

HJR

26

HOUSE COMMITTEE REPORT

3/17

(5)  
Date Referred: February 13, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: \_\_\_\_\_

added 3/17  
fin

The COMMUNITY & REGIONAL AFFAIRS Committee considered: HJR 26

HOUSE JOINT RESOLUTION NO. 26 [POWERS OF LOCAL BOUNDARY COMMISSION]  
Proposing an amendment to the Constitution of the State of Alaska relating to powers of the local boundary commission.

RECOMMENDS:

- replacing with CS HJR 26 C-RA  the same title
- the attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the Finance Committee

ADOPTS: \_\_\_\_\_ letter of intent

- ATTACHES NEW FISCAL NOTE(S):
- fiscal impact Electrons
  - zero fiscal note
  - zero with analysis C+RA

- APPROVES PREVIOUS:
- fiscal note(s) published: \_\_\_\_\_
  - zero fiscal notes(s) published: \_\_\_\_\_

SIGNING DO PASS:

SIGNING OTHER THAN DO PASS:  
(Do Not Pass, No Recommendation, Amend)

Richard Storey FOSTER  
Michael Davis DAVIS  
Eileen P. MacLean MACLEAN

Wendell PETTY JOHN  
Bette Cato CATO

Eileen P MacLean  
 Chairman's signature



# Alaska State Legislature

REPRESENTATIVE DICK SHULTZ

Member  
Finance Committee

P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4940  
Home: P.O. Box 487  
Tok, Alaska 99780

## MEMORANDUM

TO: ALL MEMBERS OF THE LEGISLATURE  
FROM: REP. DICK SHULTZ DS  
DATE: FEBRUARY 14, 1989  
RE: POWERS OF THE LOCAL BOUNDARY COMMISSION

\*\*\*\*\*

I have just now introduced HJR 26 to require a public vote when unfriendly annexations are attempted by organized governments.

Prior to HJR 26, I introduced HB 131 to beef up our statutes and give the Local Boundary Commission more guidance in their activities. It is presently being heard in the House C&RA committee. In researching HB 131, I found that the LBC has been given broad constitutional authority which can not be substantially changed by the Legislature, so a normal bill can not be used to give voting rights to the people.

If in our ambitions, we go to far in HB 131, the courts may invalidate our actions or the Governor may veto the bill.

What we can do, is to move HJR 26 along and let the public speak. Since the changes to the constitution would only apply under limited conditions, I feel there should be few arguments against it.

In summary, HJR 26 would apply only if an organized government proposes to annex an area which has a different social and economic character. If that is the case, the people in the area proposed for annexation, would have to approve it by majority vote.

Together, we can give citizens a larger say in their future. I am anxious to work toward this goal with each and every one of you.

1 IN THE HOUS\_

BY SHULTZ

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HOUSE JOINT RESOLUTION NO. 26

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

Proposing an amendment to the Constitu-

6

tion of the State of Alaska relating to

7

powers of the local boundary commission.

8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. Article X, sec. 12, Constitution of the State of Alaska,  
10 is amended to read:

11 SECTION 12. BOUNDARIES. A local boundary commission [OR BOARD]  
12 shall be established by law in the executive branch of the State  
13 government. The commission [OR BOARD] may consider any proposed local  
14 government boundary change. The commission may recommend the annexa-  
15 tion of land to a municipality only with the approval of a majority of  
16 the residents of the area to be annexed if the land is not within a  
17 relatively integrated socioeconomic unit of the municipality. The  
18 commission [IT] may present proposed changes to the legislature during  
19 the first ten days of any regular session. The change shall become  
20 effective forty-five days after presentation or at the end of the  
21 session, whichever is earlier, unless disapproved by a resolution  
22 concurring in by a majority of the members of each house. The commis-  
23 sion [OR BOARD], subject to law, may establish procedures whereby  
24 boundaries may be adjusted by local action.

25 \* Sec. 2. The amendment proposed by this resolution shall be placed  
26 before the voters of the state at the next general election in conformity  
27 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-  
28 tion laws of the state.

I have attached two items for your information. They are both pages from the Alaska Constitution.

Item "A" shows where the phrase " Relatively integrated socioeconomic " already occurs in the Constitution.

Briefly this is the language the Courts used to determine that Cordova did not fit an election District where it was originally placed under an apportionment determination.

Item "B" is the section of the Constitution that would be amended. HJR 26 would allow people living in an area proposed for annexation (that is different in terms of socioeconomic) to determine by vote whether they wish to be annexed.

\*\*\*\* Note

It is important to keep in mind that while the phrase "Relatively integrated socioeconomic" seems awkward, it has the strength of prior interpretation by the courts and therefore is probably the best choice for describing social and economic differences.

ARTICLE VI

LEGISLATIVE APPORTIONMENT

Election Districts

SECTION 1. Members of the house of representatives shall be elected by the qualified voters of the respective election districts. Until reapportionment, election districts and the number of representatives to be elected from each district shall be as set forth in Section 1 of Article XIV.

Senate Districts

SECTION 2. Members of the senate shall be elected by the qualified voters of the respective senate districts. Senate districts shall be as set forth in Section 2 of Article XIV, subject to changes authorized in this article.

