

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 80/2

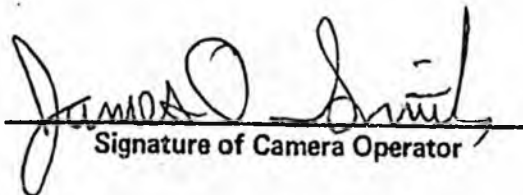
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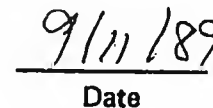


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COMMITTEE REPORT
HOUSE

(7)

FURTHER:

4/11/85

Date: 4/24/85

The Committee on STATE AFFAIRS has had HR 15

"An Act requiring an advisory election before an annexation may be proposed to the legislature."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]
[Signature]
[Signature]
[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]
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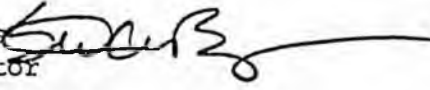
[Signature]
CHAIRMAN

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
(907) 586-6526

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

TO: Representative Peter Goll, Chair
Members of the House Community & Regional Affairs Committee

FROM: Scott A. Burgess 
Executive Director

DATE: April 8, 1985

SUBJECT: HB 15 - Annexation Advisory Elections

On behalf of the Alaska Municipal League, I must address HB 15 sponsored by yourself and Representative Marrou, and which is now being considered by your Committee. The advisory elections required by HB 15, as originally introduced, are unnecessary in terms of the information they would contribute, the potential delay that would result, and in terms of the cost incurred. In addition, the League is definitely opposed to the proposed committee substitute mandating that the election be held and paid for by the municipality.

There are four methods in Alaska that have been set up for municipal annexations developed out of the initial concerns of the drafters of our State Constitution and the creation of the Boundary Commission under Alaska Statutes 44.47. HB 15 would add a requirement that an advisory election be held for one of these methods, the Legislative Review process. The major reason for the Legislative Review process, approval by the Local Boundary Commission and the State Legislature, is to allow a municipality for good cause to annex property where the residents and/or land owners may not support it. Otherwise, the municipality would not normally pursue this type of annexation rather than one of the other three methods. An advisory election may only add numbers to verify the obvious.

Adequate procedures and criteria exist under the Legislative Review process to insure that an annexation is properly considered. Not unlike many land use decisions which a local governing body must face, the issues in annexations are not always popular. Currently, public testimony is taken and considered by the local governing body, the Department of Community and Regional Affairs, the Local Boundary Commission, and the Legislature.

The proposed substitute merely shifts the considerable and unnecessary cost of the election to the municipality from the State. The League opposes such a State mandate. The League does not support HB 15.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Page 1 of 2

Revision Date: 3/22/85

REQUEST (Version #1) FISCAL DETAIL
 Bill/Resolution No.: CSHB 15(CRA) Agency Affected: Office of the Governor
 Title: Act relating to advisory elections on annexations Program Category Affected: _____
 Sponsor: CRA Committee Division of Elections
 Requestor: Goll & Marrou BRU, Program or Subprogram(s) Affected: _____
 Date of Request: 3/22/85 Division of Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		8.6	9.0	9.5	10.0	10.5
400 SUPPLIES						
500 EQUIPMENT						
500 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	8.6	9.0	9.5	10.0	10.5

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND	0	8.6	9.0	9.5	10.0	10.5
FEDERAL FUNDS						
OTHER						
TOTAL	0	8.6	9.0	9.5	10.0	10.5

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See attached page.

Prepared By: Sherry Valentine

Phone: 465-4611

Division: Elections

Date: 3/22/85

Approved by Commissioner: _____

Date: _____

Agency: _____

Distribution (by Agency preparing fiscal note):

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

7/1/84

This fiscal note was developed on the basis of two elections per year from areas outside municipalities wishing to be annexed. It assumes that one request would be received from a punch card precinct and the other from a handmarked precinct. The cost for a punch card precinct is \$5.8 while a handmarked precinct is \$2.8. Computer counted (punch card) precincts are generally higher due to the need for computer programming and a Data Processing Review Board to oversee the computer counting of ballots.

