January 23, 2002

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Report of the Local Boundary Commission to the Second Session of the Twenty-Second Alaska Legislature

January 23, 2002

Local Boundary Commission
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On behalf of the members of the Local Boundary Commission, I am pleased to present this report of the Commission to the Second Session of the Twenty-Second Alaska State Legislature.

Chapter 1 provides background information concerning the Local Boundary Commission. Chapter 2 describes activities of the Commission and its staff during 2001. Chapter 2 also describes a number of proposals currently under consideration by municipalities and voters throughout Alaska. Chapter 3 contains discussion of vital public policy issues of particular interest to the Commission. These include the following matters

- Concerns regarding substantial disincentives hindering borough incorporation and annexation and impeding the proper development of local government in Alaska. In that context, the Commission respectfully urges the Alaska House of Representatives to adopt CSSB 48(FIN) am to reform State law governing borough incorporation and annexation of areas that are ready and capable of operating boroughs.

- Concerns over ambiguity regarding the authority of newly incorporated municipal governments to levy property taxes during the initial assessment year after incorporation. Similarly, there is uncertainty over the authority of a municipal government that has expanded its boundaries to levy property taxes in the annexed area during the initial assessment year following annexation.

Under separate cover, the Commission has presented to the President of the Alaska Senate and the Speaker of the Alaska House of Representatives a formal recommendation by the Local Boundary Commission for annexation of approximately 4.58 square miles to the City of Homer. Under Article X, § 12 of Alaska's Constitution, the Commission's recommendation for annexation of 4.58 square miles to the City of Homer takes effect unless the Legislature rejects the Commission's recommendation by adopting a joint resolution in both houses within forty-five days from the date of presentation of the recommendation (or by the end of the session, whichever occurs first).

The Commission respectfully invites the Legislature to consider the account of activities and issues addressed in this report.

Cordially,

Kevin Waring
Chairperson
Contents

BACKGROUND AND PROCEDURES
  Role and Purpose of the Commission ..............................................................1
  Members of the Commission ...........................................................................2
  Staff to the Commission ..................................................................................3
  Procedures of the Commission ........................................................................4

ACTIVITIES AND DEVELOPMENTS DURING 2001................................................6
  City Incorporation ...........................................................................................6
  Borough Incorporation .....................................................................................9
  City Annexation .............................................................................................10
  Borough Annexation .......................................................................................13
  City and Borough Consolidation .....................................................................13
  City Dissolution .............................................................................................16
  City Detachment .............................................................................................17
  Borough Detachment .....................................................................................17
  Changes to the Regulations of the Local Boundary Commission ....................18
  Litigation Involving the Local Boundary Commission ..................................18

POLICY ISSUES
  Senate Bill 48 Addresses Impediments to Development of Local
    Government in Alaska ..................................................................................20
  Ambiguities in the Law Concerning Municipal Incorporation,
    Boundary Changes, Dissolution, and Reclassification .............................28
  Small Community Housing Mortgage Loan Program Adversely
    Impacts Certain Municipal Boundary Proposals ....................................30
  Promotion of Maximum Common Interests within Boroughs ....................30
  Funding for Borough Feasibility Studies......................................................32

INDEX ...........................................................................................................33
This chapter provides information concerning the Local Boundary Commission, including background about the purpose of the Commission and the staff support functions of the Department of Community & Economic Development (DCED). Details of the procedures used by the Commission are also provided.

Role and Purpose of the Commission

The Local Boundary Commission acts on petitions for the following:

- incorporation of cities and boroughs;
- annexation to cities and boroughs;
- detachment from cities and boroughs;
- dissolution of cities and boroughs;
- merger of cities and boroughs;
- consolidation of cities and boroughs; and
- reclassification of cities.1

The Local Boundary Commission was established under Alaska’s Constitution to serve as an impartial body to review, from a statewide perspective, proposals relating to the establishment and alteration of municipal corporations. In the words of the Alaska Supreme Court:

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.2

Among the 130 or so State boards and commissions, only the Local Boundary Commission and four others have origins in Alaska’s Constitution.3

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1 See AS 29.04, AS 29.05, AS 29.06, and AS 44.33.
3 The Local Boundary Commission was established pursuant to Article X, Section 12 of the Constitution of the State of Alaska and AS 44.33.810. The four other boards with constitutional origins are the University of Alaska Board of Regents, Judicial Council, Commission of Judicial Conduct, and Redistricting Board.
Decisions of the Local Boundary Commission often involve important social, political and economic policy issues. In 1974 and again in 1993, the Alaska Supreme Court remarked that:

“A determination whether an area is cohesive and prosperous enough for local self-government involves broad judgments of political and social policy ... The Local Boundary Commission has been given a broad power to decide in the unique circumstance presented by each petition ... Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions.”

Members of the Commission

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

Information about current Commissioners follows.

**Kevin Waring**, a resident of Anchorage, has served on the Commission since July 15, 1996. He was appointed Chairperson on July 10, 1997. He was reappointed to a new term as Chairperson effective January 31, 1998. Commissioner Waring was one of the original division directors of the former Alaska Department of Community and Regional Affairs (1973-1978). Between 1980 and the spring of 1998, he operated a planning/economics consulting firm in Anchorage. From the spring of 1998 until early 2000, Commissioner Waring was employed as manager of physical planning for the Municipality of Anchorage’s Community Planning and Development Department. He has since returned to private consulting. Mr. Waring has been active on numerous Anchorage School District policy and planning committees. His current term on the LBC expires January 31, 2003.

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

**Ardith Lynch** serves from the Fourth Judicial District and lives in the greater Fairbanks area. She was appointed to the LBC on December 21, 1999. Ms. Lynch is the Borough Attorney for the Fairbanks North Star Borough. She has also worked for the State of Alaska as an Assistant Attorney General and as Deputy Director of the Child Support Enforcement Division. Ms. Lynch has served on the Board of Governors of the Alaska Bar Association and is a past president of the Alaska Municipal Attorneys’ Association. Her current term on the Commission expires December 21, 2004.
(Vacant Seat) The seat from the First Judicial District is currently vacant. Until recently, Kathleen S. Wasserman, a resident of Pelican, served from the First Judicial District as the Vice-Chairperson of the Commission. She was appointed to the Commission on September 14, 1995 and reappointed in 1996 and 2001. Ms. Wasserman serves as Mayor of the City of Pelican. In the past, Ms. Wasserman has served as a member of the Assembly of the City and Borough of Sitka and as Mayor of the City of Kasaan. Additionally, she has served as president of the Southeast Island Regional Educational Attendance Area School Board. Ms. Wasserman resigned from the Commission on January 3, 2002.