Reapportionment of House

SECTION 3. The governor shall reapportion the house of representatives immediately following the official reporting of each decennial census of the United States. Reapportionment shall be based upon civilian population within each election district as reported by the census.

Method

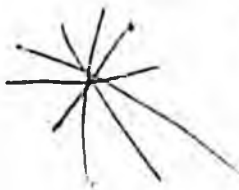
SECTION 4. Reapportionment shall be by the methods of equal proportions, except that each election district having the major fraction of the quotient obtained by dividing total civilian population by forty shall have one representative.

Combining Districts

SECTION 5. Should the total civilian population within any election district fall below one-half of the quotient, the district shall be attached to an election district within its senate district, and the reapportionment for the new district shall be determined as provided in Section 4 of this article.

Redistricting

SECTION 6. The governor may further redistrict by changing the size and area of election districts, subject to the limitations of this article. Each new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area.



A

Each shall contain a population at least equal to the quotient obtained by dividing the total civilian population by forty. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible.

Modification of Senate Districts

SECTION 7. The senate districts, described in Section 2 of Article XIV, may be modified to reflect changes in election districts. A district, although modified, shall retain its total number of senators and its approximate perimeter.

Reapportionment Board

SECTION 8. The governor shall appoint a reapportionment board to act in an advisory capacity to him. It shall consist of five members, none of whom may be public employees or officials. At least one member each shall be appointed from the Southeastern, Southcentral, Central and Northwestern Senate Districts. Appointments shall be made without regard to political affiliation. Board members shall be compensated.

Organization

SECTION 9. The board shall elect one of its members chairman and may employ temporary assistants. Concurrence of three members is required for a ruling or determination, but a lesser number may conduct hearings or otherwise act for the board.

Reapportionment Plan and Proclamation

SECTION 10. Within ninety days following the official reporting of each decennial census, the board shall submit to the governor a plan for reapportionment and redistricting as provided in this article. Within ninety days after receipt of the plan, the governor shall issue a proclamation of reapportionment and redistricting. An accompanying statement shall explain any change from the plan of the board. The reapportionment and redistricting shall be effective for the election of members of the legislature until after the official reporting of the next decennial census.

ject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services.

Unorganized  
Boroughs

SECTION 6. The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

Cities

SECTION 7. Cities shall be incorporated in a manner prescribed by law, and shall be a part of the borough in which they are located. Cities shall have the powers and functions conferred by law or charter. They may be merged, consolidated, classified, reclassified, or dissolved in the manner provided by law.

Council

SECTION 8. The governing body of a city shall be the council.

Charters

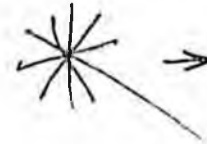
SECTION 9. The qualified voters of any borough of the first class or city of the first class may adopt, amend, or repeal a home rule charter in a manner provided by law. In the absence of such legislation, the governing body of a borough or city of the first class shall provide the procedure for the preparation and adoption or rejection of the charter. All charters, or parts or amendments of charters, shall be submitted to the qualified voters of the borough or city, and shall become effective if approved by a majority of those who vote on the specific question.

Extended  
Home Rule  
Powers

SECTION 10. The legislature may extend home rule to other boroughs and cities.

Boundaries

SECTION 11. A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.



SECTION 12. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

Agreements:  
Transfer of  
Powers

SECTION 13. Agreements, including those for cooperative or joint administration of any functions or powers, may be made by any local government with any other local government, with the State, or with the United States, unless otherwise provided by law or charter. A city may transfer to the borough in which it is located any of its powers or functions unless prohibited by law or charter, and may in like manner revoke the transfer.

Local  
Government  
Agency

SECTION 14. An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities; collect and publish local government information, and perform other duties prescribed by law.

Special  
Service  
Districts

SECTION 15. Special service districts existing at the time a borough is organized shall be integrated with the government of the borough as provided by law.

#3

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 3, 1989

SUBJECT: Prohibited recommendations from the  
Local Boundary Commission  
(CSHB 131(C&RA) and CSHJR 26(C&RA))

TO: Representative Eileen P. MacLean, Chair  
House Community and Regional Affairs Committee

FROM: Richard A. Bradley  
Legislative Counsel 

Louann Christian has requested a new version of CSHB 131(C&RA). We have provided the committee with that request.

Louann asked that we delete from the request a new section that would prohibit the commission from recommending annexations in unpopulated areas except on certain determinations; the request would prohibit the Local Boundary Commission from considering annexations of the type represented by the recent Fairbanks recommendation.

I suggest the following amendment to CSHB 131(C&RA) to achieve this request:

"Sec. 2. AS 44.47 is amended by adding a new section to read:

Sec. 44.47.568. PROHIBITED CHANGES. The commission may not propose to the legislature the annexation to an existing municipality of an unpopulated area unless the commission determines that

(1) the unpopulated area requires services not provided by the state that the municipality would be able to provide; or

(2) the health, welfare, or safety of the residents of the municipality is endangered by conditions existing or developing in the area being considered for annexation and the annexation will enable the municipality to relieve the conditions."

