

**ALASKA STATE LEGISLATURE  
HOUSE COMMUNITY AND REGIONAL AFFAIRS  
STANDING COMMITTEE**

February 21, 2002  
8:08 a.m.

**MEMBERS PRESENT**

Representative Kevin Meyer, Co-Chair  
Representative Carl Morgan, Co-Chair  
Representative Andrew Halcro  
Representative Drew Scalzi  
Representative Lisa Murkowski  
Representative Gretchen Guess  
Representative Beth Kerttula

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 358

"An Act relating to an optional exemption from municipal property taxes for certain land from which timber is harvested and for certain improvements used in or necessary to the harvest of timber."

- MOVED CSHB 358(CRA) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 39

Disapproving the Local Boundary Commission recommendation regarding the annexation of territory to the City of Homer.

- FAILED TO MOVE HJR 39 OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 18

Proposing amendments to the Constitution of the State of Alaska relating to certain municipal annexations."

- HEARD AND HELD

**PREVIOUS ACTION**

BILL: HB 358

SHORT TITLE: EXEMPTION FROM PROPERTY TAX: TIMBER

SPONSOR(S): REPRESENTATIVE(S) CHENAULT

Jrn-Date	Jrn-Page		Action
01/25/02	2067	(H)	READ THE FIRST TIME - REFERRALS
01/25/02	2067	(H)	CRA
02/19/02		(H)	CRA AT 8:00 AM CAPITOL 124
02/19/02		(H)	Heard & Held MINUTE(CRA)
02/19/02		(H)	MINUTE(CRA)
02/21/02		(H)	CRA AT 8:00 AM CAPITOL 124

BILL: HJR 39

SHORT TITLE:DISAPPROVE HOMER BOUNDARY CHANGES

SPONSOR(S): COMMUNITY & REGIONAL AFFAIRS

Jrn-Date	Jrn-Page		Action
02/13/02	2232	(H)	READ THE FIRST TIME - REFERRALS
02/13/02	2232	(H)	CRA
02/13/02	2232	(H)	REFERRED TO CRA
02/21/02		(H)	CRA AT 8:00 AM CAPITOL 124

BILL: HJR 18

SHORT TITLE:CONST.AMENDMENT:MUNICIPAL ANNEXATIONS

SPONSOR(S): REPRESENTATIVE(S)SCALZI

Jrn-Date	Jrn-Page		Action
02/26/01	0436	(H)	READ THE FIRST TIME - REFERRALS
02/26/01	0436	(H)	CRA, JUD, FIN
02/26/01	0436	(H)	REFERRED TO CRA
02/21/02		(H)	CRA AT 8:00 AM CAPITOL 124

**WITNESS REGISTER**

REPRESENTATIVE MIKE CHENAULT

Alaska State Legislature

Capitol Building, Room

Juneau, Alaska 99801

POSITION STATEMENT: Noted that he was agreeable to the changes [incorporated in CSHB 358].

KEVIN WARING, Chairperson

Local Boundary Commission

550 West Seventh Avenue, Suite 1770

Anchorage, Alaska 99501-3510

POSITION STATEMENT: Answered questions in relation to Representative Scalzi's draft resolution [HCR 27].

ABIGAIL FULLER

PO Box 2845

Homer, Alaska 99603

POSITION STATEMENT: Expressed concerns with HJR 18, although she viewed it as a step in the right direction.

PETE ROBERTS

PO Box 1134

Homer, Alaska 99603

POSITION STATEMENT: Expressed concerns with HJR 18, although he viewed it as a step in the right direction.

LINDA RIENHART

PO Box 834

Homer, Alaska 99603

POSITION STATEMENT: Testified that she didn't believe it's appropriate to disenfranchise anyone.

JIM RIENHART

PO Box 834

Homer, Alaska 99603

POSITION STATEMENT: Testified on HJR 18.

DORIS CABANA

Alaskans Opposed to Annexation

PO Box 607

Homer, Alaska 99603

POSITION STATEMENT: Testified on HJR 18.