We have specified the costs for each type of precinct so that if there were more than two such elections administered by the State within a year, the Legislature could identify the potential costs by multiplying the precinct cost by the number of additional elections beyond two.

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ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

February 21, 1985

MEMORANDUM

TO: Representative Peter Goll
Attn: Bob Berry

FROM: Jonathan Sherwood *JS*
Legislative Analyst

RE: Ten-Year History of Legislative Annexation in Alaska
Research Request 85-173

You requested that we provide information on the local annexation recommendations made by the Local Boundary Commission to the Alaska Legislature during the last ten years. Specifically, we were asked to determine the following:

- whether the Local Boundary Commission held public hearings;
- where possible, the nature of public comments presented to the Local Boundary Commission;
- whether a local advisory vote was held;
- whether the legislature approved the annexation; and
- whether the annexation was contested in court.

Table 1 provides a list of all Local Boundary Commission annexation recommendations made to the legislature from 1975 through 1984 and shows the action taken on the recommendation.¹ Where the legislature disapproved the recommendation, the legislative resolve is cited. The recommendations were identified using the Local Boundary Commission's annual reports to the Alaska Legislature; legislative action was determined by reviewing the legislative resolves for each session.

¹As you are aware, a Local Boundary Commission recommendation takes effect 45 days after it is presented to the legislature unless disapproved by joint resolution (AS 44.47.583).

Table 1
 History of Legislative Annexation Recommendations
 1975-84

<u>Location</u>	<u>Local Vote</u>	<u>Disapproved</u>	<u>Court Challenge</u>
<u>1975</u>			
City of Wrangell	no	no	no
Haines Borough	no	no	no
<u>1976</u>			
City of Yakutat	no	no	yes ^a
<u>1977</u>			
City of Palmer	no	no	no
City of Seward	no	no	no
<u>1978</u>			
City of Skagway	no	no	no
Haines Borough	no	no	no
City of Petersburg	no	no	no
<u>1979</u>			
City of Kodiak	no	by LR 3	no
<u>1980</u>			
City of Skagway	no	no	no
<u>1981</u>			
City of St. Mary's	no	no	no
City of King Cove	no	no	no
City of Nome	no	by LR 2	yes ^a
<u>1982</u>			
City of Nome	no	no	no
Kodiak Island Borough	no	no	no
City of Kodiak	no	no	no

Table 1 (Continued)
History of Legislative Annexation Recommendations
1975-84

<u>Location</u>	<u>Local Vote</u>	<u>Disapproved</u>	<u>Court Challenge</u>
<u>1983</u>			
Fairbanks North Star Borough	no	no	no
City of Port Lions	no	no	no
City of Haines	no	no	no
<u>1984</u>			
City of Haines	yes ^C	by LR 34	no
City of Ketchikan	no	no	no
City of Point Hope	no	no	no
City of Hoonah	no	by LR 37	no
City of Kodiak	no	no	no

^aThe Local Boundary Commission was the prevailing party.

^bThe advisory vote was held by the Haines Borough, not the City of Haines. A majority of those voting opposed the annexation.

Source: Local Boundary Commission Reports to the Alaska Legislature, 1975-1984; Session Laws of Alaska 1975-1984; Don Bockhorst, Department of Community and Regional Affairs, Division of Municipal and Regional Assistance; and Susan Cox, Department of Law.

* * * * *

Table 1 also shows which annexations have been the subject of a court challenge or a local advisory vote; this information was provided primarily by Don Bockhorst with the Division of Municipal and Regional Assistance in Anchorage; Mr. Bockhorst noted that there may be instances of court cases or advisory votes prior to 1980 of which he is not aware. However, Assistant Attorney General Susan Cox was not aware of any additional court cases for the period of time in question.²

²Ms. Cox is currently representing the Local Boundary Commission in litigation concerning their 1985 recommendation for annexation in the City of Fairbanks.