Representative Eileen P. MacLean  
Page 2  
March 3, 1989

As a matter of style, I modified the language within the section and deleted the concept of a prohibited "consideration" and rather prohibited "proposed . . . changes", tracking the language of the Alaska Constitution. See art. X, sec. 12.

Louann also asked whether I believed that the change was constitutional. In my opinion, it may not be.

The language of the constitution is quite clear. It provides:

SECTION 12. BOUNDARIES. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

The language permits the commission to consider "any" change. The legislature may reject the change by a majority vote.

I do not believe that this amendment is a legislative implementation of the constitution; rather, it is inconsistent with the constitution.

And this being the case, I do not believe it is possible to redraft the language within the scope of the request to make the request constitutional.

Note that the United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n case, 489 P.2d 140 (1971) agreed that the legislature could require the commission (under AS 44.47.567(a)(2)) to establish "standards" for boundary changes and, on the failure of the commission to establish the standards, the annexation was void. But see Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (1974) where the court employed the "de facto municipal incorporation" doctrine to

Representative Eileen P. MacLean  
Page 3  
March 3, 1989

approve an annexation where the commission had still not developed "standards" three years later.

In our view, the commission has adopted standards for its review of petitions for annexation to, for example, boroughs. See 19 AAC 10.190 - 10.220.

Finally, while we believe the court has implicitly approved (in the USSR&M case) the legislative requirement that the commission establish standards to guide its review of boundary changes, we do not believe that the legislature may itself establish the standards that would prevent the commission from making specified recommendations to the legislature on boundary changes. As we suggested above, this result occurs because of the language of art. X, sec. 12 that the commission may consider "any . . . boundary change."

At Louann's request, I have revised CSHJR 26(C&RA) to permit the legislature to establish standards for boundary changes. I believe this will resolve the empowerment question.

If I may be of further assistance, please advise.

RAB:gc  
WKG7/085



# Alaska State Legislature

## House of Representatives Community & Regional Affairs

### MEMORANDUM

TO: ALL MEMBERS  
HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

FROM: REPRESENTATIVE EILEEN P. MACLEAN, CHAIRMAN  
HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

DATE: March 14, 1989

RE: Sectional Analysis of CS HJR 26 C&RA

Sec. 1 New language in CS HJR 26 C&RA would give constitutional authority to the legislature to establish standards to guide the commission in its review of boundary changes.

The date the recommendation would become effective is changed from 45 to 60 days after the Local Boundary Commission presents the recommendation to the legislature.

Se. 2 Requires that upon passage of the resolutions that the question be placed before the voters at the next general election.

Original sponsors: Shultz and Foster

IN THE HOUSE

BY THE COMMUNITY AND  
REGIONAL AFFAIRS COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 26 (C&RA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

Proposing an amendment to the Constitution of the State of Alaska relating to the local boundary commission.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\* Section 1. Article X, sec. 12, Constitution of the State of Alaska, is amended to read:

SECTION 12. BOUNDARIES. A local boundary commission [OR BOARD] shall be established by law in the executive branch of the State government. The commission [OR BOARD] may consider any proposed local government boundary change. The legislature may establish standards to guide the commission in its review of a local government boundary change. The commission [IT] may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective sixty [FORTY-FIVE] days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission [OR BOARD], subject to law, may establish procedures whereby boundaries may be adjusted by local action.

\* Sec. 2. The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

# STATE OF ALASKA

## LOCAL BOUNDARY COMMISSION

STEVE COWPER, GOVERNOR

949 EAST 36TH AVENUE, SUITE 404  
ANCHORAGE, ALASKA 99508  
PHONE: (907) 561-855

April 7, 1989

The Honorable Peter Goll, Co-Chairman  
The Honorable Max F. Gruenberg, Jr., Co-Chairman  
House Judiciary Committee  
Pouch V  
Juneau, Alaska 99811

Dear Representatives Goll and Gruenberg:

RE: COMMITTEE SUBSTITUTE FOR HOUSE JOINT RESOLUTION NUMBER 26

This is to provide comments of the Local Boundary Commission (LBC) regarding CSHJR 26 (C&RA), which is presently before your committee. This measure proposes to amend the Constitution of the State of Alaska to permit limitations on the types of municipal boundary changes which could be approved by the LBC.

The LBC opposes the proposed change to the State Constitution because it would allow the imposition of inappropriate standards to govern the types of municipal boundary changes which may be approved by the LBC. Indeed, a measure has already been introduced which would have precisely this effect [Sec. 2, CSHB 131 (C&RA)]. A separate letter has been prepared offering comments regarding CSHB 131 (C&RA).

Presently, the Constitution allows the LBC to "consider any proposed local government boundary change" (Art. X, Sec. 12). Diminishing that authority would severely weaken an important aspect of the framework for municipal government in Alaska.

