. No petition has been filed to date.

Section VIII. Special Projects

In 2007 and 2008 the following special projects were completed.

Regulations

During 2007, the Commission continued reviewing regulation. Public notice of the proposed changes to the regulations was issued on February 2, 2007. Written comments on the draft regulations were initially required to be filed by March 12, 2007. The first statewide public hearing was held on February 13, 2007, with sites in Anchorage, Barrow, Fairbanks, Ketchikan, Soldotna, and Wasilla, with a Commissioner located at each site

except Anchorage (where Staff was present). The hearing was conducted by a statewide teleconference bridge, with attendance at an additional site in Wrangell.

Following that hearing, the Commission issued supplemental notices changing the time period for the second statewide hearing and adding Juneau as a teleconference site for its March 1 hearing. Hearing sites for that hearing were Anchorage, Bethel, Cordova, Craig, Dillingham, Juneau, and Nome. A Commission member was in attendance at each site except Anchorage and Juneau (where LBC staff members were located). The hearing was conducted by a statewide teleconference bridge, with attendance at additional sites in Coffman Cove, Skagway, Valdez, and Wrangell. At the written request from Senator Lesil McGuire, the Commission extended the deadline for written comments. The Commission also scheduled an additional hearing for March 29, 2007.

The Commission adopted changes to its regulations on April 30, 2007, and they were forwarded to the Department of Law for review. Following review of suggested changes by the Department of Law, the Commission readopted its revised regulations on December 4, 2007. The regulations became effective January 9, 2008.

During 2008, LBC staff has been amending LBC boundary change petition forms so that they comply with the revised regulations.

Revision of LBC Bylaws

During 2007, LBC staff continued its work on reviewing and updating the Commission's bylaws in accordance with the LBC's directives and with the recent changes to the regulations. Staff reviewed the bylaws and case materials of other constitutionally created agencies, such as the Alaska Judicial Council and Alaska Redistricting Board, as well as other administrative law agencies such as the Regulatory Commission of Alaska.

The Commission members received the draft bylaw revisions in August 2007. The draft was assigned to a bylaws subcommittee. At its September 25, 2008, Anchorage meeting, the Commission committed to completing the bylaws project.

Constitutional Forum

On May 17, 2007, at the UAA/APU Consortium Library, the LBC held a public forum on the constitutional framework for local government in Alaska. Forum panelists included former state senators Arliss Sturgulewski, Vic Fischer, and Jack Coghill; and Gordon Harrison, author of *Alaska's Constitution: A Citizen's Guide*.

The forum addressed a number of constitutional issues that the Commission routinely faces in conducting its business. Those included: the maximum local self government clause (article X, section 1); the minimum of local government units constraint (article X, section 1); the constitutional provision mandating the division of the entire state into organized and unorganized boroughs based on standards and using methods for the establishment of organized and unorganized boroughs (article X, section 3); the mandate that each organized and unorganized borough embrace an area and population with common interests to the maximum degree possible (article X, section 3); constitutional limits on establishment of borough service areas if services can be provided by incorporation as a city or by annexation to a city (article X, section 5); the Legislature's capacity to exercise any power or function in the unorganized borough that an assembly may exercise in an organized borough (article X, section 6); constitutional provisions regarding the setting of municipal boundaries (article X, section 12); the equal rights clause (article I, section 1); the corresponding obligations clause (article I, section 1); and the source of government provision (article I, section 2).

During the forum, Vic Fischer clarified a January 20, 1956, exchange on the floor of the Constitutional Convention between Delegate Nordale and himself regarding the meaning of the proposed mandate that "Each borough shall embrace to the maximum extent possible an area and population with common interests."

Orientation of New LBC Members

Due to the turnover in LBC commissioners (three out of the five commissioners left the LBC between March and May 2007), two orientations were conducted: On August 29 and 30, 2007, and on September 24 and 25, 2008. At the 2007 orientation, the LBC heard from Governor Palin; Constitutional Convention Delegates and former Senators Vic Fischer and Jack Coghill; and former Senator Arliss Sturgulewski. Assistant Attorneys General David Jones and Marjorie Vandor made presentations on Alaska's Executive Branch Ethics Act and the Open Meetings Act. Bob Hicks, former LBC member and former municipal attorney, also made presentations to the LBC, as did LBC staff.

By Mail Elections

In February 2007, the LBC chair and vice chair met with the state director of Elections to discuss the practice of conducting by mail elections for municipal incorporation, dissolution, merger, consolidation, and city reclassification. The LBC chair also sent a three-page letter outlining concerns regarding the practice. On numerous occasions, residents of an area that will vote on a boundary change proposal affecting them have expressed a strong preference for in person rather than by mail elections to the commissioners and LBC staff. The Division of Elections, however, conducts boundary change elections by mail. The director met with the Commission at its December 17, 2008, public meeting. Both agencies committed to work together regarding local boundary change elections.

Section IX. Litigation Involving the LBC

Ketchikan Gateway Borough Annexation

As noted herein, the City of Craig, *et al.*,¹³ appealed the Commission's 2007 KGB annexation decision. The KGB intervened in the case as an appellee. After various rounds of pleadings, the Superior Court approved appellants' motion to supplement the record on appeal with, among other things, documents from the 1998 KGB annexation proceeding and testimony from an evidentiary hearing held in October 2008. Appellants' opening brief is due late January 2009, and appellees' (LBC and KGB) briefs are due in mid-March 2009. For those interested in more detail regarding the appeal, the case number is 1KE-08-00004CI.

Deltana Borough

Two appeals of the Commission's Deltana borough incorporation decision were filed in Fairbanks Superior Court, one by Margaret Mullins and one by Michael Murphy. The Court denied the appellants' motions to stay the borough election. Mr. Murphy stipulated to dismissal of his appeal as being moot due to the outcome of the election rejecting incorporation. Ms. Mullins did not stipulate to a dismissal.

Ms. Mullins appealed the Superior court's decision to the Alaska Supreme Court. The appeal is still in the briefing stage. For persons interested in more detail on the case, the case number is S-12912.

13 The other appellants are Craig City School District, Annette Island School District, Organized Village of Kasaan, City of Kasaan, Klawock City School District, City of Klawock, Naukati West, Inc., Southeast Island School District, City of Thorne Bay, Hollis Community Council, Hydaburg City School District, City of Hydaburg, and Hydaburg Cooperative Assoc.

Chapter 3: Public Policy Issues

(1) Recommendation: Inducements for Borough Incorporation and Annexation

The Local Boundary Commission urges the Legislature to consider legislation that provides inducements for borough incorporation and annexation. Examples of such inducements are:

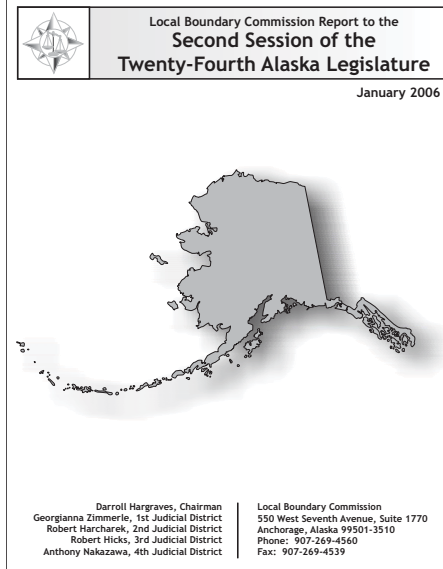
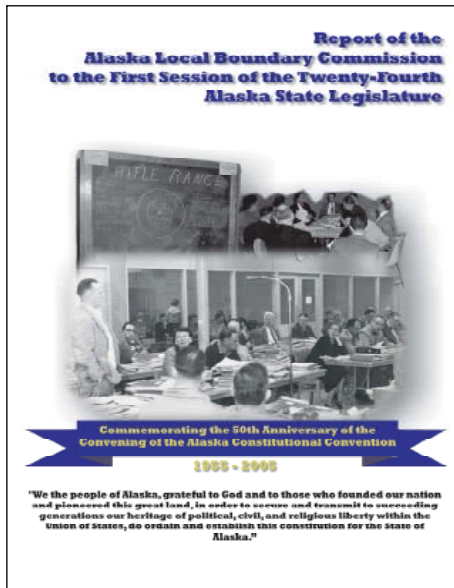
1. providing additional financial aid to organized boroughs;
2. increasing organization grants for new boroughs and extending grants to boroughs that expand their boundaries;
3. extending municipal land grants for annexations and considering increases in entitlements; and
4. restricting national forest receipts and shared fisheries fees and taxes to organized boroughs and cities within boroughs.

Issue

Incentives and adequate inducements must be developed to encourage borough formation and annexation to existing boroughs. Over half the state remains in the unorganized borough. Efforts to incorporate or annex areas into organized boroughs require incentives and inducements that appeal to residents of those areas who may surmise that they are better off maintaining the status quo than forming or becoming part of a regional government.

Background

The Commission has addressed these issues in many of its annual reports to the Legislature. In recognition of the 50th anniversary of the convening of the Alaska Constitutional Convention, the LBC in its 2005 annual report to the Legislature



explained in detail the history and constitutional intent in forming regional governments in Alaska and the failure to fully implement that intent. In that report, the Commission also provided recommendations regarding inducements and incentives to form regional government and removal of disincentives for such formation. The Commission repeated those issues and recommendations in its annual reports issued in 2006 and 2007. Rather than repeat those details in this Report, the Commission has included relevant portions of its 2005 annual report as Appendix A hereto.

While municipal revenue sharing has been reinstated, few of the Commission's other recommendations have been addressed. The state is now celebrating its 50th year of statehood, and many of the regional problems that existed during the fight for statehood still exist today; i.e., development of local government is hindered, residents in organized and unorganized areas are not treated equally regarding obligations for services, the delivery of services throughout Alaska is neither effective nor efficient, regional governments provide greater economies of scale for the local service delivery, etc. As noted above, these and other issues are discussed in detail in the Commission's many reports to the Legislature, and copies of those reports can be made available to assist in the evaluating this recommendation.

(2) Recommendation: Legislative Conducted Worksessions Addressing Boundary Change Issues

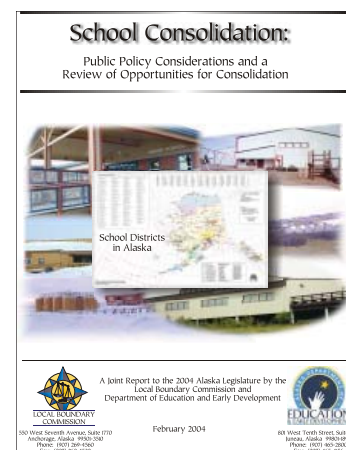
The Local Boundary Commission recommends that the Legislature conduct committee work sessions to address boundary change issues and invite Commission members to participate in those sessions. The Commission wishes to clarify and discuss its duties and objectives with the Legislature and Alaska residents.

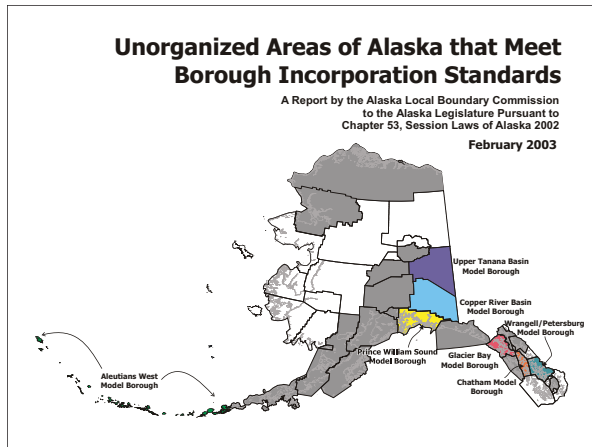
Issue

The Local Boundary Commission is one of only five state boards and commissions established in the Alaska Constitution. The Alaska Supreme Court has recognized that the Commission was created because local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. Yet, after fifty years of statehood, over half the state's area remains in the unorganized borough. The Commission believes that many legislators and the public do not understand the role and duties of the Commission and that educating in that regard is necessary.

Background

Among the Commission's mandatory duties under AS 44.33.812 is the requirement that it make studies of local government boundary problems. As previously noted, in its annual reports to the Legislature, the Commission has routinely addressed local government boundary problems in detail and made recommendations for legislation to address those problems. In addition, the Legislature itself has, on past occasions, required the Commission to make studies of local government boundary problems. The most recent of such directives are § 1 ch 83 SLA 2003, requiring a study of school consolidation opportunities, and § 3 ch 53 SLA 2002,





requiring the Commission to review conditions in the unorganized borough and report to the Legislature the areas the Commission identified as meeting the standards for incorporation. Both those studies were timely completed and furnished to the Legislature.

Unfortunately, very few of the Commission's recommendations are ever discussed by the Legislature let alone acted upon. Inasmuch as the 50th anniversary of Statehood is being celebrated this year and as a local boundary commission and boundary changes issues were a major topic of the Alaska Constitutional Convention, the Commission believes it is important that legislators better understand the Commission and what may be done through boundary change decisions to help solve problems with delivering services in the unorganized borough, most particularly in areas that have the fiscal and administrative capacity to support a regional government.

Those problems have been the subject of numerous reports and studies, several of which are discussed in Appendix A hereto. Commission members and staff are available at any time to discuss these and other boundary change matters with the Legislature.

(3) Recommendation: Legislative Repeal or Mitigation on State Tax on Municipal School Districts

The Local Boundary Commission recommends that the Legislature repeal or mitigate the onerous and discriminatory state tax on municipalities that operate school districts as requested by the Ketchikan Gateway Borough (KGB) in its Resolution No. 2117, dated October 20, 2008. The Commission has enacted its own resolution in support of the Borough's efforts in this regard. The Commission's resolution is Appendix B to the report. The KGB's Resolution No. 2117 is Appendix C to this report.

Issue

In its annual reports to the Legislature, as well as in other studies or reports, the Commission has routinely cited the education-funding issue; i.e., the required local contribution

AS 29.354.160. Education. (a) Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060.

by municipal school districts under AS 14.17.410(b)(2), as a major disincentive to organizing the unorganized borough. Regional Educational Attendance Areas (REAAs)¹⁴ in the unorganized borough

receive full funding for their schools from the Legislature; i.e., residents in REAAs are not required to contribute education funding for their schools. The required local contribution has been described as a tax on residents in boroughs and home-rule and first class cities in the unorganized borough to help pay for their schools. The Commission agrees.

Background

The Commission and others have long raised concerns that the required local contribution is a problem for two basic

reasons. First, it is inequitable, as it applies only to some Alaskans; i.e., residents of boroughs and home rule and first class cities in the

AS 29.35.260. Cities outside boroughs.

.....

(b) **A home rule or first class city outside a borough is a city school district** and shall establish, operate, and maintain a system of public schools as provided by AS 29.35.160 for boroughs. . . .

unorganized borough and not to residents in REAAs. Further, no rational basis (e.g., fiscal capacity) exists to distinguish between residents who are required to contribute and those who are not.

¹⁴ Including the federal transfer REAAs.

Second, it qualifies as a breach of promise on the part of the State during enactment of the 1963 Mandatory Borough Act.¹⁵ When enacting that legislation, which led to the creation of eight boroughs,¹⁶ the State pledged:

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

That is obviously not the case because of the required local contribution for education, which is a decrement to the level of state aid those boroughs receive for their schools.

These concerns have been discussed in detail in the Commission's many reports and studies filed with the Legislature, an example of which is reflected in the excerpt from the Commission's 2005 annual report which is Appendix A to this report, particularly at pp. 151 - 157.

AS 14.17.410. Public school funding.

.....

(b) Public school funding consists of . . . a required local contribution, . . . as follows:

.....

(2) **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 Commerce, 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 subsection.

The 1992 Task Force on Governmental Roles¹⁷ reported that, "The inequity in tax burden between residents of . . . [municipal school districts] and those residing in unorganized areas is a perennial area of area of conflict in Alaska politics." That statement is as true in 2009 as it was in 1991.

¹⁵ Section 1 ch 52 SLA 1963.

¹⁶ The eight regions for which boroughs were mandated were Anchorage, Fairbanks, Juneau, Kenai Peninsula, Ketchikan, Kodiak Island, Matanuska-Susitna Valleys, and Sitka.

¹⁷ Alaska's "Task Force on Governmental Roles" was established by the 1991 Legislature to define federal, state, and local relationships in the delivery of public services.

Appendix A

Policy Issues and Concerns from the 2005 Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

Chapter 3 - Policy Issues and Concerns

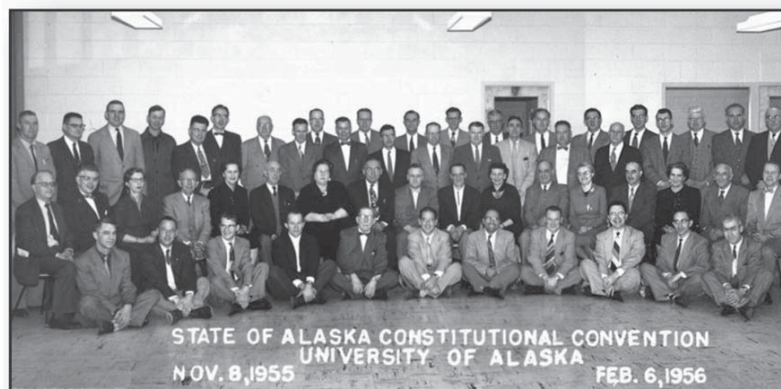
Introduction

This year marks the 50th anniversary of the convening of Alaska's Constitutional Convention. From November 8, 1955, to February 5, 1956, fifty-five elected delegates gathered at the University of Alaska campus near Fairbanks to create the framework for Alaska's future state government. Five decades later, the efforts of those delegates continue to be generally regarded as a great success.

One of the biggest challenges facing the framers of Alaska's Constitution was to transform Alaska's anachronistic local government structure into a

modern system that would serve the diverse areas of Alaska efficiently and effectively. At the time, local government in the Territory of Alaska was both rudimentary and flawed, as described below.

Under territorial status, local institutions had undergone only limited development; there was little self-determination at the territorial and even less at the local level. Federal law prescribed the powers of the territorial legislature, severely limiting the scope and types of local government and restricting the powers that could be ex-



Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

exercised by cities. For example, counties could not be established, bonding criteria were strictly delimited, and home rule could not be extended to cities.

Victor Fischer, *Alaska's Constitutional Convention*, 1975, p. 116.

Over the course of more than 44 meetings, the Committee on Local Government crafted the Local Government Article of Alaska's Constitution. When completed, the framework for local government comprised a mere 833 words.³⁹ The delegates drafted a strikingly simple, yet effective, framework to provide local services to Alaskans. A copy of the Local Government Article is included with this report as Appendix A.

Regrettably, certain key provisions of the Local Government Article of Alaska's Constitution were poorly implemented. Some say this was because decisions over complex issues were rushed. Of even greater concern is the fact that some constitutional provisions remain unexecuted, even after 46 years of Statehood. This may have been the result of deferring



Victor Fischer

difficult decisions involving controversial matters. Jay Hammond's candid account of the enactment of initial borough legislation, which is discussed in Section I of this Chapter, does nothing to dispel such conjectures.

The LBC outlines its concerns in this Chapter regarding these matters in the context of its ongoing duty to study local government boundary problems (see AS 44.33.812(a)(1)).⁴⁰

Before discussing those concerns, the Commission acknowledges the contributions made by Victor Fischer, former Constitutional Convention Delegate

³⁹The only amendment to Article X occurred in 1972. It eliminated provisions regarding city council members serving on borough assemblies. As amended, the Local Government Article now consists of 784 words.

⁴⁰The views expressed here are strictly those of the LBC, an independent commission with the duty to address "local government boundary problems."

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

**“ . . . It was our thought
there would be enough
inducement for them to
organize.”**

Victor Rivers, Committee on Local
Government, Alaska Constitutional
Convention

and State Senator, and Arliss Sturgulewski, former State Senator. These esteemed statesmen and experts in Alaska local government conferred with the Commission in the development of this report. The Commission and its individual members appreciate their critique of the concerns set out in the report and their endorsement of the importance of resolving the issues raised herein.

Section I. Lack of Adequate Inducements for Incorporation of Organized Boroughs and Annexation to Existing Boroughs

Subsection A. Statement of the Issue:

Those who wrote the Local Government Article of Alaska's Constitution clearly anticipated that the Alaska Legislature would provide sufficient inducements to prompt voluntary borough incorporation. Regrettably,

that vision of the framers of Alaska's Constitution – undoubtedly one of the most critical aspects of implementing the Local Government Article of Alaska's Constitution – still awaits fulfillment.

Subsection B. Background.

1. The Framers of Alaska's Constitution Anticipated That the Legislature Would Provide Adequate Inducements for Borough Incorporation.

During the second reading of the proposed Local Government Article at the Constitutional Convention on January 19, 1956, the members of the Committee on Local Government outlined the proposed local government principles to their fellow delegates. In the following exchange, Local Government Committee members Victor Rivers and Maynard Londborg addressed a concern expressed by Delegate Barrie White that there would be no incentive for unorganized boroughs to organize:

WHITE: . . . Haven't we here inducement to an area to remain an unorganized borough and to get the state to provide all the necessary functions?

PRESIDENT EGAN: Mr. Victor Rivers.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

V. RIVERS: I will try to answer that. **We thought that at the state level it would be the policy as it has been in the past to offer certain inducements to them to organize.** Now,



at the present time in incorporated cities there are certain refunds of taxes in the nature of license taxes, liquor taxes, and other taxes that are a percentage, at least, of which reverts back to the organized area. **In the extent that the benefits that the legislature sets up will offset the added cost to the people, and the extent of their desire for home rule will govern how far they go in organizing these boroughs, but it was our thought there would be enough inducement for them to organize and exercise home rule so that as time went on they would gradually all become incorporated boroughs.** That would take a great deal of time in looking at our map. **The thought was that inducements to organize would be offered on the basis of the**

granting of home rule powers plus certain other inducements that would make it advantageous to them to be boroughs, as we now have that same program of inducement to organize communities.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: If I may add a little word to that, Mr. White, and the rest of the delegates, at present the cities that want to incorporate have to assume a certain



percentage of their school taxes, and it isn't that they are not willing to do it, but they may find by refunds, etc., they are not able to, so therefore, you have no inducement to incorporate, and the very thing that you mention, they remain unincorporated for that very reason. We felt that it could be handled possibly different ways, but I will mention two: one is to have some state agency that would survey the whole thing and say now is the time you have to incorporate; there is no

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

way you can get out of it; you have to organize. **I believe the method that Mr. Rivers brought out would be the more desirable, by having skilled men that would study this matter and set it up so that it would come in the form of an inducement so that they can see that they are going to benefit, definitely benefit by organizing, by getting into the picture of local government.** If we do it the other way and force it upon the people, I think you are going to have it taken with resentment and probably a lack of good local government. Now, as far as wanting home rule, I think you will find that that is a common interest. I think people, most citizens, most cities, villages, be they ever so small, really want home rule. They like to feel they are governing themselves, and by making it possible to share responsibility, to share in the work of the local government, even though they be not organized, and then as they see the financial picture where they will be able to do it, I think they will take the step. You may have a further question on that.

