

KETCHIKAN GATEWAY BOROUGH

RESOLUTION NO. 2117

A RESOLUTION OF THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH URGING SENATOR BERT STEDMAN AND REPRESENTATIVE KYLE JOHANSEN TO PROMOTE LEGISLATION TO REPEAL OR MITIGATE THE ONEROUS AND DISCRIMINATORY STATE TAX ON MUNICIPALITIES THAT OPERATE SCHOOL DISTRICTS

RECITALS

WHEREAS, the 1963 Alaska State Legislature passed, and Governor Egan signed into law, the "Mandatory Borough Act" (Chapter 52, SLA 1963), dictating that certain regions of Alaska – those encompassing Ketchikan, Juneau, Sitka, Kodiak Island, Kenai Peninsula, Anchorage, the Matanuska-Susitna valleys, and Fairbanks – form organized boroughs by January 1, 1964; and

WHEREAS, Section 1 of the Mandatory Borough Act promised that, "No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation;" and

WHEREAS, key State agencies have acknowledged that "contrary to the express intent of the 1963 Mandatory Borough Act, organized boroughs are being severely deprived of State services, revenues, or assistance and are being penalized because of incorporation" (See: *School Consolidation – Public Policy Considerations and a Review of Opportunities for Consolidation*, p. 54, February 2004, Department of Education and Early Development, Local Boundary Commission, with assistance by the Department of Commerce, Community and Economic Development); and

WHEREAS, the most fiscally onerous of the penalties imposed by the State of Alaska on boroughs is the "required local contribution" for schools dictated by AS 14.17.410(b)(2), which agencies have characterized as a State tax and which will reduce FY 2009 State education funding to the Ketchikan Gateway Borough by more than \$5 million and to all boroughs by \$211,255,410 (a 35 percent increase in the penalty over the prior five years); and

WHEREAS, Article I, Section 1 of the Constitution of the State of Alaska prescribes that "all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State;" and

WHEREAS, more than one-third of Alaska's school districts – those operated by regional educational attendance areas – are exempt from the required local contribution provisions of AS 14.17.410(b)(2) that apply to organized boroughs as well as home-rule and first-class cities in the unorganized borough; and

WHEREAS, in *Matanuska-Susitna Borough School Dist. v. State*, 931 P.2d 391 (Alaska 1997), the Alaska Supreme Court rejected a constitutional challenge of the required local contribution – codified then as AS 14.17.025(a) – when it affirmed that "Boroughs are not entitled to equal protection under the Alaska Constitution" and concluded further that:

The individual plaintiffs have not shown that they pay higher taxes as a result of the required local contribution, or that invalidating AS 14.17.025(a) would result in savings to them as taxpayers. . . .

. . .

Assuming that the individual plaintiffs' interests as taxpayers actually are impaired by the school funding laws, these interests are not interests afforded much weight under our equal protection analysis. "The interest involved here, freedom from disparate taxation, lies at the low end of the continuum of interests protected by the equal protection clause."

and;

WHEREAS, Chief Justice Rabinowitz and Justice Matthews indicated in *Matanuska-Susitna Borough School Dist. v. State* that any remedy regarding concerns over the required local contribution must be pursued through the legislative and executive branches rather than the judicial branch, stating, specifically, "Here, as with State spending decisions, any available remedy must be pursued through majoritarian processes rather than through the courts;" and

WHEREAS, Article X, Section 1 of Alaska's Constitution encourages the creation of borough governments (*See Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d 92, 101 (Alaska 1974)); yet, on the eve of the fiftieth anniversary of the creation of the State of Alaska, more than half the geographic area of Alaska lies outside organized boroughs; and

WHEREAS, multiple studies in the post-mandatory-borough era have indicated that the biggest deterrent to voluntary formation of boroughs is the financial penalties that result; the late Jay Hammond expressed the matter well when he wrote in *Tales of Alaska's Bush Rat Governor*, (page 149), that "Attractive enough on paper, in practice, the organized borough concept had little appeal to most communities. After all, why should they tax themselves to pay for services received from the state, gratis?;" and

WHEREAS, Governor Sarah Palin, showing strong leadership in exploring fundamental public policy concerns with the status quo, recently directed the Alaska Departments of Law, Education, and Commerce, Community, and Economic Development (DCCED) to evaluate concerns expressed by the Ketchikan Gateway Borough relating to the required local contribution for schools; and

WHEREAS, in the face of growing concern and frustration over AS 14.17.410(b)(2), taxpayers and citizens of boroughs and cities that operate municipal school districts are increasingly likely to address their concerns and frustrations through a citizens' initiative.

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE FACTS, IT IS RESOLVED BY THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH, ALASKA as follows:

Section 1. The Ketchikan Gateway Borough Assembly hereby urges Senator Bert Stedman and Representative Kyle Johansen to promote legislation to repeal or mitigate AS 14.17.410(b)(2), the onerous and discriminatory State tax on municipalities that operate school districts.

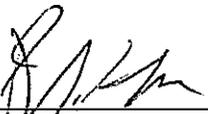
Section 2. The Borough Manager shall provide a copy of this resolution to:

- The Honorable Sarah Palin, Governor;
- The Honorable Bert Stedman, State Senator, District A;

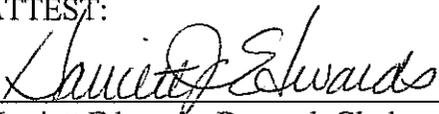
- The Honorable Kyle Johansen, State Representative, District 1;
- The Honorable Emil Notti, Commissioner, DCCED;
- The Honorable Larry LeDoux, Commissioner, Dept. of Education and Early Development; and
- The Honorable Talis Colberg, State Attorney General.

Section 3. This resolution is effective upon adoption.

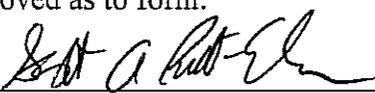
ADOPTED this 20th day of October, 2008.



 Dave Kiffer, Borough Mayor

ATTEST:


 Harriett Edwards, Borough Clerk

Approved as to form:


 Scott A. Brandt-Erichsen, Borough Attorney

| EFFECTIVE DATE: October 20, 2008 | | | |
|--|-----|----|--------|
| ROLL CALL | YES | NO | ABSENT |
| THOMPSON | ✓ | | |
| PHILLIPS | ✓ | | |
| SALAZAR | ✓ | | |
| GIBBONS | ✓ | | |
| PAINTER | ✓ | | |
| HARRINGTON | ✓ | | |
| SHOEMAKER | ✓ | | |
| MAYOR (Tie Votes Only) | | | |
| 4 AFFIRMATIVE VOTES REQUIRED FOR PASSAGE | | | |