Thirty-three years ago, the delegates to the State Constitutional Convention concluded, after considerable study and debate, that establishment and revision of local government boundaries should be the responsibility of the Local Boundary Commission. Shortly after statehood, the Alaska Supreme Court summed up the extensive considerations which led the delegates to this position (Fairview Public Utility District No. 1 v. City of Anchorage 368 P.2d 540):

An examination of the relevant minutes of [a series of 31 meetings held by the Committee on Local Government at the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not

The Honorable Peter Goll  
The Honorable Max F. Gruenberg, Jr.  
April 7, 1989  
Page Two

usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee -- "lies in placing the process at a level where area-wide or statewide needs can be taken into account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively."

The Supreme Court went on to state that it must be assumed that the Constitutional Convention delegates were aware of obstacles faced by Alaska cities in attempting to annex territory. The Court referred specifically to a related Territorial District Court case heard just prior to the convening of the Constitutional Convention. In the referenced case the judge remarked:

Every impediment and dilatory tactic has been employed by the opponents of annexation, except the homesteaders, to obstruct and harass the city in every move in connection with its efforts to extend its boundaries in the traditional manner to include the adjacent areas. Such opposition does not appear to be in the public interest or in good faith.

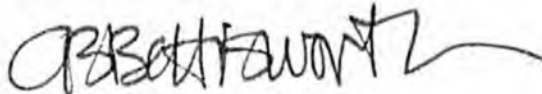
The Supreme Court went on to conclude that the Constitutional Convention delegates were sensitive to the inadequacies inherent in a system where needed municipal expansion could be frustrated. It is the Commission's opinion that the Constitutional amendment proposed by House Joint Resolution No. 26 would permit obstruction of warranted extensions of municipal boundaries of the nature which the delegates so purposefully wished to avoid.

The current system works well. Decisions of the LBC concerning boundary changes initiated under Art. X, Sec. 12 of the Constitution are subject to legislative review. If the legislature determines that an annexation proposal is unwarranted, it may reject that proposal. This process, which has been in place for thirty years, has proven to be effective, yet simple.

The Honorable Peter Goll  
The Honorable Max F. Gruenberg, Jr.  
April 7, 1989  
Page Three

Thank you for considering these comments. If possible, I will be present when your committee takes up this measure to answer any questions or provide additional information.

Sincerely,



C. B. Bettisworth  
Chairman

cc:

The Honorable Richard Shultz, Sponsor, HJR 26 and HB 131  
The Honorable Eileen MacLean, Chairman, House C&RA Committee  
The Honorable Ron Larson, Sponsor, HB 1  
Scott Burgess, Executive Director, Alaska Municipal League  
David Hoffman, Commissioner, DCRA

**DEPT. OF COMMUNITY & REGIONAL AFFAIRS**

**OFFICE OF THE COMMISSIONER**

POSITION PAPER

RE: House Joint Resolution No. 26

SPONSOR: Representative Shultz

Program Effects of Proposed Resolution:

This proposed resolution would, upon voter approval, amend the State Constitution concerning annexations to municipal governments which are subject to review by the legislature. In cases where the "land" proposed for annexation is "not within a relatively integrated socioeconomic unit of the municipality", it would be necessary to obtain the "approval of a majority of the residents of the area to be annexed".

Comments:

The department does not support the amendment proposed by the resolution.

The theme of local control is a pervasive and powerful element of the local government article of the Constitution of the State of Alaska. However, 33 years ago, the delegates to the State Constitutional Convention concluded, after considerable study and debate, that establishment and revision of local government boundaries should be primarily the responsibility of the State. Shortly after statehood, the Alaska Supreme Court articulated the considerations which led the delegates to this conclusion, (Fairview Public Utility District No. 1 v. City of Anchorage, 368 P.2d 540):

An examination of the relevant minutes of [a series of 31 meetings held by the Committee on Local Government at the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee -- "lies in placing the process at a level where area-wide or statewide needs can be taken into account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively."

- P.O. BOX B  
JUNEAU, ALASKA 99811-2100  
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RE: House Joint Resolution No. 26  
February 21, 1989  
Page Two

The Supreme Court went on to state that it must be assumed that the Constitutional Convention delegates were aware of obstacles faced by Alaska cities in attempting to annex territory. The Court referred specifically to a related Territorial District Court case heard just prior to the convening of the Constitutional Convention. In the referenced case the judge remarked:

Every impediment and dilatory tactic has been employed by the opponents of annexation, except the homesteaders, to obstruct and harass the city in every move in connection with its efforts to extend its boundaries in the traditional manner to include the adjacent areas. Such opposition does not appear to be in the public interest or in good faith.

The Supreme Court went on to conclude that the Constitutional Convention delegates were sensitive to the inadequacies inherent in a system where needed municipal expansion could be frustrated if the electors in a single urban area outside of municipal boundaries did not agree to annexation.

The procedure proposed by House Joint Resolution No. 26 would be subject to the very problems the constitutional founders attempted to avoid in creating the existing legal structure. While there is opportunity for public input, the final decision appropriately lies with the legislature. Currently, residents of an area proposed for annexation are permitted to express their position on proposed boundary changes by testifying at hearings conducted by the Commission. Further, decisions of the Local Boundary Commission concerning boundary changes initiated under Article X, Section 12 of the Constitution are subject to legislative veto. Since its inception, the Local Boundary Commission has submitted more than 90 recommendations for municipal boundary changes to the legislature. The department is aware of only eight instances where Commission recommendations were rejected by the legislature. In some of these eight cases, the legislature later approved an identical or substantially similar recommended annexation.