(Vacant Seat) The seat from the Second Judicial District is currently vacant. Until recently, Nancy Galstad served on the Commission from the Second Judicial District. Ms. Galstad resigned from the Commission last year when she moved from the Second Judicial District. She was appointed to the LBC on September 14, 1995 and reappointed in 1999. Formerly Special Assistant to the Commissioner of the Alaska Department of Labor, Ms. Galstad recently served as the Manager of the City of Kotzebue. Ms. Galstad was a member of the Alaska Safety Advisory Council for eight years and served as Vice Chair of the Alaska Municipal League Joint Insurance Association. She also served as a member of the State's Task Force on Education Funding in 1995.

Staff to the Commission

The Alaska Department of Community and Economic Development (DCED), Division of Community and Business Development (DCBD), provides staff to the Commission.\(^6\)

Commission staff provide technical assistance to municipalities, residents of areas subject to impacts from existing or potential petitions for creation or alteration of municipal governments, petitioners, respondents, agencies, and others. Types of assistance include:

- conducting feasibility and policy analysis of proposals for incorporation or alteration of municipalities;
- conducting informational meetings;
- providing technical support during Commission hearings;
- drafting decisional statements;
- implementing decisions of the Commission;
- certifying actions; and
- maintaining incorporation and boundary records for each of Alaska’s 162 existing municipal governments.

As required by law, staff analyzes formal petitions filed with the Commission and prepares reports conveying

\(^6\) AS 44.33.020(4)

DCED staff at a recent public information meeting.
DCED’s recommendations for action by the Commission. DCED staff also certifies municipal incorporations, dissolutions, annexations, detachments, mergers, consolidations, and reclassifications. The Commission and DCED are independent of one another with respect to policy matters. For example, the Commission is not bound to follow the recommendations that DCED is required by law to provide to the Commission.

**Procedures of the Commission**

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.

### Preparation and Filing of the Petition

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

Once a formal petition is prepared, it is submitted to DCED for technical review. If the petition contains all the information required by law, DCED 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 typically given at least seven weeks to submit responsive briefs and comments supporting or opposing a petition. The petitioner is typically provided at least two weeks to file one brief in reply to responsive briefs.

### Analysis

Following the public comment period, DCED analyzes the petition, responsive briefs, written comments, reply brief, and other materials as part of its investigation. The petitioner and DCED may conduct informational meetings. At the conclusion of its investigation, DCED issues a preliminary report for public review and comment. The report includes a formal recommendation to the Local Boundary Commission 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, DCED issues its final report. The final report includes a discussion of comments received on the preliminary report and also notes any changes to DCED’s recommendations to the Commission. The final report must be issued at least three weeks prior to the hearing on the proposal.

### Commission Review of Materials and Public Hearing

Members of the Commission review the petition, responsive briefs, written comments, reply brief, and DCED re-
ports. If circumstances permit, Commission 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 Commission conducts at least one hearing in or near the affected territory.

The Commission must act on the petition within ninety days of its final public hearing. The Commission 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.

The law requires the Commission to reach a decision within ninety days of its hearing. However, the Commission typically renders its decision within a few days of the hearing. Within thirty days of announcing its decision, the Commission must adopt a written statement setting out the basis for its decision. Copies of the 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 Commission to reconsider its decision. Such requests must be filed within twenty days of the date that the decision became final. If the Commission 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 Commission 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. DCED provides assistance with Voting Rights Act matters.
City Incorporation

City incorporation activities occurred in the following localities during 2001.

♦ Talkeetna
♦ Adak
♦ Meadow Lakes
♦ Naukati Bay
♦ Nikiski
♦ Sunshine
♦ Diamond Ridge
♦ Cooper Landing

**Talkeetna.** The Local Boundary Commission conducted a public hearing on the proposal to incorporate the City of Talkeetna as a home rule city at the Talkeetna Elementary School on Saturday, August 25, 2001. The petitioners’ representative, a representative of the respondent Matanuska-Susitna Borough, and members of the public provided oral comments concerning the city incorporation proposal.

At the conclusion of the public hearing, the Commission convened a decisional session. During the session, the Commission voted to approve the amended petition, subject to refinement of the proposed
Home Rule Charter by the petitioners to ensure that it complied with all provisions of law. The motion adopted by the Commission required the proposed Charter to be revised and approved by DCED no later than October 25, 2001.

The Commission met by teleconference on October 25, 2001 and approved the amended petition.

The Division of Elections subsequently ordered the election on the incorporation proposal to be conducted by mail on March 19, 2002. At the incorporation election, voters will consider the following three propositions:

**Proposition One:** Shall Talkeetna be incorporated as a Home Rule City?

**Proposition Two:** Shall the City of Talkeetna be authorized to levy the particular sales tax outlined in Proposition Number Two, which of the following sales taxes shall be levied? (Choose One)

(a) A four percent sales tax to be levied from May 1 to September 30 annually, with the limitation that the tax not exceed $10 on any single sales transaction.

(b) A two percent sales tax to be levied year-round, with the limitation that the tax not exceed $10 on any single sales transaction.

In addition, the ballot shall provide for election of a mayor and six city council members.

**Adak.** The Local Boundary Commission had approved a proposal to incorporate the second class City of Adak in November 2000. The State Division of Elections conducted an election for incorporation of the City of Adak on April 3, 2001 by mail. Voters approved city incorporation by a margin of 61-6. Voters also authorized the levy of a 3% city sales tax and a 2% fuel transfer tax. The City of Adak was incorporated on April 20, 2001.

**Meadow Lakes.** At the request of the Meadow Lakes community council, DCED staff participated in a February 14, 2001 public meeting of the Meadow Lakes Community Council regarding city in-
corporation. The standards and procedures for city incorporation and questions regarding city annexation were addressed at the meeting.

**Naukati Bay.** In March 2001, a resident of Naukati Bay requested and was provided with petition forms for second class city incorporation and background materials. Naukati Bay residents have been exploring city incorporation for more than one year.

**Nikiski.** Nikiski residents held a community meeting regarding incorporation of a home rule City of Nikiski during November 2000. At that meeting, Nikiski residents discussed reviving a proposal advanced a decade ago that sought to incorporate a 2,113 square mile city encompassing greater Nikiski, Salamatof, and Tyonek.

On December 14, 2000, forms for petitioning for incorporation of a home rule city in an organized borough were provided to an attorney representing the group that was interested in incorporation.

At a February 1, 2001 meeting, Nikiski residents discussed three potential city boundary options. The largest encompassed 5,400 square miles, including greater Nikiski, a large portion of Cook Inlet, and Tyonek. The second option included 503 square miles. The smallest option identified encompassed 72 square miles.