Representative Goll
February 21, 1985
Page Four

Under AS 44.47.581, the Local Boundary Commission must conduct a public hearing before it can recommend annexation to the Alaska Legislature. Therefore, each annexation recommendation listed in Table 1 was the subject of a local hearing. However, from the Local Boundary Commission reports to the Legislature, it appears that a least one public hearing was terminated early because of a power failure, and the commission cancelled one public hearing (the second for that recommendation) due to weather conditions.

We are unable to ascertain the content of testimony at Local Boundary Commission public hearings. This information is contained in the commission's files in the Division of Municipal and Regional Assistance's Anchorage office; according to Don Bockhorst, the division does not have the available staff to summarize this testimony. From a brief review of House and Senate Community and Regional Affairs Committee files, it appears that the commission has, on occasion, recommended annexation when a significant number of residents in the affected area opposed it. However, because committee files exist only when a resolution disapproving a recommendation is introduced, our sample may not be representative.

Jim Sanders of the Division of Municipal and Regional Assistance, who was the Division's Local Boundary Commission support staff until November, stated that the public hearing is usually the culmination of the commission's information gathering activities. The commission also considers the initial petition for annexation, the Department of Community and Regional Affairs' review and recommendations, any correspondence received on the issue, pertinent newspaper articles, and any briefs filed by opponents or proponents.

According to Mr. Sanders, the Local Boundary Commission is more concerned with the substance of public testimony than the volume for or against annexation. The commission has standards for annexation set forth in regulation, and the commission is looking for arguments as to whether a proposed annexation meets those standards.

We have attached copies of the Local Boundary Commission's annual reports to the legislature from 1975 through 1984. These reports provided detailed descriptions of the annexations recommended by the commission. Please do not hesitate to contact us if you have any questions regarding this memorandum, or if we can be of further assistance to you.

JS

Attachments



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 27, 1985

MEMORANDUM

TO: Representative Peter Goll

ATTN: Bob Berry

FROM: Rob Waldman *RW*
Legislative Analyst

RE: Historical Background of the Local Boundary Commission
Research Request 85-262

You asked that we provide historical background on the formation of the Local Boundary Commission. Historical information was obtained through interview with Senators Victor Fischer and Jack Coghill and through review of the minutes of the Alaska Constitutional Convention; the text of the State Constitution and Statehood Committee reports.¹

According to Senator Coghill, the concept of the Local Boundary Commission resulted from the constitutional convention's attempt to resolve jurisdictional conflicts between the different types of governmental entities that functioned under territorial law.² Its function was to review local government structure and adjudicate conflicts between jurisdictions. Prior to statehood, all jurisdictional disputes and boundary modifications were adjudicated by federal district courts. The members of the convention felt that the function of settling these issues should not be delegated to the court system; they felt that the executive branch should adjudicate boundary disputes and modifications.

¹Minutes to the Proceeding of the Alaska Constitutional Convention, 1955-56, pages 2665-2666, 2745-2753, and 2759-2760.

A Citizens's Guide to the Constitution of the State of Alaska, Gordon Harrison, 1982; Alaska's Constitutional Convention, Victor Fischer 1975.

Proposed Organization of the Executive Branch, State of Alaska, A Survey Report, 1958; Local Government Under the Alaska Constitution, A Survey Report, 1959, Public Administration Service.

²Under Territorial law, jurisdiction conflicts could arise between school districts, utility districts, cities, road districts, etc.

Representative Goll
March 26, 1985
Page Two

In Alaska prior to 1959, all annexation was conducted by local governments.³ At times, annexation issues became very controversial. Senator Fischer states that the commission was seen as a mechanism that circumvented local turmoil, brought the issues beyond "vested local interests" and prejudices, and permitted implementation of the "broad public intent". He believes that there was a need to ensure that municipal boundaries could be altered to adjust for changes in population and in the demand for local services. If the municipalities retained control over boundaries and annexation, there could be difficulty in altering boundaries once local interests became vested. Article X, Section 12 of the State Constitution which established the Local Boundary Commission was designed to overcome those type of roadblocks.

