

SB

151

"An Act relating to the boundaries of certain units of local governments in the state; and providing for an effective date."

COMMITTEE REPORT

3-7-73

HOUSE

Mr. Speaker:

Date 3-12-73

The Committee on CIVIL & NEG. AFFAIRS has had CS 151

under consideration. A Majority of the members of the Committee

() recommends it DO PASS

() recommends it DO NOT PASS

() recommends it DO PASS WITH ATTACHED AMENDMENT(S)

() recommends it BE REPLACED WITH CS FOR 151 AND THAT

CS FOR 151 DO PASS

() "and" recommends it BE REFERRED TO THE _____

COMMITTEE

() reports it back WITHOUT RECOMMENDATION

() "other"

Members signing the Majority report:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Members NOT concurring in the Majority report:

_____	recommends:	_____
_____	recommends:	_____
_____	recommends:	_____
_____	recommends:	_____
_____	recommends:	_____

_____ Chairman

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WILLIAM A. EGAN, GOVERNOR

POUCH K — STATE CAPITOL
JUNEAU 99801

February 9, 1973

The Honorable John Rader
Chairman
Joint Senate and House Local
Government Committees
Alaska State Legislature

Re: Anchorage Annexation of Military
Bases - Apportionment

Dear Senator Rader:

You have asked for comment on the apportionment arrangements possible in the event that Fort Richardson and Elmendorf Air Force Base become part of the City of Anchorage and of the Greater Anchorage Area Borough. The question is whether in such case all persons living within the boundaries of the military reservations must be included in the population base for purposes of apportioning representation on the borough assembly. If inclusion is legally required, the practical result will be increased representation on the assembly for the City of Anchorage.

For the reasons discussed below, it is our opinion that inclusion of non-resident military personnel and their dependents is not constitutionally required.

In general, the U.S. Supreme Court has held that military who are in fact residents may not be excluded from an apportionment base simply because of their military status. On the other hand, the court has held with equal emphasis that military who are not residents need not be included simply because they were physically present in the state on census day.

In Burns v. Richardson, 384 U.S. 73, (1966), the court dealt directly with the status of nonresident military for apportionment purposes. Hawaii's apportionment was based on registered voters. As a result, most military personnel were excluded and those areas near military bases received less representation than would be the case if total population were counted. Rejecting plaintiffs' claim that apportionment must be based on total population, the court stated at p. 91:

We start with the proposition that the equal protection clause does not require the state to use total population figures derived from the federal census as a standard by which this substantial population equivalency is to be measured.

Neither in Reynolds v. Sims nor in any other decision has this court suggested that the states are required to include aliens, transients, short-term or temporary residents, or persons denied the vote for conviction of crime, in the apportionment base by which the legislators are distributed and against which compliance with the equal protection clause is to be measured.

See also, In re Opinion of the Justices, 276 A2d 825 (N.H. 1971); Pate v. El Paso County, Texas, 337 F.Supp. 95 (W.D. Texas, 1970).

Cases which hold that military personnel may not be excluded arose where the state sought to justify, after the fact, large population variances among districts simply by pointing to the presence of military bases in certain areas. Thus, in Davis v. Mann, 377 U.S. 678 (1964) the court noted:

Discrimination against a class of individuals merely because of the nature of their employment, without more being shown, is constitutionally impermissible.

See also, Kirkpatrick v. Preisler, 394 U.S. 526 (1969).

On September 29, 1972 the Supreme Court of Alaska filed its final opinion in Egan v. Hammond, (file No. 1711), Alaska's legislative reapportionment case. The Court considered in some detail the permissible range of treatment for military personnel in reapportionment, stating:

We recognize that the substantial military population present in the state because of military orders and without intention to make Alaska their home can easily give an unbalanced representation to areas abutting their bases. But we are also mindful of the need for a permanent plan which achieves a level of accuracy of their voting participation which is closer than either including or excluding all military as a class. Thus, it is incumbent upon us to discuss alternative plans which may be available to handle the problem.

Citing the recent Hawaii case, Burns v. Richardson, the court continued:

Alaska has a master voter registration list and the court takes judicial notice that active efforts have been made to register all eligible voters. Upon adequate notice and opportunity to register before use of such a registration list for reapportionment purposes, it would appear that an apportionment plan based on current voter registration would be permissible under the Federal Constitution. Likewise, plans based on accurate data of state citizenship or state residency could meet the standards of the Federal Equal Protection Clause.

In our view, these comments of the Alaska Supreme Court accurately reflect current federal constitutional law on this question. Moreover, as indicated by the basic one man, one vote cases, principles laid down for legislative apportionment apply to local government apportionment as well. Accordingly, if the bases become a part of the city and borough, the options stated in the quotation above would be available for assembly apportionment.

AS 29.23.020(a) provides in part:

. . . if a borough is already incorporated the assembly shall be composed and apportioned in a manner prescribed by charter or ordinance. Assembly composition and apportionment, including voting procedures based on the apportionment, may be prescribed in any manner consistent with the equal protection standards of the Constitution of the United States.

In accordance with section 17, of chapter 118 SLA 1972, AS 29.23.020 was to take effect upon passage of an amendment to the Constitution of the State of Alaska relating to assembly representation. Such an amendment enacted as SJR 52 in the 1972 legislative session, was approved by the voters in the primary election on August 22, 1972. This new legislation removes any doubt that may have existed previously about the power of an assembly, under state law, to vary from raw census figures as the basis for apportionment.

Assuming that present assembly apportionment is on the basis of total population, it appears that the city would be entitled to a majority on the assembly as soon as the annexation occurred. Thereafter, the city would have the controlling voice on any proposal to change the population base by ordinance.

