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Member of the National League of Cities and the National Association of Counties

Submitted Testimony – SB 63

SB 63 proposes changes related to the Local Boundary Commission (LBC). AML members have not taken a position regarding the Local Boundary Commission nor this bill, so this testimony is neither in support or opposition. AML members may individually take a position, and we encourage their individual ability to do so. However, as the LBC is so crucial to city and borough interests, we have provided this document to identify a variety of issues that are worth the Legislature’s consideration.

For SB 63, specifically, in its current form: The addition of a seat dedicated to the Unorganized Borough appears to seek greater influence related to the decisions affecting this region of the state, and has the effect of increasing the representation of one region over others. If Judicial Districts already cover this expansive area, we are unsure of the intent other than to add votes in one direction.

If the intent of SB 63 is to improve governance within the Unorganized Borough, its necessity is questionable, given that judicial districts already provide a framework for representation of all Alaskans and communities. It is worth noting that the Unorganized Borough can also look to the Legislature, to act as the Assembly thereof, as AML members note in Resolution 2020-01.

The documents provided for SB 63 include Research About the LBC, which highlights the fact that by placing authority in this third party, arguments for and against boundary change can be analyzed objectively. By adding a seat for one group of communities over other groups seems to remove this objectivity. Ultimately, the decisions of the LBC must have a rational foundation – the composition of the Commission should not affect their ability to interpret the applicable legal standards and evaluation of the evidence, in their *ex parte* role.

While we don’t believe that extra votes for one group of communities over another is warranted, this bill does present an opportunity for meaningful reforms to strengthen the LBC’s effectiveness in municipal governance. In fact, the research provided by the bill sponsor notes that the LBC has a continuing obligation under statutory law to:

- make studies of local government boundary problems;
- adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution;
 - Please note AML’s Resolution 2021-13 in this regard.
- make recommendations to the legislature concerning boundary changes under Article 10, Section 12 of Alaska’s constitution.

The following responds to these considerations, and statutory obligations.

* First, AML has highlighted in the past that to ensure accountability and credibility, LBC members should be subject to legislative confirmation. This would align the commission’s composition with other state boards that have significant governance authority. It’s also consistent with law. AS 39.05.060 identifies the Local Boundary Commission as subject to legislative confirmation: “The governor shall appoint each member 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. Appointments are subject to confirmation by a majority of the members of the legislature in joint session.”

We understand that the State identifies within the Constitution a list of those bodies that require confirmation, and the LBC not listed there. However, the Constitution does not prohibit the Legislature acting within its law-making authority to address future needs, which it clearly did in establishing confirmation in law. The confirmation process provides a way in which, especially for the unorganized borough, the Legislature may engage directly with nominees to better understand their competency and interests.

* Second, the LBC recently overturned decades of precedence by requiring in the case of Soldotna’s annexation a local vote vs. legislative approval. In this way, instead of making decisions reflecting the State interest, they chose local interests to prevail, counter to their duty. The Supreme Court decided in their favor, that this is within their authority, but did not speak to the overall decision-making process. The decision notes the work of the LBC staff and their preliminary report: “Addressing public comments that called for approval by local option, the preliminary report noted that setting city boundaries was “legitimately the concern of the state, and not just that of the local community.” A final staff report was issued in July 2020, concluding that the petition met requirements to pursue annexation through legislative review.” Commissioners voted instead – 3-2 – to convert the legislative review to local option.

The Court had previously concluded that the constitutional delegates believed that “local political decisions do not usually create proper boundaries and that boundaries should be established at the state level,” because “[b]y placing authority in this third-party, arguments for and against boundary change can be analyzed objectively.” Soldotna’s appeal failed because in a 1992 regulation “the commission may determine during the course of proceedings that a legislative review petition must be amended and considered as a local action or local option petition if the commission determines that the balanced best interests of the locality and the state are enhanced by local participation.”

It is worth noting that AS 29.06.040(d) describes a preference for legislative review. The Court notes that “Given the history of local boundary changes in Alaska, it appears unlikely a municipality would request that their annexation petition proceed by voter approval.” In case of point, the Court acknowledges that it is almost never the case that residents outside a municipal jurisdiction choose to be included; they benefit by proximity without having the additional burdens of taxation or rulemaking. The Opinion states that “We recognize that the circumstances of the Commission’s creation and the delegates’ underlying concern that “a small, self-interested group could stand in the way of boundary changes which were in the public interest” could weigh against requiring voter approval in many circumstances.”

As the Alaska Constitution, AS 29.06.040, and AS 44.33.812 clearly authorize, and even require, the Commission must create pathways to annexation through local action. Annexation petitions require fact-specific inquiries that take into account “the unique circumstances presented by each petition.” There are certainly compelling arguments as to why the local option should be used sparingly, especially in light of the Commission’s historical purpose to act as a check on local interests.