The convention committee on local government recommended that the boundary commission be modeled after the "Canadian system" (provincial governments exercise considerable control over local governments). It was felt that boundary and annexation issues affect all incorporated and unincorporated areas and not just the specific communities involved. Therefore, it was recommended that adjudication be at the State level.

In addition, the intent of the convention was for the commission to have the authority to regulate boundary changes without prior requests from the communities involved. Communities could request that referenda, polls, and surveys be considered by the commission when developing its recommendations. However, according to Senator Fischer, the convention was very specific in its position that these types of community input are not a requirement.

During the committee sessions, there was considerable discussion of the relation between the commission and the legislature. Some members wanted total control in the hands of the legislature, and recommended that all boundary changes and rules related to boundary changes be addressed by statute because the commission was within the executive branch and requiring legislative approval would violate the "seperation of powers" concept. The amendment supporting this concept was defeated.

The majority of the members felt that legislative involvement in the process was useful and necessary at times but not required for all boundary changes. Their intent was to allow legislative participation as long as it did not become prohibitive for all proposed boundary

³For annexation, local elections had to be held concurrently in the city and area to be annexed, and majority votes were necessary.

Representative Goll
March 25, 1985
Page Three

changes.⁴ A compromise was adopted which permitted legislative intrusion into the administrative function of the executive branch only by resolution concurred in by a majority of the members of both houses. In addition, it was recommended that proposed changes become effective if the legislature is "inactive" in its function. As was described within the minutes, the legislature opted for the "negative approach to enactment of legislation," which means that the legislature must act only to reject the proposal and may grant "approval without any action at all by the body that should act on it."⁵

In 1958, the Alaska Statehood Commission was given the following recommendations for implementation of the commission:

The Local Boundary Commission should operate so far as possible in the manner of a quasi-judicial body. Its determinations should be based upon a careful assembling and weighing of relevant geographic, demographic, fiscal, and governmental facts, not disregarding expressions of judgement and sentiment by the public officials and citizens most directly concerned. So far as possible, decisions should be made in the light of a realistic projection of probable future demographic and economic trends."⁶

I hope that this information is useful to you. If you have any questions, please contact us.

RW

⁴It was felt that "in the press of business" the legislature may not get around to considering minor boundary changes, and major boundary changes could require considerable legislative time.

⁵Minutes to the Proceeding of the Alaska Constitutional Convention, page 2752.

⁶Proposed Organization of the Executive Branch State of Alaska: A Survey Report, 1958, page 147.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508
PHONE: (907) 563-1073

April 2, 1985

The Honorable Peter Goll, Chairman
Community and Regional Affairs Committee
Alaska State House
Pouch V
Juneau, Alaska 99811

Dear Representative Goll:

RE: CSHB 15

You have requested our suggestions for improvements to CSHB 15, an Act requiring advisory elections for legislative review annexation proposals. We have identified three alternatives to advisory elections which we feel have substantial benefits over an election. These alternatives, in order of our preference, are mandatory public hearings by the Department, informational meetings conducted by the Local Boundary Commission and mandatory public opinion polls.

Our preference would be to add a new section to AS 29.68 which would require the Department to conduct a public hearing on petitions for annexation using the legislative review process. Such requirements would be similar to the provisions currently required by AS 29.18.070 for incorporation proposals.

The hearing could accomplish the same objective as that proposed by CSHB 15, in that it would enable residents of the territory to state their preference on the proposed annexation. In fact, a hearing would provide the residents with far greater opportunity than that provided by an advisory election to impact this agency's recommendation on proposed annexations. An advisory election would simply tally the number of voters in favor and the number opposed to the proposed annexation, whereas a hearing would enable individuals to articulate the rationale for their positions.

