

HB

507

(7)

HOUSE COMMITTEE REPORT

Date Referred: March 13, 1992

FURTHER REFERRALS:

Date of Committee Action: 3/23/92

The STATE AFFAIRS Committee considered:

HB 507

HOUSE BILL NO. 507

LBC ANNEXATION PROPOSALS

"An Act relating to certain annexation proposals submitted by the Local Boundary Commission to the legislature."

RECOMMENDATIONS:

the same title

be replaced with _____ a new title

have attached amendment(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dep)

APPROVES PREVIOUS: (Dep/Dir)

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) C+24 3-13-92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Eugene St. Hubert</i>	<input checked="" type="checkbox"/>	<i>Tom Meyer</i>		<input checked="" type="checkbox"/>	
<i>M. P. Huerber</i>	<input checked="" type="checkbox"/>	<i>E. Blum</i>		<input checked="" type="checkbox"/>	

Eugene St. Hubert
CHAIRMAN'S SIGNATURE

STATE OF ALASKA

LOCAL BOUNDARY COMMISSION

WALTER J. HICKEL, GOVERNOR

333 W 4TH AVE., SUITE 220
ANCHORAGE, ALASKA 99501-2341
(907) 269-4500

March 20, 1992

The Honorable Gene Kubina, Chairman
House State Affairs Committee
Room 102
State Capitol
Juneau, Alaska 99801-1182

RE: HB 507

Dear Representative Kubina:

I regret that I am unable to be present at the March 23 House State Affairs Committee hearing on HB 507. Please accept this letter in lieu of my direct testimony.

The Local Boundary Commission opposes HB 507. The Commission carefully considered this bill at its meeting of March 17.

The legislation would restrict the Commission's authority to grant a deferred effective date for certain annexations. Although seldom used, this authority has been vitally important in carrying out the duties of the Commission.

During my 12 years on the Commission, deferred annexations have been granted only twice. In 1984, the Commission approved a 2 year deferred annexation allowing residents of the City of Haines and the Haines Borough to consider unification of their two governments. The only other time was the recent annexation of the Greens Creek Mine to Juneau.

With respect to the Juneau annexation, the Commission could have used the step annexation process set out in AS 46.47.567(b)(2) to accomplish its objectives. However, the law is written in a manner which requires resident voters to approve step annexation. The territory in question is uninhabited.

As a preferred alternative to HB 507, the Commission urges the House State Affairs Committee to amend AS 46.47.567(b)(2) to permit step annexation of uninhabited territory. We believe it would be wrong to begin to create artificial constraints to the exercise of duties of the Constitutionally-based Local Boundary Commission.

Thank you for your consideration.

Sincerely,



Charles B. Bettisworth
Chairman

REPRESENTATIVE
JERRY MACKIE

P.O. BOX 13
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CHAIRMAN
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TRANSPORTATION COMMITTEE

Alaska State Legislature



House of Representatives

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MEMORANDUM

TO: Representative Gene Kubina, Chair *GKWB*
House State Affairs Committee

FROM: Representative Jerry Mackie *JM*

DATE: March 18, 1992

RE: Scheduling of HB 507

HB 507, relating to certain annexation proposals submitted by the Local Boundary Commission to the Legislature, has been referred to your committee. I respectfully request a hearing on this bill at your earliest convenience.

I am attaching a copy of my sponsor statement on HB 507, along with the necessary backup materials. Please contact me if you need any additional information.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPT. OF COMMUNITY AND REGIONAL AFFAIRS

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AUG 3 1990

CBJ - LAW DEPT.

July 31, 1990

Mr. John Corso
Deputy Attorney
City and Borough of Juneau
155 South Seward Street
Juneau, AK 99801

Dear Mr. Corso:

You recently inquired about step annexation and the option to defer the effective date of annexation in regard to the Greens Creek Mine.

We believe that the Local Boundary Commission has the authority to delay the effective date of an annexation. In a January 17, 1984 opinion (copy enclosed), Assistant Attorney General James L. Baldwin concluded:

We believe the provisions of section 12 (Article X of the State Constitution) do not restrict the power of the local boundary commission to delay the operative date of the boundary change. . . .

There is no express provision in either the statute or the regulations dictating the time that a boundary change is to become operative. Therefore, the only restraint on the agency's choice of annexation method is the requirement that there be no abuse of discretion.

We are uncertain, however, whether the option of step annexation would be appropriate in this instance. Laws allowing step annexation were enacted as an alternative to immediate annexation. The step annexation provision allows for gradual assimilation of contiguous areas into a municipality where direct annexation would be premature or impractical. We are unaware of circumstances which indicate that it may be "premature or impractical" for direct annexation of the Greens Creek Mine to the City and Borough of Juneau.

EXHIBIT A

BOUNDARY ANNEXATION INFORMATION

Mr. John Corso
July 31, 1990
Page Two

Further, laws regarding step annexation provide only for the annexation to a city of contiguous territory "upon a majority approval of the voters of the contiguous area to be annexed . . ." (see AS 44.47.567(a)(4), AS 44.47.567(b)(2) and 19 AAC 10.740 - 790). Whether a unified municipality could annex an unpopulated area using this method is unclear.