By requiring local approval in the local boundary determination process as provided by this amendment, the process would revert to one dominated by local politics which does not give a proper role to statewide concerns.

RE: House Joint Resolution No. 26  
February 21, 1989  
Page Three

The department additionally has a number of technical concerns with the wording of the proposed amendment. These are as follows:

- A. The provisions of the proposed amendment would apply "if the land is not within a relatively integrated socioeconomic unit of the municipality." While it is believed that the intent of the sponsor is that this language should be interpreted as though it reads "if the land is not within a relatively integrated socioeconomic unit of which the municipality is a part", the language used raises a possibility of misinterpretation. Because the existing language refers to the unit "of the municipality," there may be a danger of interpreting this to mean the unit must be within the municipality. Since any area proposed for annexation must be outside the municipality, under this interpretation, the resident approval requirement would be applied to every annexation to be submitted to the legislature.
- B. Typically, the will of the people in important measures such as these is represented by the voters. The proposed amendment would require "approval of a majority of the residents of the area to be annexed." While it is believed that the intent of the sponsor is that an election be the mechanism used, it may be possible to interpret this language to require a broader mechanism of determination of resident, rather than voter, approval.
- C. The term "land" is used twice in the proposed amendment. While it is assumed that the term is intended to apply to areas of water (submerged lands) and tidelands, this may require some clarification.

  
\_\_\_\_\_  
David G. Hoffman Commissioner

BYLAWS

ALASKA LOCAL BOUNDARY COMMISSION

ARTICLE I - NAME

The name of this body is the Alaska Local Boundary Commission. Common usage and abbreviation may be "Commission" or "LBC." (Eff. / /89)

ARTICLE II - MISSION AND OBJECTIVES

Section 1. The Constitution of the State of Alaska recognizes that the establishment and revision of boundaries of cities and boroughs are primarily the responsibilities of the State. Article X, Section 12 of the Constitution provides the constitutional authority under which the Commission carries out these responsibilities. Shortly after statehood, the Alaska Supreme Court articulated the considerations which led to the creation of the Commission. (Fairview Public Utility District No. 1 v. City of Anchorage 368 P.2d 540).

An examination of the relevant minutes of [a series of 31 meetings held by the Committee on Local Government at the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee -- "lies in placing the process at a level where area-wide or statewide needs can be taken into account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively." (Eff. / /89)

Section 2. The courts have consistently recognized that the Commission enjoys considerable discretion and broad authority in the exercise of its powers and duties. The Commission hereby acknowledges that such powers and duties carry with them the responsibility to act in a judicious fashion. (Eff. / /89)

Section 3. The powers and duties of the Commission include:

(a) considering proposals for the incorporation of cities and boroughs;

(b) considering proposals for the annexation of territory to cities, boroughs and unified municipalities;

(c) considering proposals for the detachment of territory from cities, boroughs and unified municipalities;

(d) considering proposals for the dissolution of cities, boroughs and unified municipalities;

(e) considering proposals for the merger or consolidation of cities, boroughs and/or unified municipalities; and

(f) making studies of local government boundary problems. (Eff. / /89)

### ARTICLE III - AUTONOMY

The Commission is an autonomous body. While the Commission receives administrative and technical support from the Department of Community and Regional Affairs, it is independent of the Department and all other State organizations. (Eff. / /89)

### ARTICLE IV - MEMBERSHIP AND TERMS OF OFFICE

Section 1. Commission Composition: the Commission consists of five individuals appointed by the Governor. One member is appointed from each of the four judicial districts in the state; the fifth member is appointed from the state at-large. (Eff. / /89)

Section 2. Term of Office: (a) Commission members serve staggered terms of five years.

(b) A vacancy occurring in the membership of the Commission will be filled by appointment of the Governor for the unexpired portion of the vacated term.

(c) A member whose term has expired remains on the Commission until a successor has been appointed by the Governor.

(d) The Commission may, by a vote of three or more members, recommend to the Governor the removal of a member for cause, provided that notice shall be given to the member proposed to be recommended for removal at least 10 days prior to the meeting at which the resolution is to be considered. (Eff. / /89)

### ARTICLE V - OFFICERS AND DUTIES

Section 1. Officers consist of a Chairman and a Vice Chairman. (Eff. / /89)

BYLAWS  
ALASKA LOCAL BOUNDARY COMMISSION  
PAGE THREE

Section 2. By statute, the member appointed from the state at large is the Chairman. The Vice Chairman is elected by a majority of the Commission members for a term of three years. (Eff. / /89)

Section 3. The duties of the officers shall be as follows:

(a) Chairman

(i) Call all meetings (except that three members of the Commission may also call a meeting). Preside at all meetings.

(ii) Appoint special committees and chairpersons of special committees.

(iii) Serve as ex-officio member of all committees.

(iv) Serve as the Commission's official representative.

(v) Operate and conduct the business and affairs of the Commission according to the orders and resolutions of the Commission.