**Sunshine.** In December 2001, a resident of Sunshine indicated that the community has continued to examine the merits of city incorporation and that a Sunshine Chamber of Commerce inquiry showed that approximately 82% of Sunshine residents favored establishing a second class city in Sunshine. Three locally initiated Sunshine community informational meetings regarding city incorporation have occurred and another has been scheduled for March 24, 2002.

**Diamond Ridge.** In November 2001, an opponent of the proposed annexation to the City of Homer requested and was provided with information regarding incorporation of a second class city. Residents of the Diamond Ridge neighborhood near Homer were reportedly considering city incorporation as an alternative to annexation of the area to the City of Homer.

**Cooper Landing.** In December, a Cooper Landing resident requested and was provided information regarding the standards and procedures for city incorporation.
Borough Incorporation

The following eight areas of Alaska are examining issues relating to borough incorporation.

♦ Skagway
♦ Delta-Greely
♦ Copper River Basin
♦ Kake Area
♦ Prince of Wales Island
♦ Wrangell Area
♦ Icy Straits
♦ Nome
♦ Chickaloon

Skagway. On January 22, 2001, Skagway voters petitioned for dissolution of the City of Skagway and incorporation of a first class borough. The proposed borough boundaries are identical to those of the City of Skagway, encompassing 462 square miles and a population of 862.

On October 23, 2001, notice of the filing of the petition was published, posted, and mailed to adjacent municipalities and interested parties. The deadline for submission of public comments regarding filing of the petition was December 28, 2001.

The Commission expects to render a decision on the Skagway borough incorporation proposal during 2002.

Delta-Greely. In January 2001, DCED staff was informed of renewed interest among residents of the Delta-Greely region in borough incorporation.

On October 3, 2001, the Delta Junction City Council adopted Resolution 2002-04 authorizing the City’s application for a $30,000 grant to develop a regional government feasibility study. That resolution reads, in part:

...there has not been funding for an accurate and in-depth study done to research the feasibility and practicalities of a borough in the Delta Junction area, including which services the public might desire along with the associated costs of service delivery and potential sources of income, and if feasible, putting the question before Delta area voters.

Copper River Basin. In June 2001, representatives of the Denali Borough met with residents of the Copper River Basin to share information regarding the borough incorporation process. In December, a local study group met and expressed intent to initiate a borough feasibility study.

Kake. In October 2001, information regarding standards and procedures for borough incorporation was provided to a Kake City Council member.
**Prince of Wales Island.** In October, an official of the City of Craig indicated that communities on Prince of Wales Island were seeking funding for a borough feasibility study for Prince of Wales Island. An effort was undertaken to secure funding to defray the costs associated with such a study.

**Wrangell Area.** In November 2001, the City of Wrangell was reportedly preparing to solicit signatures from voters to authorize the filing of a borough incorporation petition. The boundaries of the area being considered for borough incorporation encompass 2,477 square miles. The City of Wrangell made the petition available for public review at the Wrangell Library.

**Icy Straits.** On February 1, 2001, DCED staff met with residents of Gustavus and officials of the City of Hoonah, City of Pelican, City of Tenakee Springs, and the Haines Borough. Matters regarding borough incorporation, borough annexation, borough apportionment, and related matters were addressed. A borough feasibility study completed several years ago was updated.

**Nome.** In December 2001, City of Nome staff requested and was provided with information regarding the standards and procedures for borough incorporation.

**Chickaloon.** Information regarding borough detachment standards, incorporation standards, and procedures was provided to a representative of Chickaloon who was purportedly contemplating a petition to detach a large portion of the eastern Matanuska-Susitna Borough and include it in a new borough with additional territory to the east.

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**City Annexation**

Two proposals for annexation of territory to cities were implemented or initiated during 2001, and three others are reportedly under consideration. Annexation related activities in the following five communities are outlined in this section of the report.

♦ Homer
♦ Wasilla
♦ Palmer
♦ Allakaket
♦ Eagle
**Homer.** On March 20, 2000, the City of Homer petitioned for annexation of an estimated 25.64 square miles with a population of 2,204. The petition was accepted for filing on March 29, 2000.

Fourteen responsive briefs and 168 letters commenting on the petition were filed with DCED in June 2000. In September 2000, the City of Homer filed its Reply Brief.

In July of last year, DCED conducted public informational meetings concerning the annexation proposal. In October 2001, DCED released its 412-page preliminary report concerning the proposed annexation for public review. After considering comments on its preliminary report from 32 individuals and organizations, DCED issued its final report on the matter in November 2001.

Prior to a public hearing on the matter in Homer, the Local Boundary Commission toured the estimated 25.64 square miles by helicopter and automobile. The Commission conducted a public hearing on the proposal on December 14 - 15, 2001. Following the hearing, the Commission amended the petition and approved annexation of an estimated 4.58 square miles subject to legislative review under the provisions of Article X, § 12 of the Constitution of the State of Alaska.

A formal recommendation under Article X, § 12 for annexation of 4.58 square miles in question has been presented under separate cover to the President of the Alaska Senate and the Speaker of the Alaska House of Representatives. That recommendation includes details about the proceedings along with the finding and conclusions of the Commission supporting annexation of the 4.58 square miles.

Under Article X, § 12, the Commission’s recommendation for annexation of 4.58 square miles to the City of Homer takes effect unless the Legislature rejects the Commission’s recommendation by adopting a joint resolution in both houses within 45 days from the date of presentation of the recommendation (or by the end of the session, whichever occurs first).

**Wasilla.** On April 10, 2001, the City of Wasilla petitioned for annexation of 32 parcels collectively comprising about 314 acres. The petition was initiated at the request of all owners of the parcels comprising the territory sought for annexation and property owners.

The territory proposed for annexation is comprised of the following seven areas:

- **Carefree Subdivision** - 22.86 acres at the intersection of the Parks Highway and Seward Meridian Parkway:
The petition was accepted for filing on April 16, 2001. On October 25, 2001, the Local Boundary Commission approved a request from the City of Wasilla for relaxation of procedural regulations concerning the petition. The Commission expects to act on the petition early this year.

Palmer. In February 2001, a consulting firm retained by the City of Palmer issued a study analyzing “potential effects of annexing areas outside current boundaries of the City of Palmer”. The report “also identifies policies the City should consider in providing municipal services beyond its boundaries, as well as current LBC policies that are relevant to the City’s annexation policy.”