If you wish to further consider the option of step annexation, we would appreciate the opportunity to discuss the matter with you. Please contact Dan Bockhorst or myself.

Sincerely,


Marty Rutherford
Director

enclosure: January 17, 1984 memorandum from James L. Baldwin

cc with enclosure:

The Honorable Bruce Botelho, Mayor, City and Borough of Juneau
Members of the Local Boundary Commission
Marjorie Odland, Assistant Attorney General

EXHIBIT A

MEMORANDUM

State of Alaska

TO: Jim Sanders
Local Boundary Commission

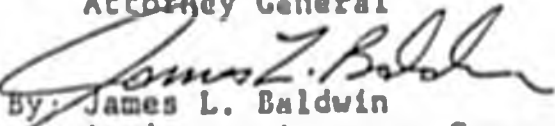
DATE: January 17, 1984


FILE NO:

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Delaying effective
date of boundary
change


By: James L. Baldwin
Assistant Attorney General
Governmental Affairs-Juneau


By: Fran Bremer, Legal Intern
Governmental Affairs-Juneau

You have asked us whether the local boundary commission can validly delay the effective date of a boundary change for two years, contingent on the holding of an election for the unification of the Borough and City of Haines. The answer is yes.

Article X, section 12 of the Alaska Constitution provides for the establishment of a local boundary commission, which may present a proposed boundary change to the legislature within the first 10 days of the session. Section 12 provides, "[t]he 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." AS 44.47.583 repeats essentially the same language: "the change becomes effective 45 days after the presentation"

An examination of the minutes of the constitutional convention shows that the wording of section 12 was not intended to set a definite date on which the boundary change was to physically occur. 4 Proceedings of the Alaska Constitutional Convention 2750-2753 (Jan. 20, 1956). Rather, the language was intended as a limit on the legislature's power to disapprove a proposed boundary change.

At the convention, an amendment was introduced which required active legislative approval of a proposed boundary change. The delegates discussed the merits of permitting the proposed change to occur without legislative intervention, and rejected the amendment. 4 Proceedings at 2751. It is clear from comments made during floor debate that the delegates' main concern was the potential for delay caused by conditioning a boundary change on legislative approval. A delegate noted that a boundary change could be "difficult to get through if it is going

EXHIBIT C

to affect somebody's constituents." Id. Others noted that changes must be submitted to the legislature "but in the press of business ... they may not get around to consider such little things as a minor boundary change ..." and that "this little boundary adjustment will go from session to session ... because they won't have time to make it approved." Id. The 45-day limit on the legislature's power to disapprove avoided the possibility that the boundary change could go "from session to session" without being decided. See also A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980)(discussion of article X, section 12 in terms of the power of the legislature to veto executive action).

We believe the provisions of section 12 do not restrict the power of the local boundary commission to delay the operative date of the boundary change. Alaska courts have recognized that annexation decisions involve policy choices that are incapable of judicial resolution. Port Valdez Co., Inc. v. City of Valdez, 522 P.2d 1147 (Alaska 1974); U.S. Smelting, Refining & Mining Co. v. Local Boundary Comm'n., 489 P.2d 140 (Alaska 1971). The local boundary commission was created to provide an expert and experienced agency to make these policy choices within the guidelines set out by law and regulation. See Town of Stillwater v. Minn. Municipal Comm'n., 219 N.W.2d 82, 87 (Minn. 1974)(commenting on the Minnesota Municipal Commission, whose structure and function is similar to that of the local boundary commission). Accordingly, the statutory scheme grants the commission broad power in matters affecting local boundaries. AS 44.47.565 -- 44.47.583. There is no express provision in either the statute or the regulations dictating the time that a boundary change is to become operative. Therefore, the only restraint on the agency's choice of annexation method is the requirement that there be no abuse of discretion. Port Valdez, 522 P.2d at 1151. The commission's decision to allow a two-year delay was a reasoned choice between the competing objectives of encouraging cooperation between the city and borough, and that of settling boundary questions promptly to facilitate planning and assure responsiveness to current conditions. The commission's choice of method -- to delay the operative date -- is analogous to an agency's power to delay the effective date of a regulation under AS 44.62.180(4). We, therefore, conclude that the commission has the power to delay the operative date of the annexation for two years.

FB/pjg

EXHIBIT C

MEMORANDUM

State of Alaska

TO: Marty Rucherford, Director
Municipal & Regional Asst. Div.
Dept. of Community & Regional
Affairs

DATE: July 23, 1985

PHONE NO: 366-034-86

TELEPHONE NO: 455-3600

FROM: Harold M. Brown
Attorney General

SUBJECT: LBC authority to detach an area from an organized borough

By: Jonathan B. Rubini
Assistant Attorney General
Governmental Affairs-Juneau

You have asked whether the Local Boundary Commission (LBC) enjoys the legal authority to present to the legislature a petition which provides for the detachment of an area from an organized borough if, but only if, the area to be detached is included within a newly-formed borough. Upon your request to expedite our review of this matter, we stated our oral advice that the LBC does enjoy the requisite legal authority. We briefly set out our views below.