We bring this to your attention not to bore you with the particulars of an individual case, nor to argue for or against the merits of the plaintiff’s or Court’s arguments. However, it is in the State’s interest to clarify the process by which the LBC chooses legislative review instead of local action. The case is instructive, at the very least, inasmuch as it highlights the challenges of advancing governance in Alaska.

The clarification, perhaps, should rest on when local action may positively lead to annexation. Here, we can promote self-organization that leads to the additional inclusion within municipal boundaries such that public safety, schools, and well-being are delivered by city and borough services. On the other hand,

there are real consequences to local action that always says no, as the Constitutional Convention delegates feared and history has shown.

* Third, Alaska's Local Boundary Commission (LBC) plays a critical role in shaping the state's local governance landscape. As the body responsible for reviewing and making recommendations on municipal boundary changes, it holds a strategic position in the advancement of borough and city formation. However, the LBC has traditionally adopted a reactive posture—responding to petitions rather than proactively guiding the structure of local government. Given the unique challenges and vast geography of Alaska, there is a strong argument that the LBC should take a more active role in accelerating the transfer of municipal entitlement lands from the State to existing and emerging municipalities.

Municipal entitlement lands—granted under Article X of the Alaska Constitution and subsequent legislation—serve as a foundation for local self-governance, revenue generation, and resource management. The timely transfer of these lands enables cities and boroughs to access and manage resources necessary for economic development, infrastructure investments, and public services. Yet, many municipalities face prolonged delays and bureaucratic obstacles in receiving these entitlements, which in turn hampers their ability to function effectively. The LBC, by actively advocating for streamlined land transfer processes, could serve as a critical intermediary between the State and local governments—facilitating not only the legal framework for formation but also the practical conditions necessary for self-governance.

An enhanced role for the LBC might include issuing recommendations to the legislature or the Department of Natural Resources (DNR) regarding process improvements, identifying priority areas for land conveyance in tandem with municipal formation initiatives, or hosting working groups that bring together stakeholders to align land policy with local governance needs. In this sense, the LBC's proactive engagement could help remove barriers and create incentives for the formation of new boroughs or the expansion of existing municipalities, especially in unorganized regions.

In addition to land transfer facilitation, the LBC could assume a vital role in monitoring the availability of *vacant, unappropriated, and unreserved* (VUU) lands—those not currently allocated to other governmental uses and potentially available for future municipal entitlement. These lands are essential to the viability of any newly formed borough. Monitoring their status would not only inform the strategic planning of borough formation but also ensure that sufficient land and resources remain available to support new local governments.

Whether the LBC *can* formally monitor these lands hinges on the authority granted to it by statute and regulation. Currently, the LBC does not have a mandate to manage or survey land holdings—that authority resides with the DNR. However, the LBC *should* collaborate with the DNR and other state agencies to maintain up-to-date assessments of land status. This could take the form of regular reports or joint initiatives aimed at identifying areas where borough formation is both needed and feasible based on land availability.

Ultimately, a more assertive and visionary LBC could help realize the constitutional promise of an integrated system of local government in Alaska. By accelerating land transfers and monitoring VUU lands, the LBC would not only enable the formation of more sustainable and autonomous municipalities but also ensure that local governance structures are equipped with the assets they need to thrive. This expanded role would align with the broader goals of decentralization, community empowerment, and equitable access to Alaska's land and resources.

We have highlighted before the challenges local governments face in accessing their entitlement lands. The numbers speak for themselves, and are provided here for reference.