The areas considered encompass approximately 12 square miles. At the direction of the Palmer City Council, the study analyzed an area that encompasses the City’s sewer service area boundary and three square-miles located south of the sewer service area.

City staff subsequently indicated that a petition for annexation of an as-yet-undetermined area would likely be submitted by March 2002, for possible consideration by the Legislature in 2003.

Allakaket. DCED staff provided assistance to the City of Allakaket in its efforts to develop a petition for annexation of developed areas adjacent to the existing City boundaries. The area to considered for annexation was developed after floods that inundated the community in 1994.

Eagle. In December, the Eagle City Clerk indicated that the City is considering extending the City’s boundaries. She requested and was provided with information regarding standards and procedures for annexation.
Borough Annexation

No petitions for annexation of territory to organized boroughs were filed during 2001 but officials of the following two organized boroughs expressed interest in annexation.

- Haines Borough
- City and Borough of Juneau

Haines Borough. A Haines Borough official requested and was provided forms and sample materials needed to petition for annexation. Borough officials were exploring extension of the Borough’s boundaries in a westerly direction to the boundaries of the City and Borough of Yakutat (thereby encompassing Gustavus) and in a northeasterly direction (thereby encompassing Skagway). Borough officials subsequently determined not to pursue annexation.

City and Borough of Juneau. On December 17, 2001, the Manager of the City and Borough of Juneau indicated that local officials were exploring the prospects of extending the boundaries of the City and Borough of Juneau to include Hobart Bay in the context of harbor development.

City and Borough Consolidation

Activities relating to consolidation of cities and boroughs occurred in three areas during 2001.

- City of Ketchikan and Ketchikan Gateway Borough
- City of Fairbanks and Fairbanks North Star Borough
- City of Haines and Haines Borough
City of Ketchikan/Ketchikan Gateway Borough. On May 8, 2000, the City of Ketchikan petitioned to consolidate the Ketchikan Gateway Borough and the City of Ketchikan into one local government (a home rule borough).

In February of last year, DCED issued its preliminary report on the petition. The Report concluded that the proposal offered credible prospects for significant advances regarding efficiencies, effectiveness, economies, and equities with regard to Ketchikan’s local government structure. The preliminary report also concluded that the Ketchikan consolidation proposal satisfied all legal standards governing consolidation. The report recommended that the Local Boundary Commission approve the petition with limited technical amendments.

Five parties submitted timely comments on DCED’s preliminary report. After considering those comments, DCED issued its final report on the matter.

The Commission held a public hearing on the proposal in Ketchikan on Saturday, April 21, 2001. Following the hearing, the Commission unanimously approved the petition, with minor technical amendments. The State Division of Elections conducted the consolidation election on July 17, 2001.

The proposition was approved by voters inside the City of Ketchikan by a two to one margin. However, voters outside the City of Ketchikan rejected the proposal by a margin of roughly four to one. The areawide tally, which determined the outcome, resulted in the rejection of the proposal by a margin of 1,642 to 2,273.

Division of Election’s certification of the Ketchikan consolidation election held in July 2001.
City of Fairbanks/Fairbanks North Star Borough. On March 20, 2000, voters in the Fairbanks North Star Borough submitted a petition to consolidate the Borough and the City of Fairbanks. The proposal called for the replacement of the two governments with a new second class borough.

The petition was signed by 4,042 voters of the Fairbanks North Star Borough, of whom 1,416 were also voters of the City of Fairbanks.

During the ten-week period allowed for public review and comment on the proposal, the City of Fairbanks, Fairbanks North Star Borough, and Interior Taxpayers’ Association filed briefs opposing consolidation. Two other interested parties submitted timely letters opposing consolidation and the petitioners filed a reply brief.


On April 7, 2001, the Commission conducted a public hearing in Fairbanks on the consolidation petition. During the hearing, a witness for the City of Fairbanks urged the LBC to delay action on the proposal to allow for the establishment of an elected commission to prepare a home rule charter, which would be added to the petition through an amendment. The petitioners’ representative, the Fairbanks North Star Borough, and the City of Fairbanks also requested that the Commission defer action on the petition. More specifically, the parties requested that the Commission allow the Borough Assembly until May 22, 2001 to adopt a resolution calling for the election of a charter commission, and allow the Fairbanks City Council to adopt a resolution approving the charter commission election. The Com-
mission recessed the meeting and provided that if either body failed to pass resolutions by May 22, 2001, the LBC would act on the petition.

The charter commission election was never held. Accordingly, on May 23, 2001, the Commission granted the petition with limited modifications that had been endorsed by the petitioners’ representative. The Commission issued its decisional statement on June 7, 2001.

The consolidation issue was placed before Fairbanks North Star Borough voters at an election conducted on August 28, 2001. Voters rejected the consolidation petition by a vote of 3,521 in favor and 12,519 opposed.

**City of Haines/Haines Borough.** On December 27, 2000, the City of Haines petitioned to consolidate the City of Haines and the Haines Borough as a single Home Rule Borough.

In February of last year, the Haines Borough filed a responsive brief opposing consolidation. In addition, eleven parties submitted written comments on the consolidation proposal. In April, the City of Haines submitted a reply brief in answer to the Borough’s responsive brief and the written comments from the individuals and groups.

In July, DCED issued its preliminary report on the matter. DCED concluded that the petition satisfied applicable legal standards for consolidation and recommended that there are fundamental public policy reasons supporting consolidation of the City of Haines and the Haines Borough.

The Commission anticipates that it will conduct a public hearing on the Haines consolidation proposal early this year.

The *Chilkat Valley News* recently reported interest on the part of the local officials in exploring ways to modify the pending consolidation petition, including the Charter, to make consolidation more acceptable to Haines voters.

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**City Dissolution**

No petitions for dissolution of cities were filed during 2001. However, interest in petitioning for city dissolution has been expressed by residents of three communities.

- City of Nightmute
- City of Scammon Bay
- City of Stebbins
**Nightmute.** On November 3, 2001, a community meeting regarding dissolution of the City of Nightmute was conducted. No petition for dissolution has yet been submitted.

**Scammon Bay.** Petition forms, standards, and procedures were requested by and provided to a Scammon Bay resident on June 8, 2001. No petition for dissolution has been filed in the matter.

**Stebbins.** Stebbins residents are developing a petition to dissolve the second class City of Stebbins and designate the Stebbins IRA Council as the successor to the City.

### City Detachment

No petitions for detachment of territory from cities were filed during 2001. However, interest has been expressed in detachment of territory from one city.

**Allakaket.** Continued local interest in seeking detachment of Alatna from the City of Allakaket has been reported.

### Borough Detachment

No petitions for detachment of territory from organized boroughs were filed during 2001. However, interest in detachment of territory from one borough was evident.