We are advised that the North Slope Borough presently has under consideration a proposal to detach that portion of the borough which is included within the NANA Regional Corporation. The area in question includes the Pad Dog mineral deposit, and inclusion of the Red Dog site is considered essential to the formation of a new borough encompassing the NANA Regional Corporation territory.

Article X, section 12 of the Alaska Constitution provides for the establishment of the LBC, and further directs the LBC to "consider any proposed local government boundary change." (Emphasis added.) Boundary changes approved by the LBC are presented to the legislature and "shall become effective forty-five days after presentation ... unless disapproved by a [concurrent resolution]."

We have previously stated our view that the LBC enjoys broad, inherent legal authority in the discharge of its constitutional and statutory obligations. 1962 Inf. Op. Att'y Gen. (J66-585-C1; Oct. 25) (copy attached). Our conclusion in this regard reflects the series of Alaska Supreme Court decisions which reflect the court's deference to recommendations and procedures adopted by the LBC. See Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974); Osau v. City of Billingsham, 439 P.2d 130 (Alaska 1968); Fairview Public Utilities District Number One v. City of Anchorage, 500 P.2d 340 (Alaska 1973). Osau is particularly illuminating, since in that case the court explicitly noted that the LBC enjoys the authority to dissolve a city notwithstanding the absence of express statutory authority to do so. Osau, 439 P.2d at 103.

EXHIBIT D

Marty Rutherford, Director
 CNA--Municipal & Regional Assoc. Division
 366-034-86

July 23, 1985
 Page 72

The immediate question is whether the constitutional effective date provision precludes the LSC presentation of a qualified boundary change, that is, a proposal which takes effect at some point -- and for some reasons -- unrelated to the 45-day provision. In most instances, the affirmative action of the legislature is required to initiate legislative action. In this instance, as in the case of legislative review of executive orders under article III, section 23, the constitution uniquely authorizes legislative "approval" through inaction. The provision reflects deference to the LSC and a desire to compel expeditious legislative attention to a LSC proposal. The constitutional provision should not be construed as a substantive limit to the otherwise broad delegation of legislative powers to the LSC. Indeed, the effective date provision is not necessarily in conflict with the broad authority of the LSC. Viewed properly, the effective date clause relates to the LSC proposal, not the underlying boundary change. Were the LSC to exercise its inherent authority to present a qualified proposal to the legislature, the proposal -- as qualified by the LSC -- takes effect 45 days after submission unless disapproved by concurrent resolution. Accordingly, we believe that the LSC enjoys the legal authority to present a qualified proposal to the legislature.

It is further noted that regulations adopted by the LSC further confirm the authority to present a qualified proposal. 19 AAC 10.240(b) provides:

(b) If, in fulfilling the requirement of (a) of this section, the petitioners have proposed the incorporation of a new municipality, the commission will, in its discretion, condition approval of the detachment upon voter approval of the incorporation proposal.

The regulation expressly authorizes the LSC to condition a detachment petition upon the subsequent incorporation of a municipality including the detached area. By direct implication, the regulation reflects that the LSC may condition a detachment petition upon the subsequent incorporation of a new borough. See 1982 Inf. Op. Att'y Gen. (J66-335-81; Oct. 23). See generally U.S. Smelting, Refining and Mining Co. v. Local Boundary Comm'n. 407 P.2d 246 (Alaska 1971).

If you have any other questions, please feel free to call.

JBR/pig
 Enc.

EXHIBIT D

C. REASONS FOR IMMEDIATE ANNEXATION

DCRA believes that immediate annexation of the territory is warranted for the following reasons.

1. Territory Currently Needs CBJ Services

The LBC concluded in its written statement of decision concerning the CBJ annexation adopted October 8, 1990, that:

The area is in need of municipal services which the CBJ can provide more efficiently than another municipality or the State. Thus, the standard set out in 19 AAC 10.190(a)(3) is satisfied. This conclusion is based upon the following findings.

While the area has no permanent residents, it is a major industrial site in close proximity to Juneau. More than 200 individuals reportedly work at the Greens Creek Mine. All of these individuals are believed to reside within the boundaries of the CBJ.

The CBJ would provide the following direct services to the area upon annexation:

- emergency police services (offered in a limited capacity and only in emergencies);
- search and rescue;
- emergency medical services;
- planning, zoning and coastal management;
- tax assessment and collection; and
- building inspection.

In addition, services delivered by the CBJ in other locations, but available to the workers in the annexed area include:

- Juneau public school system;
- Juneau International airport;
- Juneau hospital;
- Juneau harbor facilities;
- social services;
- recreation facilities;
- day care facilities; and
- museums.