VI JERREL, Ph.D.

Alaskans Opposed to Annexation

PO Box 938

Homer, Alaska 99603

POSITION STATEMENT: Testified in opposition to HJR 18.

ALEX FLYUM

267 Cityview Avenue

Homer, Alaska 99603

POSITION STATEMENT: Testified in opposition to HJR 18.

MICHAEL KENNEDY

844 Ocean Dr. Loop

Homer, Alaska 99603

POSITION STATEMENT: Expressed concerns with HJR 18, although he viewed it as a step in the right direction.

**ACTION NARRATIVE**

TAPE 02-8, SIDE A  
Number 0001

CO-CHAIR CARL MORGAN called the House Community and Regional Affairs Standing Committee meeting to order at 8:08 a.m. Representatives Morgan, Meyer, Halcro, Scalzi, and Guess were present at the call to order. Representatives Murkowski and Kerttula arrived as the meeting was in progress.

HB 358-EXEMPTION FROM PROPERTY TAX: TIMBER

CO-CHAIR MORGAN announced that the first order of business would be HOUSE BILL NO. 358, "An Act relating to an optional exemption from municipal property taxes for certain land from which timber is harvested and for certain improvements used in or necessary to the harvest of timber."

CO-CHAIR MORGAN noted that there is a committee substitute [CS] that incorporates the amendments adopted at the prior hearing.

Number 0078

REPRESENTATIVE SCALZI moved to adopt CSHB 358 [Version 22-LS1250\C] as the working document. There being no objection, CSHB 358, Version C, was before the committee.

REPRESENTATIVE SCALZI explained that currently Native corporations are exempt from [municipal] property taxes. However, if there are timber sales from Native land, the aforementioned exemption would be eliminated. If the change [incorporated in the CS] doesn't pass, the [Native] lands will fall under a new tax jurisdiction and a disincentive to harvesting the [infested] timber will be created. He emphasized the need to allow the emergency fire timber sales to take place. The change [incorporated in the CS] would allow the taxes to be deferred. He noted that [this tax deferral] is a local option.

REPRESENTATIVE MIKE CHENAULT, Alaska State Legislature, speaking as the sponsor, announced that he was agreeable to the changes.

Number 0303

REPRESENTATIVE GUESS moved to report CSHB 358 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 358(CRA) was reported from the House Community and Regional Affairs Standing Committee.

The committee took a brief at-ease from 8:14 a.m. to 8:16 a.m.

HJR 39-DISAPPROVE HOMER BOUNDARY CHANGES

CO-CHAIR MEYER announced that the next order of business would be HOUSE JOINT RESOLUTION NO. 39, Disapproving the Local Boundary Commission recommendation regarding the annexation of territory to the City of Homer.

CO-CHAIR MEYER explained that HJR 39 is a resolution that disapproves the Local Boundary Commission's (LBC) recommendation. If HJR 39 is approved, then the committee would be disapproving the LBC's decision. If HJR 39 isn't approved, then the LBC's recommendation is being approved. Co-Chair Meyer noted those folks that were available to answer any questions.

Number 0478

REPRESENTATIVE SCALZI commented that [the Homer annexation] is a contentious issue, which he believes has received good dialogue with the various parties. Representative Scalzi acknowledged that being the local representative for Homer, he couldn't escape his input in regard to the outcome. He also acknowledged that the legislature often defers to the local representative. However, he pointed out that when an annexation comes before the LBC, the LBC is the disinterested, unbiased, third party. The LBC's recommendation is reviewed by the legislature in order to determine whether the process was followed correctly. He emphasized that the legislature has the final review not the representative from the impacted area. Therefore, he felt that this should be a committee decision. Although he said that he could go either way on this matter, he said he believes the decision should be in the best interest of the state. Furthermore, if HJR 39 is approved, he hoped that there would be good justification in the "Whereas" clauses. He noted that when he reviewed other [annexations] that have been vetoed, there was little to no evidence why.