WHITE: No, I think I shouldn't take up more time. . . .

Alaska Constitutional Convention Proceedings, Alaska State Legislature, Alaska Legislative Council, November 1963, pp. 2650-2651 (emphasis added).

Later that same day, the issue of organization of boroughs was raised again. The following exchange occurred between Delegates James Hurley and Victor Fischer. Delegate Fischer was the Secretary of the Local Government Committee.

HURLEY: Mr. President, at this time I would like to ask a question. May I do so?

PRESIDENT EGAN: If there is no objection.

HURLEY: One of general intent. Is my idea correct that no organized borough will become effectuated without the voice of the people within the area?



PRESIDENT EGAN: Would you care to comment on that, Mr. Fischer?

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

V. FISCHER: The answer, I think, would be “no”.



The borough, as visualized here, is even more than just a unit of local government. It is also a unit for carrying out what otherwise are carried out as state func-

tions; and when a certain area reaches a position where it can support certain services and act in its own behalf, it should take on the burden of its own government. **As was explained earlier today, we don’t actually visualize that the state will force boroughs to organize, since we feel that they should be set up on such a basis that there will be enough inducement for each one to organize.** However, just as you have in school districts, the legislature has granted power to, I think, the board of education to incorporate school districts when they reach a certain minimum population so that they would assume their own load.

Id., at 2673-2674 (emphasis added).

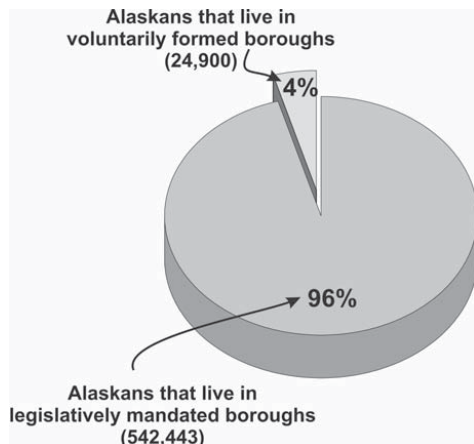
2. The State of Alaska Has Failed to Provide Inducements to Incorporate Boroughs Voluntarily.

(a) Statistics Offer Compelling Evidence That Inducements for Voluntary Borough Incorporation Have Been Generally Inadequate Over the Course of 46 Years of Statehood.

The failure to achieve the framers’ vision that the State of Alaska would offer incentives that would lead to prevalent voluntary incorporation of boroughs is evident from the following statistics:

- Only about 1 in 26 Alaskans (3.8 percent) lives in boroughs that were formed voluntarily.
- In contrast to the above figure, approximately 100 in 120 Alaskans (83.6 percent) live in boroughs that were formed under the 1963 Mandatory Borough Act, which compelled eight particular regions to form boroughs.
- About 100 in every 105 organized borough residents (95.6 percent) live in boroughs formed under the 1963 Mandatory Borough Act.
- Only eight boroughs have formed voluntarily since Alaska became a state.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature



The chart above reflects just those Alaskans within voluntarily formed and mandatorily formed boroughs. It does not account for the 81,475 Alaskans that live in the unorganized borough.

(b) Borough Formation
Under the 1961 Borough Act
Depended Upon Local Initiative:
However, Incentives for
Incorporation Were Lacking.

At least five measures were introduced during the First Alaska Legislature (1959 – 1960) to fulfill the constitutional requirement for enactment of standards and procedures for establishment of organized boroughs. However, none was enacted. In the third year of Statehood, the Legislature enacted standards and procedures for incorporation of boroughs. Jay Hammond, a member of the State House of Representatives at the time, related the following candid account of the proceedings leading to the enactment of the 1961 Borough Act:

- More than 12 years have passed since the last borough was organized.
- Approximately 100 of every 175 square miles of Alaska (57.2 percent) lie outside organized boroughs.
- About 100 of every 174 miles of coastline (57.4 percent) lie outside organized boroughs.
- Approximately 1 in 8 Alaskans (12.6 percent) lives outside organized boroughs.

Legislators had little enthusiasm for subjecting themselves to



heat generated by local school boards, public utility districts and other entrenched local bureaucracies. Not surprisingly, lawmakers chose to move proposed borough legislation to the ever-popular back burner. There it simmered and

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

stewed until increasing publicity over failure to meet our constitutional mandate compelled us to at least take off the lid and once more sniff the issue.

Still not entranced with the odor, we followed another enshrined governmental tradition: we clapped the lid back on and assigned the whole mess to a "Study Committee."

To head the committee, the Speaker appointed an irascible representative from Cordova named Harold Hansen, known to both friend and foe as "Horrible." A man of caustic wit and an unquenchable thirst for high voltage spirits, "Horrible" loved to flail tormentors on the House floor at the slightest provocation. While seldom actually drunk, "Horrible" was even less often cold sober, and many colleagues hoped the borough study assignment would somehow get lost in the alcoholic haze they presumed befogged "Horrible's" mind. The problem was, "Horrible" drunk was still sharper than most of us sober.

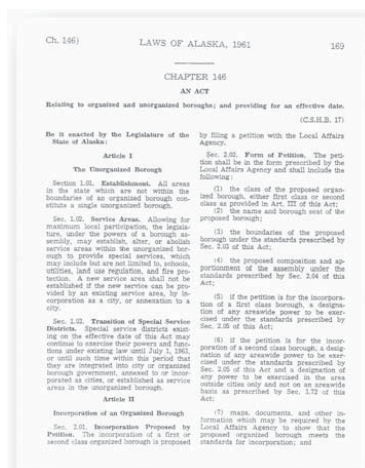
Resentful of being handed a hot potato in hopes he would drop it, Hansen fashioned his committee into a pressure cooker. Meeting daily on a grueling schedule, committee members whipped out a remarkably comprehensive piece of legislation in short order and tossed the blistering spud back into our laps.

Chagrined, we had little choice but to pass it, earning "Horrible" Hansen the sobriquet, "Father of the Borough Bill," a paternity charge he contended was a blot on the family escutcheon.

Jay Hammond, *Tales of Alaska's Bush Rat Governor*, 1994, pp. 149 – 150.

As summed up in the following thirty-two words by Jay Hammond, the 1961 Borough Act offered little reason for residents to form boroughs:

Attractive enough on paper, in practice, the organized borough concept had little appeal to most communities. After all, why should they tax themselves to pay for services received from the state, gratis?



1961 Borough Act

 Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

Id., at 149.

A 1971 study by the University of Alaska regarding state and local relations recognized the same shortcoming in the 1961 Act:

[T]he 1961 Borough Act was predicated on the assumption that local desire to establish borough government would supply the force toward incorporation, despite the findings of previous Boundary Commission hearings that there was little enthusiasm in the state for the unknown and untried form of local government. There were also pockets of intense local opposition, particularly in areas outside independent school districts.

Borough Government in Alaska, 1971, p. 73.

A 1984 report by the University of Alaska regarding local governments in Alaska stated the matter even more directly:

Like the constitution writers, the legislators and administrators who wrote the 1961 act assumed that Alaskans, especially in the urban regions, would want to establish boroughs. And, like the constitution writers, the authors of the 1961 act were wrong. The boundary commission, in its hearings around the

state in 1959 and 1960, had already found little support for this unknown and untried form of local government. Along with much apathy, they also found some scattered but intense local opposition in tax-free areas beyond the boundaries of independent school districts.

Thomas A. Morehouse, Gerald A. McBeath, and Linda Leask, *Alaska's Urban and Rural Governments*, 1984, p. 43.

(c) For More Than Four Decades, Experts and Public Policy Makers Have Recognized That Alaska Has Failed to Implement an Effective Policy Regarding Borough Formation.

John L. Rader, Alaska's First State Attorney General, former State Representative, and former State Senator, was among those who recognized early on that the 1961 Borough Act would be generally ineffective in terms of implementing borough government.

The law (Chapter 146, SLA, 1961) provided for the formation of boroughs on local initiative in much the same manner as State and Territorial law provided for the incorporation of cities on local initiative. The fact remained that local initiative involving serious tax reform would no more work in the instance of boroughs than it had worked in

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

the instance of school districts or cities. The result: no boroughs.^[41]

John L. Rader, "Legislative History," in Ronald C. Cease and Jerome R. Saroff (eds.), *The Metropolitan Experiment in Alaska, A Study of Borough Government*, Frederick A. Praeger, Publishers, New York, 1968, p. 91.

Mr. Rader characterized the 1961 Borough Act as the latest in a "series of repeated failures" by the Territorial and State governments to form viable regional governments:

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.

Id., at 81.

It is especially significant in the context of contemporary debate over borough formation that the drafters and supporters of the 1961 Borough Act reportedly recognized at the time that the measure would be generally ineffective in terms of borough formation. Moreover, they allegedly anticipated that the 1963 Legislature would be compelled to enact mandatory borough legislation to eliminate independent school districts and public utility districts that were not recognized under Alaska's Constitution:

The 1961 legislature had created a curious deadline. It stated that existing school districts and public utility districts could continue to function until July 1, 1963. Unfortunately, the law did not state what would happen if areas did not incorporate into boroughs or cities by that time.^[*] It was generally assumed by persons discussing the problem that school districts and public utility district properties would escheat to the State if the districts were abolished, and that the State would then operate the

⁴¹Footnote 20 in original. A notable exception was the Bristol Bay Borough, located on the Bering Sea, which was created by the enterprising fishermen of Bristol Bay in an attempt to solve an educational problem.

*Editors' Note in original. In reference to this point, Roger W. Pegues, director of the Local Affairs Agency in 1961 and a drafter of the Borough Act, remarks: "There was no intention of letting the time elapse. The deadline was, in a sense, advisory. The legislature was saying that it would brook little further delay. . . . It was generally believed [by the drafters and supporters of the original Borough Act of 1961] that the 1963 legislature would adopt a mandatory incorporation law." Letter from Pegues to Cease.

 Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

schools and possibly perform the functions of the utility districts. This section of the law would have had a disastrous effect if it had been permitted to operate. It would have increased greatly the tax inequity by permitting all of those outside of incorporated cities to escape any contribution to local government. People living outside cities but in the old Territorial school districts would even be relieved of local taxes for their schools.

Id., at 92 – 93.

On the tenth anniversary of the 1961 Borough Act, Thomas Morehouse and Victor Fischer published a seminal 184-page study of borough government. The study concluded as follows:⁴²

The state has never had a sound local affairs policy; nor, until recently, has it shown much interest in developing and implementing one. This first became apparent in the years immediately after statehood, when neither the executive nor the legislature were able to cope effectively with the problems of

⁴²*Borough Government in Alaska* has been cited by the Alaska Supreme Court as an authoritative reference in two cases involving the Local Boundary Commission. See *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 98 (Alaska 1974) and *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1242, (Alaska 1995).

Thomas Morehouse was a full-time faculty member at ISEGR/ISER from 1967 to 1994. He conducted extensive studies of Alaska government and public policy. Mr. Morehouse has written or co-authored numerous books and articles on state and local government in Alaska. Those include *Manpower Needs In Alaska State & Local Government* (1970); *Borough Government in Alaska* (1971); *Institutionalizing Local Government: The Problem of Boroughs in Alaska*, August 1968; *Education and the Borough*, March 1969; *Alaska's Urban and Rural Governments* (1984); *Alaska State Government and Politics* (1987); *State and Local Governmental System* (1970); *Issues of Regional Government in Alaska* (1974); and *Alaska Politics and Government* (1994).

Mr. Fischer is recognized by the Alaska Supreme Court as "an authority on Alaska government." (*Keane v. Local Boundary Commission*, 893 P.2d 1239, 1244 (Alaska 1995).) He received a bachelor's degree from the University of Wisconsin in 1948 and a Master's Degree in Community Planning from the Massachusetts Institute of Technology in 1950. In 1955, Mr. Fischer was elected as a delegate to the Alaska Constitutional Convention held in 1955 to 1956. During the convention, Mr. Fischer served on both the Committee on Local Government and the Style and Drafting Committee. He held the position of Committee

Footnote continued on next page

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

borough formation and the definition of borough roles and purposes.

With its new fiscal leverage, the state is now in a position to effect basic alteration in the existing pattern of local government and state-local relations. The state's objectives should be to encourage certain changes in the structure of local government (e.g., unification and regionalism) and to discourage others (e.g., proliferation of service areas and hardening of local boundaries.) The state can provide financial assistance where it is needed most, and it can itself assume full responsibility for functions that may be performed at the state level.

The policy development problems and tasks identified in this chapter bear directly on the current and future status of bor-

ough government in Alaska. The distribution of financial and administrative activities, state financial aid policies, state planning and policy development mechanisms, and state control over boundary setting and change can all profoundly effect the character and functions of borough governments. To guide the state's approach to its local governments, there must be clearer definitions than now exist of the purposes and roles of all levels and units of government in Alaska. Decisions must be made about what functions are to be performed and paid for by whom.

Borough Government in Alaska, pp. 138 – 139.

Footnote continued from previous page

Secretary on the former. In 1961 to 1962, Mr. Fischer received the Littauer Fellowship in public administration from Harvard University. Mr. Fischer has held several planning related positions in Alaska. He has written and co-authored a number of books and publications concerning state and local government in Alaska. These include *The State and Local Governmental System* (1970); *Borough Government in Alaska* (1971); *Alaska's Constitutional Convention* (1975); Testimony before U.S. Congress, Joint Economic Committee *Regional Planning to Solve Social and Economic Problems*, 1970; Victor Fischer in Partnership within the States: Local Self-Government in the Federal System, *Home Rule In Alaska*, University of Illinois, 1976; and *Alaska State Government and Politics* (1987). Mr. Fischer served in Alaska's Territorial House of Representatives (1957-1959) and the Alaska State Senate (1981-1986). He was a member of the faculty of the University of Alaska Fairbanks and of the University of Alaska Anchorage. At the University, he was primarily associated with ISER, where he was director for ten years.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

On the twentieth anniversary of the 1961 Borough Act, Alaska's local government agency published a 194-page study regarding borough government in Alaska. The study observed:

In general, the system of local government in Alaska has not evolved as envisioned initially.

Only eleven boroughs have formed since 1959; the rest of the State (nearly 75% of its land area) remains in the unorganized borough and depends primarily on State and federal support for services.

Problems and Possibilities for Service Delivery and Government in the Alaska Unorganized Borough, Alaska Department of Community and Regional Affairs, 1981, p. 3.

Dr. John J. Kirlin, a professor at the School of Public Administration at the University of Southern California, contributed to the study. Dr. Kirlin observed that, "This complex, jury-rigged non-system provides disincentives and barriers to change." *Id.*, at 54.

"This complex, jury-rigged non-system provides disincentives and barriers to change."

Dr. John J. Kirlin

On the thirtieth anniversary of the 1961 Borough Act, the Alaska Legislature adopted *Legislative Resolve No. 40*, providing for the Task Force on Governmental Roles to

address state and local relations. The Task Force⁴³ concluded:

Key to any rationalization of state and local roles in providing public services is an efficient local delivery system. Compared to other states with their

⁴³The Task Force was comprised of 15 members. They were: Scott Burgess (Executive Director of the Alaska Municipal League); Arliss Sturgulewski (State Senator); Steve Frank (State Senator); Ivan Ivan (State Representative); Ron Larson (State Representative); Shelby Stastny (Director of the Governor's Office of Management and Budget); Edgar Blatchford (Commissioner of the Department of Community and Regional Affairs); Jerome Selby (Mayor of the Kodiak Island Borough); Kevin Ritchie (Manager of the City and Borough of Juneau); Caleb Pungowiyi (Manager of the City of Kotzebue); Mark Begich (Assembly Member of the Municipality of Anchorage); Lamar Cotten (former Administrator of the Aleutians East Borough); Lee Sharp ("Public Member" from Palmer); Leo Rasmussen ("Public Member" appointed from Nome); and Roseanne Timber (Alaska Federation of Natives, appointed as "Unincorporated Community Representative").

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

traditional scheme of counties and cities, development of local government institutions in Alaska af-

ter just 33 years of statehood is still in its infancy. Task Force members spent a good deal of time discussing the evolution of the local government organizational scheme envisioned in the state constitution. The tension between the constitutional intent that the state become completely organized into boroughs and the strongly held notion that citizens should only have as much local government as they desire was a dominant theme in Task Force deliberations.

....

Task Force members stopped short of endorsing mandatory borough formation legislation but agreed that continued formation of additional borough governments should be a primary state policy goal.

....

**“... actions by the legislature
... have removed nearly all of
the few remaining incentives to
organize boroughs.”**

1991 Task Force on Governmental Roles

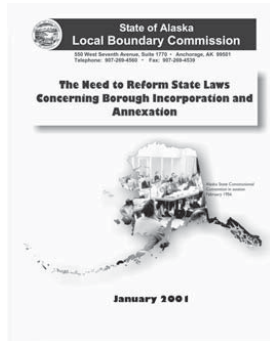
The Task Force recognized that there are large portions of the state that lack the regional resource base to support a

borough government. However, there are also a number of areas that have the resource base but are not inclined to organize. Beginning with the establishment of [Regional Educational Attendance Areas] (REAAs), which removed a powerful incentive for borough formation in rural areas – local control of schools, the state has systematically reduced the attractiveness of areawide government to citizens of the unorganized borough. In fact, recent actions by the legislature to share National Forest receipts and Fisheries Business Tax receipts with communities in the unorganized borough have removed nearly all of the few remaining incentives to organize boroughs.

*Task Force on Governmental Roles –
Final Report, July 10, 1992, pp. 14 –
15 .*

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

On the fortieth anniversary of the 1961 Borough Act, the LBC published a 44-



page policy paper advocating reform of State laws regarding the extension of borough government. The LBC concluded, "The deterrents in State law to form bor-

oughs are so pervasive and so overwhelming that they impede successful incorporation of new borough governments." *The Need to Reform State Laws Regarding Borough Incorporation and Annexation*, January 2001, p. 2.

In regard to its ongoing duty under AS 44.33.812(a)(1) to study local government boundary problems, the LBC concluded in its 2001 policy paper that, "the lack of a strong State policy promoting the extension of borough government [is] the most pressing 'local government boundary problem' facing Alaska." *Id.*, at 3.

The preceding review of the perceptions of experts and public policy makers since the early 1960s is by no means comprehensive. It is merely a reflection that those who have examined this important issue

fairly over more than the past four decades have all reached similar conclusions.

The Alaska Municipal League is among those who recognize that adequate incentives to form boroughs are lacking. The Municipal League adopted the following 2005 policy statement urging the establishment of incentives:

The League supports state policies that provide incentives to encourage the formation of boroughs or annexation to boroughs in the unorganized areas of the state, but does not mandate such action. The League urges the legislature to take a more active role as the Assembly of the Unorganized Borough as mandated by the Constitution.

Alaska Municipal League, *2005 Policy Statement*, Part III-E-1.

". . . the lack of a strong State policy promoting the extension of borough government [is] the most pressing 'local government boundary problem' facing Alaska."

Local Boundary Commission (2001)

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

3. Promotion of Borough Formation Is Sound Public Policy.

(a) Boroughs Promote Maximum Local Self-Government With a Minimum of Local Government Units.

Article X, section 1 of Alaska's Constitution sets out the purpose and construction of the Local Government Article.

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Referring specifically to section 1 of the Local Government Article, the Alaska Supreme Court observed that Alaska's Constitution encourages the creation of borough governments. *See, Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d 92, 101 (Alaska 1974).

Eben Hopson, Native leader, member of the Territorial Legislature, and State Senator, offered the following insights concerning maximum local self-government:

In 1958, when the people of the North Slope area voted overwhelmingly for Alaskan statehood, they did so for the same reason as nearly all Alaskans voted for statehood. They wanted the right to determine for themselves what they would do and when they would do it. . . . We wanted to change this system and we voted for statehood, almost every man and woman. . . . Throughout the eight years

work of creating the North Slope Borough, we had the same thing in mind. Through the "maximum of local

"Through the 'maximum of local government,' guaranteed us by the Constitution of this State of Alaska, we wanted the maximum of self determination."

Eben Hopson

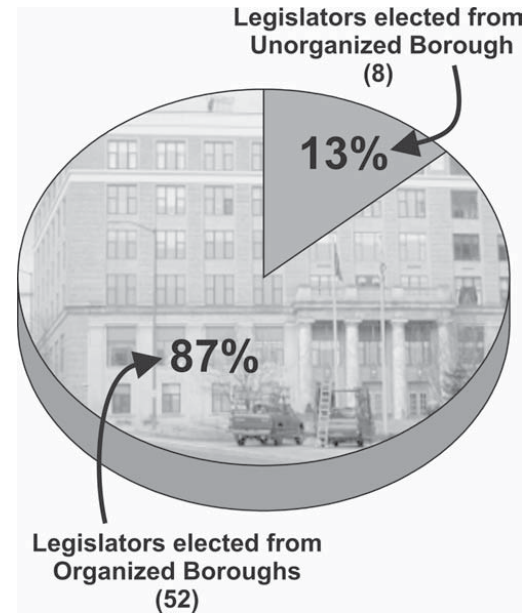
government," guaranteed us by the Constitution of this State of Alaska, we wanted the maximum of self determination.

Eben Hopson, North Slope Borough Mayor, *Official Position Paper: North Slope Borough Re: Proposed Ad Valorem Tax on Oil Properties* (Fall 1973).