**Municipality of Anchorage.** Eagle River area residents are exploring the merits of formation of an Eagle River-Chugiak borough. Other governmental structures are also being contemplated. These reportedly include detachment of Eagle River-Chugiak from the Municipality of Anchorage and annexation of that area to the Matanuska-Susitna Borough. Another option reportedly being explored is the reconstitution of the Municipality of Anchorage from a unified borough to a non-unified borough, thereby permitting communities such as Eagle River and Girdwood to form city governments.
Changes to the Regulations of the Local Boundary Commission

During the past two years, the Commission devoted considerable effort to revision of its regulations in Title 3 of the Alaska Administrative Code. The revisions were warranted since the last comprehensive review of the Commission’s regulations occurred more than ten years ago. Since then, there have been numerous changes in State statutes concerning matters involving the Commission.

Work sessions to address the proposed changes were conducted on April 28, April 30, May 24, June 27, and October 30, 2000. The Commission held a public hearing on the proposed changes on June 27, 2001. The hearing was teleconferenced to five sites. The Commission met again on July 27, 2001 to review the written and oral testimony concerning the proposed regulations. At that time, the Local Boundary Commission approved the proposed regulation changes. The proposed changes to the Commission’s regulations are currently being reviewed by the Alaska Department of Law.

Litigation Involving the Local Boundary Commission

During 2001, there were no new or on-going court challenges concerning actions by the Local Boundary Commission.
The Local Boundary Commission wishes to bring the following policy issues to the attention of the 2002 Legislature:

- Substantial disincentives for borough incorporation and annexation continue to impede development of local government in Alaska. The Commission has raised this issue with the legislature annually since the 1980s. Last year, the Commission submitted a detailed policy paper on the topic (“The Need to Reform State Laws Concerning Borough Incorporation and Annexation”). The policy paper included a proposal to address impediments to development of borough government. Senate Bill 48, which embodied the reforms recommended in the policy paper, was introduced. It passed the Senate in modified form (CSSB 48(FIN) am) and is awaiting consideration by the House of Representatives.

- Ambiguity exists regarding the authority of newly incorporated municipal governments to levy property taxes during the initial assessment year after incorporation. Similarly, there is uncertainty over the authority of a municipal government that has expanded its boundaries to levy property taxes in the annexed area during the initial assessment year following annexation.

- Article X, Section 3 of the Constitution of the State of Alaska requires that each borough, including each unorganized borough, “embrace an area and population with common interests to the maximum degree possible.” However, there is now, and always has been, a lack of common interests within the unorganized borough.

The Commission encourages the House of Representatives to give serious consideration to the legislation. Additional comment on the issue and SB 48 are provided in this Chapter of the report.
Senate Bill 48 Addresses Impediments to Development of Local Government in Alaska

Since the 1980s, the Local Boundary Commission has urged the Legislature to examine and address the substantial disincentives for borough incorporation and annexation. The Legislature and the Commission have complementary duties relating to that issue. Specifically, the Legislature has the constitutional duty to prescribe procedures and standards for borough formation (see Article X, Section 3 of the Constitution of the State of Alaska). The Commission has the statutory duty to make studies of local government boundary problems (see AS 44.33.812[a][1]).

Alaska’s Constitution encourages the creation of organized boroughs. The authors of Alaska’s Constitution envisioned that organized boroughs would be established wherever citizens were ready for and capable of assuming the responsibilities of local government. According to Constitutional Convention Delegate Vic Fischer:

...the convention gave consideration to whether boroughs should be established on a voluntary or compulsory basis. The [Local Government] committee had previously decided that although voluntary incorporation was preferable, organized boroughs should be created without approval in the area if considered necessary by the state, because the borough would, as appropriate, carry out state functions. Also, the state may want to mandate incorporation if an area is deemed to have reached a position where “it should take on the burden of its own government.” Committee members anticipated, however, that the legislature might choose to provide the local people with the opportunity to vote upon the issue in a referendum, and that the state would offer adequate inducement to local people to accept organized borough status and to initiate incorporation.

The founders recognized that the Legislature would have divergent alternatives available to carry out its constitutional duty to prescribe methods for borough formation.

As noted above, delegates preferred a voluntary, rather than compulsory, approach to borough incorporation. However, they also recognized that, to be successful, a voluntary approach must be coupled with adequate inducements to establish boroughs. Constitutional Convention Delegate Maynard D. Londborg reflected such in his comments to the Convention:

We felt that it could be handled in 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 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.
In 1961, the legislature enacted the initial laws implementing procedures for the formation of organized boroughs. With minor exceptions, those laws remain in place today. The 1961 Legislature opted to try the voluntary approach to borough formation.

However, inducements to organize were lacking. Legislators recognized from the very beginning that adequate incentives had not been provided to encourage people to form boroughs. Jay Hammond, who was a member of the State House of Representatives when the Borough Act of 1961 was adopted, characterized the matter as follows:

> 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?  

Constitutional Convention Delegate Victor Fischer and Thomas Morehouse portrayed the Borough Act of 1961 as follows:

> ... the 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.

By the end of the fourth year of statehood, only one undersized organized borough had formed. It encompassed only about 600 residents. A number of officials were critical that Alaska’s only organized borough was a drastic departure from the regional concept envisioned by the Constitutional Convention Delegates. Each of the nine regions of the state that had created independent school districts – legal under Territorial law, but not recognized under Alaska’s Constitution – clung to those single purpose governmental units.

When the 1963 Legislature convened, Representative John Rader took the position that the lack of progress toward borough formation was the “greatest unresolved political problem of the State”:

> 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.

To address the pressing issue, Representative Rader drafted and introduced a bill that mandated incorporation of boroughs in all areas of Alaska that had independent school districts. Nine areas were named in the legislation. Those consisted of Ketchikan, Sitka, Juneau, Kodiak Island, Kenai Peninsula, Anchorage, Matanuska-Susitna valleys, Lynn Canal – Icy Straits Election District, and Fairbanks.

In promoting his bill, Representative Rader stressed:

> We must make local government and, in this instance, boroughs, financially desirable and gener-
ally give communities additional incentives to govern themselves. Apparently, the desire for self-government as a principle has not been strong enough in most areas of the state to cause the incorporation of boroughs under the present law. Too frequently, Alaskans have found that when they form a local unit of government (either a city, public utility district or school district) that they continue to pay the same amount of state taxes and also pay local taxes to provide services which the state previously supplied free of charge. Not only is there little incentive for local government under these conditions, but there is an actual penalty placed upon the citizens who assume responsibility for local problems by organizing local government.\(^{19}\)

The legislation was amended during deliberations to remove the Haines-Skagway region from the bill. Following the amendment, the bill narrowly passed and was signed into law by Democratic Governor William A. Egan.

