

KETCHIKAN GATEWAY BOROUGH

RESOLUTION NO. 2182

A RESOLUTION OF THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH COMMEMORATING THE FORTY-SIXTH ANNIVERSARY OF THE INCORPORATION OF THE BOROUGH, AND EXPRESSING THE NEED TO REMIND STATE OFFICIALS THAT THE GOVERNOR AND STATE LEGISLATURE PROMISED AT THE TIME OF INCORPORATION THAT BOROUGHS WOULD NOT BE DEPRIVED OF STATE SERVICES, REVENUES, OR ASSISTANCE AND THAT THEY WOULD NOT BE OTHERWISE PENALIZED BECAUSE OF INCORPORATION

RECITALS

WHEREAS, forty-six years ago on September 6, 1963, voters of the greater Ketchikan area voted to incorporate the Ketchikan Gateway Borough; the results of the election were certified on September 13, 1963; and

WHEREAS, the Framers of Alaska's Constitution envisioned that the Alaska Legislature, in consultation with the Governor, would provide incentives to induce local citizens to incorporate boroughs voluntarily; and

WHEREAS, by January 1963 (the beginning of the fifth year of statehood), only one small organized borough had formed; it was thus evident that the State of Alaska had been unsuccessful in establishing general inducements to form boroughs voluntarily; and

WHEREAS, on March 22, 1963, the Alaska State House of Representatives passed *Committee Substitute for House Bill 90 (CSHB 90)* by a vote of 27 to 12 (with 1 absent), dictating that regions encompassing Ketchikan, Juneau, Sitka, Kodiak Island, Kenai Peninsula, Anchorage, the Matanuska-Susitna valleys, and Fairbanks must form boroughs by January 1, 1964; and

WHEREAS, on April 3, 1963, the Alaska State Senate passed *CSHB 90* by a vote of 11 to 9; and

WHEREAS, Governor William Egan, former President of the Alaska Constitutional Convention, neither vetoed *CSHB 90* nor allowed it to become law without his signature, but signed the bill into law on April 12, 1963, as Chapter 52, SLA 1963; and

WHEREAS, Section 1 of Chapter 52, SLA 1963, approved by the Alaska State House

of Representatives, the Alaska State Senate, and Governor Egan, 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, the voters of the greater Ketchikan area – reassured by the promise of the Alaska Legislature and Governor Egan that boroughs would not be deprived of state services, revenues, or assistance and that they would not be otherwise penalized because of incorporation – were the very first among the eight regions named in the Mandatory Borough Act to incorporate an organized borough; and

WHEREAS, after 50 years of statehood, more than 60 percent of the geographic area of Alaska remains outside organized boroughs; 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 so-called “required local contribution” for schools dictated by AS 14.17.410(b)(2), which the Ketchikan Gateway Borough Assembly and some State agencies have characterized as a State tax, and which has operated to penalize the Ketchikan Gateway Borough more than \$50 million during the past 10 years by reducing State Education Aid to the Borough (\$5,259,305 or nearly \$2,500 per student alone in the current year); 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 in the unorganized borough operated as regional educational attendance areas (REAs) – 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 a letter dated August 28, 2007, to the Alaska Local Boundary Commission, former State Senator Gary Wilken (a strong advocate for an equal measure of local responsibility among all school districts) stressed that there is no rational basis, such as fiscal or administrative capacity, to distinguish between REAAs and municipal school districts:

In a recent filing, 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. . . .

Given the remarkable fiscal capacity of the region, the action by Deltana voters [by which 90.6% of the voters rejected a proposal to incorporate] shines a glaring spotlight on the State's long-standing irrational public policy regarding the extension of borough government in Alaska. The framework of government for our nation and our state rests on the fundamental principles that all people are treated equally and fairly and that all persons have corresponding obligations to the people and to the State. (Alaska Constitution, Article I, Section 1.) Regrettably, those principles have not carried forward

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, 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

WHEREAS, 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;

WHEREAS, 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

WHEREAS, 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

WHEREAS, 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

WHEREAS, 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

WHEREAS, 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

WHEREAS, 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

WHEREAS, 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

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

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 commemorates the 46th anniversary of the incorporation of the Ketchikan Gateway Borough. The Borough provides the following essential services to the estimated 12,993 residents of the Borough:

Areawide Powers:

- Education;
- Assessment and Collection of Taxes;
- Planning, Platting, and Land Use Regulation;
- Economic Development;

- Transit System;
- Airport, including Marine Ferry Operations;
- Parks and Recreation;
- Regulation of Hours of Operation of Licensed Premises Dispensing Alcoholic Beverages; and
- Animal Control.