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

Dr. Victor Jones, a professor at the Institute of Governmental Studies at the University of California, concluded as follows in the previously cited 1981 study on the unorganized borough: "The constitutional goal of 'maximum local government' can only be approached when a locality or region is organized." *Problems and Possibilities for Service Delivery and Government in the Alaska Unorganized Borough*, p. 115.

By their general-purpose nature, boroughs serve as a mechanism to achieve "maximum local self-government." They are political subdivisions of the State and have the power to levy taxes, issue debt, enact laws, and otherwise exercise broad responsibilities of general local governments. In contrast, delivery of fundamental services in the unorganized borough is often carried out by single-purpose entities. For example, REAAs and federal transfer regional educational attendance areas (FTREAAAs) provide educational services for 100 of every 155 residents of the unorganized borough (64.6 percent).



Organized boroughs also achieve "maximum local self-government" in the sense that they are governed by assemblies comprised of local residents who are elected by local voters. In contrast, the State Legislature wields the power of the assembly for the unorganized borough, with the vast majority of its members elected by voters who do not live in the unorganized borough.⁴⁴ Having officials elected largely by one group (i.e., legislators elected by residents of organized boroughs) govern the *local*

⁴⁴Article X, section 6 of the Alaska Constitution provides that:

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

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

affairs of another group (i.e., residents of the unorganized borough) runs counter to basic democratic principles. In this case, approximately 87 percent (52 of its 60 members) of the assembly of the unorganized borough is elected by voters living within organized boroughs. That circumstance is hardly conducive to maximum local self-government.

Organized boroughs promote the constitutional principle of a "minimum of local government units" because of their regional nature and broad powers. Boroughs provide many fundamental powers (e.g., education) to all residents. Moreover, approximately 100 of every 121 residents of the organized boroughs (82.9 percent) rely exclusively on borough governments for all municipal services. The remaining 17.1 percent of the residents of organized boroughs receive municipal services from both a borough and a city government. In contrast, the unorganized borough fosters fragmented service delivery. The Alaska Municipal League characterizes the matter as follows:

The unorganized borough provides for "a minimum of local self-government with a maximum of local government units."

Alaska Municipal League

Article X of the Constitution also states, "The purpose of this article is to provide for maximum local self government with a minimum of local government units." In the Unorganized Borough the opposite is true. There is currently a minimum of local self-government with a maximum of local government units.

- Alaska is the only state with no local government for a large geographical part of the state.
- In the absence of boroughs, local services are provided by "over 400 governmental and quasi-governmental institutions. These include 150 municipal governments, 35 state sponsored quasi-municipal institutions (REAA's, CRSA's, and ARDOR's), hundreds of tribal institutions, and scores of local and regional non-profit institutions (DCRA, 1996).

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

Municipal Government in Alaska – WHITE PAPER, Alaska Municipal League, undated, p. 2, published online at <<http://www.akml.org/>>.⁴⁵

(b) Boroughs Provide a Legal Structure for Service Delivery.

Recognizing that borough governments were needed to provide a formal structure for delivery of services, John Rader expressed the following views leading up to the 1963 legislative session:

My experience as the Anchorage City Attorney and the State Attorney General led me to believe that the greatest unresolved political problem of the State was the matter of boroughs. As near as I could see, no reasonable solutions were being propounded. A great opportunity to create something of value could be lost. A state of the size, population density, and distribution of Alaska makes State administration of local problems impossible. Anyone who had ever worked in Alaska on the local level or on the State level could see the frustrations of honest attempts repeatedly failing because of the simple fact that

there was no governmental structure upon which to hang necessary governmental functions. I therefore decided to do what I could.

Metropolitan Experiment, p. 93.

In 1974, Eben Hopson expressed his views regarding the critical importance of borough governments in terms of providing essential services:

If I were governor, organization of regional borough government would become one of my primary goals, and I would ask the legislature to fashion special revenue sharing legislation to finance their operation until sufficient tax base was developed for local financing.

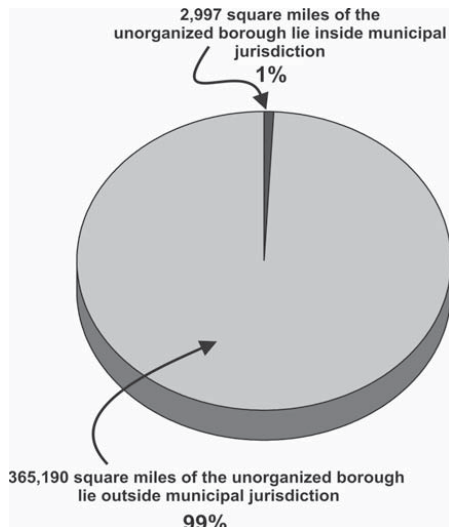


Eben Hopson

. . . .

⁴⁵CRSAs are Coastal Resource Service Areas. ARDORs are Alaska Regional Development Organizations.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature



If I can do that [provide for schools and public works] with the North Slope, I don't see why we can't do the same with the rest of the state. . . . There has not been much progress in the last years.

Fairbanks Daily News-Miner, June 17, 1974.

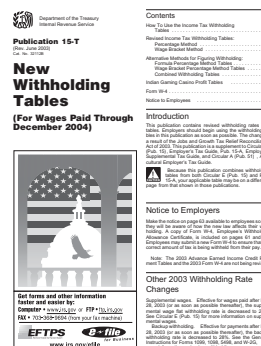
An estimated 365,190 square miles of the unorganized borough (99.2 percent) lie outside the boundaries of city governments. Thus, those areas lack any capacity to provide municipal services. For example, national flood insurance is not available in those 365,190 square-mile portions of the unorganized borough because partici-

pation in the flood insurance program requires passage of a municipal ordinance to meet applicable Federal Emergency Management Agency regulations. The lack of flood insurance coverage can have profound economic effects on unprotected areas.

(c) *Boroughs Offer Stable and Capable Administrative Capacity to Provide Services.*

There are approximately 180 communities in the unorganized borough. Sixty percent of them have fewer than 300 residents. Only seven percent have more than 1,000 residents.

It is often difficult for the smaller communities to maintain a stable and capable administrative capacity. According to the Department, more than 40 communities in the unorganized borough typically have difficulty managing such basic needs as fuel delivery. Many also have problems with respect to such fundamental responsibilities as bookkeeping. Moreover, a number of cities or quasi-public institutions in the unorganized borough are facing sanctions by the U.S. Internal Revenue Service (IRS) because they have either not properly withheld taxes



 Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

from employees or neglected to pay the withholdings to the IRS. Regional governments offer the economies of scale to retain qualified administrative talent and efficiently provide for local services.

(d) Boroughs Foster Local Responsibility.

The very first section of Alaska's Constitution, often characterized as the "equal protection clause," also calls for equal responsibility for all Alaskans. Specifically, Article I, section 1 of the Constitution provides as follows:

This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and 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).

Moreover, the Local Government Article of the Constitution calls for "maximum local responsibility" for the unorganized borough. Article X, section 6 provides as follows:

The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, **allow-**

ing for maximum local participation and responsibility.

It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough (emphasis added).

In his State-of-the-State address to the 1963 Legislature, Governor William Egan, former President of Alaska's Constitutional Convention, reflected on the capacity of boroughs to assume local responsibility for a broad range of services:

Local government problems continue to be [the] subject of deep and understandable concern. Many areas need improved school systems, sanitation, fire protection, planning and zoning, water and flood control, community water and sewer systems. Organized boroughs can provide these local government services.

Governor Murkowski echoed similar sentiments in his January 2004



State-of-the-State address. He noted that the key to Alaska's future is financial stability. Two components of his plan to achieve that stability relate

to issues underlying local responsibility:

 Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

The third element of my program is that the costs of government should be borne as much as possible by the direct users of services.

- My fiscal program expects that those who directly benefit from state services pay a fair share - through modest fees and taxes that do not interfere with personal savings and investment.

The fourth cornerstone of my program is local responsibility for local needs. Local governments should look first to local revenue sources to help fund schools, public facilities, fire and safety services.

(e) Boroughs Promote Accountability.

Boroughs are governed by democratically elected local officials. Moreover, boroughs are subject to laws ensuring fundamental safeguards relating to open meetings, ethics, access to public records, and financial record keeping. The State's Open Meetings Act, for example, provides that, "All meetings of a governmental body of a public entity of the state are open to the public except as otherwise provided by this section or another provision of law. . . ."

(f) Boroughs Exercise Planning and Platting Responsibilities.

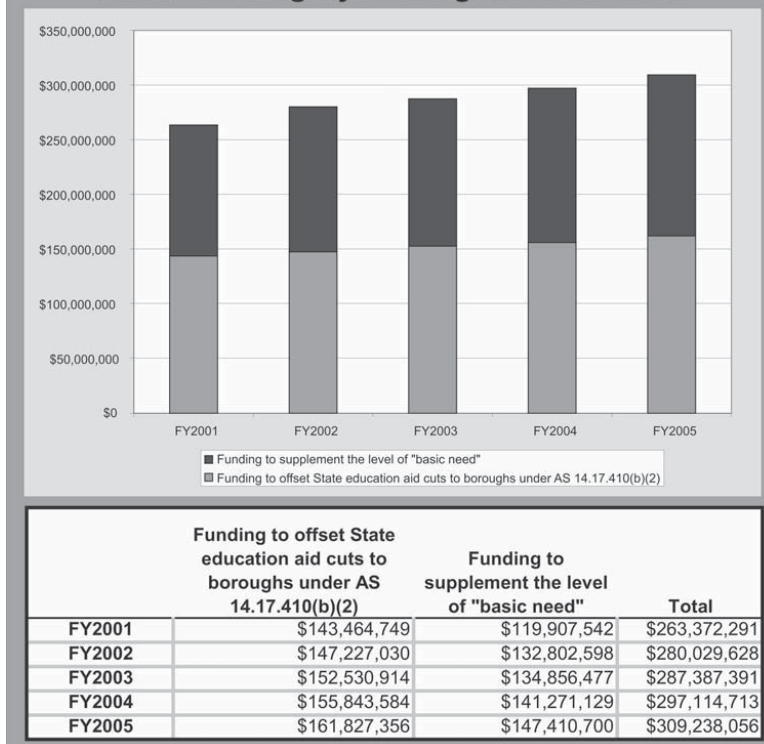
As reflected in the previously noted 1963 remarks of then-Governor Egan, land use planning is a fundamental local service. In the absence of a local planning and platting authority, that responsibility falls on the State.

Moreover, absent a borough government, the State makes decisions regarding platting. Those decisions are, by their nature, less cognizant of local attitudes and concerns. Land use decisions are best rendered at the local level.



Platting in the unorganized borough under AS 29.03.030 is carried out in Anchorage by State employees in the 20-story Robert B. Atwood Building.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

Table 3-1**Local Funding By Boroughs for Schools**

decision-making of local government while providing resources for funding local government services.

(h) Boroughs Have Capacity to Provide Greater Financial Aid to Schools.

REAA's and FTREAA's are entirely dependent upon the State and federal government for operating revenues and capital funding. In contrast, boroughs have the capacity to generate local revenues for schools and capital facilities. This allows local residents

(g) Boroughs Provide a Means to Promote Private Ownership of Land.

Newly formed boroughs are entitled to a percentage of State lands within the boundaries of the boroughs. Boroughs can use those lands to promote greater economic development within Alaska. Inadequate private ownership of land can be an impediment to developing a sustainable economy. Local government entitlements of State land put the land resources under the

to better determine the appropriate level of support for their schools.

As reflected in Table 3-1, in the past five years, organized boroughs have provided more than \$1.4 billion in *local funds* to support their schools. More precisely, boroughs contributed \$1,437,142,079 in support of schools over the past five years. Of that amount, \$760,893,633 was used to offset cuts in State education aid under AS 14.17.410(b)(2) imposed on boroughs but not imposed on REAA's

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

Table 3-2							
	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Number of Districts Given Waivers of Requirement for 70 Percent of Expenditures on Instruction	13	16	24	29	27	32	32
State Aid for Education	\$641,945,621	\$642,193,474	\$638,461,956	\$645,468,498	\$638,933,278	\$667,861,186	\$775,398,129
Student Enrollment (ADM)	132,905.	131,696.	132,256	132,670	132,484	131,622	Not Available

and FTREAs. The remaining \$676,248,446 was appropriated by borough assemblies to boost funding for schools beyond the level of “basic need” calculated for schools under AS 14.17.

(i) Boroughs Consolidate School Districts.

Education services are delivered in a fragmented manner in the unorganized borough. The unorganized borough encompasses 37 of the 53 (69.9 percent) school districts in Alaska. However, in Fiscal Year (FY) 2004, the school districts in the unorganized borough served only 18,756 of the 121,582 (15.4 percent) resident students in Alaska.

Fifteen of the thirty-seven school districts in the unorganized borough had fewer than 250 resident students in FY 2004 (a statutory threshold for creation of a new school district).⁴⁶

Beginning in FY 1999, State law (AS 14.17.520) imposed a proportional spending requirement for instruction. The requirement was phased in over a three-year period. In the first year, at least 60 percent of the operating expenditures of each district had to be used for instruction. The following year, the figure was increased to 65 percent. Since FY 2001, each district has been required to use at least 70 percent of its operating expenditures for instruction. The

⁴⁶AS 14.12.025 provides:

Notwithstanding any other provision of law, a new school district may not be formed if the total number of pupils for the proposed school district is less than 250 unless the commissioner of education and early development determines that formation of a new school district with less than 250 pupils would be in the best interest of the state and the proposed school district.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

Alaska State Board of Education and Early Development has authority to grant waivers of the proportional spending requirement.⁴⁷

As reflected in Table 3-2 on the previous page, the number of school districts in Alaska that failed to meet the proportional spending requirement increased by 146 percent between FY 1999 and FY 2005. Part of the upsurge may be attributed to the rise in the requirement for instructional spending from 60 percent of operating expenditures in FY 1999 to 70 percent in FY 2001. During that two-year period, the number of districts receiving waivers of the requirement jumped from 13 to 24 (an increase of 84.6 percent). However, since FY 2001, the proportional requirement for instructional spending has not increased, but the number of districts receiving waivers increased by one-third.

As is also reflected in Table 3-2, State aid for education increased by 21 percent between FY 1999 and FY 2005. Moreover, between FY 1999 and FY 2004, student enrollment declined by 1 percent.

Seventy-eight percent of the districts granted waivers by the State Board of Education and Early Development in FY 2005 are in the unorganized borough.⁴⁸

In a press release dated June 6, 2003, Governor Murkowski noted that sacrifices had been made in other parts of the State's FY 2004 budget to fully fund education. The Governor stated, "With full funding, I expect full accountability by the education community in improving student proficiency." In a letter to Alaska's school superintendents the same day, Governor Murkowski noted that although K-12

⁴⁷AS 14.17.520(d) states, in part, "The board may grant the waiver if the board determines that the district's failure to meet the expenditure requirements of this section was due to circumstances beyond the control of the district. The request must also be submitted to the Legislative Budget and Audit Committee, which shall review the district's request and forward the committee's recommendations on it to the board."

⁴⁸Those districts are Alaska Gateway REAA, Aleutian Region REAA, Aleutians East Borough School District, Annette Island REAA, Bristol Bay Borough School District, Chatham REAA, Copper River REAA, Cordova City School District, Haines Borough School District, Hoonah City School District, Hydaburg City School District, Iditarod Area REAA, Kake City School District, Klawock City School District, Kuspuk REAA, Lake and Peninsula School District, Lower Yukon REAA, Nome City School District, North Slope Borough School District, Northwest Arctic Borough School District, Pelican City School District, Pribilof Islands REAA, Saint Mary's City School District, Skagway City School District, Southeast Island REAA, Southwest Region REAA, Tanana City School District, Wrangell City School District, City and Borough of Yakutat School District, Yukon Flats REAA, Yukon-Koyukuk REAA and Yupiit FTREAA.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

education was being held “harmless from the budget reductions taking place in this year’s operating and capital budgets,” the education community was expected to undertake a critical review of school operations so that resources might be shifted from administration to teaching. Specifically, the Governor wrote:

I am challenging all of Alaska’s educators, parents, school board members, community leaders, and residents to take a hard look at how our schools are run. We need to get more dollars from administration into the classroom. Why do some school districts exceed the state requirement of using more than 70 percent of the funds they receive in the classroom, and others do not? . . .

Interest in school consolidation has often been expressed by the Legislature. For example, the 2003 Legislature directed the LBC, in cooperation with the Department of Education and Early Development (DEED), to prepare a study addressing school consolidation. The following news media account summarized the issue and legislative directive:

Two state agencies are looking at whether Alaska’s smallest school districts should be combined with other districts.

Gov. Frank Murkowski and Senate Finance Co-Chairman Gary Wilken, a Fairbanks Republican, are pushing the consolidation idea, which is almost certain to be opposed by many of the communities that would be affected.

“Very frankly, we have too many school districts in this state,” Murkowski said at a recent news conference. “I know it’s very nice for each community to have its own district, but there are certain limits to how we can best spend our dollars, and we can reduce substantially administrative expenses.”



Senator Gary Wilken

Wilken included language in the state budget calling for the Department of Education and Early Development and the Local Boundary Commission

to look at opportunities for consolidation, particularly in districts with fewer than 250 students. The agencies are to report to the Legislature in February 2004.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

Seventeen of Alaska's 53 school districts have fewer than 250 students, said School Finance Manager Eddie Jeans.

Wilken said the study might lead to legislation combining districts, perhaps as part of a rewrite of the state's overall school funding formula. But he said he's really just looking for information right now.

"This is really a baby step to see if there are some consolidation options out there," Wilken said. "It's always been a bit of concern to me that we have so many school districts for so few children."

In particular, he questions the need for four school districts on Prince of Wales Island - Craig, Klawock, Hydaburg and Southeast Island Schools. All but Craig have fewer than 250 students.

"That's sort of the poster child for consolidation," Wilken said. "Why couldn't school districts get together and use common payroll, common personnel, common purchasing departments?"

Other districts with fewer than 250 students are Pelican, Aleutian Region, Tanana, Chugach, Skagway, Pribilof, Yakutat, Kake, St. Mary's, Hoonah, Nenana,

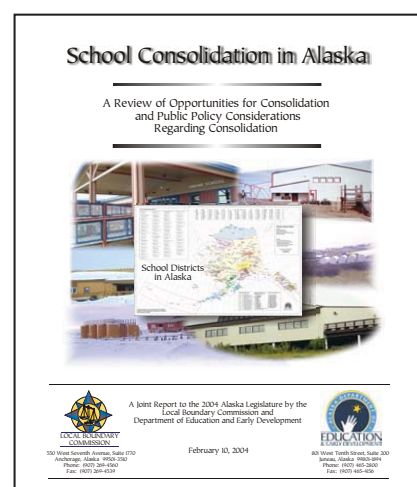
Chatham, Bristol Bay and Galena. Galena and Nenana have larger enrollments if correspondence students are counted.

Several of those districts are in Rep. Albert Kookesh's Southeast Alaska legislative district.

Consolidation threatens local control and raises a community's fears about losing its school, which is often the central gathering place where activities from basketball games to dances take place, said Kookesh, an Angoon Democrat.

Cathy Brown, Associated Press, June 6, 2003.

The school consolidation study was completed and filed with the Legislature in February 2004. Details about the study are provided in Section V of this Chapter.



Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

Table 3-3			
City School Districts in the Unorganized Borough			
District	FY 2004 ADM	Correspondence ADM	Total ADM
City of Pelican	15.00	0	15.00
City of Tanana	62.50	29.50	92.00
City of Hydaburg	86.85	0	86.85
City of Skagway	105.83	0	105.83
City of Saint Mary's	147.50	0	147.50
City of Klawock	147.68	0	147.68
City of Kake	155.15	0	155.15
City of Hoonah	179.40	0	179.40
City of Nenana	207.10	724.22	931.32
City of Galena	222.60	3,667.43	3,890.03
City of Craig	381.75	573.69	955.44
City of Wrangell	391.78	0	391.78
City of Unalaska	398.55	0	398.55
City of Cordova	471.40	0	471.40
City of Dillingham	513.13	0	513.13
City of Petersburg	657.45	0	657.45
City of Nome	715.10	0	715.10
City of Valdez	864.25	1.00	865.25
TOTAL	5,723.02	4,995.84	10,718.86

A number of legislative proposals have been filed in the past to consolidate schools. The latest example is House Bill No. 480 in the 2004 Legislature. That bill would have allowed a home-rule or first-class city in the unorganized borough to operate a school district only if it had at least 1,000 students. As shown in Table 3-3, none of

Alaska's 18 city school districts had close to that level of enrollment in terms of resident students during FY 2004.

House Bill No. 480 in the last legislative session would have also required reconfiguration of REAAs (presumably including "FTREAAs"⁴⁹) to encompass

⁴⁹FTREAAs are legally distinct from REAAs but are not often recognized as such. REAAs were established under AS 14.08.031. FTREAAs were carved out of REAAs under ch. 66 SLA 1985 and referred to as FTREAAs in that law.

Beyond education services provided through the four types of districts listed above, in FY 2004, the State also operated two educational facilities. One was Alyeska Central School, a statewide correspondence school serving approximately 412 students. The other was Mt. Edgecumbe High School, a boarding school in Sitka that is attended by approximately 335 students.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

Table 3-4			
REAA School Districts in the Unorganized Borough			
District	FY 2004 ADM	Correspondence ADM	Total ADM
Aleutian Region REAA	41.85	0	41.85
Chugach REAA	77.85	113.25	191.10
Pribilof Islands REAA	124.25	0	124.25
Southeast Island REAA	210.23	9.57	219.80
Chatham REAA	215.00	0	215.00
Annette Island REAA	287.50	0	287.50
Yukon Flats REAA	292.20	0	292.20
Iditarod Area REAA	293.45	82.85	376.30
Kuspuk REAA	424.10	0	424.10
Yukon/Koyukuk REAA	434.05	947.02	1,381.07
Alaska Gateway REAA	438.71	54.55	493.26
Copper River REAA	532.15	126.10	658.25
Delta/Greely REAA	667.30	363.94	1,031.24
Southwest Region REAA	676.95	0	676.95
Bering Strait REAA	1,704.00	0	1,704.00
Lower Yukon REAA	2,031.80	0	2,031.80
Lower Kuskokwim REAA	3,784.60	0	3,784.60
TOTAL	12,235.99	1,697.28	13,933.27

at least 1,000 students. As shown in Tables 3-4 and 3-5, only 3 of the 17 REAAs and 2 FTREAs had enrollments in excess of 1,000 during FY 2004.