Number 0745

REPRESENTATIVE MURKOWSKI agreed with Representative Scalzi's comments in regard to the need to justify a rejection of the

annexation. She noted that she has consistently heard that although the LBC may have acted within its jurisdiction, improvements are necessary in order to avoid such a contentious annexation. However, annexations by nature are contentious. Although Representative Murkowski remarked that this should be viewed as an opportunity to provide constructive guidance, she was at a loss as to where to start an outline [of improvements] as mentioned by Representative Scalzi. She related her belief that the City of Homer could've done better "leg work" at the beginning of the process.

Number 0982

REPRESENTATIVE GUESS agreed with the previous two speakers. She related her belief that the standards were met and the final decision was probably the correct decision. However, she believes the process was flawed. She said she believes that the council overreached and was sloppy in requesting the 25 square miles. Moreover, the public process was poor. Representative Guess emphasized that the [LBC] should've returned to the city when the [petition] was changed to 4.5 square miles. However, she wasn't sure how to go about fixing the process. She stated her belief that the [change to the] 4.5 square miles was correct.

Number 1153

REPRESENTATIVE HALCRO remarked that the greatest part of this discussion is that the process worked. He acknowledged that one side to this issue is regarding whether [the process was] legal, which it was determined to be. There is also the social side to this issue. Representative Halcro said that one has to question whether one more public hearing would've helped when one considers the large picture and the public's involvement. He couldn't see that another public hearing would've made a difference. He remarked that the 4.5 square miles [of annexed] land is justified. Therefore, Representative Halcro said he believes that the committee should say that although there are some changes that should be made, those are another discussion. In this case, the process worked, he reiterated.

Number 1314

REPRESENTATIVE KERTTULA echoed the earlier comments regarding the difficulty of this decision. She noted that Dan Bockhorst, Staff, LBC, provided her with case law regarding the constitution and the constitutional minutes when the decision

was made to create this process, which made her realize that this is something the legislature is supposed to resolve. Although she really cared about the individuals involved, she found that the cases highlight that there is a public interest in the way that the state is managed as well as its land. She referred to Wasilla's past when the best farmland in the state was paved over for strip malls.

REPRESENTATIVE KERTTULA said that she, too, couldn't point to anything that the municipality did that was illegal. However, she did believe there was a better way to manage public hearings and such, which she believes the LBC recognizes because it is putting in place a regulation to resolve some of those issues. Although she agreed with Representative Halcro that the process worked, she didn't believe that the ends justify the means. She expressed concern over what she viewed as punishment. She announced that until the vote is taken, she wasn't sure how she would vote.

Number 1593

REPRESENTATIVE SCALZI remarked, "I'd like to whack the city myself." However, he agreed with Representative Kerttula that punishment isn't the legislature's role. In regard to the 25 square mile boundary, Senator Torgerson has said that he wouldn't support [the annexation] without a vote. Representative Scalzi recalled that at the time he said he wouldn't support the 25 square miles, but would wait to review the LBC's [decision]. What the LBC presented, annexation of 4.5 square miles, was reasonable.

REPRESENTATIVE SCALZI referenced a draft resolution that he provided to the committee. He proposed that this draft resolution from the committee would be directed to the LBC and urge the LBC to promote standards and regulations that would provide a preliminary judgment on some of these ridiculous petitions. Therefore, the city or municipality would have to do their homework on the matter. He noted that Kevin Waring, LBC, helped draft this draft resolution. He hoped that the committee would review this draft resolution regardless of the outcome with HJR 39.

REPRESENTATIVE SCALZI, in response to Co-Chair Meyer, related his belief that HB 13 is a separate issue entirely and shouldn't be incorporated into HJR 39.

Number 1858

CO-CHAIR MORGAN remarked that he agreed with everyone's comments thus far. He also agreed that the process worked. He noted that he, too, would have to make the decision when the time comes.