If the legislature wishes to insure exclusion of, non-resident military personnel, it may wish to amend AS 29.23.020(a) by adding language along the following lines:

Provided that, if 10% or more of the total population of a borough consists of military personnel and dependents living on a military reservation, representation on the borough assembly shall be apportioned on the basis of resident population

It should be noted that separating residents and non-residents has become increasingly difficult with the demise of durational residence requirements. In all likelihood, same sort of special census would be required.

Registered voters is also a permissible base, with the advantage of easy determination. A disadvantage of a registered voter base is that, absent vigorous registration efforts, it tends to under-represent areas with highly mobile population. If, for whatever reason, the registered voter list fails to reflect resident population with some accuracy, it becomes subject to challenge.

We trust the above discussion will be of assistance to you in dealing with this matter. If you have questions or comments, please do not hesitate to contact us.

Very truly yours,

JOHN E. HAVELOCK
ATTORNEY GENERAL

By: *Richard W. Garnett III*

Richard W. Garnett, III
Assistant Attorney General

RWG:mjj

STATEMENT OF ROBERT E. SHARP, CITY MANAGER, CITY OF ANCHORAGE, BEFORE
HOUSE AND SENATE COMMITTEES ON COMMUNITY AND REGIONAL AFFAIRS.

February 21, 1973

Senate Bill No. 151

This bill would annex to the Greater Anchorage Area Borough certain military reservation lands generally embracing the populated portions of Elmendorf Air Force Base and Ft. Richardson. A portion of these lands is now inside the boundaries of the City of Anchorage.

This bill would also annex to the City of Anchorage the balance of the populated portion of Elmendorf Air Force Base, and Ft. Richardson military reservations. This is the same area the Local Boundary Commission approved for annexation to the City of Anchorage.

The apparent purpose of this bill is to annex the populated portions of the two military reservations to both the City and Borough. We have no objection to this approach. However, we would strongly oppose the passage of House Joint Resolution No. 12 and thereby disapprove the annexation of these military reservation lands to the City of Anchorage on the assumption Senate Bill No. 151 will be enacted into law.

Senate Bill No. 150

Each section of this bill will be discussed.

Section 1 provides for the automatic annexation of military reservation lands to a borough if such lands are annexed to a city within the borough. We have no objection to this provision.

Section 2 - no comment.

Section 3 provides for the use of voter registration instead of population as the basis for apportionment of borough assemblies if a military reservation is annexed to or located within such borough. Notwithstanding the legality of using only voter registration this basis has many other problems. A person's name is not removed from the register until he has failed to vote in either a primary or general election at least once in four consecutive calendar years. With the transient nature of large segments of the population in Anchorage and other communities in the State some assemblymen might represent more "paper" than "people".

We note the "voter registration" basis for apportionment would apply in only those boroughs with military reservations in their boundaries. Accordingly, all boroughs in the State would not use the same basis for apportionment. Inasmuch as the final State apportionment has not been approved there could be still a different basis for apportionment for representation in the State Legislature.

We feel that the basis for apportionment for representation on Councils, Assemblies and Legislature should be the same; and that the resolution of this problem can be accomplished under existing law.

Section 4 relates to council representation and our remarks concerning Section 3 would generally apply to this section.

Sections 5, 6 and 7 provide for continued State operation of on base schools unless the Department of Education approves borough operation of such schools. We have no objection to these sections.

Section 8 provides for reduced State shared revenues. This reduction would apply to the portion of Elmendorf Air Force Base already in the city limits of Anchorage as well as to the area being annexed. The City of Anchorage objects this reduction and its discriminatory provisions as it relates to the

area already in the city limits. The limitation should apply to only military reservations annexed subsequent to the effective date of Act.

There were 6,544 people in the area of the City that embrace a portion of Elmendorf Air Force Base as of the last U. S. census in 1970. This produces \$163,600 in State shared revenues for police parks and recreation, transportation and fire services. Under this bill the amount would be \$89,980 for a loss of \$73,620. The Richardson Vista apartment complex in this area is provided all the municipal services furnished other areas of the City and it would be highly discriminatory to exclude this area from normal revenue sharing.

We concur with the State shared revenue limitations applied to the military reservation area to be annexed to the City under the Local Boundary Commission action or SB #151 except for parks and recreation which we feel should be fifty (50) percent rather than twenty-five (25) percent. The fifty (50) percent ratio more nearly represents the park and recreation programs provided at large compared with neighborhood facilities and programs which is a fair and equitable criteria for treating this matter.

To summarize this statement the City of Anchorage is desirous of annexing the balance of the populated area of Elmendorf Air Force Base, and the populated portion of Ft. Richardson, and we have no objection to the annexation of military area proposed in SB #151 to the Greater Anchorage Area Borough. The City strongly opposes the passage of HJR #12 on the assumption SB #151 will pass the Legislature. The Local Boundary Commission's action should stand. The subsequent confirmation by the passage of SB #151 poses no problem. The City of Anchorage does not think voter registration in itself is an equitable method of apportioning assemblies or councils. Further, the basis for reapportionment should be the same for all local governments and the State Legislative bodies. Existing law is

adequate for handling apportionment and Sections 3 and 4 should be deleted from SB #150. The reduction of State shared revenues to the City of Anchorage for the portion of Elmendorf Air Force Base that has been in the City limits for 53 years is highly discriminatory and Section 8 of the bill should be applicable to only military reservation areas annexed subsequent to the effective date of Act.

Reapportionment at this time would
set a stage.

Who is entitled to Representation?

LT Gov has not stated he will use
Voter Reg for reapportionment.

Separate Criteria for STATE + Borough

Impact Policy

IN LANE