(vi) Perform other duties described in these bylaws or assigned by resolution of the Commission.

(b) Vice Chairman

(i) Assist the Chairman in the discharge of his/her duties.

(ii) Assume the duties of the Chairman in the absence of the Chairman.

(iii) Act as the parliamentarian for the Commission.

(iv) Perform other duties in accordance with the orders and resolutions of the Commission. (Eff. / /89)

ARTICLE VI - MEETINGS

Section 1. Meetings of the Commission may be held at such time and place as the Chairman or a majority of the Commission members may order. (Eff. / /89)

Section 2. Reasonable public notice of Commission and committee meetings shall be provided in accordance with the requirements of law. (Eff. / /89)

Section 3. Three members of the Commission constitute a quorum for the conduct of business at a meeting. Two members constitute a quorum for the conduct of a hearing. (Eff. / /89)

Section 4. Meetings of the Commission and its committees are subject to the Open Meetings Act, AS 44.62.310 and 44.62.312. (Eff. / /89)

Section 5. The Local Boundary Commission will schedule at least one period for general public comment during each Commission meeting. The purpose for having public comment is to allow persons the opportunity to provide information to the Commission and to advise the Commission about problems and issues. (Eff. / /89)

Section 6. It is the Commission's policy that, to the extent which is practical, all public hearings and decisional sessions of the Commission will be conducted in person and that all members of the Commission will be present. However, it is recognized that financial constraints and other limitations may sometimes prevent this level of participation. Members who are unable to participate in person are encouraged to participate by teleconference as permitted by AS 44.62.312(a)(6). (Eff. / /89)

#### ARTICLE VII - COMMITTEES

The Commission Chairman may designate ad hoc committees or task forces to accomplish special purposes. Persons other than Commission members may serve on the Commission's ad hoc committees and task forces. (Eff. / /89)

#### ARTICLE VIII - PARLIAMENTARY AUTHORITY

Section 1. Unless otherwise provided by law or these bylaws, the Commission's procedures shall be governed by Robert's Rules of Order, Revised. (Eff. / /89)

Section 2. The purpose of parliamentary rules is to assist the LBC in transacting business. Whenever the rules fail to serve this purpose, and are not required by law, they may be suspended expressly or by contrary action. A failure by the LBC to conform to procedural rules does not invalidate its official actions. Departures from parliamentary rules do not form the basis for a dispute which is subject to jurisdiction of the courts. (Eff. / /89)

ARTICLE IX - ETHICS

Section 1. Commission members are required to comply with AS 39.52.010 - 39.52.960, the Alaska Executive Branch Ethics Act. As provided by AS 39.52.960(8), the Chairman shall act as the designated supervisor for the Commission members.

Section 2. In addition to the ethics standards established by the Executive Branch Ethics Act, the following apply to members of the Commission:

(a) A member of the Commission is prohibited from having ex parte contacts (i.e., any contact outside a formal proceeding of the Commission with another party) concerning a matter for which a petition has formally been submitted to the Department of Community and Regional Affairs. The prohibition shall take effect once the Commission member has been advised by the Department that a petition has been received. The prohibition shall remain in effect until the Commission's power to order reconsideration of its decision on the petition expires.

(b) Except as provided in (f) of this Section, a member of the Commission shall not participate in matters before the Commission in which the Commission member has been employed by a petitioner or respondent during the 180 days preceding the submission of the petition or response brief. The 180 days will be measured from the date that the Commission member has been advised by the Department of Community and Regional Affairs that a petition or response brief has been received.

(c) Except as provided in (f) of this Section, if a member of the Commission acted upon a proposal before the Commission, that member shall not accept employment with a petitioner or respondent in any action brought before the Commission for a period of at least 180 days following Commission action on the matter.

(d) Except as provided in (f) of this Section, a member of the Commission shall not participate in the consideration of a proposal before the Commission where that proposal would affect the territory in which the residence of the Commission member is located. Such territory may consist of: a) an area proposed for annexation to or incorporation of a municipality; or b) a municipality subject to a proposal for annexation, detachment, merger, consolidation or dissolution.

BYLAWS  
ALASKA LOCAL BOUNDARY COMMISSION  
PAGE SIX

(e) Except as provided in (f) of this Section, a member of the Commission shall not participate in the consideration of a proposal before the Commission where that Commission member is affiliated with the petitioner, a respondent, or a group or organization which has advocated a position concerning the matter before the Commission.

(f) Exceptions to the prohibitions governing the participation of a Commission members may be granted if a majority of the other Commission members present at the meeting at which the question is raised conclude that

(1) granting the exception would not result in a violation of the Alaska Executive Branch Ethics Act,

(2) the general public will perceive the Commission member whose participation is at issue as being able to be fair and objective in the proceedings, and

(3) there is no other reason based upon ethics as to why the Commission member whose participation is at issue should not participate in the proceedings.