| Municipality | Certified | Patented* | Approved | Conditional | Selected | Remaining | % to Finalize |
|-------------------------------------|------------------|----------------|----------------|-------------|---------------|----------------|----------------|
| <i>Aleutians East Borough</i> | 7,633 | 576 | 7,208 | 492 | | 0 | 100.88% |
| <i>Municipality of Anchorage</i> | 44,893 | 21,130 | 3,586 | | 1,196 | | 10.65% |
| <i>City of Anderson</i> | 1,182 | 832 | 349 | 40 | 135 | 0 | 44.33% |
| <i>Bristol Bay Borough</i> | 2,898 | 2,699 | | | | 199 | 6.87% |
| <i>City of Coffman Cove</i> | 222 | 220 | | 2 | | 0 | 0.90% |
| <i>City of Cordova</i> | 235 | 168 | 76 | | 184 | 0 | 110.64% |
| <i>Denali Borough</i> | 49,789 | 5,844 | 42,656 | 1,920 | 20 | 0 | 89.57% |
| <i>City of Edna Bay</i> | 320 | | 314 | | | 6 | 100.00% |
| <i>Fairbanks North Star Borough</i> | 112,000 | 97,396 | 15,697 | | 2,407 | 0 | 16.16% |
| <i>Haines Borough</i> | 5,967 | 2,569 | 2,413 | 20 | 1,692 | 987 | 85.67% |
| <i>City and Borough of Juneau</i> | 19,584 | 17,273 | 2,100 | 100 | | 0 | 11.23% |
| <i>Kenai Peninsula Borough</i> | 155,780 | 104,111 | 41,931 | 320 | 561 | 9,738 | 33.73% |
| <i>Ketchikan Gateway Borough</i> | 11,593 | 11,209 | 812 | | | 0 | 7.00% |
| <i>Kodiak Island Borough</i> | 56,500 | 21,090 | 10,431 | | | | 18.46% |
| <i>Lake and Peninsula Borough</i> | 125,000 | 1 | 99,785 | | 42,879 | 25,214 | 134.30% |
| <i>Matanuska-Susitna Borough</i> | 355,210 | 264,388 | 79,722 | 3,495 | | | 23.43% |
| <i>North Slope Borough</i> | 89,850 | 4,491 | 20,826 | | 12,311 | 64,533 | 108.70% |
| <i>Northwest Arctic Borough</i> | 285,438 | 107,130 | 176,770 | 1,532 | 19,314 | 1,538 | 69.77% |
| <i>Petersburg Borough</i> | 14,666 | 1,048 | 5,895 | | 7,184 | 7,723 | 141.84% |
| <i>City of Port Alexander</i> | 53 | 8 | 45 | | | 0 | 84.91% |
| <i>City of Seward</i> | 565 | 548 | | | 30 | 20 | 8.85% |
| <i>Municipality of Skagway</i> | 7,977 | 4,672 | 3,003 | 55 | | 118 | 39.81% |
| <i>City and Borough of Sitka</i> | 10,500 | 10,671 | 46 | | | 0 | 0.44% |
| <i>City of Valdez</i> | 7,593 | 7,212 | 413 | | | 0 | 5.44% |
| <i>City of Whale Pass</i> | 296 | 5 | 289 | | | 2 | 98.31% |
| <i>City of Whittier</i> | 600 | 600 | | | | 0 | 0.00% |
| <i>City and Borough of Wrangell</i> | 9,006 | 2,410 | 6,965 | | | 0 | 77.34% |
| <i>City and Borough of Yakutat</i> | 21,500 | 364 | 22,487 | | | 0 | 104.59% |
| Totals | 1,396,850 | 688,738 | 542,852 | | 87,913 | 110,105 | 53.04% |

* Fourth, the issue of municipal lands held in trust, those designated under the Alaska Native Claims Settlement Act (ANCSA) for future municipal governments, raises similar questions about foresight, coordination, and the role of the LBC in safeguarding long-term options for incorporation and local self-governance.

ANCSA established Alaska Native corporations and transferred large tracts of land to them, but it also included provisions that allowed for the withholding of some lands for the potential future incorporation of communities as cities. The intention was to ensure that newly formed municipalities would have access to sufficient land and resources to support governance, infrastructure, and development.

These lands have generally remained in limbo. Many communities that might have incorporated did not do so—often due to economic, administrative, or political challenges. Meanwhile, these reserved lands have been neither utilized nor integrated into long-term community or municipal planning. In recent years, Congress has considered or enacted legislation that would repatriate or release these lands back to Alaska Native village corporations, effectively closing the door on their use for future municipalities. This is not to say what should or shouldn't happen in this decision, nor in any way diminishing the benefit and value of these lands in the hands of Alaska's village corporations. We should just be clear that this will make it more difficult if not impossible for political subdivisions of the State of Alaska to be formed in these communities, unless State lands are otherwise identified. Village corporations don't have taxing authority, nor a public purpose under State law. As such, contributions to public safety, education, and well-being may be limited, even as these lands are hoped to be development for economic development, which may well lead to housing, jobs, and a more robust local economy.

The Local Boundary Commission is uniquely positioned to represent the interests of future municipalities—those that do not yet exist but that the Alaska Constitution envisioned would one day be

formed. While the LBC does not have jurisdiction over ANCSA lands, its mandate to guide and recommend municipal formation, boundary changes, and governance restructuring gives it a policy voice that could—and arguably should—have been used more forcefully in these land trust decisions. Had the LBC proactively:

- Assessed the communities most likely to incorporate in the future and documented how the lands in trust could support those governments;
- Engaged with Congress and State officials to underscore the long-term value of retaining some lands for municipal purposes;
- Published reports or held hearings that explicitly tied the fate of trust lands to Alaska’s constitutional goals of local government formation;

...it could have influenced the policy landscape more meaningfully. Even now, the LBC could issue findings or recommendations emphasizing the importance of preserving options for local self-governance and encouraging compromises or shared-use agreements that respect both Native corporation interests and municipal potential. It could also recommend State lands within these communities to offset the loss.