Thus, the LBC has concluded that there are presently unfulfilled needs for municipal services in the area proposed for annexation. KGCNC officials dispute this finding of the LBC. In their comments of April 15, 1991 (see appendix), Mr. Clark states:

There is not a single service that the CBJ can offer that Greens Creek "needs". The mine is completely self-sufficient and has its own emergency response

team for medical problems. With respect to support services for mine employees, the mine employees pay for those services through their own taxes.

The Department's argument goes on to state that KGCMC has a need for planning and zoning and coastal management, tax assessment and collection, and building inspection. These are the very problems associated with annexation that both the CBJ and KGCMC are seeking to avoid by deferral and thus, the statement is ludicrous on its face.

Mr. Clark seems to suggest that the mine should be viewed in an isolated fashion -- totally separate from the community of Juneau. In DCRA's view, KGCMC "needs" the services of the CBJ because it requires an educated, healthy, protected workforce -- one which travels to and from work on roads maintained by the CBJ and uses other facilities and services of the CBJ.

While the Greens Creek Mine may have its own emergency response team, any injured worker requiring serious medical attention is likely to receive such at the Juneau hospital. Regardless of the extent to which the mine endeavors to be self-supporting, any calamity of the mine site would likely require direct services from the CBJ (police, EMS, search and rescue).

Arguments that residential property and sales taxes pay an appropriate share of the costs of providing services to local residents are unpersuasive. The 1990 taxable value of residential real property within the boundaries of the CBJ amounted to only 50.7% of the total taxable property in the CBJ (\$609,218,700 of \$1,200,903,075 - source: State Assessor).

Thus, the territory proposed for annexation is in need of services and it is appropriate that all taxable properties within the CBJ contribute to the financial support of the local government.

2. Law Contemplates Immediate Annexation

The LBC's standards for annexation to boroughs (19 AAC 10.200) require that:

The commission will not approve an annexation unless the annexing organized borough demonstrates to the satisfaction of the commission that it is capable of extending and willing to extend services to the annexed area in accordance with this subsection. If possible, areawide and non-areawide borough services shall be extended to the annexed area immediately. . .

The LBC formally concluded in its October 8, 1990 statement of decision that "the CBJ is capable of extending and willing to extend areawide services to the 140 square mile area proposed for annexation in accordance with 19 AAC 10.200." DCRA is

*2 more State
likely vs.
propos. vs.
cash based*

unaware of any circumstance which suggests that it is not possible to extend immediate services to the Greens Creek Mine upon annexation. As such, the LBC's regulations contemplate that annexation occur immediately.

D. CONCERNS OVER DUE PROCESS

Mr. Clark indicates in his comments of April 15, 1991 that "KGCMC has previously asserted and continues to assert that the LBC did not have authority to approve the application for annexation after it was withdrawn by the CBJ Assembly on July 13, 1989".

DCRA and the LBC have taken every conceivable measure to ensure the rights of KGCMC in this matter. The reconsideration process has followed all of the steps which would be required of a new petition.

Mr. Clark's comments of April 15 conflict with testimony provided to the Commission in November (see appendix). The November testimony states on page 5:

Greens Creek urges the commission to grant its request for reconsideration because the proper measure of due process has not occurred to date. In order to rectify the situation, the CBJ petition with the 1994 deferred effective date should be noticed and the LBC procedures begun anew. This would give all interested parties the opportunity to submit testimony on the issue and allow the commission to make an informed decision. (emphasis added)

The concerns expressed by Mr. Clark last November were fully addressed in the procedures used in the reconsideration DCRA believes that these procedures are in substantial compliance with all applicable requirements.

SECTION III - CONCLUSIONS AND RECOMMENDATION

The CBJ initiated its petition for annexation in May of 1989. That annexation, which might have been implemented as early as March of 1990, was delayed by one year as a result of the model boundaries project. The annexation was delayed an additional year as a result of the current reconsideration proceedings. The earliest that the annexation could now be implemented is March of 1992. The Greens Creek Mine has already gained nearly one million dollars in tax relief.

The Department does not believe that further delay in the annexation of the Greens Creek Mine is warranted. This position is based upon the following:

- The LBC has formally concluded that the Greens Creek Mine is presently in need of municipal services.

- Standards for borough annexation contemplate the immediate extension of services to newly annexed areas.
- The taxes and regulatory burden placed upon the Greens Creek Mine are not unreasonable when viewed in the context of the size of the mine, its impact upon Juneau and the taxing and regulatory practices of the CBJ.
- If the annexation is deferred to provide financial relief to the Greens Creek Mine, others in Alaska are likely to seek similar treatment. Manipulating regional government boundaries in such a fashion is counter to the Constitutional provisions requiring boroughs to "embrace an area and population with common interests to the maximum degree possible".
- The deferral would have adverse financial impacts on the State.
- The deferral is contrary to the State's goal of diminishing reliance on the State to support local services.