(g) In determining whether to grant an exception under (f), the Commission will, in its discretion, consider the the following

(1) the size and population of the area encompassed by the petition pending before the Commission,

(2) the nature of the petition pending before the Commission (i.e., petition initiated by 100% of the owners/voters of an area; petition involving only municipally owned lands; petition involving an election or petition involving legislative review),

(3) for exceptions from (d) of this Section, the proximity of the area encompassed by the petition to the residence of the Commission member,

(4) for exceptions from (e) of this Section, the nature of the affiliation of the Commission member to the petitioner, respondent, or party which has advocated a position concerning the matter pending before the Commission. (Eff. / /89) [Editor's note: supplemental ethics standards were first established by resolution of the Commission on May 24, 1988.]

ARTICLE X - AMENDMENT OF BYLAWS

These bylaws may be amended at any meeting of the Commission by adoption of a motion for approval of the amendment by three or more Commission members. Amendments to "Article IX, Ethics" become effective upon approval of the Department of Law. (Eff. / /89)

ARTICLE 17  
MISCELLANEOUS PROVISIONS

19 AAC 10 is amended by adding new sections to read:

19 AAC 10.850. SCHEDULING OF PROCEEDINGS. (a) The chairman of the local boundary commission shall issue an order setting or amending a formal schedule for action on petitions for municipal incorporation, boundary changes pursuant to AS 29.06.040(b), dissolution, merger and consolidation.

(b) A schedule established under (a) of this section must allow at least

(1) forty-nine days from the date of initial publication or posting of the notice of the filing of the petition, whichever occurs first, for the receipt of answering briefs and written comments in support of or in opposition to the petition;

(2) fourteen days from the date established under (b)(1) of this section for the receipt of a reply brief from the representative of the petitioner(s);

(3) twenty-eight days from the date of distribution of the draft report and recommendation of the department regarding the petition for the receipt of comments on the draft report and recommendation;

(4) thirty days from the date of initial publication or posting of the notice of a hearing, whichever occurs first, for an initial hearing on the petition by the local boundary commission;

(5) twenty-one days between the date of distribution of the final report and recommendation of the department regarding the petition and the conduct of an initial hearing on the petition by the Commission. (Eff. / / , Register )

Authority: Art. X, Sec. 12,  
Alaska Const.  
AS 44.47.567

19 AAC 10.860. EFFECTIVE DATE OF DECISION. Approval by the commission of a petition for incorporation, boundary change, dissolution, merger or consolidation becomes effective upon the adoption of a motion for approval by three or more commission members. The need or intention to issue a written decision following the approval of a petition by the commission does not delay the effective date of such approval. The issuance of a written decision governs the opportunity for reconsideration by the commission under 19 AAC 10.870. (Eff. / / , Register )

Authority: Art. X, Sec. 12,  
Alaska Const.  
AS 44.47.567

19 AAC 10.870. RECONSIDERATION. (a) Within twenty days after a written decision has been approved by the commission, any individual may file a request for reconsideration of that decision setting out specifically the grounds upon which the decision is believed to be unreasonable, erroneous, unlawful or otherwise defective. At the same time that the request for

the representative of the petitioner(s) for the matter to which the decision relates. The request for reconsideration filed with the commission shall be accompanied by an affidavit stating that a copy of the request for reconsideration was served to the representative of the petitioner(s).

(b) Any individual opposing the request for reconsideration has ten days after the date on which the request is filed to respond.

(c) The commission may order reconsideration upon the adoption of a motion for reconsideration by three or more commission members. The commission's power to order reconsideration expires thirty days after the date on which the request for reconsideration is filed with the commission. If the commission takes no action on a request for reconsideration within the time allowed, the request is automatically denied. (Eff. / / , Register )

Authority: Art. X, Sec. 12,  
Alaska Const.  
AS 44.47.567

19 AAC 10.880. PURPOSE OF RULES. Regulations governing the procedures of the commission are designed to facilitate the business of the commission, and shall be construed to secure the reasonable, speedy and inexpensive determination of every action and proceeding. Procedural regulations of the commission may be relaxed or dispensed with by the commission in any case where it shall be manifest to the commission that a strict adherence to them will work injustice or result in a substantially uninformed decision. (Eff. / / , Register )

Authority: Art. X, Sec. 12,  
Alaska Const.  
AS 44.47.567

ARTICLE 5.  
STANDARDS FOR DISSOLUTION OF CITIES.

19 AAC 10.130 is amended by modifying (a) and (b) and adding (f) to read as follows:

19 AAC 10.130 DISSOLUTION. (a) The commission will, in its discretion, approve a petition for dissolution of a city under AS 29.06.450(a) if the commission determines that

(1) dissolution is in the best interests of the state based on (e) of this section;

(2) the city is free of debt or has satisfied its creditors with a method of repayment, as evidenced, to the extent possible, by an audit prepared by an independent certified public accountant or a written report prepared by or on behalf of the department which identifies the assets and liabilities of the city, as required by (f) of this section; and

(3) at least one of the following standards is met:

(A) the city no longer meets the standards established by law for the incorporation of a city;

(B) the city has ceased for at least 730 consecutive days to exercise each of its mandatory powers; or

(C) the petition for dissolution was signed by a number of voters of the city greater than 50 percent of the number of votes cast in the last general election of that city.

