

ALASKA LEGISLATURE
JOINT MEETING
SENATE AND HOUSE COMMUNITY & REGIONAL AFFAIRS COMMITTEES
February 12, 2002
8:12 a.m.

SENATE MEMBERS PRESENT

Senator John Torgerson, Chair
Senator Alan Austerman
Senator Randy Phillips
Senator Pete Kelly

SENATE MEMBERS ABSENT

Senator Georgianna Lincoln

HOUSE 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

HOUSE MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

Homer Annexation

PREVIOUS ACTION

No previous action to record

WITNESS REGISTER

Ms. Mary Jackson
Staff to Senator Torgerson
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Explained the provisions of the proposed resolution

Mr. Kevin Waring
Local Boundary Commission
Department of Community and Economic Development
550 W 7th Ave., Ste. 1770
Anchorage, AK 99501-3510

POSITION STATEMENT: Answered questions about the annexation process

Mr. Dan Bockhorst
Local Boundary Commission
Department of Community and Economic Development
550 W 7th Ave., Ste. 1770
Anchorage, AK 99501-3510

POSITION STATEMENT: Answered questions about the annexation process

ACTION NARRATIVE

TAPE 02-3, SIDE A [Senate CRA tape]

CO-CHAIRMAN JOHN TORGERSON called the joint meeting of the Senate and House Community & Regional Affairs Committees to order at 8:12 a.m. Present were Senators Kelly, Austerman, Phillips and Torgerson and Representatives Halcro, Scalzi, Murkowski, Kerttula and Co-Chairmen Meyer and Morgan. Co-Chairman Torgerson announced that the purpose of the meeting is to decide what recommendation to make to the rest of the Legislature about the Homer annexation. He informed members that inaction on the part of the Legislature means approval of the annexation. The Legislature cannot amend the proposed annexation; it is an either/or situation. If the Legislature disapproves the annexation, it must do so by March 7.

CO-CHAIRMAN TORGERSON informed committee members that committee staff has drafted a proposed resolution denying the recommendation. At the request of many committee members, staff also prepared a packet of information on the pros and cons of annexation. He noted Commissioner Waring of the Local Boundary Commission (LBC) and Dan Bockhorst of the Department of Community and Economic Development (DCED) were available via teleconference to answer questions. He informed members if the joint committee chooses to go forward with the proposed resolution, it would be introduced on Wednesday [February 13] in both houses. It is his intention, if introduced, to waive it from the Senate Community and Regional Affairs Committee to the Senate Rules Committee.

CO-CHAIRMAN MEYER moved to adopt the proposed resolution [22-LS1497\A, Cook, 2/11/02] for the purpose of discussion. [The proposed resolution would eventually become SJR 34. The House

companion resolution is HJR 39.]

CO-CHAIRMAN TORGERSON announced that with no objection, the committee would work off of the proposed resolution. He asked staff to explain the resolution.

MS. MARY JACKSON, staff to Senator Torgerson and the Senate Community and Regional Affairs Committee, explained that the proposed resolution is a compilation of responses to concerns expressed at the last two hearings. One provision in the proposed resolution addresses a concern that all LBC standards were not met, but the LBC has since submitted information to substantiate that the standards were met. She pointed out that during previous hearings, concern was also expressed about the inadequacy of the City of Homer's transition plan. She advised removing the "Whereas" clause in the proposed resolution that addresses the transition plan because the LBC believes it was adequate.

MS. JACKSON gave the following description of the clauses in the resolution.

The first three "Whereas" clauses address the background and "legalese." They explain why the proposed resolution is before the Legislature and the 45-day timeframe for action.

The fourth "Whereas" clause on page 1, line 12, states legislative recognition that the LBC is a disinterested third party.

The fifth "Whereas" clause on page 1, line 15, states that the Legislature recognizes the need for the legislative review process, but believes this tool should be used as the final process.

MS. JACKSON stated the Legislature does not have any statutory or regulatory authority to tell the LBC what to do: the proposed resolution is suggestive.

The sixth "Whereas" clause on page 2, line 3, contains a direct reference to HB 13.

The next "Whereas" clause on page 2, line 6, refers to the question of whether or not the LBC has the authority to truncate terms. When that question was asked during the committee process, the LBC Chair indicated he did not know.

The eighth "Whereas" clause on page 2, line 9, is self-explanatory.

The "Whereas" clause on page 2, line 13, addresses the inadequacy of the transition plan, however this is the clause she suggests

removing because the LBC has indicated that the city's transition plan was adequate.