CO-CHAIR MEYER noted that he was torn as well. He pointed out that this has been a long process and thus there will be no public testimony taken today. He also noted his respect for the citizens of Homer in regard to the manner in which they conducted themselves throughout this process. Co-Chair Meyer echoed earlier testimony regarding the notion that 4.5 square miles is a reasonable annexation. Furthermore, when looking at the map of that area, [the 4.5 square acres] is a densely populated area, and it looks as if it is a part of the City of Homer. He concluded that there should be some resolution to this.

Number 2069

REPRESENTATIVE MURKOWSKI informed the committee that when people stopped by her office, she asked whether the 4.5 square miles should be annexed. Every person she spoke with conceded that that the 4.5 square miles was reasonable to annex. If this annexation is rejected, two years from now the committee could be reviewing the approval of the same 4.5 square mile annexation. On the other hand, if the committee agrees that the annexation is reasonable, she questioned whether it would be fair for the citizens to have to go through the process again, only to get the same result.

REPRESENTATIVE HALCRO thanked Representative Scalzi for all the research he has done on this issue. Representative Halcro noted that during the LBC's history there have been 120 annexations, 9 of which have been vetoed by the legislature, and 7 of those 9 have returned in the next few years with little modification. Representative Halcro related his belief that there is no need to put the citizens of Homer through this for another year or two. Representative Halcro commented that he was impressed with the city councilmen who announced that they would resign and run again in order to protect the voting voice of [those in the annexed area].

Number 2273

REPRESENTATIVE GUESS returned to Representative Halcro's comment regarding whether one more public hearing would've helped. She

said she feels that it would have helped, although she didn't think the lack of another public hearing is a reason to reject the resolution. She pointed out that when there is a significant change in the [annexed area], there should be a public hearing. When dealing with boundary changes, one should move through the process very carefully.

CO-CHAIR MEYER asked if the Representative Scalzi wanted his draft resolution to come forward as a committee resolution regardless of the outcome of HJR 39.

REPRESENTATIVE SCALZI answered yes. Representative Scalzi read the draft resolution into the record. [Please refer to HCR 27.]

CO-CHAIR MEYER related his belief that [HCR 27] addresses some of the issues and concerns mentioned by the committee. Although [HCR 27] wouldn't help the current situation, it would help future annexations.

REPRESENTATIVE HALCRO recalled that the [LBC] comes before this committee every year to provide an overview of the LBC's activities of the year. He also recalled that the overview seems to always include suggestions of needed clarifications to state law. Therefore, he asked whether any of the vagueness in state law clouded this public process issue. He also asked if there is anything that can be done legislatively to address these problems.

Number 2650

KEVIN WARING, Chairperson, Local Boundary Commission, testified via teleconference. In regard to [HCR 27], he didn't believe that any clarification of law is required. Mr. Waring pointed out that the LBC does receive "flawed" petitions. Petitions that are procedurally flawed can be returned. Furthermore, petitions that are contrary to laws or the constitution can be returned as well. In the years of the commission's existence, petitions that have weak facts or petitions that may not be supportable by the standards aren't returned without going through the entire process. Mr. Waring related his understanding that [HCR 27] establishes a circuit breaker that would allow the LBC to return a petition that the commission has deemed to not be supported by facts or is seriously at odds with the standards without going through the entire process. Therefore, the local government could amend the petition and resubmit it. Mr. Waring remarked that he believes it isn't a question as to whether the LBC has statutory powers but rather

would the commission pursue the step of adopting regulations and standards. Mr. Waring stated that this would be a welcome step forward as the LBC is always looking to improve the process. He said he believes that [HCR 27] would result in an improvement. If [HCR 27] was passed, he expected that the LBC would report [to the legislature] regarding what it has done to move in the direction of [HCR 27].

Number 2800

REPRESENTATIVE MURKOWSKI inquired as to how Mr. Waring would define "substantively deficient" [which is the language included in HCR 27].

