

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

February 26, 2002  
8:07 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. 389

"An Act changing the date of repeal of a provision authorizing an exemption from and deferral of municipal property taxes on certain types of deteriorated property; and providing for an effective date."

- MOVED CSHB 389(CRA) OUT OF COMMITTEE

HOUSE CONCURRENT RESOLUTION NO. 27

Relating to urging the Local Boundary Commission to adopt standards and procedures to enable the commission to return a petition for a local boundary change to the petitioner when the commission determines the petition is substantively deficient or in need of substantial amendment or supplementation.

- MOVED HCR 27 OUT OF COMMITTEE

**PREVIOUS ACTION**

BILL: HB 389

SHORT TITLE: MUNI TAX EXEMPTION: DETERIORATED PROPERTY

SPONSOR(S): REPRESENTATIVE(S) KOHRING

Jrn-Date	Jrn-Page		Action
02/06/02	2165	(H)	READ THE FIRST TIME - REFERRALS
02/06/02	2165	(H)	CRA
02/19/02	2329	(H)	COSPONSOR(S): DYSON
02/26/02		(H)	CRA AT 8:00 AM CAPITOL 124

BILL: HCR 27

SHORT TITLE: LOCAL BOUNDARY COMMISSION PROCEDURES  
SPONSOR(S): COMMUNITY & REGIONAL AFFAIRS

Jrn-Date	Jrn-Page		Action
02/22/02	2365	(H)	READ THE FIRST TIME - REFERRALS
02/22/02	2365	(H)	CRA
02/26/02		(H)	CRA AT 8:00 AM CAPITOL 124

**WITNESS REGISTER**

REPRESENTATIVE VIC KOHRING  
Alaska State Legislature  
Capitol Building, Room 24  
Juneau, Alaska 99801

POSITION STATEMENT: Testified as the sponsor of HB 389.

MARK MARLOW, Businessman  
(No address provided)  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 389.

DAN BOCKHORST, Staff  
Local Boundary Commission  
Department of Community & Economic Development  
550 West Seventh Avenue, Suite 1770  
Anchorage, Alaska 99501-3510

POSITION STATEMENT: Answered questions regarding HCR 27.

ABIGAIL FULLER  
PO Box 2845  
Homer, Alaska 99603

POSITION STATEMENT: Testified that [HCR 27] is a good idea, but offered some suggestions.

PETE ROBERTS  
P O Box 1134  
Homer, Alaska 99603

POSITION STATEMENT: Reviewed his suggestions for HCR 27.

DORIS CABANA

Alaskans Opposed to Annexation

PO Box 607

Homer, Alaska 99603

POSITION STATEMENT: Supported returning [problem] petitions.

VI JERREL, Ph.D.

Alaskans Opposed to Annexation

PO Box 938

Homer, Alaska 99603

POSITION STATEMENT: Testified in support of HCR 27.

**ACTION NARRATIVE**

TAPE 02-9, SIDE A

Number 0001

CO-CHAIR KEVIN MEYER called the House Community and Regional Affairs Standing Committee meeting to order at 8:07 a.m. Representatives Morgan, Meyer, Halcro, and Scalzi were present at the call to order. Representatives Murkowski, Guess, and Kerttula arrived as the meeting was in progress. [The minutes for the overview can be found under the 9:20 a.m. minutes for the same date.]

HB 389-MUNI TAX EXEMPTION: DETERIORATED PROPERTY

CO-CHAIR MEYER announced that the first order of business would be HOUSE BILL NO. 389, "An Act changing the date of repeal of a provision authorizing an exemption from and deferral of municipal property taxes on certain types of deteriorated property; and providing for an effective date."

Number 0110

REPRESENTATIVE VIC KOHRING, Alaska State Legislature, testified as the sponsor of HB 389. He noted that HB 389 is a reiteration of legislation passed in 1998. That 1998 legislation authorized municipalities to provide for tax exemptions with the understanding that the exemptions would enable developers to renovate deteriorated properties. One such property is the McKay Building, which prompted the 1998 legislation. The 1998 legislation will expire in July 2002. Therefore, HB 389 would extend the expiration date to 2005. Representative Kohring pointed out that this legislation applies to any deteriorated property, within a municipality, that could potentially be

renovated. He noted that HB 389 could apply to the Knik Arm Power Plant.

Number 0322

MARK MARLOW, Businessman, requested the committee's support for HB 389. He commented that he wasn't exactly sure why there was a sunset provision in the original legislation. He informed the committee that although a law would receive more use in an older part of the country, there were many things built during World War II that could possibly be renovated. Mr. Marlow commented that there are a few [buildings], such as the Knik Arm Power Plant, for which he would like to be able to use this legislation. He explained that [he is] putting together a project with the Knik Arm Power Plant in response to an RFP from the U.S. Army who is seeking power for Fort Richardson.