An agreement had reportedly been reached among legislators during the First Session of the Third Alaska Legislature prior to approval of the 1963 Mandatory Borough Act that additional boroughs would later be mandated by the legislature.\(^{20}\) However, neither the Second Session of the Third Alaska State Legislature nor any other subsequent legislature has mandated additional boroughs.

While neither the Borough Act of 1961 nor the 1963 Mandatory Borough Act provided adequate incentives to form boroughs voluntarily, the 1963 Mandatory Borough Act did promise that organized boroughs would not be penalized because of incorporation. Specifically, Section 1 of Chapter 52, SLA 1963 provided as follows:

**Declaration of Intent.** It is the intention of the legislature to provide for maximum local self-government with a minimum number of local government units and tax-levying jurisdictions, and to provide for the orderly transition of special service districts into constitutional forms of government. The incorporation of organized boroughs by this Act does not necessarily relieve the state of present service burdens. **No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation.** (Emphasis added)

Notwithstanding the promise of equity in the 1963 Mandatory Borough Act, organized boroughs are severely penalized with respect to certain State financial aid. Consider, for example, public education. Organized boroughs are mandated by State law (AS 29.35.160) to carry out, within their boundaries, the duties of the State of Alaska under Article VII, Section 1 of the Constitution for public education. Moreover, organized boroughs are mandated by State law (AS 14.17.410) to pay a significant portion of the State’s cost of education in the form of a “local contribution.”

The local contribution required of organized boroughs is deducted from the level of State education foundation funding that would otherwise be paid to the district. Last fiscal year, organized boroughs received $143 million less in State educational

\(^{19}\) Ibid., page 47.

\(^{20}\) Personal communication with Clem Tillion, member of the House of Representatives in the Third Alaska Legislature, April 28, 2000.
foundation aid than they would have received had they not been organized as boroughs.\textsuperscript{21} Thus, 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.

In addition to the $143 million in required "local contributions", the sixteen organized boroughs made “voluntary local contributions” of $159,401,604 or $1,508 per student last year. The total contributions in support of schools by organized boroughs last year amounted to $302,866,353 or $2,866 per student.

Attempts by boroughs to achieve a judicial remedy of perceived tax inequities inherent in the education funding formula have been unsuccessful. In one recent case the court concluded that freedom from disparate taxation lies at the low end of the continuum of interests protected by the equal protection clause.\textsuperscript{22} Justices Matthews and Rabinowitz stated that any remedy of the perceived inequities must be pursued through the legislature rather than the courts.

\[\ldots\] the legislature can decide whether and how much to tax property in REAAs free from legally maintainable claims brought by taxpayers in other taxing jurisdictions that its decision is wrong. Here, as with State spending decisions, any available remedy must be pursued through majoritarian processes rather than through the courts.\textsuperscript{23}

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

\begin{itemize}
  \item Areas of the unorganized borough outside of home rule and first class cities suffer no reduction in the level of State education foundation aid, as is the case for municipal school districts. In fact, the single purpose REAAs in Southeast Alaska receive National Forest Receipts funding which boosts their level of financial aid well beyond the basic need determination made under the education foundation formula.
  \item Borough formation carries the prospect of substantial education funding reductions in the form of eliminated supplementary funding floors under AS 14.17.490, reduced area cost differentials, and other factors.
  \item Borough formation or annexation would mean the loss of eligibility on the part of REAAs and cities in the unorganized borough for National Forest Receipts. Funds would be received by the new borough.
  \item The extension of borough government would result in the loss of eligibility on the part of cities for federal
\end{itemize}
payments in lieu of taxes (PL 94-565, as amended by PL 104-333). Funds would be paid to the borough.

- Borough formation or annexation would cause the loss of eligibility for State Revenue Sharing by unincorporated communities and volunteer fire departments in the unorganized borough.

- Extension of borough government would bring about the loss of eligibility for State capital matching grants by unincorporated communities in the unorganized borough.

- Borough formation or annexation would mean a 50% reduction of the entitlement of cities within the unorganized borough to fisheries business tax refunds from the State.

- The extension of borough government requires areawide planning, platting, and land use regulation. Such is commonly perceived by cities currently exercising those powers as a loss of local control (although boroughs may delegate the powers to cities within the borough).

- In some cases, borough formation carries with it the prospect of significant funding reductions from the State for coastal zone management.

Perhaps no statistic is more illustrative of the effect of the disincentives for borough government than the fact that only 4% of Alaskans live in boroughs that were formed voluntarily. In contrast, 83% of Alaskans live in organized boroughs that were formed under the 1963 mandate from the Legislature. The remaining 13% of Alaskans live in the unorganized borough.

It is noteworthy that the Alaska Municipal League shares the Commission’s concerns. The 2002 Policy Statement adopted by the Alaska Municipal League States:

**Encouragement of Municipal Government in the Unorganized Borough:** The League supports state policies that remove disincentives and encourage the formation and annexation to boroughs in the unorganized areas of the state . . .

**Call for a Review of the Role of Government.** The League calls for a review of municipal government . . . to determine if state policies are consistent with the intent of the Alaska Constitution mandating “maximum local self-government with a minimum of local government units. . . .” According to the Local Boundary Commission, the state has created significant disincentives to the formation of new municipal governments.

It is also noteworthy that, the City of Cordova, the seventh most populous city in the unorganized borough, has advocated for the type of reform provided by Senate Bill 48. In December 1999, the Council of the City of Cordova adopted Resolution Number 1299-83 urging “the executive and legislative branches of the government of the State of Alaska to review and amend the borough formation process.”

Cordova, where officials of the seventh most populous city government in the unorganized borough, called for reform similar to SB 48.

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23 Ibid., 406.

24 Boroughs that have formed voluntarily typically enjoy abundant natural resources or other attributes that make borough government particularly attractive for those regions. Many of the eight boroughs formed under the 1963 Mandatory Borough Act lack comparable resources. The eight boroughs that formed voluntarily are the Bristol Bay Borough, Haines Borough, North Slope Borough, Northwest Arctic Borough, Aleutians East Borough, Lake and Peninsula Borough, Denali Borough, and Yakutat Borough.
The Local Boundary Commission takes the position that CSSB 48(FIN) am provides a carefully designed process to promote borough incorporation and annexation in those areas of Alaska that have the human and financial resources to support fundamental local governmental operations. The bill provides a well thought-out public evaluation of the capabilities of unorganized areas to assume a reasonable measure of local responsibility for the delivery of fundamental public services.