The fiscal impact of such requirements would not be great. I estimate that the costs relating to travel, per diem, providing public notice of the hearing and other direct expenses (excluding currently salaried personnel costs) would be approximately \$500 per hearing. Assuming five such annexation proposals per year, the fiscal impact of this requirement would be estimated at \$2,500 per year.

The Honorable Peter Goll
RE: CSHB 15
April 2, 1985
Page 2

As an alternative to a statutory mandate for the public hearing, the Committee could request the Department to begin, as a matter of policy, conducting hearings on such annexations in the manner discussed above. The Department could even include such provisions in the administrative regulations governing proceedings concerning legislative review annexations.

The second option would require, by either statute or regulation, that the Local Boundary Commission hold an informational meeting on the petition prior to the public hearing.

As the less preferred alternative, the Committee could propose adding a new section to AS 29.68 which would require that a public opinion poll be conducted in the territory proposed for annexation. As is the case with the public hearing, a proper public opinion poll could serve to provide the Department and the Local Boundary Commission with greater useful information than would be provided with a simple tally of votes from an advisory election.

Standards and procedures for the conduct of public opinion polls would have to be carefully developed to ensure that the poll was both accurate and creditable. For example, by requiring a poll of every registered voter in the territory proposed for annexation whose State Voter Number ends with an odd number, would ensure that the poll would be highly representative of the total number of registered voters and that the individuals polled were selected in an unbiased manner.

I feel that the burden for conducting the poll should be placed on the petitioner. As such, there would be no fiscal impact on the State for such requirements. Again, as an alternative to imposing such requirements by law, the Department could require public opinion polls through its administrative regulations.


Attached for your information is a list of questions which might be used in such a poll.

The Honorable Peter Goll
RE: CSHB 15
April 2, 1985
Page 3

Another idea to improve the process would be to have the Local Boundary Commission make available summaries of the testimony at the public hearing, along with the other material currently provided.

If you would like to discuss this matter further, please contact me.

Sincerely,



Jeff Smith
Deputy Commissioner

cc: Marty Rutherford, Director
Municipal and Regional Assistance Division

Tom Lane, Planner
Municipal and Regional Assistance Division

Attachment: as stated

PUBLIC OPINION POLL REGARDING ANNEXATION
PAGE ONE OF TWO

1. Are you aware of the City's proposal to annex _____ square miles, including the territory in which you live?
[Note: if not, see the attached map showing the boundaries of this territory]
() yes () no
2. In your opinion, does any part or all of the territory proposed for annexation have the following characteristics?
- URBAN (is the population density approximately equal to that of the City, is the development in this area the result of growth beyond the present City boundaries, is the property suitable for urban purposes);
() yes () no
 - NEED FOR SERVICES BY CITY (is the territory in need of municipal services which the City can provide more efficiently than another municipality);
() yes () no
 - GROWTH (is there a reasonable likelihood that future growth and development will occur in the territory in a manner that would benefit from City planning and control);
() yes () no
 - HEALTH (are there conditions developing or existing in the territory which could endanger the health, welfare or safety of residents which could be relieved through annexation);
() yes () no
 - TERRITORY NEEDED TO EXTEND SERVICES (is it necessary to annex this territory to enable the City to extend facilities or services to other individuals presently residing in the City);
() yes () no
 - RESIDENTS ALREADY RECEIVING SERVICES (are residents or property owners within the territory using City facilities and services without paying for them);
() yes () no
 - OTHER PUBLIC PURPOSE (are there other reasons why this territory should be annexed);
() yes () no
3. Are you in favor of annexation?
() yes () no