Number 0581

REPRESENTATIVE KERTTULA inquired as to whether the sunset date should be eliminated entirely.

MR. MARLOW indicated his agreement.

REPRESENTATIVE KOHRING said that would be the best scenario.

Number 0619

REPRESENTATIVE HALCRO recalled that three years ago this legislation was HB [76], which he sponsored. Originally, [HB 76] didn't have a sunset date. However, [HB 76] was amended by Senator Halford on the Senate floor. Representative Halcro recalled that Senator Halford said that he was concerned because in some communities the largest and oldest dilapidated buildings were owned by wealthy people. Therefore, Senator Halford expressed the need to maintain a check and balance, a sunset date, in order to avoid abuse. Representative Halcro pointed out that the original bill clearly provided authority to the local government and would have to move through a very public process. Therefore, he felt that any abuse would be spotted.

CO-CHAIR MEYER commented that the [Anchorage] assembly does review these [projects] thoroughly, and there is much public scrutiny.

MR. MARLOW explained that the local assembly would have to, by ordinance, designate an area that a dilapidated structure is

within as a deteriorated area. That would have to happen first. After that step, the developer could request an exemption, referral, or blend of the two. Therefore, there are safeguards built into the legislation so as to prevent possible abuses.

REPRESENTATIVE KERTTULA said that she would leave it to the sponsor as to whether he wanted to amend the bill. She mentioned the possibility that the sponsor may want to discuss the amendment with Senator Halford before seeking its adoption.

REPRESENTATIVE KOHRING recommended amending HB 389 by deleting the sunset date entirely.

Number 0876

REPRESENTATIVE HALCRO moved that the committee adopt the following amendment:

Page 1, line 6,  
Delete the entire sentence.

There being no objection, the amendment was adopted.

Number 0962

REPRESENTATIVE SCALZI moved to report HB 389 [as amended] out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 389(CRA) was reported from the House Community and Regional Affairs Standing Committee.

REPRESENTATIVE KERTTULA said that although the drafter will probably understand, she clarified: "It will show the language in the statute being deleted, we're not actually deleting that line."

The committee took a brief at-ease from 8:23 a.m. to 8:24 a.m.

#### HCR 27-LOCAL BOUNDARY COMMISSION PROCEDURES

CO-CHAIR MORGAN announced that the next order of business would be HOUSE CONCURRENT RESOLUTION NO. 27, Relating to urging the Local Boundary Commission to adopt standards and procedures to enable the commission to return a petition for a local boundary change to the petitioner when the commission determines the petition is substantively deficient or in need of substantial amendment or supplementation.

[There was an unnecessary motion to place HCR 27 before the committee.]

Number 1181

REPRESENTATIVE SCALZI noted that HCR 27 is the result of the contentious Homer annexation. Representative Scalzi informed the committee that sometimes a community, to appease a few people, will submit petitions that are too small. There have been instances in which the Local Boundary Commission (LBC) has rejected those small petitions because the planning is for five or ten years. Therefore, in order to expedite the process HCR 27 will allow the LBC to return a petition early in the process.

REPRESENTATIVE MURKOWSKI turned to the current situation and inquired as to what the commission does when it receives a petition that is "out of scope."

Number 1358

DAN BOCKHORST, Staff, Local Boundary Commission; Department of Community & Economic Development (DCED), explained that under the current process DCED is responsible for making a determination as to whether a petition has all the technical matters in order regardless of the merit of the facts or policy. If a petition is accepted for filing, the LBC moves through the entire process, which can take a year or more. Although it isn't a common occurrence that petitions are "out of whack" in terms of the standards, there have been some such instances. For example, there or four years ago there was a proposal to carve up the Fairbanks North Star Borough and extend it. Although that petition clearly didn't meet the standards, no provision existed to allow denial of the petition without moving through the entire process. Therefore, in that case the LBC went through the entire process and was ultimately denied. This resolution, HCR 27, encourages the LBC to develop a circuit breaker that would allow the LBC to make a summary judgment on petitions that fail to meet a [specified] threshold of standards to conform to the local government principles established in the constitution.

REPRESENTATIVE MURKOWSKI related her understanding then that the only way the LBC can deny a petition from the outset is if the petition has a technical deficiency.

MR. BOCKHORST answered yes, and noted that the LBC has rejected petitions that haven't conformed to the technical requirements of law.

Number 1514

REPRESENTATIVE KERTTULA inquired as to what Mr. Bockhorst envisioned; she asked whether he envisioned a preliminary hearing.