There are a number of unorganized regions that have expressed concern that they may be compelled to form boroughs even though they might not be able to afford to do so. CSSB 48(FIN) am would require the Commission to make a thorough review of the financial capabilities of any region proposed for incorporation based on standards that have long been established in State law. The Commission certainly recognizes that it would be counter to the interests of the State to create organized boroughs that were not financially viable. Notwithstanding, the Commission takes the position that there is benefit in addressing the concerns raised about this issue.

To assuage such concerns, the Commission recommends that the 2002 Legislature amend CSSB 48(FIN) am to establish a specific economic threshold below which it would be presumed that an unorganized region lacks the financial resources to operate a borough. For example, the legislation could be amended to provide that if an unorganized region lacked at least two-thirds of the median per capita income of organized boroughs, a formal presumption would exist that the region lacks the financial resources needed to operate an organized borough.

For illustrative purposes, a table is provided on the following page which lists organized and unorganized regions of Alaska according to per capita income as reported in the 1990 Census. Comparable data from the 2000 Census will not be released until sometime between March and May of this year. Notwithstanding the eleven-year old data, economists indicate that the relative rankings of the regions generally remain unchanged over time, absent major economic developments affecting a particular region.
The unorganized regions (i.e., census areas) listed in the table generally do not conform to prospective boroughs. However, unlike Bureau of Economic Analysis income data, Census Bureau data on per capita income are available at the community level. The use of Census Bureau data would allow the Commission to make determinations specific to each prospective borough. The table lists fourteen boroughs. Two additional boroughs were created subsequent to the 1990 Census (Denali Borough in 1990 and City and Borough of Yakutat in 1992).

While the Commission endorses CSSB 48(FIN) am, there is one aspect of the legislation that the Commission opposes. Section 5 of CSSB 48(FIN) am would repeal a 1985 law prohibiting the incorporation of new third class boroughs.

The Commission views the third class borough form of government as archaic. Laws allowing the incorporation of a third class borough were enacted to respond to a unique set of circumstances in the Haines area that will never occur again.25

Beyond its archaic nature, the third class borough concept has been distorted in its implementation. Under statute, a third class borough is expressly prohibited from exercising any areawide power other than “education and tax assessment and collection” (see AS 29.35.220[b]). Yet, under the liberal interpretation of municipal powers provided by Article X, Section 1 of Alaska’s Constitution and AS 29.35.400 – 29.35.420, the “education” powers of the third class borough have been stretched to include the operation of a public library, public museum, and cultural facilities center.

Further, a third class borough is authorized to exercise only one power on a non-areawide basis (i.e., in the area of the borough outside of city governments as defined in AS 29.71.800[14]). That sole authorized non-areawide function is the power necessary to

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25 As noted earlier in this discussion, Representative Rader originally included the Lynn Canal – Icy Straits Election District in the 1963 legislation mandating borough incorporation because Haines was operating an independent school district. While the Lynn Canal – Icy Straits Election District was ultimately excluded from the Mandatory Borough Act, the Act nonetheless provided for the dissolution of all independent school districts on July 1, 1964.
contain, clean up, or prevent a release or threatened release of oil or a hazardous substance” (see AS 29.35.220(e)). However, the Haines Borough has, in fact, assumed other powers on a ‘de facto non-areawide basis’ through the creation of a service area encompassing the identical territory which AS 29.71.800(14) defines as the non-areawide part of the borough. Doing so effectively annuls the legislative prohibition set out in AS 29.35.220(e).

Moreover, since the Borough has assumed powers on a ‘de facto non-areawide basis’ that are prohibited on a ‘de jure non-areawide basis’, there is nothing to suggest that a similar occurrence will not some day exist on an areawide basis.

The City of Haines recently commented to the Commission as follows with respect to the third class form of borough government:

... there comes a time where such a classification can be “outgrown” and efficiencies achieved through consolidation. In addition, Borough voters themselves expressed their dissatisfaction with the Third Class Borough in October of 1998. When asked if they preferred the Third Class Borough as the form of government, the majority said no.

Given the circumstances cited here, the Local Boundary Commission opposes provisions in CSSB 48(FIN) am that would allow the incorporation of new third class boroughs.

The Commission looks forward to the opportunity to address CSSB 48(FIN) am further with the Legislature this year.
Ambiguities in the Law Concerning Municipal Incorporation, Boundary Changes, Dissolution, and Reclassification

State statutes are unclear with respect to municipal authority to levy property taxes during an initial period following incorporation, boundary change, dissolution, and reclassification. Ambiguity exists with respect to whether a municipal government that incorporates or changes its boundaries after January 1 of a particular year is prohibited by AS 29.45.110(a) and AS 29.45.120(a) from levying and collecting property taxes in the area of change during that calendar year.

This issue, as it relates to annexation, was addressed by the State Attorney General’s office at the request of the Senate Finance Committee thirteen years ago. The Attorney General’s office concluded that as long as the local government in question had time to add the property in question to its tax rolls, it had the authority (and probably the duty) to levy and collect the tax.

However, the question of whether AS 29.45.110(a) and AS 29.45.120(a) prohibit the levy of taxes during the initial year if jurisdiction is not established by January 1, appears to have become more uncertain as a result of a recent decision of the Alaska Supreme Court. In the case at issue, the Court interpreted AS 29.45.110(a), AS 29.45.120(a), AS 29.45.240(a), and AS 29.45.300 collectively to mean that “The tax ‘accrues’ in full each year on January 1.”

The Commission stresses that every proposal that comes before it is unique and demands flexibility. Although the Commission is not committed to any particular language, one way to resolve the issues raised here is to enact a clear grant of authority for the Commission to make determinations concerning property taxation in the course of its proceedings. This could be done by a statutory requirement for petitioners to present transition plans as a part of their petitions. Transition plans would be prepared in consultation with affected local governments and State instrumentalities (e.g., regional educational attendance areas). As provided under current law for other elements of a petition, the
transition plans should be subject to amendment by the Commission following a public hearing on the proposal.\textsuperscript{29} The Commission emphasizes that there are suitable checks and balances on the authority of the Commission. Actions that come before the Commission are: (1) initiated by all property owners and residents of the affected area, (2) subject to approval by the voters of the affected area, and/or (3) subject to tacit approval by the Legislature.