The "Whereas" clause on page 2, line 18, addresses an issue raised by the public about its inability to vote, that was discussed briefly. An informal poll was taken in the Homer area and given to the city council, which made a decision to not go out for a vote of the citizens.

The final "Resolve" clause states that the Homer annexation is not approved by the Legislature.

MS. JACKSON repeated that this process is straightforward in that inaction on the part of the Legislature implies approval so it is unnecessary to have a resolution of support.

8:22 a.m.

SENATOR PHILLIPS said he has three questions that refer to the clauses on page 2, lines 3-5, 9-11, and 18-21. Regarding the clause on lines 3-5, he asked if a legal opinion has been issued about whether HB 13 affects the creation of a service area within a borough or a city.

CO-CHAIRMAN TORGERSON said the committee has a legal opinion that says it does not apply to this annexation and that the LBC has a higher responsibility so the Legislature cannot change the LBC's authority by statute. He noted this issue has raised an expectation and that folks who oppose this have their own attorneys who say that it can and should apply. However, the general public's expectation is still that some other form of government would not demolish service area concepts. The LBC chose to ignore that completely. It had a lot of options before it about how it could have applied. The LBC clearly has the right to put stipulations on annexations but chose not to. He said that is one of the major reasons he opposes this annexation - that and the truncation of terms. He likened it to Anchorage trying to annex the Mat-Su area, if the same population numbers and other factors were applied. He pointed out, regarding Senator Phillips' question, it is not a service area within a unified municipality.

SENATOR PHILLIPS responded:

Of course you have a different borough on the Kenai so you've got locally organized cities within a borough, and I'm not familiar with that process day-to-day. What I'm indicating here is my perspective that - are you saying that the service area concept within the borough is

inclusive in this piece of legislation here?

CO-CHAIRMAN TORGERSON said the Kenai Borough and Municipality of Anchorage were founded under the same laws.

SENATOR PHILLIPS said Eagle River has a service area concept, which is why he became involved in HB 13. He asked, "... and the HB 13, does it apply to the borough side of it - the service area concept, versus the city? That's what I'm trying to get - to clarify that."

SENATOR AUSTERMAN said that "Whereas" clause speaks to the intent of HB 13 that it would apply on a broad basis concept of not just service areas. He thought the Legislature intended the vote concept to apply to more than just service districts.

REPRESENTATIVE HALCRO commented that he has never seen a resolution designed in this way. The clause on page 1, lines 12-14, recognizes the constitutional authority of the LBC but the resolution then proceeds to say that what the LBC did was wrong. Then, language on page 2, lines 13-17, says the transition plan was adequate. And, regarding Senator Phillips' question about HB 13, the committee has two legal opinions that clearly say that HB 13 cannot make an incursion into the LBC's constitutional authority. He said he is not sure that he understands what the problem is.

8:28 a.m.

SENATOR PHILLIPS noted that Ms. Jackson stated the resolution says the Legislature is concerned about the process of annexation and asked what was wrong with the process.

MS. JACKSON replied:

And if I might, I think I can address your previous concern about HB 13. What you had before you was the section that references unified municipalities. On page 2 of that bill was a brand new section that applied to boroughs and that's where the authority, if you will, applied. And then Senator Austerman addressed the question of the intent and that was it. This is not addressing the legality of the issue. Without question, you have two legal comments or opinions before you that say the legality is not there. And then, specifically to the constitutionality of the Local Boundary Commission, there is still a trump - and that is by this body. This body has the ability to disapprove and that is too in the Constitution. And you don't need to even address 'whereases.' As a practical matter, the ones that I've

researched that have been most recent do not have reasons for disapproval. The decision was to lay this on the table and have you debate it in full and, you may find if you disapprove, you don't want to put any of the 'whereases' but you had debated all of the issues.

SENATOR PHILLIPS said that is what concerns him because he is worried about setting a precedent. He repeated the proposed resolution expresses concern about the process but does not specify what part of the process was flawed.

MS. JACKSON stated there was nothing wrong with the process and that "process" may be the wrong term. As an example, she explained that a public policy issue was identified that may be inappropriate; that being whether it was appropriate to have an inclusion of 2,300 people that was ratcheted down to 890.

SENATOR PHILLIPS referred to the "Whereas" clause on page 2, lines 18-21, and asked Ms. Jackson to elaborate.

MS. JACKSON explained that the public comment had been received but the residents of the City of Homer did not have the ability to make a determination on whether or not they wanted the municipality to annex. The process does not require a vote of the municipality, nor does it require a vote of the area to be annexed, so that would be a process issue. The LBC develops the regulations for the process.