What’s at stake is not just land—but the future configuration of State governance in rural Alaska. If all reserved trust lands are transferred to private or corporate ownership, the practical pathway to incorporation becomes steeper for many communities, particularly those in unorganized areas. The LBC is one of the few bodies in Alaska positioned to think decades ahead about such implications.

It is important that the LBC evolve beyond a passive adjudicator of petitions into a strategic planner and public advocate for a robust municipal framework. Its independence and constitutional authority give it the legitimacy to convene stakeholders, evaluate long-term risks, and voice concern when foundational tools of governance—like land—are at risk of disappearing.

* Fifth, in 1963, Alaska took a bold and constitutionally significant step by passing the Mandatory Borough Act, a policy grounded in the state’s unique vision of local self-governance. It required certain areas to organize into boroughs, ensuring that essential services could be delivered and local needs more effectively met. The Act was transformative, shaping regional governance for much of the state. But despite its ambition, the project remains unfinished. Vast regions of Alaska remain unorganized and unincorporated, with limited or no local government presence.

As the designated body to review and recommend changes in local government structure, the LBC is uniquely positioned to develop a comprehensive strategic plan to complete the goals of the 1963 Act. Such a plan is not just overdue—it is critical to the future of governance in Alaska. It would enable the state to address long-standing disparities, close governance gaps, and build a more equitable and effective local government system.

This process does not come at the expense of local action and voice, but allows these to flourish. Ultimately, to provide for maximum local self-government is not to avoid incorporation of cities or borough formation, but to ensure that it occurs to reflect the needs, interests, and priorities of Alaskans. Failure to do so goes against the intent and charter established by Alaska’s Constitution.

Alaska’s geographic, cultural, and economic diversity challenges the one-size-fits-all approach to local governance. Communities range from urban centers like Anchorage and Fairbanks to remote, roadless villages with subsistence economies. The existing classifications—home rule, general law boroughs, and cities—may not adequately reflect the governance needs or capacities of all regions.

The LBC should lead an evaluation of new classifications of local government—such as “regional towns,” “village service areas,” or “tiered boroughs”—to create more tailored options for communities. These

could include scaled-down responsibilities, hybrid governance models, or phased transitions. The goal would be to remove the binary choice of full incorporation or none at all and replace it with a continuum of self-governance options better suited to Alaska's on-the-ground realities.

One of the key barriers to municipal organization is the lack of incentives and support. Many communities hesitate to incorporate or transition to borough status due to financial uncertainty, administrative burden, and a lack of technical capacity. A strategic plan from the LBC should propose a comprehensive package of state-backed incentives for communities that pursue incorporation or organization. These might include:

- Transitional funding to support new boroughs in their early years.
- Capacity-building grants for governance planning and staffing.
- Legal and technical assistance for petitioning and structuring.
- Shared service models to reduce startup costs and improve efficiency.

Incentivizing incorporation not only empowers local communities—it also relieves the State from providing direct services in areas that lack local government, which can ultimately improve efficiency and responsiveness.

The strategic plan should also examine innovative regional governance structures that can deliver public services efficiently while honoring the value of local control. In remote or low-population regions, a full-fledged borough may not be sustainable in the traditional sense—but intermediate models may be.

Possibilities include:

- Regional service authorities governed by local representatives.
- Multi-community compacts that share administrative structures but retain community identity.
- Decentralized boroughs with sub-regional councils embedded within the broader governance framework.

The LBC's role would be to model these structures, assess their legal viability, and consult with communities on their relevance. These governance models could increase representation, improve service delivery, and offer alternatives to remaining perpetually unorganized.

Conclusion

Sixty years after the Mandatory Borough Act and seventy since Alaska's Constitution was adopted, the vision of a comprehensive, functional local government system across Alaska remains incomplete. The Local Boundary Commission is the state's best-positioned institution to address this legacy. By developing a comprehensive strategic plan, the LBC could fulfill its constitutional mandate not only by responding to petitions, but by guiding Alaska toward a more intentional, inclusive, and effective system of local governance.

In doing so, the Commission would move from being a reactive regulator to a proactive architect of the state's municipal future—one capable of adapting to the changing needs of communities and aligning with the aspirations set out at statehood. The time for such leadership is now.

While SB 63 raises valid concerns about governance in the unorganized borough, its effectiveness would be significantly improved by expanding the LBC's role in facilitating municipal governance, land management and transfer, and strategic planning. Incorporating these revisions would ensure that the bill meaningfully contributes to improving local government capacity and accountability.