DCRA notes that delays in the annexation proceedings have already resulted in substantial tax savings to the mine. The annexation might have been effected as early as March, 1990; the earliest it can now be implemented is March, 1992. These delays have resulted in projected tax savings to the mine amounting to \$972,000.

DCRA does not dispute the critical public benefit associated with ensuring the viability of the mine. However, to the extent that deferral of taxes may be necessary to accomplish that end, DCRA stresses that the CBJ enjoys independent authority to grant full relief from municipal sales and property taxes to the mine following annexation.

Therefore, DCRA recommends that the LBC deny the proposed deferral of the annexation.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

February 11, 1992

SUBJECT: Effective Dates of LBC (Work Order No. 7-LS1980)

TO: Representative Jerry Mackie

FROM: Tamara Brandt Cook
Director TBC

You have asked whether the Local Boundary Commission (LBC) may include a delayed effective date in an annexation proposal submitted to the legislature. It is not clear to me that the LBC now has the authority to delay the effective date of an annexation. Article X, section 12 of the state constitution 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. (Emphasis added)

The legislature has included this language in AS 44.47.567, so it could be argued that the effective date of an annexation submitted to the legislature as a boundary change has been established as a matter of both constitutional and statutory law.

It is true that the legislature has provided for gradual or step annexations for cities under AS 44.47.567. The Supreme Court appears to have accepted the power of the legislature to do so, despite the language of the constitution regarding the effective date of changes. (Port Valdez Company, Inc. v. City of Valdez, 522 P.2d 1147 (Alaska 1974)) But it may be that the court does not consider a step annexation to amount to a special effective date, since the beginning of the annexation process may coincide with the constitutionally established effective date. In any case, it does not appear that the legislature has authorized even step annexations for boroughs, much

Representative Jerry Mackie
February 11, 1992
Page 2

less delayed effective dates. There is, I think, at least a question as to whether the LBC can, on its own initiative, provide for a delayed effective date.

TBC:mi
92-021.mai

prevent the LBC from acting on the petition for annexation. The relationship of the Greens Creek area to Juneau and adjacent regions (particularly the Chatham region) was fully considered by the LBC. Interested parties from adjacent regions had ample opportunity to provide written comment and oral testimony to the LBC on this matter. While the 140 square mile area has undeniable social, cultural and geographic ties to the Chatham area, the LBC finds that this area has even stronger ties to Juneau.

Commission's Initial Position on the Proposal to Defer the Effective Date of the Annexation

On August 20, the CBJ Assembly rescinded its withdrawal of the annexation petition, but made the rescission subject to the LBC deferring the effective date of the annexation to January 1, 1994. Juneau advised the LBC of the proposal to defer in an August 22, 1990 letter from the CBJ Manager which enclosed three pages of testimony by Cliff Davis, Manager of the Kennecott Greens Creek Mining Company (KGC/MC). The proposal to defer the effective date of the annexation was intended to extend the municipal tax exempt status of the mine development. Mr. Davis' testimony stated:

... by delaying annexation until 1994, Greens Creek would be given a breathing space to become profitable before taxation begins. We have stabilized the economics at very low margin, but must improve them considerably to secure the mine's long-term future. We have considered a number of options for doing this, most of which require large capital expenditures. We want to get this behind us before we are annexed and begin paying taxes.

The LBC considered the proposed deferral at its meeting on September 6, 1990. The LBC concluded the information and arguments presented by the CBJ and the mining company did not sufficiently justify a deferred effective date.

The LBC felt that to grant the request for the deferred effective date would set a poor precedent. It would allow unorganized boroughs to "lock up" parts of the unorganized borough without exercising jurisdiction and control over these areas. The Commission concluded that the request to defer the annexation for approximately 33 months was counter to the interests of the State.

The LBC noted that the CBJ Assembly had the capacity to grant tax relief to the mine without affecting the interests of the State. AS 29.45.000(m) authorizes the CBJ to enact an ordinance to "partially or totally exempt all or some types of economic development property from taxation for up to five years" and that such exemptions may even be extended beyond the five year period under certain restrictions. Thus,

the CBJ could unilaterally grant the property tax deferral which it initially sought on behalf of the Mine.

Further, municipalities in Alaska enjoy very broad and liberal authority to grant exemptions from the sales taxes they levy. The LBC believes the CBJ could legally enact a sales tax exemption (e.g. "exemption of sales to economic development properties") to provide sales tax relief to the mine for whatever period of time desired by the CBJ Assembly.

Granting such exemptions would not affect the level of local support required for operation of public schools required under Alaska's Public School Foundation Program. Regardless of any property or sales tax exemptions, the CBJ would be required to contribute an additional estimated \$248,000 in support of its public schools as a direct result of the annexation, beginning in FY 94 (see AS 14.17.025).

If, however, the Commission agreed to the January 1, 1994 deferred effective date, this would defer the effective date of the additional required local contribution for schools for two years. The LBC believed this result would have been counter to the interests of the State.

