

Borough Government In Alaska

Alaska's Constitution requires that all of Alaska be divided into boroughs – organized and unorganized – according to standards in law.

The Framers of Alaska's Constitution envisioned that the State would provide incentives for voluntary borough formation.

By January 1963 (the beginning of the fifth year of statehood), it was evident that the vision had not been fulfilled. Only 1 Borough had formed encompassing just one-tenth of 1% of the geographic area of Alaska.

In 1963, the legislature and governor supported a mandate that 8 specific regions of Alaska form boroughs by January 1, 1964. Those regions were: Ketchikan, Juneau, Sitka, Kodiak Island, Kenai Peninsula, Anchorage, the Matanuska-Susitna valleys, and Fairbanks must form boroughs by January 1, 1964.

Section 1 of the law -- Chapter 52, SLA 1963 -- 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.”

Voter in Ketchikan were the first to step forward to form a borough under that law.

After the 8 regions mandated to form boroughs in 1963, the Legislature and Governor abruptly reversed its borough formation policy, adopting instead, a "laissez-faire" approach. After 50 years of statehood, more than 60 percent of the geographic area of Alaska remains outside organized boroughs; and

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).

The most fiscally onerous of the penalties imposed by the State of Alaska on boroughs is the so-called “required local contribution” for schools

In 2007, the State Attorney General's Office pointed out that "the fiscal resources, particularly the value of taxable property, of the proposed Deltana Borough would be the envy of most organized boroughs in Alaska. . . .

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;

the Alaska Supreme Court first held that boroughs lack equal protection rights in *Kenai Peninsula Borough v. State, Dep't of Community and Regional Affairs*, 751 P.2d 14, 18-19 (Alaska 1988), where the Court relied on a then-55-year-old case involving the City of Baltimore Maryland – *Williams v. Mayor and City Council of Baltimore*, 289 U.S. 36 (1933) – as the foundation for its conclusion that boroughs lack the constitutional right of equal protection; and

reliance on a more than half-century-old case from Maryland appears to be a gross affront to the principles of local government in Alaska because the Framers of Alaska's Constitution specifically chose the term “borough” to avoid the application of restrictive case law from other states as noted in *Borough Government in Alaska*, by Thomas A. Morehouse and Victor Fischer, at fn 9:

Much controversy surrounded the selection of the name “borough.” While there were strong proponents of the word “county” (as well as canton, division, province, and others), the majority believed that the term had a very definite connotation and that its use should be avoided in order to preclude rigid thinking as well as restrictive court interpretations and decisions based on the extensive body of county law developed in the older states. It was believed that a different name could more readily be interpreted in the context of the Alaska Constitution; Black's Law Dictionary defines “borough” as “a place organized for local government purposes.” See *Minutes*, 18th, 29th Meetings; *Commentary*, p. 4; *Proceedings*, pp. 2618-19; 2777-87, 3599-3608, 3621-25, 3627.

and;

to provide a measure of some relief to beleaguered taxpayers of municipal governments that operate school districts, the Alaska Legislature in 2001, enacted a State law (sponsored by Senator Wilken and known informally as the “50 Percent Rule”) which provides that 100 percent of the value of taxable property as of January 1, 1999, but only 50 percent of any increase in that value will be used to calculate the 4-mill local “contribution” required of 28 of Alaska’s 53 school districts; and

on January 26, 2009, in a presentation to the Education Committee of the State House of Representatives, the Director of School Finance for the Alaska Department of Education and Early Development (DEED) repeatedly characterized the 50 Percent Rule as a “tax subsidy” by the State of Alaska for 28 municipal school districts, including the Ketchikan Gateway Borough; and

in its presentation to the Education Committee of the State House of Representatives on January 26, 2009, DEED ignored far greater disparities in terms of local funding for education and focused on perceived inequities resulting from the 50 Percent Rule; and

without the 50 Percent Rule, the required local contribution for the Ketchikan Gateway Borough for FY 2010 would have increased by \$915,009 from \$5,259,305 to \$6,174,314; and

it was evident from the presentation on January 26, 2009, that DEED is likely to bring increasing pressure in the years ahead for the Legislature to repeal or significantly amend the 50 Percent Rule because its statewide fiscal impact was only \$3,595,242 in FY 2002, but has grown to \$73,515,747 in FY 2010 – more than 20 times the amount in the first year; and

the positive fiscal impact to the Ketchikan Gateway Borough as a result of the 50 Percent Rule is tentatively projected to increase from \$915,009 in FY 2010 to \$1,041,551 in FY 2011; and

repeal of the 50 Percent Rule for FY 2011 would result in a \$1,041,551 reduction of funds that the Ketchikan Gateway Borough contributes to the Ketchikan Gateway Borough School District under AS 14.17.410(c), an immediate tax hike of \$1,041,551 for the taxpayers of the Ketchikan Gateway Borough for which not a single penny of improved services to the Borough would result, or some combination of both; and

such an increase would further reduce the level of State Education Aid provided to the Borough to more than \$3,000 per student.