MR. WARING answered that the language would be defined in the regulations. He related his belief that "substantively deficient" would mean [the petition] didn't have the facts. He presumed that the LBC would adopt standards and there would be a process by which the staff would evaluate a petition against the standards. If the staff suggested that the LBC review the petition, he envisioned a "mini-hearing" whereby the petition is reviewed against the standards. If the LBC found that the facts were weak, then the commission may make the decision to return the petition so that the petitioner would have the opportunity to review and perhaps revise the petition. In further response to Representative Murkowski, Mr. Waring agreed that there is a difference between a return of a petition versus a rejection of a petition. Rejection has consequences that prevent the petitioner from returning the petition for some time. Therefore, it seems punitive to not allow the opportunity to reject a petition without allowing the petitioner to make the fix.

Number 2916

REPRESENTATIVE SCALZI noted the discussion of a possibility of a percentage that must be met in relation to the standard. He asked if [the LBC] would consider a guideline in the standards in order to be clear that the municipality has to be within a certain standard of reason.

MR. WARING answered that he wasn't sure that a percentage would work. He pointed out that statute governing the LBC mandates that the LBC accept and consider petitions. He explained that the regulatory standards would include specific guidelines that would be of use to potential petitioners. He hoped that if there were standards of that sort that the LBC might never have

to utilize this authority. Therefore, warning of the consequences might motivate the petitioner to do the job correctly initially.

TAPE 02-8, SIDE B

The committee took an at-ease from 8:59 a.m. to 9:07 a.m.

CO-CHAIR MEYER announced that the committee has decided to [sponsor] the draft resolution [HCR 27].

Number 2957

REPRESENTATIVE SCALZI moved to report HJR 39 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE HALCRO objected.

REPRESENTATIVE HALCRO clarified that the committee is voting on whether to move HJR 39 out of committee. Therefore, a [majority] of yes votes would move HJR 39 out of committee and a [majority] of no votes would fail to move HJR 39 out of committee.

A roll call vote was taken. Representative Morgan voted for moving HJR 39 out of committee. Representatives Guess, Kerttula, Halcro, Murkowski, Meyer, and Scalzi voted against moving HJR 39 out of committee. Therefore, HJR 39 failed to move out of the House Community and Regional Affairs Standing Committee by a vote of 1:6.

The committee took an at-ease from 9:11 a.m. to 9:14 a.m.

HJR 18-CONST.AMENDMENT:MUNICIPAL ANNEXATIONS

CO-CHAIR MEYER announced that the final order of business before the committee would be HOUSE JOINT RESOLUTION NO. 18, Proposing amendments to the Constitution of the State of Alaska relating to certain municipal annexations."

Number 2759

ABIGAIL FULLER testified via teleconference. Although Ms. Fuller remarked that HJR 18 is a step in the right direction, she still had some concerns. She pointed out that in an annexation the rights of the people effected are important. The

Homer annexation illustrates that the Local Boundary Commission (LBC) is capable of trimming a too large annexation down to a reasonable size. However, the Homer annexation also demonstrates that the LBC has a complete disregard for the citizens and thus this area [of the annexation process] needs amending. Ms. Fuller said, "I feel any annexation of a settled area requires a vote. Anything less violates the basic founding principles of our country." She pointed out that placing a 10 percent limit on who is allowed to vote would be problematic because it would violate the equal protection clause. Therefore, Ms. Fuller suggested that HJR 18 be redrafted in order to mesh with HB 13 of last year. She suggested:

It should say that any city annexation that effects a borough service area would require a vote. What this would do is prohibit legislative review annexations for cases where the people outside the city are already getting the services they want through a borough government. In this situation there is no need to force anyone into the city regardless of what a certain state commission thinks. Annexation can wait until the city can offer the outsiders a good enough deal that they will vote for it.

Therefore, forced annexations in the more settled areas would be restricted while perhaps encouraging borough formation in the remainder. She viewed this as a step toward eventually doing away with the legislative review method entirely.