\textbf{AS 44.33.830. Transition Plan.} (a) A petition for change involving incorporation, annexation, detachment, merger, consolidation, dissolution, or city reclassification shall include a transition plan. The transition plan shall set out a practical proposal to implement the proposed change through the assumption, transfer, or surrender of relevant powers, duties, assets, and liabilities of affected cities, organized boroughs, and service areas of the unorganized borough. The transition plan may provide for the assessment, levy, and collection of property taxes by a city or organized borough on a prorated basis in the area of change for the remainder of the tax year following the change, notwithstanding AS 29.45.110(a) and AS 29.45.120(a). The transition plan may provide for other measures reasonably necessary to implement the proposed change.

(b) The transition plan shall be prepared in consultation with officials of affected cities, organized boroughs, and service areas of the unorganized borough. If such officials decline reasonable opportunities for consultation, the transition plan may be included in the petition without such consultation.

(c) The local boundary commission may amend the transition plan following a public hearing on the petition.

(d) A transition plan included in a petition approved by the local boundary commission takes effect only after any requisite approval of the petition under AS 29.04, AS 29.05, AS 29.06, or AS 44.33. A transition plan included in a petition that takes effect has the force and effect of law. □

\textsuperscript{29} The Commission has adopted regulations (3 AAC 110.900) that require transition plans in all proceedings that come before the Commission. While that regulation ostensibly covers matters involving taxation and service areas, absent express authority from the legislature concerning the issues raised above, it has not remedied the ambiguities to the satisfaction of many parties.
Small Community Housing Mortgage Loan Program Adversely Impacts Certain Municipal Boundary Proposals

Historically, provisions in State law concerning AHFC’s Small Communities Housing Assistance program (AS 18.56.400 - 18.56. 600) have affected the outcome of certain important municipal boundary proposals. For example, in 1998, opponents of the proposal for consolidation of the City of Haines and the Haines Borough published advertisements stating, in part:

... all Borough residents inside and outside the City will lose their eligibility for rural financing if we consolidate, because our combined population will exceed 1600. This means paying up to 1% more in interest on housing loans after consolidation.

Because of these and many more reasons please vote no on consolidation November 3rd.

The 1998 proposition for consolidation of local governments in Haines was defeated by just three votes. Considering the close vote and the substantial concern over the loss of eligibility to participate in the housing loan program, it is reasonable to conclude that the Haines consolidation would have been approved if the impacts on the housing loan program had been neutralized.

Last year, the AHFC Board of Directors adopted regulations that resolved the concerns of the Local Boundary Commission relating to merger and consolidation. However, concerns regarding annexation and incorporation were not addressed.

A means of resolving the remaining concerns of the Local Boundary Commission in a manner that maintains the Small Communities Housing Assistance program but eliminates the unintended adverse impacts on legitimate municipal boundary changes without a fiscal impact on the State of Alaska appears to be elusive.

Promotion of Maximum Common Interests within Boroughs

As it has done previously, the Commission brings to the attention of the Legislature that the unorganized borough is configured in a manner that does not conform to the requirements of Alaska’s constitution. Article X, Section 3 of the Constitution provides that:

In an effort to facilitate implementation of that constitutional mandate, the Local Boundary Commission recommended to the 1960 legislature that the Commission be given a mandate by resolution, directing the Commission to divide the whole of Alaska into boroughs, organized or unorganized, and that such recommendation(s) be presented to the next Legislature. However, that recom-
encompasses all or portions of nine state house election districts;

♦ wholly encompasses nineteen regional education attendance areas;

♦ encompasses all or portions of ten of Alaska's twelve regional Native corporations formed under the Alaska Native Claims Settlement Act;

♦ partially encompasses model borough territory for five existing organized boroughs.

In short, the unorganized borough is comprised of a vast area with widely diverse interests rather than maximum common interests required by the constitution. This is particularly evident from the fact that the unorganized borough spans so many house election districts, census districts, regional educational attendance areas, regional Native corporations, and model boroughs, each of which is to some extent comprised of an area with common social, cultural, and other characteristics.

Greater 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. However, just as the formal corporate boundaries of organized boroughs in Alaska are flexible to accommodate changing social, cultural, and economic conditions, the Commission recognizes that the model borough boundaries must also remain flexible. It has been thirteen years since efforts were initiated to define model borough boundaries. The Commission has found that in certain instances, social, economic, or other developments might warrant a change to model boundaries. For example, when the model borough boundaries were developed, Adak was a huge naval base with its own regional educational attendance area. Accordingly, the model borough boundaries identified a separate prospective borough for the area from Adak west. Subsequently, however, the naval base at Adak closed and the Adak regional educational attendance area merged with the Aleutian Region REAA. It seems reasonable to presume today that if
the Commission were defining model borough boundaries for the unorganized borough portion of the Aleutian region, those boundaries would encompass all of the territory west of the Aleutians East Borough.

This issue is addressed by CSSB 48(FIN) am. As it is currently worded, the legislation would require the Alaska Department of Community and Economic Development to submit a proposal to Commission by November 30, 2001 for the establishment of multiple unorganized boroughs. Further, the Local Boundary Commission is required to submit its proposal to divide the unorganized borough into multiple unorganized boroughs to the 2002 Legislature which take effect unless rejected by Legislature within 45 days. The Commission endorses the provision. However, the dates provided in the current legislation must obviously be altered.

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**Funding for Borough Feasibility Studies.**

AS 44.33.840 – AS 44.33.846 authorizes the undertaking of borough feasibility studies. Unfortunately, however, funding for the studies has never been appropriated. The Commission is aware of two regions that have recently expressed interest in conducting borough feasibility studies. Those are the Prince of Wales Island region and the Delta-Greely region. The Commission recommends that the Legislature appropriate at least $50,000 annually to the fund to facilitate local borough study efforts.
Index

A
Adak 7
Alatna 17
Allakaket 12, 17
Anchorage 17

C
Chickaloon 10
Cooper Landing 8
Copper River Basin 9

D
Delta-Greely 9
Diamond Ridge 8

E
Eagle 12
Eagle River 17
Eagle River-Chugiak borough 17

F
Fairbanks 15
Fairbanks North Star Borough 15

G
Girdwood 17
Gustavus 13

H
Haines 16
Haines Borough 13, 16
Homer 11

I
Icy Straits 10

J
Juneau 13

K
Kake 9
Ketchikan 14
Ketchikan Gateway Borough 14

M
Matanuska-Susitna Borough 17
Meadow Lakes 7

N
Naukati Bay 8
Nightmute 17
Nikiski 8
Nome 10

P
Palmer 12
Prince of Wales Island 10

S
Scammon Bay 17
Skagway 9, 13
Stebbins 17
Sunshine 8

T
Talkeetna 6

W
Wasilla 11
Wrangell Area 10

Y
Yakutat 13