(b) The commission will, in its discretion, submit a recommendation for dissolution of a city to the state legislature under AS 29.06.450(b) if the commission determines that

(1) the city has ceased to exercise its mandatory municipal powers for at least 730 consecutive days,

(2) dissolution is in the best interests of the state, and

(3) the city is free of debt or its creditors are satisfied with a method of repayment, as evidenced, to the extent possible, by an audit prepared by an independent certified public accountant or a written report prepared by or on behalf of the department which identifies the assets and liabilities of the city, as required by (f) of this section. In determining whether dissolution is in the best interests of the state, the commission will, in its discretion, consider the factors in (e) of this section.

(f) An audit identifying assets and liabilities must be submitted for the proposed dissolution of a home rule or first class city and for the proposed dissolution of a second class city which has undergone an audit in each of the three years immediately preceding the petition for dissolution. In lieu of an audit for a second class city proposed for dissolution which has not undergone an audit in each of three years immediately preceding the petition for dissolution, the department may submit a written report which identifies the assets and liabilities of the city proposed for dissolution. (Eff. 2/21/82, Register 81; am 4/1/89, Register ; am / / /, Register )

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Community & Regional Affairs  
 Title: "Proposing..amendment..Constitution  
..powers..local boundary commission." BRU: \_\_\_\_\_  
 Sponsor: Shultz Components: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING:** (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

SEE ATTACHED

*Jim Plasmann*

Prepared by: Jim Plasmann, Deputy Director Phone: 465-4750  
 Division: Municipal & Regional Assistance Date: \_\_\_\_\_  
 Approved by Commissioner: [Signature] Date: 2-21-89  
 Agency: Community & Regional Affairs

**Distribution (by preparer):**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

House Joint Resolution No. 26  
Fiscal Note Attachment

While the Department has reflected a zero fiscal note, it should be noted there will be fiscal impacts from this legislation in terms of the cost of putting the matter on the ballot. Division of Elections should be contacted on this. If the constitutional amendment is adopted there would be additional costs for the cost of elections in annexations where the area to be annexed is not within a relatively integrated socioeconomic unit of the municipality. It is assumed the state will bear the cost of those elections. By adopting a standard for determining when such elections should or should not be held, a certain potential for additional litigation based upon that standard is raised, although such costs must be regarded as speculative.

## FISCAL NOTE

**REQUEST:**

Revision Date: 12/8/89  
Title: Const. Amend. Relating to powers of the Local Boundary Commission  
Sponsor: Shultz  
Requestor: Shultz

Agency Affected: Office of the Governor  
BRU: Division of Elections

Components: II Elections

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	2.2*	**	**	**	**	**
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>2.2*</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING:** (Thousands of Dollars)

GENERAL FUND	2.2*	**	**	**	**	**
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>2.2*</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

\* Costs included cover 2 to 3 pages in each Official Elections Pamphlet, for printing and typesetting, and costs estimated to cover computer programming requirements for vote counting purposes. (Continued)

Prepared by: Linda Edgeworth Phone: 465-4611  
Division: Division of Elections Date: 12/8/89

Approved by Commissioner: [Signature] (Acting) Date: 12-11-89  
Agency: Division of Elections

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. HJR 26

However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per ballot x approximately 320,000 voters. The total cost of printing the additional ballot card would be \$51.2

Under these circumstances the fiscal note would be:

53.4

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: Const. Amend. relating to powers  
of the local boundary commission  
Sponsor: Shultz  
Requestor: Shultz

Agency Affected: Office of the Governor  
BRU: Division of Elections  
Components: I Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	-0-	-0-	2.2*	**	**	**
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	2.2*	**	**	**

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	2.2*	**	**	**
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	2.2*	**	**	**

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

\* Costs included cover 2 to 3 pages in each Official Elections Pamphlet, for printing and typesetting, and costs estimated to cover computer program-ing requirements for vote (Continued)

Prepared by: Linda Edgeworth Phone: 465-4611  
Division: Elections Date: 2/21/89

Approved by Commissioner: [Signature] Date: 2/22/89  
Agency: Division of Elections

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. \_\_\_\_\_

\* Continued

counting purposes. However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however, that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per box x approximately 320,000 voters. The total cost of printing the additional ballot card would be \$51.2.

Under these circumstances the fiscal impact would be:

53.4

\*\* While not directly stated in the text of the resolution, there is an assumption that an election would have to be conducted to determine if a majority of the residents of the area to be annexed, actually approve of the annexation. Because the actual frequency with which these types of elections would be required can only be speculated, and because there is no way to know the number of voters or precincts which might be involved at any given time, it is difficult to anticipate the total fiscal impact on the Division of Elections. However, as a rough estimate, elections of this type would generally run from 3.5 to 8.0.

It should also be pointed out, that if the area is part of a Rural Educational Attendance Area (REAA) or Coastal Resource Service Area (CRSA), and if it is ultimately annexed into an incorporated community, it might be necessary to reapportion the REAA or CRSA involved. Often such reapportionments require a special election to elect new board members based on the new apportionment plan. These types of elections could be costly because they often involve several precincts and lots of voters. An election of this type generally costs from 5.5 to 9.0.