Nonareawide:

- Library;
- Sewage Collection and Treatment;
- Solid Waste Collection and Disposal; and
- Prohibition of Sale and Possession of Fireworks.

Service Areas:

- Fire Protection;
- Emergency Medical Services;
- Road Maintenance and Construction;
- Water Utilities;
- Street Lighting; and
- Docks and Marine Facilities.

Section 2. The Ketchikan Gateway Borough Assembly expresses the need to remind officials of the State of Alaska of the promise that was made to the citizens of Ketchikan and all other boroughs, both in the Alaska Constitution and in Chapter 52, SLA 1963, that borough residents would be treated equally. Moreover, the Assembly expresses its vigorous opposition to any efforts to repeal or amend the 50 Percent Rule, and further expresses its support for the repeal or mitigation of AS 14.17.410(b)(2) in that it is an onerous and discriminatory State tax that is applied only to 34 of Alaska's 53 school districts.

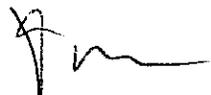
Section 3. Officials of the Borough are encouraged, whenever opportunities arise, to raise the concerns expressed in this resolution to the following State officials:

- The Honorable Sean Parnell, Governor;
- The Honorable Bert Stedman, State Senator, District A;
- The Honorable Kyle Johansen, State Representative, District 1;
- The Honorable Kevin Meyer, Co-Chair, Senate Education Committee;
- The Honorable Joe Thomas, Co-Chair, Senate Education Committee;
- The Honorable Bettye Davis, Vice-Chair, Senate Education Committee;
- The Honorable Charlie Huggins, Member, Senate Education Committee;

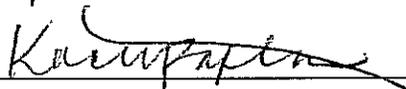
- The Honorable Donald Olson, Member, Senate Education Committee;
- The Honorable Gary Stevens, Member, Senate Education Committee;
- The Honorable Paul Seaton, Chair, House Education Committee;
- The Honorable Cathy Engstrom Munoz, Vice Chair, House Education Committee;
- The Honorable Bryce Edgmon, Member, House Education Committee;
- The Honorable Wes Keller, Member, House Education Committee;
- The Honorable Peggy Wilson, Member, House Education Committee;
- The Honorable Robert L. "Bob" Buch, Member, House Education Committee;
- The Honorable Berta Gardner, Member, House Education Committee;
- The Honorable Emil Notti, Commissioner, Department of Commerce, Community, and Economic Development; and
- The Honorable Larry LeDoux, Commissioner, Dept. of Education and Early Development.

Section 4. This resolution is effective upon adoption.

ADOPTED this 8th day of September, 2009.

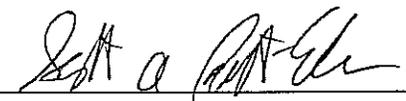


 Dave Kiffer, Borough Mayor



 Kacie Paxton, Borough Clerk

APPROVED AS TO FORM:



 Scott A. Brandt-Erichsen, Borough Attorney

EFFECTIVE DATE:		SEPTEMBER 8, 2009		
ROLL CALL	YES	NO	ABSENT	
Gibbons			✓	
Harrington	✓			
Painter	✓			
Phillips	✓			
Salazar	✓			
Shoemaker	✓			
Thompson	✓			
Mayor (tie votes only)				
4 AFFIRMATIVE VOTES REQUIRED FOR PASSAGE				