MR. BOCKHORST answered that there are many options available to the commission, one of which would be analogous to a summary judgment proceeding in a court in which a notice of filing is given. In a summary judgment proceeding citizens are invited to comment [and there would be] a quick hearing on the concerns raised with the petition.

REPRESENTATIVE SCALZI turned to HJR 18, which limits petitions to no more than 10 percent of the current area or population. He explained that HJR 18 was put forth for discussion. When Mr. Bockhorst was asked whether he felt HJR 18 was beneficial, Representative Scalzi recalled that Mr. Bockhorst said that the LBC does a good job and makes sound and reasonable decisions. Furthermore, both those in support of and in opposition to the Homer annexation [agreed] that [the 4.5 square miles] was reasonable.

REPRESENTATIVE KERTTULA asked if regulations are being promulgated now.

MR. BOCKHORST replied that the LBC did adopt regulations in July 2001. Those regulations, currently being reviewed by the Department of Law, include some innovative provisions that deal with some of the controversial aspects of annexation. [These regulations] would require local governments to conduct local public hearings on proposals before being filed with the department.

Number 1781

ABIGAIL FULLER, testifying via teleconference, said that she believes [HCR 27] is a good idea. The LBC does need to be able to return petitions that have major problems. She recommended that the LBC should also be able to return a petition if the proposal is too controversial. Although all controversy can't be eliminated, there is often things a municipality can do to reduce the level of controversy. For example, in the Homer

annexation the city was repeatedly asked to pull the petition and start over, which would've made a difference. She said that when the city wasn't willing to pull the petition, the LBC should've instructed the city to do so.

Number 1828

PETE ROBERTS testified via teleconference. He related his belief that the process is quite flawed. He recommended review of the following. First, the choice of the annexation method should be left to the LBC, possibly after a short hearing by the LBC commissioners. Therefore, much controversy would be eliminated from these annexations because the city couldn't start a hostile annexation as was the case in Homer. Second, is the issue of due process. He referred to the Alaska State Constitution, Article I, Section 7, which addresses due process in executive branch procedures. The process of the LBC wasn't anything like due process. For example, both parties didn't have access to the same number of filings. Third, the public hearing at the end doesn't serve any purpose more than to further inflame the situation. Therefore, he suggested having this public hearing prior to the preliminary report being completed. In such a case, consideration could be given to public comment. Mr. Roberts urged the committee to consider his three suggestions.

MR. ROBERTS, in response to Representative Scalzi's comments regarding the hearing suggestion, clarified that he was suggesting that the final hearing should happen prior to the preliminary report. Therefore, the hearing would be part of the process when the comments would matter and thus there would be time to reflect upon the comments.

Number 2083

DORIS CABANA, Alaskans Opposed to Annexation, testified via teleconference. Although Ms. Cabana supported returning the petitions as suggested in [HCR 27], she suggested that the LBC obtain public input before the changes are put into place. Ms. Cabana remarked that those impacted by [petitions] should be allowed to vote, even when [the petition] is returned. She pointed out that the U.S. Constitution comes before any other law. She related her belief that legislative review [of annexations] has robbed citizens of the right to vote. Therefore, the laws need to be cleaned up and there needs to be more public input. Ms. Cabana reviewed what she viewed as improprieties with the Homer annexation process, such as the

limited time [to testify]. She commented on the number of members on the LBC that are from Anchorage.

Number 2197

DR. VI JERREL, Ph.D., Alaskans Opposed to Annexation, thanked Representative Morgan for his "yes" vote on HJR 39. Dr. Jerrel, Ph.D., noted her support of HCR 27, which is a small change in the LBC regulations. She expressed the need to throw out the LBC's regulations. She emphasized that the state cannot make any laws above the U.S. Constitution, which is the supreme law of the land. It's unconstitutional to rob people of their right to vote, she said. Furthermore, the people in the proposed annex area should be allowed to vote. Dr. Jerrel, Ph.D., informed the committee that Robert Erwin, Attorney, Alaskans Opposed to Annexation, has noted [in his filings] the unlawful and unconstitutional reasons why the Homer annexation should have not been approved. She urged those members that voted [against moving HJR 39 from committee] to review the constitution. She also urged the committee to review HJR 39 again.

REPRESENTATIVE SCALZI announced that if there had been any way he could've recused himself he would have. Therefore, he said that he would vote with the majority of the committee.

Number 2413

REPRESENTATIVE SCALZI returned to the testimony that the LBC should be left to determine whether the annexation is appropriate rather than the city.

MR. BOCKHORST explained that under current law, a city government is permitted to file any petition it wishes, given the standards. The LBC must consider any local government boundary change requested by a municipal government. This resolution encourages the LBC to establish a mechanism by which it returns petitions that don't meet the standards, which he saw as addressing the issue. In further response to Representative Scalzi, Mr. Bockhorst stated that controversial is a subjective term that would be difficult to measure. He said he feels that the LBC was created was to examine proposals that are controversial at the local level, examine them with a statewide perspective, and render judgments based on the standards that exist in the law.