Regarding the areawide issue (page 2, lines 9-12), Ms. Jackson said Senator Torgerson and Representative Scalzi indicated their concern about it over a year ago. They both introduced joint resolutions to amend the Constitution to require that the LBC not go forward with an annexation that exceeds 10 percent. That percentage was chosen merely to start a dialog about the appropriateness of, what has been seen by some as, a land grab.

REPRESENTATIVE GUESS stated, regarding page 2, lines 3-17, as a member of the committee that heard HB 13 last year, she agrees with the two legal opinions. She said that issue was never discussed on the House side and she does not believe that was the intent. Regarding the truncation of terms, she said it should be clarified by the LBC but added that people testified that the election is in October and that people from the area that is annexed can run for those offices. She said she is unsure why that is an issue. Regarding the "Whereas" clause on page 2, lines 9-12, she reads that to mean the process worked. The City of Homer tried to annex 25 square miles but was stopped by the LBC. She believes the "Whereas" clause on lines 18-21 is the core of the resolution and that the legitimacy of the previous three clauses is mixed.

MS. JACKSON noted the issue of the application HB 13 is one for the body to determine. The issue of the truncation of terms is twofold. The LBC said it didn't know for certain that it has the ability to truncate terms so that is a question for the Legislature. If the Legislature passes this resolution, it will act as a letter of intent and asks the LBC to research whether it has that ability. The second part has to do with residency requirements. The City of Homer is putting forward an ordinance at its next meeting to clarify that matter. She sees that action as meaning that if an ordinance is necessary now, it was not clarified originally. Regarding whether the process worked because the number of people was reduced from 2,300 to 890, she said one could look at it as not working because it should not have been that big to begin with and the regulations should have been specific. That goes to the legislation introduced by Senator Torgerson and Representative Scalzi to amend the Constitution. That issue was raised while the LBC was developing its regulations but it was not considered.

REPRESENTATIVE SCALZI informed members that the resolution was proposed for discussion purposes. He noted that he researched what has been done before and was disappointed to find no direction from other annexation denials. He believes the Legislature should give direction to the LBC for future annexations regarding the problems that occurred during this one. He said he disagrees with the HB 13 argument on this particular issue and stated:

If you are going to have a service area, which we have a road service area that's - although non area wide encompasses the whole borough, effectively if we are going to allow a vote to change the boundaries on that, the whole borough would have to vote on whether or not the City of Homer could annex and that wouldn't be appropriate because you'd need a non area wide vote, you'd need the whole borough to vote to change those boundaries. Well that would preclude any annexation from going forward - or certainly may. So I think that the Boundary Commission's argument and the Attorney General's argument are valid in this case that the LBC's annexation procedures would trump what we do through statutory regulation.

He then asked Mr. Bockhorst about the non-involvement of Kachemak City. He noted Kachemak City is a second-class city next to the Homer area and is surrounded by this annexation. The report said that the Homer annexation would not have gone through if Kachemak City had been a part of it. The LBC and DCED staff expressed some concern about that because the LBC is mandated to incorporate

second-class cities as they are with the same language with regard to service areas. He stated, "... and say, well if you can do it better with a unified city then you don't need the service area, also second class cities.

MR. BOCKHORST said the City of Kachemak and City of Homer were both incorporated by the Superior Court of Alaska. The department, in its analysis of the Homer annexation, acknowledged that the Superior Court did not pay enough attention to the constitutional provisions encouraging minimum numbers of local government units. However, with regard to the proceeding before the LBC, the issue of the City of Kachemak and its status was never put on the table. A petition filed by the City of Homer for annexation of 25.6 square miles was on the table. To deal with that question would have required the LBC to take extraordinary due process steps because the issue was not on the table. He felt that from a public policy standpoint, it would also represent a heavy hand on the part of the State of Alaska, if the LBC or DCED initiated it at the local level. DCED, in its analysis, acknowledged that there ought to be consideration of the future relationship between the City of Homer and the City of Kachemak that would involve discussions of local officials, citizens in the local area and the broader area of the Kenai Peninsula.

8:40 a.m.

REPRESENTATIVE SCALZI said a forced annexation or legislative review implies a heavy hand anyway. He felt the LBC should have at least made a recommendation for the sake of consistency but did not tackle it because of the difficulty of the issue.

REPRESENTATIVE HALCRO commented to his understanding, law guides the LBC process and 14 standards must be met before it can propose an annexation.

MS. JACKSON clarified that the LBC has adopted regulations that identify standards but that the Constitution grants authority for legislative review, not statutes.