If boroughs were formed in accordance with the model borough boundaries established under 3 AAC 110.990(9),

school districts in the unorganized borough would be consolidated, leaving about half the number that exist currently.

FY 2004 enrollment figures for organized borough school districts are provided in Table 3-6 on the following page.

Table 3-5			
FTREAA School Districts in the Unorganized Borough			
District	FY 2004 ADM	Correspondence ADM	Total ADM
Kashunamiut FTREAA	362.25	0	362.25
Yupit FTREAA	434.25	0	434.25
TOTAL	796.50	0	796.50

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

Table 3-6			
Borough School Districts			
District	FY 2004 ADM	Correspondence ADM	Total ADM
Municipality of Anchorage	48,559.88	705.10	49,264.98
Fairbanks North Star Borough	14,369.36	225.03	14,594.39
Matanuska-Susitna Borough	13,350.19	953.87	14,304.06
Kenai Peninsula Borough	8,992.70	569.25	9,561.95
City and Borough of Juneau	5,356.92	84.95	5,441.87
Kodiak Island Borough	2,620.88	55.75	2,676.63
Ketchikan Gateway Borough	2,346.12	24.30	2,370.42
Northwest Arctic Borough	2,020.75	8.00	2,028.75
North Slope Borough	1,810.45	0	1,810.45
City and Borough of Sitka	1,443.48	23.05	1,466.53
Denali Borough	305.15	266.00	571.15
Lake & Peninsula Borough	415.23	3.00	418.23
Haines Borough	302.99	16.00	318.99
Aleutians East Borough	277.49	1.00	278.49
Bristol Bay Borough	195.35	0	195.35
City and Borough of Yakutat	125.00	0	125.00
TOTAL	102,491.94	2,935.30	105,427.24

Beyond the 53 school districts listed in Tables 3-2 through 3-5, the State of Alaska operated two schools in FY 2004. Enrollment figures for those schools are provided in Table 3-7 on the following page.

(j) Boroughs Have Capacity for Regional Control of Alcohol and Other Substances.

In 1998, then-Governor Tony Knowles created a commission to review the State's relationship with, and responsibility to, rural Alaska.⁵⁰ The Alaska

Commission on Rural Governance and Empowerment recognized the need to address "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. Alaska Commission on Rural Governance and Empowerment, *Final Report to the Governor*, p. 65.

Borough governments have the capacity to institute regional alcohol control. Currently, bootlegging can occur

⁵⁰The members of the Alaska Commission on Rural Governance and Empowerment were Robert Keith, Byron Mallott, Brad Angasan, Nancy Barnes, John Binkley, Arnold Brower, Jr., Niles Cesar, Christopher Cooke, Roy Ewan, Victor Fischer, Steve Ginnis, Chuck Greene, Weaver Ivanoff, Marlene Johnson, Willie Kasayulie, Rosemarie Maher, Will Mayo, Gene Peltola, Margaret Roberts, Gilda Shellikoff, Lee Stephan, Arliss Sturgulewski, and Esther Wunnicke.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

outside the relatively constrained boundaries established for alcohol control by cities and villages in the unorganized borough. A regional approach to such matters can promote greater effectiveness in terms of substance abuse.

(k) Boroughs Promote Economic Development.

Virtually every organized borough engages successfully in economic development activities. Establishment of more boroughs could lead to economic development in areas that are currently unorganized. Organized boroughs have the capacity to issue bonds, thereby leveraging State and federal funding. They can promote economic development through better decisions regarding infrastructure, land use, and job-training initiatives than that currently offered through State and federal agencies further removed from the problems of the region.

The previously cited 1999 report by the Alaska Commission on Rural Governance and Empowerment 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." *Id.*, at 72. As political subdivisions of the State government, boroughs meet that qualification.

(l) Boroughs Provide a Proper Role for State Government.

The 1991 Task Force on Governmental Roles, cited previously, observed, "Most knowledgeable observers of Alaska's fiscal situation believe that in the near future it will be necessary to devolve responsibility to municipal governments for many public services that are now either provided directly by the state or funded with state revenues." *Task Force Final Report*, p. 7.

Moreover, it is difficult for a State agency to be as sensitive and responsive to local issues as a borough government. The State of Alaska generally applies uniform levels of services and the same service delivery approaches across the State. Well-meaning agencies are not in the best position to understand or recognize local needs and issues. Boroughs have

Table 3-7
State Operated Schools

District	FY 2004 ADM	Correspondence ADM	Total ADM
Alyeska Central School	0	411.78	411.78
Mt. Edgecumbe High School	334.90	0	334.90
TOTAL	334.90	411.78	746.68

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

the capacity to provide the varying levels of services desired by the region.

(m) Boroughs Promote Equity and Fairness.

Article I, section 1 of Alaska's Constitution calls for equal treatment and equal responsibilities for all Alaskans. The fact that organized boroughs are subject to provisions such as the requirement for local contributions in support of schools, along with mandatory responsibilities for platting, planning, and land use regulation, while the areas of the unorganized borough outside home-rule and first-class cities are not, is a constant concern among many officials of existing boroughs. The 1991 Task Force on Governmental Roles observed 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." *Task Force Final Report*, p. 8.

The issue of equity and fairness is also a perennial concern to many legislators. A number of legislative proposals have been introduced in the past to address such matters. Those include Senate Bill No. 30 and Senate Bill No. 337 in the 20th Legislature and House Bill No. 250 and Senate Bill No. 280 in the 19th Legislature. Each of those proposals included the following or similar language:

[T]he rights, opportunities, and obligations of borough residents are not equal to those of residents in the unorganized borough, particularly in respect to education, taxation, and land use regulation, and that this is not in keeping with art. I, sec. 1, of the Constitution of the State of Alaska, that states in part, "... that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State."

The issue of inequity is addressed in greater detail in Section III of this Chapter.

Subsection C. Recommendations.

As it has done in the past, the LBC continues to urge the Legislature to create inducements for voluntary incorporation of organized boroughs in order to achieve the constitutional principles of maximum local self-government.

Six fundamental incentives for borough formation are listed here for consideration by the Legislature. The LBC recognizes that two of those incentives, in particular, are likely to generate intense opposition from those affected. However, as stressed at the beginning of this Chapter, the LBC reminds readers that the current

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

troubled state of affairs regarding incorporation of boroughs is viewed by some as the product of deferring difficult decisions over challenging issues. If progress is going to be made in that regard, those challenging issues must be addressed.



Senator Sturgulewski remarked in that regard to the LBC at its January 5, 2005, meeting that “. . . about the controversy, it’s never easy, but you’re also in a position as members of this constitutionally-mandated commission to take the overview and to really identify those areas that need to be taken care of.”

1. Tax the Unorganized Borough.

The previously cited Task Force of Governmental Roles established by the 1991 Legislature took the position that, “All citizens should bear a fair portion of the cost of basic health, education and public protection services.” *Task Force Final Report*, p. 2. Moreover, the Final Report of the Task Force stated:

Task Force members stopped short of endorsing mandatory borough formation legislation but agreed that continued formation of additional borough governments should be a primary state policy goal.

. . . .

Experience has shown establishment of boroughs to be primarily a function of the economic self-interest of residents. While local control is an incentive, it is generally outweighed by residents’ aversion to paying local taxes for services (e.g., education in [regional educational attendance areas]) that are currently provided by the state at no cost.

The Task Force position is 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.

Id., at 15, emphasis added.

An example of such aversion is readily apparent in a bulletin furnished to LBC staff in 2004 and set out on page 117. It is noteworthy that the bulletin opposes borough formation but at the same time acknowledges that the economy of the area (Delta/Greely) is prosperous. A sound economy is one

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

"All citizens should bear a fair portion of the cost of basic health, education and public protection services."

1991 Task Force on Governmental Roles

of the key reasons supporting borough formation. This issue is well-covered in *Borough Government in Alaska*:

It was decided that, although voluntary incorporation would be preferable, organized boroughs could be created without the approval of the people within the area. The rationale behind this position of unilateral state actions was that the borough:

... is more than just a unit of local government. It is also a unit for carrying out what otherwise got carried out as state functions; and **when a certain area reaches a position where it can support certain services and act in its own behalf, it should take on the burden of its own government.**

Id., at 61, emphasis added, footnotes omitted.

A 1984 study by the University of Alaska concluded that the prospect of taxes was one of the foremost disincentives to borough formation. *See Alaska's Urban and Rural Governments*, p. 43.

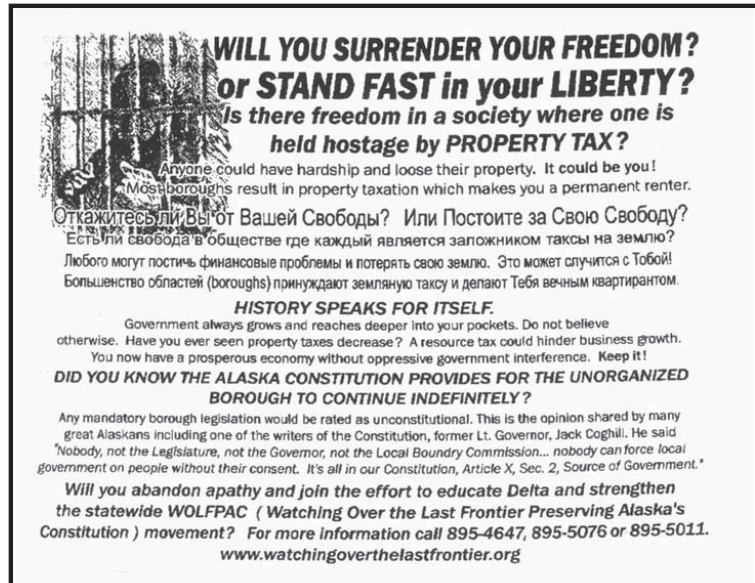
The State could eliminate that fundamental deterrent to borough formation by imposing an appropriate tax burden on the unorganized borough. Four options are explored below.

(a) Property Taxes.

Among the various tax options, the LBC anticipates that residents of the unorganized borough might least prefer property taxes, because all residents would not uniformly share the burden of such. That concern, however, exists with respect to property taxes levied by any municipal government in Alaska. (See AS 29.45.030 for mandatory exemptions from municipal property taxes.) Thus, the anticipated concern is not unique to the unorganized borough.

Notwithstanding its anticipated unpopularity, imposition of a property tax on the unorganized borough would aid the Legislature and executive branch in planning. (See AS 14.17.510(a)). Moreover, establishment of property tax rolls for the unorganized borough would facilitate transition of areas to

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature



2004 WOLFPAC bulletin opposing borough formation

ough would require an inaugural investment.⁵¹ To pay the cost of establishing the tax, the State could use what would be a relatively small portion of its windfall from recent higher oil prices. Any cost could be recovered through future tax levies on the unorganized borough.

organized status, since local contributions required of boroughs under AS 14.17.410(b)(2) are based on the taxable value of property.

Given the general lack of property tax rolls for the unorganized borough, the LBC recognizes that an *ad valorem* property tax on the unorganized bor-

The LBC notes that a property tax on territory, including that which today is the entire unorganized borough, has a precedent. The Territory of Alaska established a territory-wide property tax fifty-six years ago. As noted below, that tax was specifically intended to address the very issue of tax inequity:

⁵¹The office of the State Assessor, currently staffed by two individuals, has spent considerable time since August 2004 estimating the value of taxable property in the Upper Tanana Basin portion of the unorganized borough (Delta Greely REAA and Alaska Gateway REAA). The effort is designed to give local residents (including those developing a petition for borough incorporation) and State policy makers an up-to-date estimate of the region's tax base. The project does not, however, involve the development of formal tax rolls. The State Assessor projects that the field work will be completed by the end of January 2005 and that the property value estimates will be prepared by mid-February. To undertake similar efforts throughout the remainder of the unorganized borough would require additional resources for the office of the State Assessor.

 Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature



The 1949 Territorial Legislature eliminated inequities in taxes for schools through a Territory-wide property tax.

Under Territorial law, those who lived in a city or school district were required in all instances to provide a substantial portion of the cost of education. . . .

The Territorial Legislature of 1949, which was controlled by the Democratic Party and operated under the influence of a strong Democratic governor, Ernest Gruening (now United States Senator), made an initial attempt to provide some relief from these inequities by enacting a Territory-wide general property tax. The proceeds were refunded to the local entity if collected in an incorporated city, school district, or public utility district. If the area was not incorporated, the proceeds went into the treasury of the Territory. The merits of a property tax are not germane to this chapter. What is pertinent

is that the measure was an attempt to equalize the tax burden by requiring those in the unincorporated areas to contribute something to the cost of the services received. This reform, however, was short-lived.

The matter of a Territorial tax became a partisan political issue. The election of a Republican President of the United States and the appointment of a Republican governor for the Territory of Alaska resulted in the repeal of the property tax act by the 1953 Republican-controlled Territorial Legislature. There were substantial mining and fishing interests which were greatly opposed to the tax; as were the homesteaders, trappers, Indians, and Eskimos. This combination firmly re-established the tax inequity

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

favoring those who were getting free services from the Territory by refusing and failing to incorporate. It appeared that to equalize taxes in Alaska one would need – and perhaps must create – a vested interest to protect the tax reform and combat the interests which benefited financially from the inequity.

Metropolitan Experiment, pp. 87 - 88.

State Legislators have introduced a number of proposals to impose property taxes on the unorganized borough in the past. None, however, has passed. A recent example of such a proposal is House Bill No. 2 introduced in the 22nd Legislature, which proposed a 10-mill property tax on the unorganized borough outside home-rule and first-class cities.

The provision in House Bill No. 2 exempting home-rule and first-class cities in the unorganized borough presumably stemmed from the fact that those cities have most of the same duties as organized boroughs (education, platting, planning, and land use regulation). While justified if the policy debate is limited strictly to the issue of equity, such an exemption eliminates the incentive for residents of those cities to become part of a borough government.



House Bill No. 2, 22nd
Legislature

If the Legislature considers a property tax levy on the unorganized borough in the future, the LBC urges prudent consideration of alternatives to an across-the-board exemption for home-rule and first-class cities in the unorganized borough. If inclined to recognize the local responsibilities of home-rule and first-class cities in the unorganized borough but retain some degree of incentive, the Legislature could provide for a *partial* rebate of taxes to home-rule and first-class cities. Given the public policy set long ago by the Legislature in AS 14.12.025 to promote new school districts with at least 250 students, the Legislature might consider limiting any partial rebate to just those home-rule or first-class cities with at least 250 resident students.⁵²

⁵²Ten of the eighteen home-rule and first-class cities in the unorganized borough have fewer than 250 resident students.

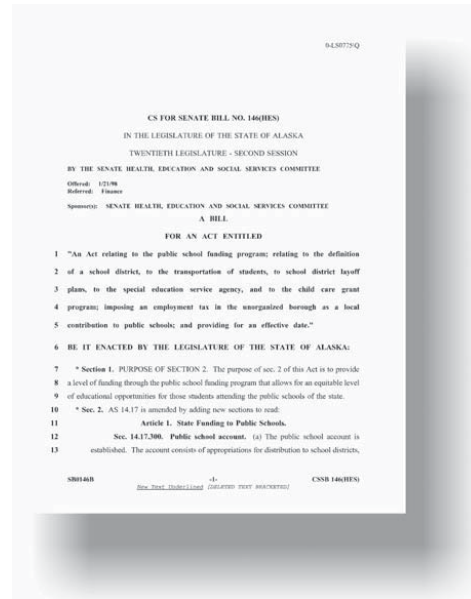
Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

(b) Sales Taxes.

The 1991 Task Force on Governmental Roles offered the following insights regarding the prospect of a sales tax:

The sales tax is not particularly costly or difficult for the state to administer, hence its popularity among states. Since it is collected from sellers at the retail level, there are fewer returns to deal with than in the case of an income tax. Many states with both state and local general sale taxes gain administrative efficiency by piggybacking local tax collection onto the state tax system. The main advantages of a sales tax are that it can be designed so that revenue grows in proportion with the economy, it is relatively popular with voters (probably because it is paid in small amounts), and it captures revenues from nonresidents. The main disadvantages are its regressivity [sic] and the fact that it is not deductible from federal income tax.

Task Force members brought up additional considerations. To be efficiently collected by the state, a sales tax would have to be uniform with respect to exemptions. This would eliminate the local option to apply the sales tax narrowly (e.g., only on fish sales, hotel/motel use, tobacco sales, etc.) or broadly. A state-



wide sales tax would infringe on municipalities' ability to express social policy with respect to taxation of food, residential rent, home heating oil, etc. Municipal officials might also be leery of piggybacking onto a state sales tax for fear that the state would gradually take over the entire sales tax and leave little or nothing for municipalities.

Task Force Final Report, pp. 41-42.

The LBC is aware that the Alaska Municipal League opposes the prospect of a statewide sales tax:

The League vigorously defends sales tax as a local option to maintain control over this key

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

local revenue source. Imposition of a State sales tax would jeopardize local economics and cause a reduction in municipal sales tax.

Alaska Municipal League, *2005 Policy Statement*, Part I-A-1-e.

The Alaska Municipal League might oppose a sales tax on the unorganized borough as well. The LBC notes, however, that such a tax would be the equivalent of a sales tax imposed by a borough assembly, since it would be enacted by the Legislature under its authority to act as the assembly of the unorganized borough.

The preceding comments by the LBC regarding the prospect of exempting home-rule and first-class cities in the unorganized borough from a property tax apply here as well. In the Commission's view, there is yet another significant reason for not exempting home-rule and first-class cities from a sales tax on the unorganized borough. Unorganized borough residents who live in areas adjoining home-rule and first-class cities in the unorganized borough, but shop in those cities, would effectively receive the exemption. For example, an estimated 162 individuals reside in the unincorporated area adjoining the boundaries of the home-rule City of Petersburg. See: *Petition for Annexation to the City of Petersburg*, October 2004, p. 8.

(c) Employment Tax.

As is the case with property taxes, legislators have previously introduced measures to levy employment taxes on the unorganized borough. For example, Senate Bill No. 146, introduced in the 20th Legislature, proposed to levy an employment tax upon each employee who receives compensation for services performed in the unorganized borough outside of a home-rule or first-class city. Earnings from business activities of self-employed individuals conducted in the unorganized borough outside of a home-rule or first-class city would also have been subject to the tax.

The Commission's views regarding the prospect of exempting home-rule and first-class cities in the unorganized borough from a property tax or sales tax apply here as well. Residents of the unorganized borough who live in unincorporated areas adjoining home-rule and first-class cities in the unorganized borough but are employed in those cities would have, effectively, received the exemption. As noted above, for example, an estimated 162 individuals reside in the unincorporated area adjoining the boundaries of the home-rule City of Petersburg.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

A head tax on the unorganized borough is equivalent to the school tax paid by residents of organized boroughs would generate between \$15 million and \$23 million annually, depending on policy decisions regarding applicability of the tax.

(d) Head Tax.

Imposition of a uniform tax on residents of the unorganized borough is another option. One of the obvious advantages of such a tax is its simplicity.

As was previously discussed with regard to other prospective taxes on the unorganized borough, a policy determination would be necessary to decide who would be subject to the tax. If the purpose of the tax were limited to equity and fiscal considerations, the tax might apply only to those residents of the unorganized borough outside of home-rule and first-class cities. If, in addition to equity and fiscal considerations, the tax policy were aimed at promoting consolidation of small school districts (those with fewer than 250 resident students per AS 14.12.025), the tax might also apply to residents of the ten home-rule and first-class cities that serve fewer than 250 resident students. If the tax

policy were also intended to promote borough incorporation, the tax might apply to all residents of the unorganized borough.

In FY 2005, organized boroughs were compelled by AS 14.17.410(b)(2)

to pay \$161,827,356 in "local contributions" for schools. That is equivalent to \$285.24 for each of the 567,343 residents of organized boroughs. An equivalent tax on each of the 52,618 individuals residing in the unorganized borough outside of home-rule and first-class cities would generate \$15,008,758. If the 5,869 residents of city school districts with fewer than 250 resident students were also subject to the tax, it would increase the annual revenue by \$1,674,074. If the tax were applied to all residents of the unorganized borough, it would generate an additional \$6,557,097. Thus, a head tax on the unorganized borough that is equivalent to the school tax paid by residents of organized boroughs would generate between \$15 million and \$23 million annually, depending on policy decisions regarding applicability of the tax.

2. Provide Financial Aid to Boroughs.

Boroughs (and city governments) are political subdivisions of State government. They are created to provide fundamental services on behalf of the State. Most local governments in the United States receive general financial aid from their respective state governments. The State of Alaska is a notable exception.

The gradual reduction and eventual elimination over the past two decades of general financial aid through the revenue sharing and safe communities programs is a significant disincentive to formation of new boroughs. Funding for those two programs reached a peak of \$141,656,800 in FY 1985. Adjusted for inflation and population growth, the 1985 figure is conservatively estimated to be equivalent to \$290,000,000 in today's terms.⁵³

The contrast in treatment for general aid to local governments compared to education funding is notable. Education, of course, is one of the funda-

The "local contribution" required of boroughs under AS 14.17.410(b)(2) rose by 12.8 percent over the past five years.

mental duties of borough governments (see AS 14.12.020(b) and AS 29.35.160(a)). While State aid for education funding has increased substantially, the financial burden placed on borough governments to provide schools has also escalated significantly. As noted earlier in this chapter, borough governments contributed \$1,437,142,079 in support of their schools over the past five years. The "local contribution" required of boroughs under AS 14.17.410(b)(2) rose by 12.8 percent over the past five years. (See Section III of this Chapter for a discussion of the increased financial obligations placed on boroughs for delivery of education services on behalf of the State of Alaska.)

⁵³Various "inflation calculators" available online indicate that \$141,656,800 in 1985 is equivalent to amounts ranging from \$239,280,243 to \$242,233,128 in 2003. Additionally, the population of Alaska has grown from 541,300 in 1985 to 648,818 in 2003. That represents an increase of 107,518 (19.9 percent) in the number of residents. Taking the growth of population into consideration increases the figure to a range of \$286,897,011 - \$290,437,520. Given that the figures above do not reflect inflation and population growth since 2003, the \$290 million figure is probably conservative.

 Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

By FY 1988, the fundamental general financial aid programs for local governments had already been cut from \$141,656,800 to \$96,857,800 (\$44,799,000 or 31.6 percent). State aid for education in FY 1988 was \$431,656,373. As reflected in Table 3-8, while the fundamental general aid programs were reduced by 100 percent by FY 2004, State aid for education grew to \$775,398,129 in FY 2005.⁵⁴ That represents an increase of \$343,741,756 (79.6 percent) in education funding since FY 1988. The increase in education funding for FY 2005 was the highest on record. The Commission notes further that Governor Murkowski has proposed to increase education funding by an additional \$126 million for FY 2006 and FY 2007.

The LBC encourages the Legislature to provide financial aid for local governments to carry out fundamental duties beyond education. Like the program-specific funding for education, such new funding for boroughs could be targeted for specific critical public services such as emergency medical, fire protection, police, and road maintenance. In terms of promoting the formation of new boroughs, it would be ideal if the aid program were designed with that goal in mind.

3. Increase Organization Grants for New Boroughs and Extend Grants to Boroughs That Expand Their Boundaries.

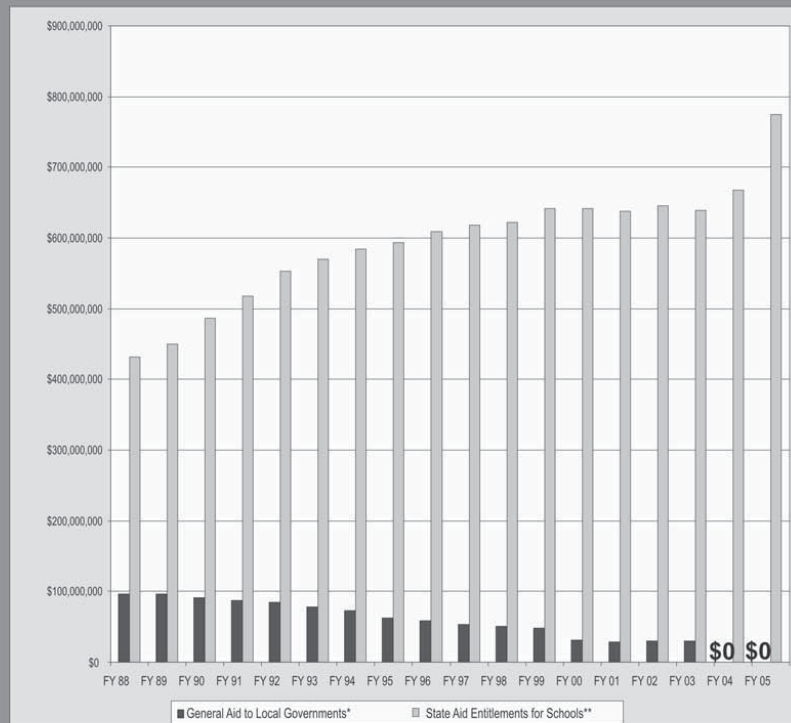
State law provides that each borough incorporated after December 31, 1985, is entitled to organization grants totaling \$600,000 over three years (\$300,000 the first year, \$200,000 the second year, and \$100,000 the third year). The grants are intended to defray the cost of transition to borough government and to provide for interim governmental operations. The level of funding has not increased in two decades. To adjust the funding for inflation alone would require an increase in the grants to more than \$1 million. To offer a truly significant financial incentive to incorporate a borough, the LBC urges the Legislature to increase the amount of the grant to \$5 million over a three-year period (e.g., \$2.5 million the first year; \$1.5 million the second year, and \$1 million the third year).

Moreover, to create incentives to expand the boundaries of existing boroughs, organization grants should be extended to borough annexations. Clearly, boroughs that annex territory incur transition costs, as is the case for newly formed boroughs.

⁵⁴The FY 2005 figure is the amount appropriated by the 2004 Legislature based on projected entitlements of all school districts. The actual figure will not be known until school district enrollment figures for FY 2005 are formally determined by DEED, based on the average daily student count over 20 consecutive school-days generally in October (AS 14.17.600).

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

Table 3-8



Fiscal Year	General Aid to Local Governments*	State Aid Entitlements for Schools**
FY 88	\$96,857,800	\$431,656,373
FY 89	\$96,857,800	\$449,607,417
FY 90	\$91,094,000	\$486,819,910
FY 91	\$87,450,200	\$517,645,586
FY 92	\$84,995,000	\$552,494,751
FY 93	\$78,195,400	\$570,427,417
FY 94	\$72,721,800	\$584,504,545
FY 95	\$62,613,500	\$593,824,947
FY 96	\$58,230,700	\$609,149,906
FY 97	\$53,572,300	\$617,763,007
FY 98	\$50,358,000	\$622,647,714
FY 99	\$47,840,100	\$641,945,621
FY 00	\$31,893,400	\$642,193,474
FY 01	\$28,493,400	\$638,461,956
FY 02	\$29,630,700	\$645,468,498
FY 03	\$29,630,700	\$638,933,278
FY 04	\$0	\$667,861,186
FY 05	\$0	\$775,398,129

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

***4. Eliminate the Necessity
That Boroughs Encompassing
the Trans-Alaska Oil Pipeline
Must Impose Property Taxes.***

Under current law, organized boroughs are required to make financial contributions in support of their schools. The contributions are based on the value of taxable property within the borough. Each borough must contribute the equivalent of a 4-mill tax on the full and true value of taxable property within the borough (not to exceed 45 percent of the educational "basic need" for the borough school district).

The full and true value of a borough includes all oil and gas exploration, development, and transportation property within the borough assessed by the Department of Revenue (DOR) under AS 43.56. The State of Alaska levies a 20-mill property tax on the value of that property and credits the oil companies for taxes paid to a borough or city.

Given the current law, unorganized regions encompassing significant oil and gas exploration, development, and transportation

properties would, upon borough incorporation, be faced with the prospect of substantial local contributions when calculating their 4-mill tax in support of schools. Consequently, the areas would likely have no practical alternative means of generating the required local contribution except through the levy of property taxes. The practical necessity of levying a property tax under such circumstances is a disincentive for borough formation because residents of unorganized areas generally seem to least prefer a property tax than any other type of local tax imposed on the general population. Four of the sixteen organized boroughs in Alaska do not levy property taxes.

The benefit to the State from the higher contributions resulting from the inclusion of the value of the oil and



Trans-Alaska Pipeline

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

gas property, of course, would be directly offset by reductions in State revenues from the State's 20-mill *ad valorem* property tax on the property in question. Thus, the amendment proposed here would have no fiscal impact on the State.

In reality, the State would likely be better off from a fiscal standpoint by such an exemption so long as local government property taxes were not levied on any oil and gas property within the borough. Doing so would insulate the State's 20-mill property tax from all fiscal impacts relating to a new borough, not just those associated with the borough's required local contribution for schools.

Such a provision would reduce impediments to borough formation in the Upper Tanana Basin, Copper River Basin, Yukon-Koyukuk region, and the Yukon Flats region. The LBC emphasizes that this option would not preclude a borough government from levying property taxes in a region with substantial oil and gas properties. It simply would not make it a practical requirement.

In 2001, the Alaska Senate adopted Senate Bill No. 48 (CS for Senate Bill No. 48(FIN) am), which included the identical provision recommended here. Because of other provisions in the bill, however, the legislation was not approved by the House. Section 2 of

Senate Bill No. 48 provided as follows (underlined bold text reflects the additional language):

AS 14.17.510(a) is amended to read:

(a) To determine the amount of required local contribution under AS 14.17.410(b)(2) and to aid the department and the legislature in planning, the Department of Community and Economic Development, in consultation with the assessor for each district in a city or borough, shall determine the full and true value of the taxable real and personal property in each district in a city or borough. If there is no local assessor or current local assessment for a city or borough school district, then the Department of Community and Economic Development shall make the determination of full and true value from information available. In making the determination, the Department of Community and Economic Development shall be guided by AS 29.45.110. **However, the full and true value of taxable real and personal property in any area detached shall be excluded from the determination of the full and true value of the municipality**

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

from which the property was detached for the two years immediately preceding the effective date of the detachment. Also, in making the determination for a municipality that is a school district or for a city that is within a borough school district, the assessed value of property taxable under AS 43.56 shall be excluded if a municipal tax is not levied under AS 29.45.080 in that school district.

The determination of full and true value shall be made by October 1 and sent by certified mail, return receipt requested, on or before that date to the president of the school board in each city or borough school district. Duplicate copies shall be sent to the commissioner. The governing body of a city or borough that is a school district may obtain judicial review of the determination. The superior court may modify the determination of the Department of Community and Economic Development only upon a finding of abuse of discretion or upon a finding that there is no substantial evidence to support the determination.

5. Extend Municipal Land Grants for Annexations and Consider Increases in Entitlements.

Under current law, a borough incorporated after July 1, 1978, is entitled to ten percent of the vacant, unappropriated, unreserved state lands within its boundaries. To encourage borough annexations, it is suggested that the same grants be given for any area annexed to an existing borough.

The Alaska Municipal League endorses municipal land entitlements as a means to promote annexation to boroughs. The League's formal position on the matter is set out below:

The League supports legislative changes to entitlement lands provisions to encourage existing municipalities to provide services to portions of the unorganized borough through annexation.

Alaska Municipal League, 2005 Policy Statement, Part III-E-3.

The prospect of increasing land entitlements to existing and future boroughs should also be explored as further incentive for the extension of borough government.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

Further in this regard, the LBC notes that land entitlements for boroughs have not always been transferred as quickly as borough officials would prefer. See, Table 3-12 for details regarding this issue as of February 2003. The LBC understands that additional funds have been appropriated for the State agency dealing with municipal land transfers and anticipates that the remaining entitlements will be conveyed expeditiously and that any future municipal entitlement transfers will be a priority of the State.

6. Restrict National Forest Receipts and Restrict Shared Fisheries Fees and Taxes to Boroughs and Cities Within Boroughs.

As noted above, the 1991 Task Force on Governmental Roles concluded that "... recent actions by the legislature to share National Forest receipts and Fisheries Business Tax receipts with communities in the unorganized borough have removed nearly all of the

Borough Land Entitlements – AS 29.65

Municipality	Original Entitlement	Acreage Remaining to Convey
Aleutians East Borough	7,633	5,713
Municipality of Anchorage	44,893	272
Bristol Bay Borough	2,898	349
Denali Borough	49,789	29,303
Fairbanks North Star Borough	112,000	177
Haines Borough	2,800	25
City and Borough of Juneau	19,584	160
Kenai Peninsula Borough	155,780	20,892
Ketchikan Gateway Borough	11,593	0
Kodiak Island Borough	56,500	0
Lake and Peninsula Borough	125,000	92,885
Matanuska-Susitna Borough	355,210	8,489
North Slope Borough	89,850	89,486
Northwest Arctic Borough	285,438	285,434
City and Borough of Sitka	10,500	0
City and Borough of Yakutat	21,500	20,088

Source: Table attached to February 28, 2003, Letter from Dick Mylius, Chief, DNR Resource Assessment and Development Section, Division of Mining, Land, and Water, Department of Natural Resources, to Senator Thomas Wagoner, Chair, Senate Community and Regional Affairs Committee, Alaska Senate.

few remaining incentives to organize boroughs." Those issues are addressed below.

(a) National Forest Receipts.

In 1964, following the formation of organized boroughs encompassing portions of Alaska's national forests, the State of Alaska allocated National Forest receipts on the basis of national forest acreage within each organized borough and the unorganized borough. Payments were made to organized boroughs, while the State retained the share for the unorganized borough. Because the federal law required that National Forest receipts be spent on schools and roads in the area where

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

the payment was generated, the State held the view that the legal requirement was met because the State spent an amount at least equal to the retained unorganized borough portion on schools and roads within the affected areas of the unorganized borough.

The Legislature changed the allocation of funds, effective in 1992. Under the revised law, the State allocated the unorganized borough portion of the funds to cities in or near the portion of the national forest in the unorganized borough, REAAs in or near the portion of the national forest in the unorganized borough, and the unincorporated community of Metlakatla. While payments to boroughs were based strictly on the amount of national forest acreage within their respective boundaries, payments to cities and REAAs within the unorganized borough depended on student enrollment (for REAAs and city school districts) and miles of roads maintained (for cities and Metlakatla).

In FY 2004, the five organized boroughs in southeast Alaska that qualified for program funds received an average of \$62.60 per capita. In contrast, nineteen entities (three REAAs,



nine home-rule or first-class cities, six second-class cities, and one nonprofit corporation) in the southeast Alaska portion of the unorganized borough received an average of \$333.81 per capita.

The LBC notes, in particular, that REAAs within national forests receive funds not available to REAAs outside national forests. In FY 2004, the three REAAs in southeast Alaska received \$1,027,546 in National Forest receipts. That amounted to \$1,423 for each student in those districts (a total of 722.3 ADM for those three districts, including correspondence students).

In addition to being a disincentive to borough formation, the existing system creates broad opposition to

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

certain borough annexations. As noted in Chapter 2 of this report, the Ketchikan Gateway Borough is expected to propose the annexation of 5,545 square miles. Annexation of national forest lands to a borough results in the shift of national forest funds from entities in the unorganized borough to the annexing borough. According to the Department, based on FY 2004 funding, it is estimated that the proposed Ketchikan Gateway Borough annexation would shift \$1,315,573 annually from unorganized borough recipients to the Ketchikan Gateway Borough. Recipients within the unorganized borough expressed concern over earlier attempts by the Ketchikan Gateway Borough to annex much of the area in question.

Restricting National Forest receipts funding to organized boroughs, as was the case prior to 1992, would create incentives for borough incorporation of the area encompassing Prince of Wales Island and other unorganized areas of southeast Alaska. It would also remove impediments to borough annexations in southeast Alaska.

(b) Shared Fisheries
Fees and Taxes.

DOR collects fisheries business license fees and taxes under the provisions of AS 43.75.011 – 43.75.290. A portion of the fees and taxes are distributed

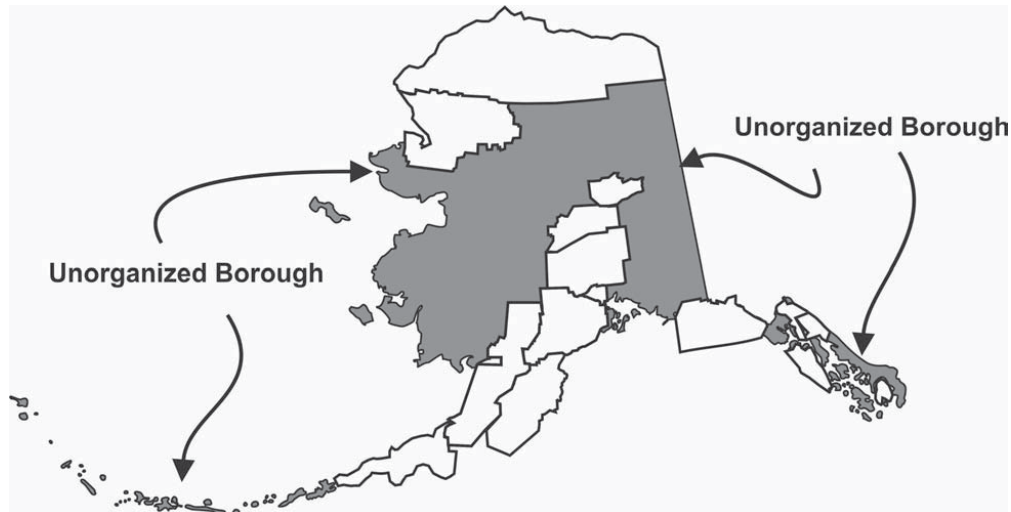


by DOR to eligible municipalities under the formula set out in AS 43.75.130.

Fifty percent of any revenue not transferred to eligible municipalities is allocated to the Department for distribution to eligible municipalities that demonstrate significant effects from fisheries business under the provisions of AS 29.60.450.

Under the Fisheries Resource Landing Tax statutes (AS 43.77.010–200), DOR collects a landing tax on floating fisheries businesses and distributes it directly to eligible municipalities according to the formula spelled out in AS 43.77.060. Once this allocation is made, 50 percent of the funds not distributed by DOR to eligible municipalities are also transferred to Commerce for distribution to eligible municipalities.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature



As is the case with National Forest receipts, restricting shared fisheries fees and taxes to organized boroughs would create further incentives for borough incorporation.

Section II. Lack of Standards and Law Providing the Manner for Establishment of Unorganized Boroughs

Subsection A. Statement of the Issue:

Article X, section 3 of Alaska's Constitution requires the Alaska Legislature to enact laws providing for (1) standards for establishment of organized and unorganized boroughs and (2) methods for establishment of organized and unorganized boroughs. In 1961, the Legislature enacted standards for establishment of *organized*

boroughs. Laws providing the manner for establishment of *organized boroughs* have also been enacted. However, in 46 years, the Legislature of the State of Alaska has yet to enact laws providing standards and the manner for establishment of *unorganized boroughs*.

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

Dr. John Bebout, a consultant to the Local Government Committee at the Alaska Constitutional Convention,

 Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

Assistant Director of the National Municipal League, and Professor at the New York University School of Administration, commented in 1981 on the matter as follows:

The legislature never did look at the state as a whole with a view to a division of the "entire state" into boroughs along meaningful social, economic and geographic lines. Instead, it provided for or accepted a number of organized boroughs of varying sizes and shapes, without regard to future borough formation, and left all the rest of the state in one "unorganized borough." This defeated for the time being the intent of the constitution that the legislature, acting in lieu of borough assemblies, should provide for the performance of services deemed appropriate to each region of the state, "allowing for maximum local participation and responsibility" in each case. . . .

The development of consensus for organized borough government seems likely in most regions to be a gradual process if it occurs at all. The first step toward it is to break up the single unorganized borough by a single act which establishes boundaries that make sense in

terms of the socio-economic standards set by the constitution and reflect the needs of all regions of the state. To continue to create new boroughs, whether unorganized or organized, piecemeal would be likely to leave shapeless areas that could never be assembled in viable borough units unless radical changes were made in the boundaries of already established boroughs, always a politically chancy business.

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

Subsection B. Background:

1. Alaska's Constitution Requires the Legislature to Enact Standards and Methods for Establishment of Unorganized Boroughs.

Article X, section 3 of Alaska's Constitution provides as follows:

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.⁵⁵

In sum, Article X, section 3 imposes the following seven duties upon the Legislature:

1. Enact standards (including population, geography, economy, transportation, and other factors) for establishment of organized boroughs;
2. Enact standards (including population, geography, economy, transportation, and other factors) for establishment of unorganized boroughs;
3. Enact laws providing the manner for establishment of organized boroughs;
4. Enact laws providing the manner for establishment of unorganized boroughs;
5. Classify boroughs;
6. Prescribe the powers and functions of boroughs; and

7. Enact methods by which boroughs may be "organized, incorporated, merged, consolidated, reclassified, or dissolved."

2. Standards and Methods for Establishment of Unorganized Boroughs Have Never Been Enacted.

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

The LBC views this circumstance as being analogous to the failure on the part of the Commission during the early years of Statehood to perform its duty to adopt standards for annexation.

The 1959 Legislature enacted a law providing, in part, that, "The [LBC] is hereby vested with the duties, powers, and responsibilities involved in . . . developing proposed standards and procedures for changing local boundary lines" SLA 1959, ch. 64, § 7. In 1964, the Legislature amended the law to make the

⁵⁵The term "by law" is defined by Article XII, section 11 of the Constitution to mean "by the Legislature." It states, "As used in this constitution, the terms 'by law' and 'by the legislature,' or variations of these terms, are used interchangeably when related to law-making powers. . . ."

 Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

development of standards a precondition to the LBC's action on annexation petitions. The Commission, as it was constituted from 1964 until 1973, neglected to adopt standards. The Alaska Supreme Court concluded, in effect, that the LBC was guilty of nonfeasance. The Court stated:

In our view the [LBC] has had sufficient time to discover sensible principles pertaining to the changing of local boundaries. Permitting continued failure on the commission's part to promulgate standards for changing local boundary lines can no longer be justified by the need for further experience.

United States Smelting, Refining and Mining Company v. Local Boundary Commission, 489 P.2d 140 (Alaska 1971).

3. Standards for Unorganized Boroughs Should Include Consideration of the Fiscal and Administrative Capacity of the Area.

Provisions were made in the Constitution for unorganized boroughs because the framers believed that, at least initially, some boroughs might lack the administrative and fiscal capacity to operate as organized boroughs. Dur-

ing the second reading of the proposed Local Government Article at the Constitutional Convention on January 19, 1956, the Chair of the Committee on Local Government explained to his fellow delegates:

[W]e allow for the boroughs remaining unorganized until they are able to take on their local government functions.

Alaska Constitutional Convention Proceedings, Alaska State Legislature, Alaska Legislative Council, November 1963, p. 2612.

In addition to standards for unorganized boroughs dealing with population, geography, economy, and transportation, the requisite standard regarding "other factors" would logically include a measure of the fiscal and administrative capacity of an area to determine whether unorganized boroughs are able to take on their local government functions.

Similar views were reflected in an open letter from the Director of the State's local government agency in 1960:

What would be reasonable standards for an unorganized borough in demonstrating its readiness and ability to become an organized — and — in the

 Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

same vein, standards for an organized borough to achieve home rule, as provided by the state constitution? . . .

. . . .

The constitution makes provisions for some standards, such as economy, geography and culture, but we must have more than these. Financial ability to support self-government must be given heavy consideration.

. . .

Letter from Charles W. Hughes, Director, Division of Local Affairs, January 15, 1960, pp. 2-3.

In the LBC's view, the capacity of an area to assume local responsibility is determined largely by two fundamental factors. One is the specific duties

imposed on boroughs by the State. Obviously, the greater the duties imposed on boroughs (e.g., education, transportation, public safety, health and social services, etc.), the greater the difficulty regions will have in meeting the capacity threshold. The second factor is the human and financial resources available to the borough.

With regard to duties, the LBC notes that the Legislature has prescribed three fundamental duties for organized boroughs. Those are education, assessment and collection of taxes, and land use regulation.⁵⁶ Beyond that, other borough functions are discretionary.