REPRESENTATIVE SCALZI used the Homer annexation as an example. He related his belief that the City of Kachemak should've been

more a part of the dialogue. However, he felt that dialogue didn't occur because it would've been very controversial. He asked Mr. Bockhorst if he viewed it as a controversial standard.

MR. BOCKHORST answered, "I certainly think it would be controversial." He related his belief that the Homer annexation didn't include the City of Kachemak partly because of controversies, and partly because the city maintains that it's paying its own way in local costs. Mr. Bockhorst said, "Certainly, the question exists as to whether or not the constitutional principles are served of having minimum numbers of local government units when you have two city governments existing side-by-side and the bigger city government essentially serving and providing services to the citizens of the smaller local government." He pointed out that this issue will be raised when this committee hears HB 296, which deals with mergers and consolidations.

Number 2600

REPRESENTATIVE SCALZI recalled dialogue regarding the questioning by the LBC versus the legislature, during the hearing process. He noted that there has been much discussion regarding the lack of dialogue the LBC gave in reference to the public [testimony]. He indicated the need for the appearance of the dialogue to be made better and thus he asked if [Mr. Bockhorst] had any suggestions.

MR. BOCKHORST turned to Ms. Cabana's testimony that she was told she couldn't speak at one of the LBC meetings. He explained that the matter wasn't on the agenda and thus [the matter] can't be [discussed]. He pointed out that the LBC has prohibitions against dealing with a matter that isn't on the agenda, and it also has prohibitions against ex parte contact. However, legislators are able to receive individuals to discuss these issues at any time. Mr. Bockhorst related his belief that the record on the Homer annexation was extensive and was reviewed by the LBC. In regard to comments that the LBC was reading from a prepared script during the decisional deliberations, Mr. Bockhorst refuted those comments and explained that the LBC had before it a workbook in which the department had listed all of the standards with spots for the commission members to make notes during the hearing. Mr. Bockhorst related his belief that the commission members do put forth a tremendous out of time and effort in their deliberations.

REPRESENTATIVE SCALZI turned to the issue of the makeup of the LBC and the charge that the LBC is made up of more urban officials than rural officials, and requested that Mr. Bockhorst speak to that assertion.

MR. BOCKHORST explained that by statute, the LBC consists of five members, one member is appointed from each judicial district of the state. Therefore, there is geographic representation on the LBC. There is also a member that is appointed from the state at large. The current composition of the LBC is such that the member from the Third Judicial District and the Chairman, who is appointed from the state at large, are both from Anchorage. This composition hasn't always been the case. He pointed out that there have been cases in which the LBC has consisted of no members from Anchorage. In further response to Representative Scalzi, Mr. Bockhorst pointed out that statutes require that appointed members have knowledge in the field. He related his belief that the members of the LBC are highly qualified and experienced. Although he understood the concern of overrepresentation of Anchorage, Mr. Bockhorst didn't believe that such a composition was a poor reflection on the LBC's work.

Number 2845

REPRESENTATIVE SCALZI moved on to the issue of local officials being recused from the issue.

MR. BOCKHORST said that this was the first time, in his 22 years serving the LBC, he has ever heard the issue of recusing local officials. Mr. Bockhorst related his belief that it is particularly important for local representatives to weigh in on the issue. Therefore, he didn't feel that recusing a local official was appropriate.

CO-CHAIR MORGAN announced that the public testimony would be closed.

TAPE 02-9, SIDE B

REPRESENTATIVE MURKOWSKI related her belief that [HCR 27] is a good first step in allowing the LBC to address [inadequate petitions] early on. She said she feels this would be good for the public as well as the LBC.

Number 2919

REPRESENTATIVE KERTTULA returned to the issue of a controversial [petition] and related her belief that [HCR 27] is intended to address controversy when there is a substantive legal problem, not when the [petition] is merely controversial. Furthermore, Representative Kerttula said she feels it would've been wrong for Representative Scalzi to recuse himself.

REPRESENTATIVE HALCRO expressed his hope that those who have testified on the Homer annexation realize that they have helped make the LBC process better.

Number 2828

REPRESENTATIVE MURKOWSKI moved to report HCR 27 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HCR 27 was reported from the House Community and Regional Affairs Standing Committee.

#### **ADJOURNMENT**

There House Community and Regional Affairs Standing Committee meeting took an at-ease at 9:03 a.m. in order to hear an overview from the Department of Commerce and Economic Development regarding the Alaska Economic Information System. [The minutes for the overview can be found under the 9:20 a.m. minutes for the same date.]