In consideration of all of these points, the LBC concluded that if the CBJ truly wished to defer the effective date of the annexation until January 1, 1994, the current petition should be denied and the CBJ should resubmit its petition for annexation in two years.

Commission's First Order on the Juneau Annexation

Based upon its findings and conclusions, the Commission ordered:

1. That The City and Borough of Juneau, Alaska Petition for the Annexation of Certain Onshore and Offshore Areas in Stephens Passage and Admiralty Island, dated May 31, 1989, is approved.
2. That a recommendation for the annexation of the territory requested in the annexation petition noted in # 1 above be submitted to the First Regular Session of the Seventeenth State Legislature during the first ten days of the Session.
3. That the annexation take full effect forty-five days after presentation of the recommendation noted in # 2 above, or at the end of the First Regular Session of the Seventeenth State Legislature, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

4 That, upon the effective date of the annexation, the Department of Community and Regional Affairs issue a Certificate of Boundaries to reflect the annexation of territory to the City and Borough of Juneau.

Reconsideration

Three weeks later, KCCMC filed a timely request for reconsideration of the LBC's decision. The request for reconsideration raised the following claims:

1. Once the petition had been withdrawn by the CBJ, the LBC had no authority to approve it.
2. After the CBJ reinstated its petition, the matter should have been treated as a new petition, beginning with new notice of the filing of the petition.
3. The LBC did not seriously consider the CBJ's request to defer the effective date of the annexation.
4. The LBC's decision on the proposed deferral was made without substantive discussion and the conclusions presented in its statements of decision were not supported by the record.
5. The LBC was arbitrary in that it approved the petition based upon the action of the CBJ Assembly on September 17, 1990 (which did not provide for an immediate effective date, given the pending reconsideration) but denied the proposed deferral without debate.
6. The LBC's decision to approve the CBJ's petition was arbitrary in light of its denial of a similar annexation petition from the Fairbanks North Star Borough.

On November 8, 1990, the CBJ filed a response to the request for reconsideration. The response stated that "the city and borough believes that reconsideration of the reinstated amended petition with the 1994 effective date proposal as set forth in CBJ Resolution No 1442 (Substitute) is appropriate." The following three reasons were cited as the basis for the CBJ's position.

1. The CBJ Assembly action of September 17, 1990 was not intended to preclude reconsideration.
2. Neither the statutes nor LBC regulations provided procedures for withdrawal or amendment of petitions.

3. Reconsideration would result in a full hearing on the CBJ's reinstated amended petition.

On November 10, the LBC voted to reconsider its earlier denial of the proposed deferral of the annexation. The LBC limited reconsideration to the effective date of the annexation. That is, approval of the annexation itself was not to be reconsidered.

The CBJ filed a brief urging the LBC to approve the proposal to defer the annexation. Copies of the brief were served by the CBJ on 62 interested parties. Notice of the proposal to defer the annexation was also served on 62 parties by the CBJ, and the notice was published three times in the Juneau Empire. KGCMC also filed a brief in support of the deferral. The Mayor of the City of Kake was the only other party to offer written comments on the matter by the February 11, 1991 deadline.

DCRA's draft report recommending against the proposed deferral was released for public review on March 15, 1991. Interested parties were given until April 15, 1991 to comment on the draft. DCRA then issued its final report and recommendation on the proposed deferral, still recommending against granting the deferral.

The LBC's Findings and Conclusions on Deferral

On June 29, 1991, the LBC held a public hearing on the proposal to defer the annexation. Then, based upon the evidence before the Commission, including but not limited to the briefs filed by the CBJ and KGCMC, the report and recommendation of DCRA, other written submissions and testimony to the LBC at the June 29 hearing, the Commission made the following findings and conclusions.

Conclusion #1

The deferred effective date would serve valid public purposes.

The annexation is warranted for the reasons stated in the Commission's October 8, 1990 statement of decision. However, it appears that municipal tax and regulatory burdens imposed prior to 1994 may jeopardize the long-term viability of the mine.

According to testimony from the CBJ at the June 29, 1991 hearing, concerns over the impacts of annexation upon the mine were not present in 1989 when the annexation petition was filed. However, a subsequent decline in the price of silver and zinc affected the profitability of the mine.

Cliff Davis, Manager of the Greens Creek Mine, stated in an affidavit dated April 15, 1991, that "[t]he Greens Creek Mine is not currently profitable and will not be profitable under current circumstances." The record also indicated that the mine cut

back on employee pay and benefits in order to reduce costs. Further, KGCMC officials testified that the mine had asked vendors to reduce the cost of supplies provided to the mine as a consequence of the downturn in the price of ore.

In addition to efforts to reduce costs, mine officials contemplated an expansion of the operations to enhance profitability. If the territory were annexed to the CBJ, any expansion would be subject to land use regulation by the CBJ. KGCMC officials testified that the municipal permits for the expansion would likely exceed \$200,000.