The most substantial of those three duties is education. In terms of judging the capacity to carry out that duty, the Commission notes that State law

⁵⁶The mandatory responsibilities of boroughs are outlined in AS 29.35.160 – 29 35.180 below:

Sec. 29.35.160. Education. (a) Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation in a borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education and Early Development. However, operation of the military reservation schools by the borough school district may be required by the Department of Education and Early Development under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education and Early Development, operation, management, and control of schools on the military reservation transfers to the borough school district in which the military reservation is located.

Footnote continued on next page

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

provides greater State aid for education in boroughs with lower levels of taxable property.⁵⁷ In other words, the financial burden to support schools that is placed on municipal school districts with less resources is proportionately lower than it is for communities and regions that have greater fiscal capacity.⁵⁸ The common perception that poorer areas are unable to assume responsibility for municipal government is not necessarily valid.⁵⁹

For example, as shown in Table 3-9 on the following page, in FY 2005, the City of St. Mary's, which operates a

city school district, was subject to a local contribution requirement for its schools that was equivalent to \$127 per resident student. In contrast, the per-student required local contribution of the North Slope Borough was \$4,721, more than 37 times that of the City of St. Mary's.⁶⁰

The LBC is, of course, not suggesting that unorganized boroughs themselves would have any governmental powers. The authority to exercise governmental powers in unorganized boroughs rests exclusively with the Alaska Legislature which, under

Footnote continued from previous page

(b) This section applies to home rule and general law municipalities.

Sec. 29.35.170. Assessment and collection of taxes. (a) A borough shall assess and collect property, sales, and use taxes that are levied in its boundaries, subject to AS 29.45.

(b) Taxes levied by a city shall be collected by a borough and returned in full to the levying city. This subsection applies to home rule and general law municipalities.

Sec. 29.35.180. Land use regulation. (a) A first or second class borough shall provide for planning, platting, and land use regulation in accordance with AS 29.40.

(b) A home rule borough shall provide for planning, platting, and land use regulation.

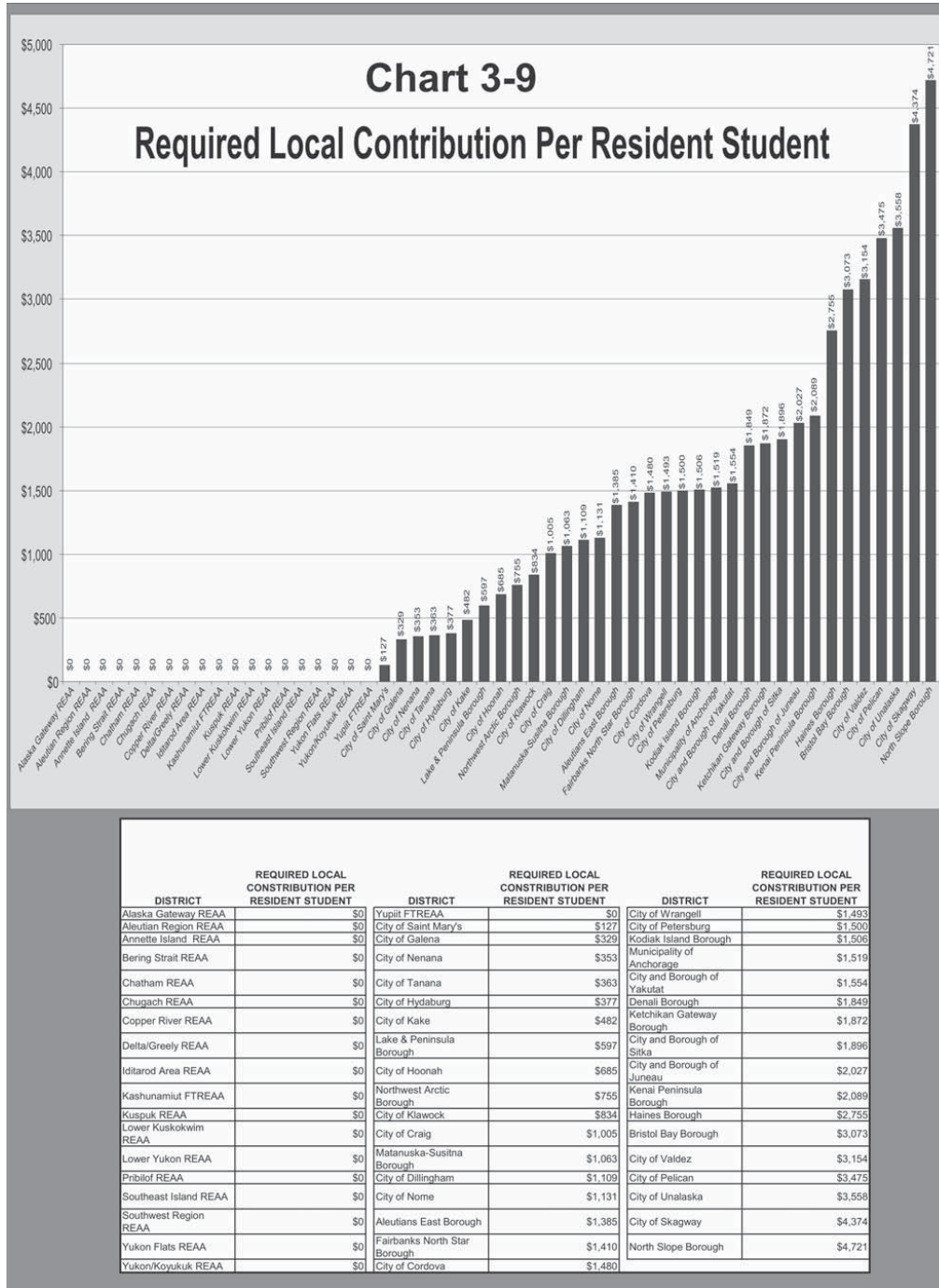
⁵⁷Details about the formula are provided in the discussion in this chapter about the need to amend AS 14.17.510.

⁵⁸Without regard to fiscal capacity, REAAs and FTREAs are not required to make local contributions.

⁵⁹In terms of fiscal capacity, the LBC recognizes that the elimination of funding for the State Revenue Sharing and Safe Communities programs has had a detrimental effect on the capacity of regions to carry out responsibilities locally.

⁶⁰Figures are based on FY 2005 required local contributions divided by the latest enrollment figures (FY 2004).

Local Boundary Commission Report to the First Session of the Twenty-Four Alaska State Legislature



 Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

Article X, section 6 of the Alaska Constitution, has the capacity to “exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.” Creation of unorganized boroughs would help the State provide critical services on a more carefully controlled regional basis, facilitate the gathering of information that reflects regional differences, and separately track state expenditures and revenues in each of the unorganized boroughs.

4. A Single, Residual Unorganized Borough Does Not Conform to Constitutional Guidelines.

In 1960, the LBC had recommended to the Legislature that the LBC be given the duty, subject to review by the 1961 Legislature, to divide all of Alaska into boroughs, organized or unorganized. The recommendation, however, was rejected.

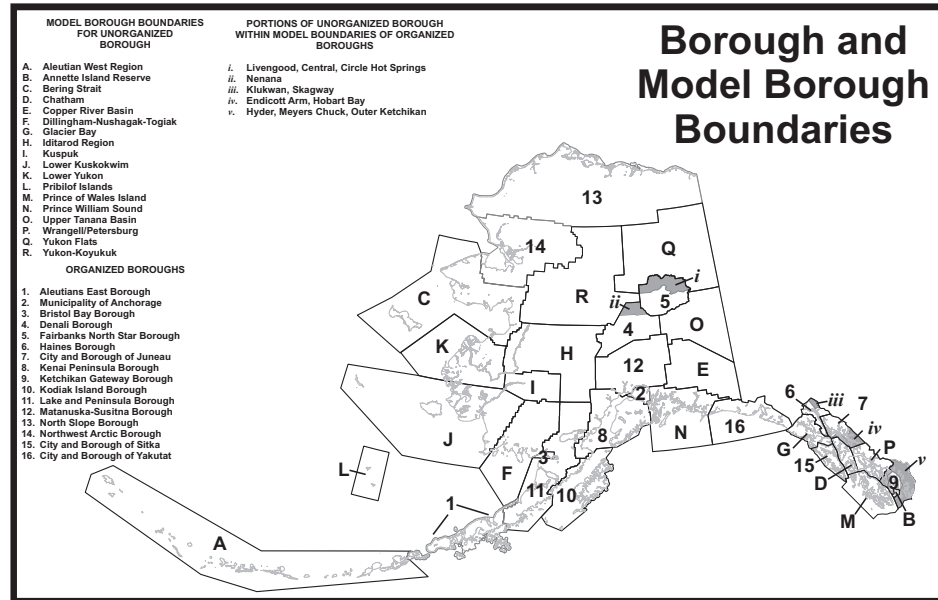
Instead, the 1961 Alaska Legislature, without the benefit of standards, established a single unorganized borough encompassing all of Alaska not within an organized borough. Given the vast and diverse nature of Alaska, establishing a single, residual unorganized borough does not adhere to the mandate in Article X, section 3 that each borough, organized or organized, “embrace an area and population with common interests to the maximum degree possible.”

From its inception, the unorganized borough has embraced an area and population with highly diverse interests rather than the maximum common interests required by the Constitution. The contemporary contrasts in various parts of the unorganized borough are remarkable. As currently configured, the unorganized borough contains an estimated 374,843 square miles, 57 percent of the total area of Alaska. It ranges in a noncontiguous manner from the southernmost tip of Alaska to approximately 150 miles above the Arctic Circle. The unorganized borough also extends in a noncontiguous manner from the easternmost point in Alaska (at Hyder) to the westernmost point in Alaska at the tip of the Aleutian Islands. The unorganized borough encompasses all or portions of:

- Alaska’s four judicial districts;
- eleven census areas;
- nine state house election districts;
- seventeen REAAs and two FTREAAs;
- ten of Alaska’s thirteen regional Native corporations formed under the Alaska Native Claims Settlement Act;
- eighteen model boroughs and model borough boundary areas for five existing organized boroughs.

In short, the unorganized borough is comprised of a vast area with widely diverse interests rather than maximum

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature



common interests as required by the Constitution. This is particularly evident from the fact that the unorganized borough spans so many house election districts, census districts, REAAs, regional Native corporations, and model boroughs, many of which are comprised of areas with common social, cultural, and other characteristics.

Compliance with the common interests clause of Article X, section 3 of Alaska's Constitution could be achieved with respect to the unorganized borough if AS 29.03.010 were amended to divide the single unorganized borough into multiple unorganized boroughs formed along natural regions.

The foundation for such an effort already exists in the form of model borough boundaries established by the Commission between 1989 – 1992. Those boundaries were defined using all the constitutional, statutory, and regulatory boundary standards for organized boroughs. During the multi-year effort, hearings were conducted in 88 communities throughout Alaska.

The LBC formally adopted the model borough boundaries under 3 AAC 110.990(9). The Commission views those boundaries as a credible and useful tool in guiding future policy decisions regarding the establishment and alteration of borough governments. In recent years, the model

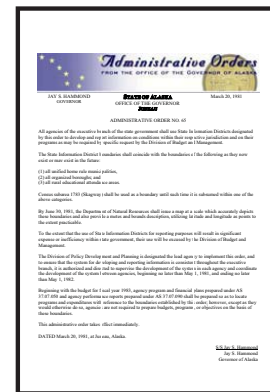
Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

borough boundaries have been challenged by some. The challenge seems to have its roots in the 2002 unanimous decision of the LBC to reject a particular borough boundary proposal.

In her comments to the LBC on January 5, 2005, former Senator Sturgulewski stated as follows:

I think the biggest issue is the lack of standards and procedures for the establishment of unorganized boroughs. It was a 1961 law that kind of “dumped” everybody into the unorganized borough. . . . I think that it would be well to consider unorganized borough boundaries based on . . . the model borough boundaries developed by the LBC.⁶¹

Senator Sturgulewski emphasized that in 1981, then-Governor Hammond adopted Administrative Order No. 65, establishing “State Information Districts” to develop and report information on conditions within those districts. The boundaries of the State Information Districts were based on boroughs and REAAs.⁶² Senator Sturgulewski urged the LBC to recommend that the Legislature and the Governor adopt a similar measure with respect to existing boroughs and model boroughs. A copy of Administrative Order No. 65 is included as Appendix C in this report.



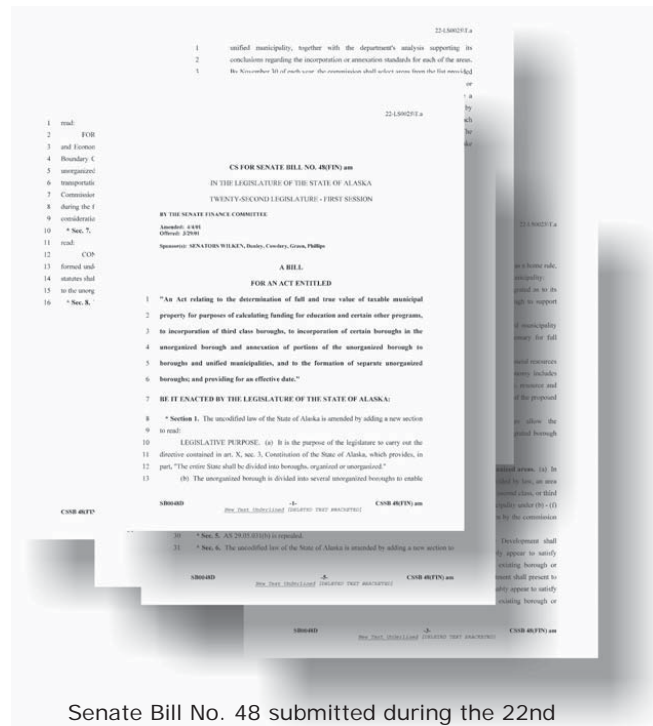
⁶¹Senator Sturgulewski acknowledged that there is controversy over the model borough boundaries. She stressed that if they are “out-of-date,” as some critics have suggested, they should be updated.

⁶²It is noteworthy that, in many cases, the boundaries of REAAs are used as model borough boundaries. REAAs are regional governmental institutions established thirty years ago for the efficient and effective delivery of educational services in the unorganized borough. Statutory standards for REAA boundaries, set out in AS 14.08.031, are very similar to those for boroughs. When REAAs were created in 1975, they were widely perceived as forerunners to organized boroughs. However, just as the formal corporate boundaries of organized boroughs are flexible to accommodate changing social, cultural, and economic conditions, the Commission recognizes that the model borough boundaries are also flexible. The Commission has found that in certain instances, social, economic, or other developments since 1992 have warranted changes to model borough boundaries. In 1996, the LBC modified the model borough boundaries for the Prince William Sound region. Following the merger of the Adak REAA with the Aleutians REAA, the LBC modified the Aleutians West Model Borough to encompass all of the territory west of the Aleutians East Borough.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

The Commission embraces Senator Sturgulewski's recommendation and notes that several legislative proposals have been introduced to divide the unorganized borough along model borough boundary lines. The need for dividing the unorganized borough was well articulated in SB 48 in the 22nd Legislature. The bill stressed that doing so would "enable the state to provide critical services on a more carefully controlled regional basis, to facilitate the gathering of information that reflects regional differences, and to separately track state expenditures and revenues in each of the unorganized boroughs."

Senator Fischer stressed in his comments to the LBC on January 5, 2005, that action should be taken on this step in the near term in order to ensure that such boundaries will be in place prior to preparations for the 2010 federal Census.



Senate Bill No. 48 submitted during the 22nd Legislature.

5. Prior Legislative Proposals Have Recognized That the Unorganized Borough Does Not Conform to the "Common Interests Clause" of the Constitution.

During the past ten years, at least six legislative proposals recognized that the unorganized borough does not conform to the common interest clause of Article X, section 3 of the Constitution. For example, Senate Bill No. 48 in the 22nd Legislature would have

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

required the State's local government agency to propose the division of the single unorganized borough into multiple unorganized boroughs using standards regarding population, geography, economy, and transportation. The LBC would have been required to submit each proposed unorganized borough to the Legislature for review under Article X, section 12 of Alaska's Constitution.⁶³

6. The Failure to Follow the Constitutional Principles Concerning Unorganized Boroughs Hinders Coordinated Delivery of State Services.

In remarks to the LBC on January 5, 2005, former Senator Victor Fischer stressed the importance of establishing multiple unorganized boroughs. Senator Fischer pointed out that the issue was *the* fundamental concern in a 1979 Local Government Study initiated by the Chairmen of the Senate and House Community and Regional Affairs Committees in response to recognized problems related to local government in Alaska.⁶⁴

The study recommended the establishment of multiple regional unorganized boroughs. The purpose of doing so was two fold: (1) to promote efficient and effective delivery of all state services, and (2) to provide common areas for collection of information, data, and other materials important to the region and to agencies responsible for provision of technical and financial assistance.

Subsection C. Recommendation:

The LBC recommends that the Alaska Legislature enact laws providing standards for establishment of unorganized boroughs and the manner in which unorganized boroughs are created.

The LBC envisions that the standards relating to unorganized boroughs would be identical to those for organized boroughs, except with respect to fiscal and administrative capacity. Organized borough standards are set out in AS 29.05.031 below:

⁶³Other measures included SB 142 and HB 205 in the 20th Legislature and SB 280, SB 337, and HB 250 in the 19th Legislature.

⁶⁴*Local Government Study – 1979*, Senate and House Community and Regional Affairs Committees. Members were Senator Arliss Sturgulewski, Senator Tim Kelly, Senator Bob Mulcahy, Senator Pat Rodey, Senator Terry Stimson, Representative Bill Parker, Representative Margaret Branson, Representative Pat Carney, Representative Ray Metcalfe, Representative Pat O'Connell, Representative Charlie Parr, and Representative Fred Zharoff.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

Sec. 29.05.031. Incorporation of a borough or unified municipality.

(a) An area that meets the following standards may incorporate as a home rule, first class, or second class borough, or as a unified municipality:

The following are excerpts from the preliminary report of the *Local Government Study - 1979* that identified issues and problems being studied.

- **EXISTING UNORGANIZED BOROUGH IS INADEQUATE**
Most of rural Alaska is characterized by lack of adequate governmental services and by absence of appropriate vehicles for meeting local and regional needs. **The existing single unorganized borough consists of those parts of the state left over after other areas become organized. It is not a region; it is an "amorphous mass."** As a result, the present unorganized borough does not provide any basis for the delivery of state services or for fostering of local self-determination (emphasis added).
- **NO SELF-GOVERNMENT OR PARTICIPATION IN RURAL REGIONS**
Alaska's constitution calls for maximum local self-government. It requires that the legislature provide for performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. But rural people have virtually no say on what happens in their regions.
- **ABSENCE OF COORDINATED APPROACH TO DELIVERY OF PUBLIC SERVICES**
Lack of officially recognized regional boundaries has created a situation in which numerous entities (such as Native corporations and regional nonprofit organizations), having no official links to state government, are called upon and attempt to deliver services and provide local and regional control. Confusion and frustration have resulted from the proliferation of these entities. Villages and small communities are overwhelmed by state, federal, and quasi-governmental programs and service deliverers, which provide uncoordinated and unplanned solutions to local problems and needs. There is no coordinated approach to service delivery. Instead, there is an array of programs administered in an uncoordinated manner. These multitudinous separate efforts contribute to the inability of villages to digest all the "bits and pieces."
. . .
- **DIFFICULTIES OF REGIONAL PLANNING IN RURAL REGIONS**
A major problem resulting from the lack of officially recognized regional boundaries has been the inability of the state to provide for comprehensive planning in rural Alaska - the type of planning which would be both long range and short term, providing an alternative to dealing with each problem on a confrontation basis. The lack of this local/regional planning capability leads to a lack of local control and coordination of state and federal programs in rural Alaska.
- **LACK OF REGIONAL COORDINATION BY STATE**
Fragmentation of service delivery also results from the proliferation of district boundaries used by governmental agencies for both administrative and service delivery functions. . . . [T]hese overlapping jurisdictional boundaries were depicted as confusing roadblocks to the efficient delivery of services to citizens. . . .

The LBC notes that these same issues and problems exist today and underlie the conclusions and recommendations in this report.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government;

(2) the boundaries of the proposed borough or unified municipality conform generally to natural geography and include all areas necessary for full development of municipal services;

(3) the economy of the area includes the human and financial resources capable of providing municipal services; evaluation of an area's economy includes land use, property values, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough or unified municipality;

(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government.

The LBC is prepared to lend its expertise and assistance to the Legislature in the development

of appropriate standards and procedures for establishment of unorganized boroughs.

Section III. Funding for Borough Feasibility Studies

Subsection A. Statement of the Issue:

There is no ready source of funding for borough feasibility studies.

Subsection B. Background:

AS 44.33.840 – 44.33.846 authorizes the undertaking of borough feasibility studies. Unfortunately, however, funding for the studies has never been appropriated. As outlined in Chapter 2 of this report, certain regions have interest in considering borough incorporation. If the Legislature institutes adequate inducements for borough incorporation on the order recommended by the LBC earlier in this Chapter, interest in borough incorporation will likely increase significantly.

Subsection C. Recommendation:

The Commission recommends that the Legislature appropriate \$100,000 to be available for local borough study efforts in the near term. If inducements for borough incorporation are implemented, that figure should be increased significantly.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

Section IV. The Law Curbing the Escalating "Tax" on Borough and City School Districts Lacks Provisions to Deal with Boundary Changes.

Subsection A. Statement of the Issue.

In 2001, the Legislature amended the formula under which State aid for borough and city school districts is calculated. The amendment was intended to provide modest financial relief for the boroughs and 18 cities that are required to make a "local contribution" in support of their schools.

The "local contribution" results in a direct offset of State aid for those districts. In other words, for each dollar that a borough or city is required to contribute, State aid to that borough or city school district declines by one dollar. If a borough or city fails to make its required "local contribution," all State aid for education is withheld from that borough or city school district.

In effect, the required "local contribution" is a State tax imposed on organized boroughs and cities that operate schools. Public school districts other than boroughs and cities are not required to make local contributions. Therefore, those other districts are exempt from the tax.

Prior to the 2001 amendment, the required "local contribution" for many boroughs and cities had been escalating significantly year after year. The 2001 amendment slowed the increase in the required "local contribution" for those boroughs and cities.

However, it is unclear how the 2001 amendment applies with respect to municipal boundary changes for boroughs and cities that are required to operate schools (i.e., formation of a new borough or city school district, annexation to an existing borough or school district, or detachment from an existing borough or city school district). It appears that the prospect for such boundary changes was not considered when the 2001 amendment was crafted.