REPRESENTATIVE HALCRO asked if the LBC must meet those standards.

MS. JACKSON said it must, but they are the ones that establish the standards and they are also the ones that determine if those standards have been met. The only oversight is this body.

REPRESENTATIVE HALCRO said he believes Representative Guess was right on track. He stated the "Whereas" clause on page 2, lines 3-5, pertains to HB 13. The committee has two legal opinions that

say that HB 13 cannot conflict with the LBC's constitutional authority. The "Whereas" clause on lines 6-8 pertaining to truncated terms shouldn't be an issue. During testimony at a previous hearing, five city council men said they would resign their terms and volunteer to run for re-election. The next "Whereas" clause shows the LBC process worked. The City of Homer was over-reaching for 25 square miles; the LBC reduced it to a little less than 5 square miles. The "Whereas" clause on lines 13-17 says that if a transition plan was adopted for 25 square miles, 4.8 square miles should be sufficient. He added that the City of Homer had several budget meetings last fall to plan how to provide service during the transition. He stated the last "Whereas" clause defies what the LBC process is. He noted many legislators went through the Anchorage Hillside police issue five or six years ago. The LBC was created because local communities, when they encounter growth, are incapable of making that kind of decision. He noted if the Legislature votes to overturn the annexation, the City of Homer will have to go through the process for another two years and it will not get better. He maintained that all of the points in the resolution are clearly trumped by the facts.

8:45 a.m.

REPRESENTATIVE MURKOWSKI questioned what directive the Legislature is trying to send in the resolution. She expressed concern that if it is to act as a letter of intent, it seems empty to say the Legislature is concerned about the process, even though the LBC acted within the confines of its authority, and offer no guidance. She maintained that the resolution says the Homer annexation is problematic enough to stop but the resolution has no muscle.

SENATOR PHILLIPS stated that disapprovals of annexations in the past have been short and to the point and gave no reasons for disapproval. He suggested removing the reasons from the proposed resolution and letting legislators explain why they are voting for or against it during the floor debate. He repeated that the LBC works under a constitutionally mandated process.

CO-CHAIRMAN TORGERSON said he agrees with Senator Phillips' suggestion but explained that other members wanted to include the reasons to couch the debate.

8:50 a.m.

SENATOR PHILLIPS moved to amend the proposed resolution by deleting lines 3-21 on page 2 [Amendment 1].

REPRESENTATIVE HALCRO questioned how to justify the conclusion on

page 2, lines 22-24, if the entire content of the resolution is deleted.

CO-CHAIRMAN TORGERSON stated the Legislature is not required to explain the reasons and, according to Tam Cook, legal counsel, legislatures have gone both ways in similar situations.

SENATOR PHILLIPS repeated that each member could state on the floor, for the record, the reasons why they are voting for or against it. He stated a letter of intent could also be sent. He does not want to tell the LBC how to do its job when it is guided by a constitutional mandate.

SENATOR PHILLIPS repeated his motion to delete lines 3-21 on page 2.

CO-CHAIRMAN TORGERSON announced that with no objection, Amendment 1 was adopted. He then informed members a motion would be in order to have a House and Senate joint resolution introduced in each body.

SENATOR PHILLIPS moved that the Community and Regional Affairs Committees introduce the proposed resolution in the House and Senate. [The resolutions, SJR 34 and HJR 39, were subsequently introduced.]

REPRESENTATIVE SCALZI stated appreciation for Senator Phillips' comment that members should look to local legislators of the areas in matters like this as they have local knowledge and know the history. He commented that he hopes to debate this issue in the House CRA Committee.

CO-CHAIRMAN MEYER stated support for the motion as time is of the essence in this matter because action must be taken by March 7.

CO-CHAIRMAN TORGERSON announced that support of the motion to introduce the proposed resolution in both houses does not reflect members' support or opposition of the Homer annexation.

REPRESENTATIVE MURKOWSKI stated that Senator Torgerson said he would ask that the resolution be waived from the Senate CRA Committee and noted she would like the House CRA Committee to hear the measure so that members have the opportunity to get their positions on the record.

CO-CHAIRMAN TORGERSON commented that he would talk to the Co-Chair and decide what to do. He then announced, with no objection, the motion to introduce the proposed resolution in each body carried. [The proposed resolution would eventually become SJR 34. The House

companion resolution is HJR 39.]

TAPE 02-3, SIDE B

With no further business to come before the committee, he adjourned the joint meeting of the Senate and House Community and Regional Affairs Committees at 9:00 a.m.