CBJ officials testified that KGCMC had proven itself to be a very responsible organization with a sound environmental record. Any expansion of the mine would be subject to federal and state environmental laws. CBJ officials expressed no concern over the prospect of expansion of the mine while it was outside the jurisdiction of the CBJ.

In addition to relief from permit fees, CBJ officials testified that temporary relief from municipal sales and property taxes was warranted. The Greens Creek Controller testified that deferral of the annexation until 1994 was projected to save the mine a minimum of nearly \$835,000 in taxes and permit fees. The CBJ and the KGCMC reached an accord that deferral of the annexation until 1994 would provide sufficient relief from regulation and taxes to help ensure the long-term viability of the mine.

Because the Greens Creek Mine, which directly employs more than 200 Juneau residents, is an important part of the Juneau economy, its well-being is critical to the interests of Juneau. In turn, healthy communities are vital to the interests of the State.

Conclusion #2

Deferral of the annexation is a reasonable mechanism to grant temporary relief from taxes and regulation.

While the CBJ has authority to grant sales and property tax relief to the mine following annexation, it would be impractical for it to do so. Once property and sales tax exemptions are enacted by local ordinance, they are likely to be difficult to repeal. Thus, any tax exemptions could well extend beyond the short-term period desired in this particular case.

Further, any property and sales tax exemptions granted to the Greens Creek Mine are likely to be requested by others in the CBJ. In order to enact legally sound exemptions, CBJ officials testified that it might be necessary to extend the exemptions to others. Testimony from CBJ officials indicated that the CBJ Assembly considered, but rejected, the option of local tax exemptions because of these concerns.

The Commission's Order of Decision

Based upon the findings and conclusions set out in its Statement of Decision, the Commission ordered as follows:

1. That the annexation of approximately 140 square miles to the City and Borough of Juneau (as noted in the LBC's October 8, 1990 Statement of Decision) be given an effective date of January 1, 1994.
2. That a recommendation for the annexation of the subject territory with an effective date of January 1, 1994, be submitted in accordance with Article X, § 12 of the Constitution of the State of Alaska to the Second Regular Session of the Seventeenth State Legislature during the first ten days of the Session (i.e. no later than January 22, 1993).
3. That upon the effective date of the annexation, the Department of Community and Regional Affairs issue a certificate of boundaries of the City and Borough of Juneau reflecting the subject annexation. Provided, however, that the City and Borough of Juneau first submit documentation to the Department demonstrating full legal compliance with the Voting Rights Act of 1965, 42 U.S.C. § 1973, as it relates to this annexation.

SUBMISSION TO THE LEGISLATURE

In accord with these two decisions - one approving the annexation itself, and one approving the deferred effective date - the LBC is submitting to the Legislature the proposed annexation of approximately 140 square miles to the City and Borough of Juneau, to be effective January 1, 1994. The recommendation of the Local Boundary Commission approving this annexation takes effect 45 days after its submission to the Legislature, or at the end of the session, whichever is earlier, unless disapproved by a concurrent resolution by a majority of the members of each house.

The post-annexation boundaries of the City and Borough of Juneau would be as follows:

Beginning at Point Coke near McLaughlin Bay in Stephens Passage at North 57° 47' 30" Latitude and West 133° 47' Longitude.

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

March 9, 1992

POSITION PAPER

RE: HB 507

SPONSOR: Representative Mackie

Program Effects of Bill:

This legislation would prohibit the Local Boundary Commission (LBC) from submitting an annexation proposal having a deferred effective date (other than a step annexation under AS 44.47.567 (b)(2)) to the legislature.

Comments:

In the more than 33 years since statehood, there have only been two instances where the Local Boundary Commission has submitted deferred annexation proposals to the legislature.

The first instance involved an annexation to the City of Haines in the mid-1980's. When the LBC approved an annexation, officials of the Haines Borough asked the Commission to defer the annexation for two years so that local officials could bring a unification proposal before the voters. The deferral was granted.

The second instance involved the present annexation of the area around Greens Creek mine to the City and Borough of Juneau. The rationale for the deferral requested by Juneau was to limit financial hardship (from taxes and municipal land use regulation) on the property owner in the territory proposed for annexation.

In the Greens Creek annexation, the petitioners considered the step annexation process set out in AS 44.47.567 (b)(2). This option was not available, however, because the process requires approval of voters within the territory to be annexed and the territory in question was uninhabited. DCRA opposed the deferral request due largely to the fact that the CBJ had authority under existing law to grant tax relief. The LBC chose to approve deferral of the annexation.

WALTER J. HICKEL, GOVERNOR

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Position Paper on HB 507
March 9, 1992
Page Two

HB 507 was introduced in response to the deferred annexation of the Greens Creek mine by the CBJ. While in the judgment of the Department that deferral lacked merit, there may be other annexation proposals in the future that warrant deferral.

The Department urges restraint in proposals to limit the options available to the LBC. HB 507 should be opposed unless AS 44.47.567 (b)(2) is amended in the same legislation to allow step annexations of uninhabited territory.