Detailed background information on the issue is provided below. The Commission is only proposing modifications to address inadequacies in the amended law when boundary changes are at issue. However, to understand the rationale underlying the current law, a fair amount of detailed background information is warranted to place the boundary issue in the proper context. Following that background information, the LBC offers a specific recommendation to clarify the law.

Subsection B. Background.

1. *The State of Alaska Has a Duty to Provide Education.*

The Legislature has a constitutional duty to “establish and maintain a system of public schools” (Article VII, section 7). That duty is largely carried out through four types of school districts: (1) borough school districts, (2) home-rule and first-class city school districts in the unorganized borough, (3) REAAs, and (4) FTREAAAs.⁶⁵

Currently, there are 16 borough school districts, 18 city school districts, 17 REAAs, and 2 FTREAAAs.

2. *Distinctions Among the Four Types of School Districts.*

The LBC recognizes three fundamental distinctions with respect to the different types of school districts. Those are outlined below:

(a) Size and Economies of Scale.

The first distinction among the types of school districts relates to size and

Table 3-10
Comparison of School District Types
Regarding Size and Economies of Scale

Type	Average Size (sq. miles)	Average Number of Schools	Average Number of Students
Boroughs	17,242	18	6,406
REAAs	21,578	8	720
Cities	74	2	318
FTREAAAs	10	2	398

economies of scale. Borough school districts and REAAs generally encompass large regions, multiple schools, and relatively large numbers of students. In contrast, each city school district and FTREAA generally encompasses a single community, few schools, and relatively small numbers of students. It is notable that because city school districts and FTREAAAs exist as enclaves within REAAs, the number of schools and the number of students served by REAAs would be significantly greater if REAAs served all students within the region. Table 3-10 reflects average characteristics of each of the four types of school districts regarding size and economies of scale.

⁶⁵See n. 10. Beyond education services provided through the four types of districts listed above, in FY 2004, the State also operated two educational facilities: Alyeska Central School, a statewide correspondence school, and Mt. Edgecumbe High School, a boarding school in Sitka. More details regarding these schools are provided in Table 3-7, above.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

Table 3-11
Comparison of School District Types in Terms of Vested Responsibilities and Legal Capacity

Type	Taxing Power	Authority to Initiate Debt	Legislative Powers	Elected By
Borough	Borough Assembly	Borough Assembly	Borough Assembly	Borough Voters
City	City Council	City Council	City Council	City Voters
REAA	Alaska Legislature	Alaska Legislature	Alaska Legislature	Borough, City, REAA, and FTREAA Voters
FTREAA	Alaska Legislature	Alaska Legislature	Alaska Legislature	Borough, City, REAA, and FTREAA Voters

(b) Local Versus State Responsibility and Legal Capacity

The second fundamental distinction among the different types of districts relates to local versus State responsibility and legal capacity. Borough and city school districts are components of their respective municipal corporations. As political subdivisions of the State of Alaska, borough and city governments hold the power to levy taxes, issue debt, enact laws, and otherwise exercise broad responsibilities of general local governments. Those powers are vested in locally elected borough assemblies and city councils.

In contrast, REAAs and FTREAs are single-purpose service areas of Alaska's unorganized borough. They are instrumentalities of State government. The Alaska Legislature holds exclusive power to levy taxes, issue debt, and enact laws regarding REAAs⁶⁶ and FTREAs. Those powers are vested in 60 legislators⁶⁷ who, by overwhelming margins, reside outside REAAs and FTREAs and are elected by voters living within the other types of school districts (i.e., boroughs, home-rule cities in the unorganized borough, and first-class cities in the unorganized borough). [Table 3-11](#)

⁶⁶In 2003, REAAs were, however, granted limited authority to borrow funds through the Alaska Housing Finance Corporation for construction or acquisition of teacher housing. (AS 14.08.101(9), AS 18.56.580.)

⁶⁷Article X, section 6 of Alaska's Constitution. See n. 5 above for full text of this section.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

provides a comparison of the different types of school districts in terms of vested responsibilities and legal capacity.

(c) State Aid for
Operation of Schools.

The third fundamental distinction concerns State aid for operation of schools. That distinction is at the root of the issue at hand. State aid for all types of school districts is nominally defined by AS 14.17.410(b)(1) and represented by the following formula:

$$\begin{aligned} &\text{Basic Need}^{68} \\ &\text{-- required local contribution} \\ &\text{-- } \underline{90\% \text{ of federal impact aid}} \\ &= \text{State aid} \end{aligned}$$

The distinction among types of school districts with respect to State aid arises from the fact that only borough and city school districts are subject to the required local contribution provision.

Thus, in effect, two divergent formulas for State aid apply to school districts. Those are reflected below:

As shown in the above formulas, the "required local contribution" of a city or borough school district results in a direct offset of State aid for education. For every dollar that a borough or city is required to contribute, State aid to that borough or city school district is decreased by one dollar. Moreover, AS 14.17.410(d) provides that, "State aid may not be provided to a city or borough school district if the local contributions required under (b)(2) of this section have not been made." In effect, the "required local contribution" is a State tax imposed on organized boroughs and cities that operate schools. REAAs and FTREAs are not required to make local contributions.

The contribution requirement for boroughs and cities is set out in AS 14.17.410(b)(2). It provides as follows:

Formula Applicable to Borough and City School Districts	Formula Applicable to REAAs and FTREAs
Basic Need	Basic Need
– required local contribution	
– <u>90% of federal impact aid</u>	– <u>90% of federal impact aid</u>
= State aid	= State aid

⁶⁸The term "basic need" is defined in the glossary.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

[T]he 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 subsection.

AS 14.17.510 sets out the method by which the full and true value of taxable property is determined. Prior to the 2001 amendment, AS 14.17.510 read as follows:

Sec. 14.17.510. Determination of full and true value by Department of Community and Economic Development.

(a) To determine the amount of required local contribution under AS 14.17.410(b)(2) and to aid the department and the legislature in planning, the Department of Community and Economic Development, in consultation with the assessor for each district in a city or borough, shall determine the full and true

value of the taxable real and personal property in each district in a city or borough. If there is no local assessor or current local assessment for a city or borough school district, then the Department of Community and Economic Development shall make the determination of full and true value from information available. In making the determination, the Department of Community and Economic Development shall be guided by AS 29.45.110. The determination of full and true value shall be made by October 1 and sent by certified mail, return receipt requested, on or before that date to the president of the school board in each city or borough school district. Duplicate copies shall be sent to the commissioner. The governing body of a city or borough that is a school district may obtain judicial review of the determination. The superior court may modify the determination of the Department of Community and Economic Development only upon a finding of abuse of discretion or upon a finding that there is no substantial evidence to support the determination.

 Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

(b) Motor vehicles subject to the motor vehicle registration tax under AS 28.10.431 shall be treated as taxable property under this section.

3. Concerns Over the Required Local Contribution Provision.

Concerns have long been expressed by some that the "required local contribution" (i.e., the "State tax" selectively levied on organized boroughs and cities that operate school districts) is problematic in two fundamental respects. The first is that it is inequitable – perhaps even unconstitutional. The second is that it amounts to a breach of promise on the part of the State of Alaska.

(a) Concerns Over Inequity.

The concerns over inequity stem from the fact that the provision for the required local contribution applies only to a particular class of Alaskans (i.e., residents of boroughs and residents of home-rule and first-class cities in the unorganized borough) and that no rational basis exists (e.g., fiscal capacity to support schools) to distinguish that class from the remainder of Alaskans (i.e., residents of REAAs and FTREAs).

In 1997, the Alaska Supreme Court ruled on an appeal over whether the divergent funding scheme violated the equal-protection clause under Alaska's Constitution. *Matanuska-Susitna Borough School District v. State*, 931 P.2d 391 (Alaska 1997). In large part because the Court held that "freedom from disparate taxation, lies at the low end of the continuum of interests protected by the equal protection clause," the Court concluded that there was no violation of the equal protection clause. A synopsis of the *Matanuska-Susitna* case is provided in this report as Appendix B. Readers are encouraged to review the synopsis when considering the issue of equity.

The Court ruling has certainly not curtailed concerns over the issue. The conclusion by the 1991 Task Force on Governmental Roles that such inequity "is a perennial area of conflict in Alaska politics" is as true today as it was then.

In their concurring statements in *Matanuska-Susitna*, Justices Matthews and Rabinowitz indicated that the proper venue for resolution of the issue is the Alaska Legislature. Justices Matthews and Rabinowitz noted that "any available remedy must be pursued through majoritarian processes rather than through the courts." *Id.*, at 406.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

It is noteworthy that no fewer than nine proposals were introduced in the Alaska Legislature over the past decade to address the issue of equity. For example, Senate Bill No. 30 in the 20th Legislature included a finding that:

[T]he rights, opportunities, and obligations of borough residents are not equal to those of residents in the unorganized borough, particularly in respect to education, taxation, and land use regulation, and that this is not in keeping with art. I, sec. 1, of the Constitution of the State of Alaska, that states in part, ' . . . that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State'.

SB 30 provided for the levy of a six-mill property tax levy within each of several unorganized boroughs (excluding the territory within home-rule and first-class cities) established along the model borough boundaries identified by the LBC.⁶⁹



Members of the 1963 Legislature.

While not addressed by the Court in *Matanuska-Susitna*, adding to the concerns over inequity is the fact that the overwhelming majority of those subject to the local contribution requirement live in districts that were incorporated by the 1963 legislative mandate to incorporate eight specific areas of Alaska. More than 95 percent of borough residents live in boroughs that were mandated to incorporate under the 1963 Mandatory Borough Act. The Legislature has made no similar enactment subsequent to 1963 to ensure that residents of other areas of the unorganized borough that possess the fiscal and administrative capacity to operate boroughs incorporate boroughs.

⁶⁹Other bills addressing the issue of equity include HB 470 in the 23rd Legislature; HB 2, in the 22nd Legislature; SB 142, SB 146, SB 337, and HB 205 in the 20th Legislature; and SB 280 and HB 250 in the 19th Legislature.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

(b) Concerns Over Breach of Promise.

As noted in part B-2(c), the “local contribution” required of each organized borough and city that operates a school district acts as a decrement to the level of State aid for schools received by that borough or city school district. Because the “required local contribution” provision applies only to borough and city school districts, and not to REAAs and FTREAAAs, it can be viewed as a “penalty” imposed on boroughs and cities that operate schools.

In 1963, the Legislature mandated that eight specific regions of Alaska incorporate boroughs. Those were the greater regions of Ketchikan, Juneau, Sitka, Kodiak Island, Kenai Peninsula, Anchorage, Matanuska-Susitna Valleys, and Fairbanks. The 1963 Mandatory Borough Act included a statement of intent that, “No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation.” Sec. 1, Ch. 52, SLA 1963.

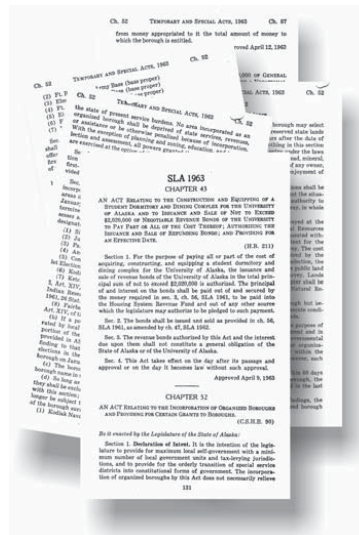
That statement of intent, viewed as a promise, has long since been abandoned.

Boroughs formed under the 1963 Mandatory Borough Act are responsible for educating the vast majority of Alaska’s students. In FY 2004, 80 percent of resident students (97,040 of 108,215) were educated by mandatorily formed boroughs.

Boroughs formed under the 1963 Mandatory Borough Act bear, by far, the greatest burden of the funding decrement imposed by the required “local contribution.” In FY 2005, the mandatorily

formed boroughs accounted for \$148,928,606 of the \$171,057,616 in required “local contributions.” That figure represents 87 percent of all required local contributions for FY 2005.

Moreover, given the formulas involved, the mandatorily formed boroughs generally experienced the greatest increases in the annual decrements for education funding resulting from the “local contributions” required by AS 14.17.410(b)(2).



Mandatory Borough Act

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

4. 2001 Amendment.**(a) The Change in the Law.**

In 2001, the Alaska Legislature passed a bill amending AS 14.17 regarding State aid to public schools.⁷⁰

Section 3 of the law was intended to provide moderate financial relief for boroughs and cities that are subject to the State "tax" for education in the form of required "local contributions." Section 3 did not reduce the financial burden for those boroughs and cities; however, it slowed the *increase* in that burden for some boroughs and cities beginning in FY 2002.

Specifically, Section 3 of Ch 95 SLA 2001 provided as follows:

Sec. 3. AS 14.17.510 is amended by adding a new subsection to read:

(c) Notwithstanding AS 14.17.410(b)(2) and the other provisions of this section, if the assessed value in a city or borough school district determined under (a) of this section increases from the base year, only 50 percent of the annual increase in assessed value may be included in determining the assessed value in a city or borough school district under (a) of this section. The limitation on the increase in assessed value in this subsection applies only to a determination of assessed value for purposes of calculating the required contribution of a city or borough school district under AS 14.17.410(b)(2) and 14.17.490(b). In this subsection, the base year is 1999.

⁷⁰HOUSE CS FOR CS FOR SENATE BILL NO. 174(FIN) contained five sections. Section 1 expressed the intent of the Legislature that any increase in funding for education under AS 14.17 provide an opportunity for schools to move toward standards-based education and pay the costs of improving student performance by providing standards-based programs. Section 2 increased the base student allocation by \$70 (from \$3,940 to \$4,010). Section 3, which is at issue here, amended the law regarding what is referred to in the statutes as the "required local contribution" of borough and city school districts under AS 14.17.410(b)(2). Section 4 modified the law regarding the determination of the number of schools in a district. Section 5 provided for an effective date.

The Senate, comprised of 13 Republicans and 7 Democrats, passed the bill unanimously. The House passed the bill by a vote of 29 to 11. Twenty-three of 26 House Republicans (88.5 percent) and 6 of 13 House Democrats (46 percent) voted for the bill. (The Alaska Independence Party member of the House did not vote for the bill.) The bill was signed into law as Ch 95 SLA 2001 by then-Governor Tony Knowles.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

(b) Effect of the Amendment.

The 2001 amendment had the desired effect of slowing the growth of the annual decrement in State education aid (i.e., slowing the increase in the required "local contribution" or "tax") for boroughs and cities that operate schools.

In FY 2001, the "tax" totaled \$152,438,383. In FY 2005, the tax grew to \$171,057,616. In the four years since Section 3 of Ch 95 SLA 2001 has been in place, the amount of the annual tax on borough and city school districts has grown by \$18,619,233.

Between FY 2001 and FY 2005, borough and city school districts have incurred education funding decrements (i.e., they have made "required local contributions" or paid "taxes") totaling \$806,560,805. The cumulative increase in the tax for FY 2002, 2003, 2004, and 2005 amounted to \$44,368,890. If the 2001 amendment had not been enacted, the cumulative tax during that same four-year period would have been roughly double the actual figure. Specifically, it would have increased by an additional \$44,396,674.

Even with the 2001 amendment, the tax increased for some districts by more than 21 percent since FY 2001.

Without the amendment, 15 borough and city school districts would have suffered double digit decrements.

[Table 3-12 on the following page](#) lists the decrements imposed by AS 14.17.410(b)(2) (i.e., the "required local contributions") for the 16 borough school districts and 18 city school districts for FY 2001 and FY 2005. Additionally, the cumulative decrements for the five-year period from FY 2001 through FY 2005 are also shown. Further, the table lists the percentage change in the decrements between FY 2001 and FY 2005. The 17 REAAs and 2 FTREAs are also listed.

Even with the 2001 amendment in place, the eight boroughs formed under the 1963 Mandatory Borough Act suffered the bulk of the increased decrements between FY 2001 and FY 2005. Those eight boroughs paid 97.7 percent of the increase (\$43,329,442 of the \$44,368,890).

In relative terms, the City of Hoonah benefited the most from the 2001 amendment. Had AS 14.17.510(c) not been enacted, the percentage increase in the City of Hoonah's required local contribution from FY 2001 to FY 2005 would have been 42.54 percent. With the curb in place, it was still 21.27 percent.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

Table 3-12
REQUIRED "LOCAL CONTRIBUTION" PAID BY LOCAL TAXPAYERS
(Ranked in descending order of total "required local contribution" from FY 2001 – FY 2005)

District	FY 2001	FY 2005	Total (FY 2002 - FY 2005)	Percentage Change from FY 2001 to FY 2005
Municipality of Anchorage	\$62,643,830	\$73,751,264	\$338,440,837	17.73%
Fairbanks North Star Borough	\$18,856,685	\$20,265,902	\$97,501,855	7.47%
Kenai Peninsula Borough	\$16,203,652	\$18,787,851	\$86,593,923	15.95%
Matanuska-Susitna Borough	\$11,919,135	\$14,190,111	\$64,884,783	19.05%
City and Borough of Juneau	\$9,975,186	\$10,857,132	\$52,517,981	8.84%
North Slope Borough	\$8,741,954	\$8,546,346	\$44,015,496	-2.24%
Ketchikan Gateway Borough	\$4,344,296	\$4,391,848	\$22,146,028	1.09%
Kodiak Island Borough	\$3,746,940	\$3,947,342	\$19,233,596	5.35%
City and Borough of Sitka	\$2,543,072	\$2,737,156	\$13,174,419	7.63%
City of Valdez	\$2,571,754	\$2,725,788	\$13,154,061	5.99%
Northwest Arctic Borough	\$1,524,744	\$1,526,651	\$7,627,652	0.13%
City of Unalaska	\$1,312,800	\$1,417,911	\$6,847,074	8.01%
City of Petersburg	\$975,396	\$986,492	\$4,904,373	1.14%
Haines Borough	\$792,247	\$834,746	\$4,090,197	5.36%
City of Nome	\$767,704	\$808,454	\$3,980,106	5.31%
Bristol Bay Borough	\$840,184	\$600,308	\$3,847,312	-28.55%
City of Cordova	\$661,261	\$697,681	\$3,417,697	5.51%
City of Wrangell	\$592,117	\$584,754	\$2,996,998	-1.24%
City of Dillingham	\$585,075	\$569,155	\$2,940,084	-2.72%
Denali Borough	\$490,981	\$564,194	\$2,644,530	14.91%
City of Skagway	\$524,241	\$462,878	\$2,491,861	-11.71%
City of Craig	\$413,016	\$383,790	\$2,032,406	-7.08%
Aleutians East Borough	\$387,694	\$384,290	\$1,906,147	-0.88%
Lake & Peninsula Borough	\$276,964	\$247,911	\$1,334,978	-10.49%
City and Borough of Yakutat	\$177,185	\$194,304	\$933,899	9.66%
City of Klawock	\$129,095	\$123,135	\$635,384	-4.62%
City of Hoonah	\$101,288	\$122,834	\$574,279	21.27%
City of Galena	\$71,933	\$73,143	\$361,445	1.68%
City of Kake	\$72,257	\$74,734	\$361,363	3.43%
City of Nenana	\$72,306	\$73,183	\$353,941	1.21%
City of Pelican	\$49,161	\$52,121	\$245,446	6.02%
City of Hydaburg	\$32,892	\$32,726	\$164,550	-0.50%
City of Tanana	\$23,336	\$22,692	\$114,926	-2.76%
City of Saint Mary's	\$18,002	\$18,789	\$91,178	4.37%
Alaska Gateway REAA	\$0	\$0	\$0	
Aleutian Region REAA	\$0	\$0	\$0	
Annette Island REAA	\$0	\$0	\$0	
Bering Strait REAA	\$0	\$0	\$0	
Chatham REAA	\$0	\$0	\$0	

Table continued on next page

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

Table continued from previous page

Table 3-12 REQUIRED "LOCAL CONTRIBUTION" PAID BY LOCAL TAXPAYERS <i>(Ranked in descending order of total "required local contribution" from FY 2001 – FY 2005)</i>				
District	FY 2001	FY 2005	Total (FY 2002 - FY 2005)	Percentage Change from FY 2001 to FY 2005
Chugach REAA	\$0	\$0	\$0	
Copper River REAA	\$0	\$0	\$0	
Delta/Greely REAA	\$0	\$0	\$0	
Iditarod Area REAA	\$0	\$0	\$0	
Kashunamiut FTREAA	\$0	\$0	\$0	
Kuspuk REAA	\$0	\$0	\$0	
Lower Kuskokwim REAA	\$0	\$0	\$0	
Lower Yukon REAA	\$0	\$0	\$0	
Pribilof REAA	\$0	\$0	\$0	
Southeast Island REAA	\$0	\$0	\$0	
Southwest Region REAA	\$0	\$0	\$0	
Yukon Flats REAA	\$0	\$0	\$0	
Yukon/Koyukuk REAA	\$0	\$0	\$0	
Yupit FTREAA	\$0	\$0	\$0	
	\$152,438,383	\$171,057,616	\$806,560,805	

From FY 2001 to FY 2005, the Matanuska-Susitna Borough, Municipality of Anchorage, Kenai Peninsula Borough, and Denali Borough also suffered double digit increases in the education funding decrements imposed by AS 14.17.410(b)(2).

Had the 2001 curb not been in place, the increase to the Matanuska-Susitna Borough would have been more than 38 percent. The Municipality of Anchorage and the Kenai Peninsula Borough would have also experienced increases in their decrements in excess of 30 percent.

(c) Lack of Provisions
Dealing With Boundary Changes
in 2001 Amendment.

The 2001 amendment does not address the manner in which the required "local contributions" are to be determined following boundary changes (i.e., incorporations, annexations, mergers, consolidations, detachments, and reclassifications) involving boroughs and home-rule and first-class cities in the unorganized borough. For example, if an existing borough annexes territory, it is unclear whether the base full and true value of that

 Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

borough is changed to reflect the annexation. Similarly, if a new borough is formed, it is unclear what its base full and true value would be.