Number 2672

PETE ROBERTS testified via teleconference. Although Mr. Roberts urged review of [HJR 18], he felt that the entire process misses the point. This is a discussion about people, Mr. Roberts emphasized. Although this constitutional amendment is a step in the right direction, he, too, felt that the 10 percent was problematic. He pointed out that when one lives in an adjoining city, one has voting rights, but those in an adjoining borough or unorganized territory have no voting rights. "There's something wrong with this," he said. This resolution doesn't really address this matter either. He urged the committee to look at this from the citizen's point of view.

Number 2587

LINDA RIENHART testified via teleconference. She began by saying that she agreed with the prior two comments. She said,

"I believe the basic issue is not percentages -- how many people it's fair to disenfranchise. I believe it's not fair to disenfranchise a single person."

JIM RIENHART testified via teleconference. Mr. Rienhart said, "What I heard this morning was you people saying that you recognize that slavery is wrong, but those who have slaves can keep them."

Number 2537

DORIS CABANA, Alaskans Opposed to Annexation, testified via teleconference in opposition to the 10 percent or anything similar because she viewed it as rewarding the city. She noted that she would be one of the 900 that won't have a voice. Ms. Cabana provided remarks in reference to the Homer annexation. She informed the committee that Robert Erwin, Attorney, Alaskans Opposed to Annexation, notes in his petition for reconsideration [of the Homer annexation] that "Alaska Statute 29.35.450(e) requires a vote of the people effected in eliminating a substantial portion of borough service area established for roads, fire protection, parks, and recreation. It is presumed that whenever the legislature enacts a provision it has in mind previous statutes relating in the same manner and should be construed together." She indicated that the aforementioned quotation was from Haughlin (ph) v. Inlandboatmen's Union of the Pacific. Ms. Cabana charged that the City [of Homer] has been forgotten and the 900 citizens have been forgotten as well.

Number 2382

DR. VI JERREL, Ph.D., Alaskans Opposed to Annexation, testified via teleconference. Dr. Jerrel announced that she opposed HJR 18 because the 10 percent isn't constitutional. She expressed the need for the people in the area proposed for annexation to be allowed to vote. She charged that [HJR 18] violates the constitutional right to due process, as well as equal protection under the law. Furthermore, [HJR 18] violates civil rights [under the U.S. Constitution], as well as the Ninth Amendment. Dr. Jerrel, Ph.D., announced opposition to "this entire thing" as well as the proposed annex petition by the City of Homer. In conclusion, Dr. Jerrel, Ph.D. expressed the need to have the entire annexation process changed.

Number 2244

ALEX FLYUM testified via teleconference. He mentioned that he has four businesses in Homer where he also owns seven or eight parcels of property. Mr. Flyum spoke in opposition to HJR 18. Mr. Flyum related his belief that "we are in the process of trying to cut state expenses, not add more ... by hiring more people to do this." He said that he believes that the process with the LBC takes [already addresses] everything.

MICHAEL KENNEDY testified via teleconference. Although Mr. Kennedy agreed that [HJR 18] is a start in the right direction, he failed to see the logic in the 10 percent. He said, "I just heard your committee approve an annexation that covers 25 percent in population and area. And so, if you're going to approve something at 25 percent, I fail to see the logic of putting forward a resolution when you're going to require a vote of the people by 10 percent." He maintained that if HJR 18 is to be supported, then the committee would have to deny the City of Homer's annexation petition and allow Homer to start over and put the petition to a vote.

Number 2074

REPRESENTATIVE SCALZI informed everyone that HJR 18 was drafted by he and Senator Torgerson as a means to [start discussion] and indicate to the LBC that there are some inadequacies in the petition process. He noted that the 10 percent is a starting point. In regard to why [the committee] would approve the current Homer annexation if [the committee] feels that 10 percent is adequate, Representative Scalzi pointed out that [the committee] is playing by the current rules under which there is no percentage.

CO-CHAIR MEYER announced that the public hearing on HJR 18 would be closed. He also announced that HJR 18 would held.

REPRESENTATIVE SCALZI agreed.

#### **ADJOURNMENT**

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 9:32 a.m.