Edg. Blatchford
Edgar Blatchford, Commissioner

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 507

Revision Date: _____
 Title: "...relating to certain annexation proposals submitted by the Local Boundary Commission..."
 Sponsor: Representative Mackie
 Requestor: (H) CRA

Department Affected: Community and Regional Affairs
 BRU: _____
 Component: _____

COMPONENT SERIAL NO.

0	0	0	0
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Handicobn Phone: 465-4708
 Division: Administrative Services Division Date: 3/10/92

Approved by Commissioner: Elen B. Lewis Date: 3-6-92
 Agency: Department of Community and Regional Affairs

REPRESENTATIVE
JERRY MACKIE

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COMMUNITY & REGIONAL AFFAIRS COMMITTEE

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TRANSPORTATION COMMITTEE

Alaska State Legislature



House of Representatives

WILE IN JUNEAU
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JUNEAU ALASKA 99811
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SPONSOR STATEMENT

HB 507

HB 507 would prohibit the Local Boundary Commission (LBC) from submitting an annexation proposal with a deferred effective date to the legislature.

This bill was introduced as a result of the Community and Regional Affairs Committee's hearings on the annexation of the Greens Creek Mine by the City and Borough of Juneau. When I read the reports of the Department of Community and Regional Affairs (DCRA), and the decisions of the LBC on the proposal, my instinctive reaction was to agree that delayed effective dates are not good public policy.

On September 6, 1990, the LBC stated that the deferred effective date set poor public policy, would allow an organized borough to "lock-up" parts of the unorganized borough without exercising jurisdiction or control, and was counter to the interests of the state (see Senate House Joint Journal Supplement No. 18, page 9).

On June 4, 1991, the Department of Community and Regional Affairs, in their analysis and recommendation to the LBC on the deferred effective date of the Greens Creek Annexation, pages 15-16, stated that the standards for borough annexation contemplate immediate annexation, would have an adverse financial impact on the state, and is contrary to the state's goal of diminishing reliance on the State to support local services. Additionally, DCRA felt that an annexation deferred to provide relief from taxation would inspire others to seek similar treatment; that such manipulation of government boundaries is counter to the Constitutional provisions requiring boroughs to embrace an area and population with common interests to the maximum degree possible.

SPONSOR STATEMENT

Sponsor Statement
HB 507

Article X, section 12 of the Constitution, regarding annexation proposals submitted for legislative approval, provides that The change shall become effective forty-five days after presentation or at the end of the session, whichever comes earlier. I believe this section of the constitution is what DCRA was referring to in their 1991 report regarding standards for annexation contemplating immediate annexation. Even our own legal staff agrees that there is a legitimate question as to whether the LBC can provide for a delayed effective date (see February 11, 1992 opinion, work order No. 7-LS1980).

I believe HB 507 will place into statute what the members of the Constitutional Convention envisioned regarding borough boundaries, and I urge your support.

(7)

Date Referred: February 18, 1992

FURTHER REFERRALS:

State Affairs

Date of Committee Action: 3/11/92

The COMMUNITY AND REGIONAL AFFAIRS Committee considered:

HB 507

HOUSE BILL NO. 507

LBC ANNEXATION PROPOSALS

"An Act relating to certain annexation proposals submitted by the Local Boundary Commission to the legislature."

RECOMMENDATIONS:

be replaced with _____

the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact _____

fiscal note(s) _____

zero fiscal note DEA

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>Cheri Davis</u>	<input checked="" type="checkbox"/>				
<u>[Signature]</u>	<input checked="" type="checkbox"/>				
<u>[Signature]</u>	<input type="checkbox"/>				
<u>Richard [Signature]</u>	<input checked="" type="checkbox"/>				

[Signature]
CHAIRMAN'S SIGNATURE



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: March 23, 1992

PLACE: Capital Room 102

SUBJECT OF MEETING:

- HR 348-Relating to Grp Health & Life Insur.: State Empl
- HB 507-Relating to IBC Annexation Proposals
- HB 565-Relating to Approp: Contr. Settlement Costs
- HR 3 -Relating to Change Terms of Represen.to 4 Yrs
- HR 72-Relating to Compensation for Legislators
- SB 337-Relating to Retirement Incentive Program
- HR 63-Relating to Support Military at Ft Richardson

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Sandra Wicks	DCRA				4750	(Y) N	if needed on HB 507
Jerry Brown	R. Phillips			22	4545	(Y) N	if needed HR 63
W. Luce	SOA				2722	Y (N)	HB 565 / SB 337
ION KOCH	DN of INSURANCE	P.O. Box 110805 IN.	47511		2577	ANSWER BY 7:30 (N)	HB 348
Carol J. J. J.	OMB				3308	(Y) N	SB 337
Cheryl J. J. J.	OMB					(Y) N	HB 565
Mike Mc Miller	Admin					Y (N)	HB 565
Deann Coran	Admin				4404	Y (N)	
Don Don Duncan						Y N	
Rep Randy Phillips						Y N	
						Y N	