The lack of such boundary-change valuation methodology exacerbates the difficulties faced by municipal governments that have a duty to provide education. In particular, those seeking boundary changes face great uncertainty with respect to their prospective required local contribution for funding education. Addressing the boundary-change valuation methodology in the manner outlined below will resolve that uncertainty. Of course, it does nothing to address the fundamental issues discussed above such as the inequities with respect to the burden placed on residents of boroughs and cities that operate schools and the breach of the 1963 promise for equitable funding made with respect to boroughs.

Subsection C. Recommendation:

To address the issue set out above, the LBC recommends the following amendments to AS 14.17.510:

Sec. ____. AS 14.17.510(c) is amended to read:

(c) Notwithstanding AS 14.17.410(b)(2) and the other provisions of this section, if the assessed value in a city or borough school district deter-

mined under (a) of this section increases from the base [YEAR], only 50 percent of the annual increase in assessed value may be included in determining the assessed value in a city or borough school district under (a) of this section. The limitation on the increase in assessed value in this subsection applies only to a determination of assessed value for purposes of calculating the required contribution of a city or borough school district under AS 14.17.410(b)(2) and 14.17.490(b). In this subsection, the base [YEAR] is **the full and true value of the taxable real and personal property as of January 1, 1999, except as provided in (d) - (i) of this section.**

Sec. ____. AS 14.17.510 is amended by adding new subsections to read:

(d) The base for a borough, home rule city in the unorganized borough, or first class city in the unorganized borough that existed before January 1, 1999, and that annexes territory after January 1, 1999, is the sum of the full and true value of the taxable real and personal property in that borough or city as of January 1, 1999, and the full and true value of taxable real and personal property in the

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

annexed area or territory on January 1 of the year immediately following the year in which the annexation takes effect.

(e) Except as provided in (f), the base for a borough incorporated after January 1, 1999, is the sum of the base for all home rule and first class cities in the newly incorporated borough as of the date of incorporation of the borough and the full and true value of taxable real and personal property in the borough outside home rule and first class cities on January 1 of the year immediately following the year in which the borough incorporation takes effect.

(f) The base for a borough incorporated after January 1, 1999, through merger, consolidation, or unification is the sum of the base for the borough that existed before merger, consolidation, or unification.

(g) The base for a home rule or first class city in the unorganized borough incorporated after January 1, 1999, is the full and true value of taxable real and personal property in the city on January 1 of the year immediately following the year in which the incorporation takes effect.

(h) The base for a city in the unorganized borough that was reclassified from a second class city to a first class city after January 1, 1999, is the full and true value of taxable real and personal property in the city on January 1 of the year immediately following the year in which the reclassification takes effect.

(i) The base for a borough, home rule city in the unorganized borough, and first class city in the unorganized borough from which an area or territory is detached after January 1, 1999, is reduced in proportion to the ratio of the full and true value of taxable property in the detached area or territory as estimated by the Department of Commerce, Community, and Economic Development divided by the full and true value of taxable property in the borough on January 1 of the year immediately following the year in which the detachment takes effect.

To ensure coordination of the above recommendation with other recommendations made by the Commission in this report, the LBC notes that it has also urged the Legislature to consider amendment of AS 14.17.510(a) in the context of providing inducements for the incorporation of boroughs. Details concerning that proposed amendment are outlined in

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

Section I of this Chapter. The specific amendment recommended for AS 14.17.510(a) is set out below.

Sec. ____. AS 14.17.510(a) is amended to read:

(a) To determine the amount of required local contribution under AS 14.17.410(b)(2) and to aid the department and the legislature in planning, the Department of Commerce, Community, and Economic Development, in consultation with the assessor for each district in a city or borough, shall determine the full and true value of the taxable real and personal property in each district in a city or borough. If there is no local assessor or current local assessment for a city or borough school district, then the Department of Commerce, Community, and Economic Development shall make the determination of full and true value from information available. In making the determination, the Department of Commerce, Community, and Economic Development shall be guided by AS 29.45.110. However, the full and true value of taxable real and personal property in any area detached shall be excluded from the determination of the full and true value of the municipality from which the

property was detached for the two years immediately preceding the effective date of the detachment. Also, in making the determination for a municipality that is a school district or for a city that is within a borough school district, the assessed value of property taxable under AS 43.56 shall be excluded if a municipal tax is not levied under AS 29.45.080 in that school district. The determination of full and true value shall be made by October 1 and sent by certified mail, return receipt requested, on or before that date to the president of the school board in each city or borough school district. Duplicate copies shall be sent to the commissioner. The governing body of a city or borough that is a school district may obtain judicial review of the determination. The superior court may modify the determination of the Department of Commerce, Community, and Economic Development only upon a finding of abuse of discretion or upon a finding that there is no substantial evidence to support the determination.

Section V. School Consolidation Study

Subsection A. Statement of the Issue:

When considering the costs of education, it is prudent to examine the possibilities of school consolidation.

Subsection B. Background:

On February 24, 2004, the joint report by the LBC and DEED regarding school consolidation was filed with the Legislature. The school consolidation study was mandated by the Legislature in 2003 (p. 10, Section 1, Chapter 83, SLA 2003) as follows:

It is the intent of the legislature that (1) the [LBC] identify opportunities for consolidation of schools, with emphasis on school districts with fewer than 250 students, through borough incorporation, borough annexation, and other boundary changes; (2) the [LBC] work with the [DEED] to fully examine the public policy advantages of prospective consolidations identified by the [LBC], including projected cost savings and potential improvements in educational services made possible through greater economies of scale; and (3) the [LBC] with the [DEED] report their findings

to the legislature no later than the 30th day of the Second Session of the 23rd Legislature.

The LBC met in public session on six occasions to consider the issues and take public comment thereon.

The LBC unanimously approved the report at its Public Meeting of February 13, 2004. The Deputy Commissioner of DEED also participated in the meeting and indicated DEED's approval of the report. Senator Gary Wilken was an active participant in the study effort throughout the course of the project.

The 330-page report was distributed in hard copy and electronic format and is posted to the LBC's Web site.

In the course of the study, DEED analyzed the economic effects of consolidating ten small city school districts (districts with fewer than 250 students). The LBC reached the following conclusions regarding the effects that consolidation would have on those districts.

- State education costs would be reduced by \$262,833 each year, or more than \$190 per student in the ten city school districts.
- Consolidation would increase basic need (the entitlement for education funding) for the students in the ten small districts by \$1,038,240 - or more than \$750 per student.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

- Consolidation would free up local taxes in the ten cities by \$1,088,642 annually, or nearly \$800 per student.
- The sum of the economic gains noted above equals \$1,740 per student each year, but prospective benefits of consolidation extend well beyond that gain.
- Many of the ten small city school districts and the four regional educational attendance areas that encompass those city school districts do not meet the statutory requirement for a minimum of 70 percent instructional spending. If consolidated, those fourteen districts would be merged into four larger regional districts.
- Creating four larger regional districts might improve programs and offer other educational benefits to students.
- Circumstances suggest to the [LBC] that the future of small school districts in Alaska is unlikely to improve without leadership from the State Legislature in terms of school consolidation. Those circumstances include growing administrative burdens on school districts, generally shrinking student populations in smaller school districts, and competition for increasingly scarce financial resources.

Details regarding those conclusions are found on pages 65 - 69 of the 2004 school consolidation report.

The LBC and DEED took the view that considerable benefit had already resulted from this school consolidation study effort and that the potential future benefits are beyond measure. Under Alaska's Constitution, education is a State function and a State responsibility. How far the State Legislature pursues this matter will be decided in time.

The LBC outlined the following general recommendations to the Legislature regarding school consolidation:

- (a) Promote borough government.
- (b) Establish a threshold for school districts to relinquish school powers.
- (c) Establish formal procedures for REAA boundary changes.
- (d) Address the establishment of FTREAs through apparent local and special legislation.
- (e) Remove disincentives for school consolidation from the education funding formula.
- (f) Create incentives for school consolidation.

Details concerning those recommendations are presented on pages 51 - 59 of the report.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

Subsection C. Recommendation:

The LBC recommends that the Legislature consider the joint report on school consolidation submitted by the Commission and DEED in response to the mandate set out in section 1, Ch 83, SLA 2003, p. 10.

Section VI. Staff Resources Needed to Support the LBC

Subsection A. Statement of the Issue:

The workload of the LBC requires additional staff resources.

Subsection B. Background:

The LBC staff currently consists of two Local Government Specialists. Chapter 2 of this report lists pending and reasonably anticipated petitions and other actions involving LBC staff. In addition, the LBC staff also carries out significant other duties within the Department. For example, LBC staff is frequently called upon to provide local-government expertise on matters dealing with legislation, regulations, and policy.

This current staff level represents a significant reduction over the past two decades. In the 1980s, the LBC staff consisted of three Local Government Specialists. Those three staff members were dedicated largely to full-time service to the LBC.

The two current staff members routinely each work fifty to seventy hours a week to meet statutory and other deadlines and still meet the heavy demand for information and assistance from the LBC Commissioners, municipal officials, the general public, the Legislature, other departments, and other divisions of Commerce. The additional hours that each works are uncompensated. When possible, LBC staff members have been aided to a limited extent by other Commerce staff. However, the two LBC staffers must still review that work to ensure compliance with LBC statutes, regulations, and case law.

Moreover, once staff has prepared required reports or other documents, it must also arrange, schedule, and notice the public meetings or hearings in which the Commissioners must participate. Such meetings frequently require travel on the part of the Staff, as well as the Commissioners. While attending such meetings and hearings, the other work of LBC staff is deferred. Following such hearings or meetings, LBC staff is required to ensure that minutes are prepared of the events; that decisional statements are drafted or revised; that reports, legislation, regulations, etc., are drafted, revised, or issued based on the LBC meetings or hearings; and that petition forms and informational documents are updated to reflect necessary changes.

Local Boundary Commission Report to the First Session of the Twenty-Fourth Alaska State Legislature

In its 2004 annual report, the LBC requested funding for at least one additional staff member. The Legislature funded one new position; however, the appropriation was vetoed. Following the veto, the Department explored reallocating staff resources to provide additional support to the LBC. However, given other budget cuts to the agency over the years, general fund resources are particularly limited. The Department was unable to reallocate sufficient staff resources to address the concern.

Subsection C. Recommendation:

The LBC encourages the funding of at least one additional staff person in the Department's budget to assist with Commission business.

Appendix B

LOCAL BOUNDARY COMMISSION

A RESOLUTION OF THE LOCAL BOUNDARY COMMISSION SUPPORTING RESOLUTION NO. 2117 OF THE KETCHIKAN GATEWAY BOROUGH REGARDING DISCRIMINATORY EDUCATION FUNDING

WHEREAS, the 1963 Alaska State Legislature passed, and Governor Egan signed into law, the "Mandatory Borough Act" (Chapter 52, SLA 1963), dictating that certain regions of Alaska – those encompassing Ketchikan, Juneau, Sitka, Kodiak Island, Kenai Peninsula, Anchorage, the Matanuska-Susitna valleys, and Fairbanks – form organized boroughs by January 1, 1964; and

WHEREAS, Section 1 of the Mandatory Borough Act promised that, "No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation;" and

WHEREAS, Article I, Section 1 of the Constitution of the State of Alaska prescribes that "all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State;" and

WHEREAS, the most fiscally onerous of the penalties imposed by the State of Alaska on municipalities and their school districts is the "required local contribution" for schools dictated by AS 14.17.410(b)(2), which is in essence a State tax; and

WHEREAS, more than one-third of Alaska's school districts – those operated by regional educational attendance areas – are exempt from the required local contribution provisions of AS 14.17.410(b)(2) that apply to organized boroughs as well as home-rule and first-class cities in the unorganized borough; and

WHEREAS, in *Matanuska-Susitna Borough School Dist. v. State*, 931 P.2d 391 (Alaska 1997), the Alaska Supreme Court rejected a constitutional challenge of the required local contribution – codified then as AS 14.17.025(a) – when it affirmed that "Boroughs are not entitled to equal protection under the Alaska Constitution" and concluded further that:

The individual plaintiffs have not shown that they pay higher taxes as a result of the required local contribution, or that invalidating AS 14.17.025(a) would result in savings to them as taxpayers. . . .

. . .

Assuming that the individual plaintiffs' interests as taxpayers actually are impaired by the school funding laws, these interests are not interests afforded much weight under our equal protection analysis. "The interest involved here, freedom from disparate taxation, lies at the low end of the continuum of interests protected by the equal protection clause."

and;

WHEREAS, Chief Justice Rabinowitz and Justice Matthews indicated in *Matanuska-Susitna Borough School Dist.*, *supra*, that any remedy regarding concerns over the required local contribution must be pursued through the legislative and executive branches rather than the

LBC Resolution
Page 2 of 3

judicial branch, stating, specifically, "Here, as with State spending decisions, any available remedy must be pursued through majoritarian processes rather than through the courts;" and

WHEREAS, Article X, Section 1 of Alaska's Constitution encourages the creation of borough governments (*See Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d 92, 101 (Alaska 1974)); yet, on the eve of the fiftieth anniversary of the creation of the State of Alaska, more than half the geographic area of Alaska lies outside organized boroughs; and

WHEREAS, multiple studies in the post-mandatory-borough era have indicated that the biggest deterrent to voluntary formation of boroughs is the financial penalties that result; the late Jay Hammond expressed the matter well when he wrote in *Tales of Alaska's Bush Rat Governor*, 1994, (p. 149), that "Attractive enough on paper, in practice, the organized borough concept had little appeal to most communities. After all, why should they tax themselves to pay for services received from the state, gratis?;" and

WHEREAS, the Local Boundary Commission in its annual reports to the Legislature has consistently discussed the education-funding issue as a disincentive to borough formation and annexation and encouraged the Legislature to address the inequity in education funding (*See, e.g., Report of the Alaska Local Boundary Commission to the First Session of the Twenty-Fourth Alaska State Legislature*, January 2005, pp. 151-155; *Local Boundary Commission Report to the Second Session of the Twenty-Fourth Alaska Legislature*, January 2006, pp. 54-55; *Local Boundary Commission Report to the First Session of the Twenty-Fifth Alaska Legislature*, January 2007, pp. 91-92; and

WHEREAS, the Local Boundary Commission in studies and reports mandated by the Legislature has asserted that contrary to the express intent of the 1963 Mandatory Borough Act, organized boroughs are being severely deprived of State services, revenues, or assistance and are being penalized because of incorporation (*See, e.g., School Consolidation – Public Policy Considerations and a Review of Opportunities for Consolidation*, Local Boundary Commission (with assistance by the Department of Commerce, Community, and Economic Development (DCCED)), and the Department of Education and Early Development (DEED), February 2004, p. 54; and *Unorganized Areas of Alaska That Meet Borough Incorporation Standards*, February 2003, pp. 20 - 21, a report by the Local Boundary Commission to the Legislature pursuant to ch. 53, SLA 2002; and

WHEREAS, Resolution No. 2117 passed by the assembly of the Ketchikan Gateway Borough accurately summarizes the education-funding inequity issue; and

WHEREAS, Governor Sarah Palin, recently directed the Department of Law, DEED, and DCCED to evaluate concerns expressed by the Ketchikan Gateway Borough relating to the required local contribution for schools; and

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE FACTS, IT IS RESOLVED BY THE LOCAL BOUNDARY COMMISSION AS FOLLOWS:

Section 1. The Local Boundary Commission urges the Legislature to promote legislation as requested by the Ketchikan Gateway Borough to repeal or mitigate AS 14.17.410(b)(2), the onerous and discriminatory State tax on municipalities that operate school districts.


LBC Resolution
Page 3 of 3

Section 2. LBC Staff shall provide a copy of this resolution to


- The Honorable Sarah Palin, Governor;
- The Honorable Bert Stedman, State Senator, District A;
- The Honorable Kyle Johansen, State Representative, District 1;
- Senator Donny Olson, Chair, Senate Community and Regional Affairs Committee
- Rep. Cathy Engstrom Munoz, Co-Chair, House Community and Regional Affairs Committee
- Rep. Bob Herron, Co-Chair, House Community and Regional Affairs Committee
- The Honorable Emil Notti, Commissioner, DCCED;
- The Honorable Larry LeDoux, Commissioner, DEED;
- The Honorable Talis Colberg, State Attorney General; and
- Dave Kiffer, Mayor, Ketchikan Gateway Borough

Section 3. This resolution is effective upon adoption.

ADOPTED this 12th day of January 2009.


Kermit L, Ketchum, LBC Chair

ATTEST:


Brent Williams, LBC Staff

Appendix C

KETCHIKAN GATEWAY BOROUGH

RESOLUTION NO. 2117

A RESOLUTION OF THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH URGING SENATOR BERT STEDMAN AND REPRESENTATIVE KYLE JOHANSEN TO PROMOTE LEGISLATION TO REPEAL OR MITIGATE THE ONEROUS AND DISCRIMINATORY STATE TAX ON MUNICIPALITIES THAT OPERATE SCHOOL DISTRICTS

RECITALS

WHEREAS, the 1963 Alaska State Legislature passed, and Governor Egan signed into law, the “Mandatory Borough Act” (Chapter 52, SLA 1963), dictating that certain regions of Alaska – those encompassing Ketchikan, Juneau, Sitka, Kodiak Island, Kenai Peninsula, Anchorage, the Matanuska-Susitna valleys, and Fairbanks – form organized boroughs by January 1, 1964; and

WHEREAS, Section 1 of the Mandatory Borough Act promised that, “No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation;” and

WHEREAS, key State agencies have acknowledged that “contrary to the express intent of the 1963 Mandatory Borough Act, organized boroughs are being severely deprived of State services, revenues, or assistance and are being penalized because of incorporation” (See: *School Consolidation – Public Policy Considerations and a Review of Opportunities for Consolidation*, p. 54, February 2004, Department of Education and Early Development, Local Boundary Commission, with assistance by the Department of Commerce, Community and Economic Development); and

WHEREAS, the most fiscally onerous of the penalties imposed by the State of Alaska on boroughs is the “required local contribution” for schools dictated by AS 14.17.410(b)(2), which agencies have characterized as a State tax and which will reduce FY 2009 State education funding to the Ketchikan Gateway Borough by more than \$5 million and to all boroughs by \$211,255,410 (a 35 percent increase in the penalty over the prior five years); and

WHEREAS, Article I, Section 1 of the Constitution of the State of Alaska prescribes that “all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State;” and

WHEREAS, more than one-third of Alaska’s school districts – those operated by regional educational attendance areas – are exempt from the required local contribution provisions of AS 14.17.410(b)(2) that apply to organized boroughs as well as home-rule and first-class cities in the unorganized borough; and

WHEREAS, in *Matanuska-Susitna Borough School Dist. v. State*, 931 P.2d 391 (Alaska 1997), the Alaska Supreme Court rejected a constitutional challenge of the required local contribution – codified then as AS 14.17.025(a) – when it affirmed that “Boroughs are not entitled to equal protection under the Alaska Constitution” and concluded further that:

The individual plaintiffs have not shown that they pay higher taxes as a result of the required local contribution, or that invalidating AS 14.17.025(a) would result in savings to them as taxpayers. . . .

. . .

Assuming that the individual plaintiffs' interests as taxpayers actually are impaired by the school funding laws, these interests are not interests afforded much weight under our equal protection analysis. "The interest involved here, freedom from disparate taxation, lies at the low end of the continuum of interests protected by the equal protection clause."

and;

WHEREAS, Chief Justice Rabinowitz and Justice Matthews indicated in *Matanuska-Susitna Borough School Dist. v. State* that any remedy regarding concerns over the required local contribution must be pursued through the legislative and executive branches rather than the judicial branch, stating, specifically, "Here, as with State spending decisions, any available remedy must be pursued through majoritarian processes rather than through the courts;" and

WHEREAS, Article X, Section 1 of Alaska's Constitution encourages the creation of borough governments (*See Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d 92, 101 (Alaska 1974)); yet, on the eve of the fiftieth anniversary of the creation of the State of Alaska, more than half the geographic area of Alaska lies outside organized boroughs; and

WHEREAS, multiple studies in the post-mandatory-borough era have indicated that the biggest deterrent to voluntary formation of boroughs is the financial penalties that result; the late Jay Hammond expressed the matter well when he wrote in *Tales of Alaska's Bush Rat Governor*, (page 149), that "Attractive enough on paper, in practice, the organized borough concept had little appeal to most communities. After all, why should they tax themselves to pay for services received from the state, gratis?;" and

WHEREAS, Governor Sarah Palin, showing strong leadership in exploring fundamental public policy concerns with the status quo, recently directed the Alaska Departments of Law, Education, and Commerce, Community, and Economic Development (DCCED) to evaluate concerns expressed by the Ketchikan Gateway Borough relating to the required local contribution for schools; and

WHEREAS, in the face of growing concern and frustration over AS 14.17.410(b)(2), taxpayers and citizens of boroughs and cities that operate municipal school districts are increasingly likely to address their concerns and frustrations through a citizens' initiative.

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE FACTS, IT IS RESOLVED BY THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH, ALASKA as follows:

Section 1. The Ketchikan Gateway Borough Assembly hereby urges Senator Bert Stedman and Representative Kyle Johansen to promote legislation to repeal or mitigate AS 14.17.410(b)(2), the onerous and discriminatory State tax on municipalities that operate school districts.

Section 2. The Borough Manager shall provide a copy of this resolution to:

- The Honorable Sarah Palin, Governor;
- The Honorable Bert Stedman, State Senator, District A;

Resolution 2117

Page 3

- The Honorable Kyle Johansen, State Representative, District 1;
- The Honorable Emil Notti, Commissioner, DCCED;
- The Honorable Larry LeDoux, Commissioner, Dept. of Education and Early Development;
and
- The Honorable Talis Colberg, State Attorney General.


Section 3. This resolution is effective upon adoption.

ADOPTED this 20th day of October, 2008.



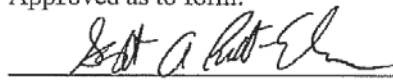
Dave Kiffer, Borough Mayor

ATTEST:



Harriett Edwards, Borough Clerk

Approved as to form:



Scott A. Brandt-Erichsen, Borough Attorney

EFFECTIVE DATE: October 20, 2008			
ROLL CALL	YES	NO	ABSENT
THOMPSON	✓		
PHILLIPS	✓		
SALAZAR	✓		
GIBBONS	✓		
PAINTER	✓		
HARRINGTON	✓		
SHOEMAKER	✓		
MAYOR (Tie Votes Only)			
4 AFFIRMATIVE VOTES REQUIRED FOR PASSAGE			