PUBLIC OPINION POLL REGARDING ANNEXATION
PAGE TWO OF TWO

4. State the principal reason(s) for your answer to question #3

-

-

-

-

-

-

5. How long have you been a resident of the territory proposed for annexation?

_____ years _____ months

6. Are you a head of household?

() yes () no

7. Are you a female or male?

() female () male

8. Do you own or rent your current residence?

() own () rent

9. Do you own other real property in the area proposed for annexation?

() yes () no

10. If your answer to question #9 is yes, is this property comprised of land or land and buildings?

() land () land and buildings

ALASKA STATE LIBRARY

BOROUGH GOVERNMENT IN ALASKA

A Study of State-Local Relations

by

Thomas A. Morehouse
and
Victor Fischer



Institute of Social, Economic and Government Research
University of Alaska
College, Alaska 99701

ISEGR Report No. 29

March 1971

Price: \$5.00

legislature could reserve to itself authority over education generally or school financing in particular, and then grant it directly to local school authorities. This issue was not pursued, however, due to its obvious conflict with the borough provisions then already accepted.

State Organization and Role

The lack of any general government beyond the city; a tradition of territorial responsibility for services beyond incorporated communities; the varying levels of local government capability and of the requirements for local services throughout Alaska; and, finally, the realization that further detailed study and planning was necessary to establish a new governmental system—these factors militated strongly in the direction of continuing state responsibility for local affairs. In short, the Constitutional Convention viewed the role of the state as critical in making the local governmental system work. Here, as elsewhere in its local government deliberations, the convention left much to be determined later in the state legislative and administrative process.

In addition to dealing with local government organization, Article X includes the following provisions for state authority and responsibility:

—responsibility is vested in the legislature for establishing procedures and standards under which boroughs will be created and classified;⁴⁴

—the legislature is established as the governing body for unorganized boroughs and has responsibility for provision of services in such boroughs;⁴⁵

⁴⁴ *Constitution*, Article X, Section 3.

⁴⁵ *Constitution*, Article X, Section 6.

—a state-level local boundary commission is given responsibility for changes in local government boundaries;⁴⁶

—an executive agency is established in state government to deal with local affairs;⁴⁷ and

—authorization is granted for joint exercise of powers by local governments and the state.⁴⁸

In providing for—indeed, in mandating—a major role for the state in local affairs, the Alaska constitution was taking a lead position nationally in the intergovernmental field. The concept of the boundary commission has still not been replicated in similar scope elsewhere and probably cannot be due to the frozen structures of county government and the near permanency of existing municipal boundaries in most states. Only in recent years have states created instrumentalities with some jurisdiction over annexation and incorporation. Similarly, the provision for a top-level local affairs agency preceded by several years the recent movement to create such agencies in other states.⁴⁹

Local Boundary Commission

The Local Government Committee and the convention concluded that establishment and revision of local government boundaries should be primarily a state responsibility. Several considerations led to this conclusion: first, the delineation of boroughs required a statewide analysis of pertinent considerations; second, the state had a direct interest, since the borough was

⁴⁶*Constitution*, Article X, Section 12.

⁴⁷*Constitution*, Article X, Section 14.

⁴⁸*Constitution*, Article X, Section 13.

⁴⁹See Appendix F for brief descriptions of local affairs and related agencies in the United States at the end of 1968.

to serve not only as a local government but also as a unit for the provision of state services; third, it was generally believed that an objective analysis of relationships between adjacent local units could only be made at a higher level; and fourth was the belief that strictly local political decisions do not usually create proper boundaries.⁵⁰ Because similar considerations applied, city boundaries were also included under the jurisdiction of a boundary commission or board to be established in the executive branch of the state government. Boundary changes under this system could be made by the commission upon petition or on its own initiative.⁵¹

Convention delegates from the beginning considered it appropriate that boundary changes proposed by the commission be subject to legislative veto. In addition, there was some feeling on the part of the Local Government Committee "that the citizens of a local unit should have some check upon any proposed revision."⁵² The issue was again raised on the convention floor,⁵³ but no requirement for a referendum was included in the constitution.

Initially, the Local Government Committee draft article stipulated that proposed changes be submitted to the legislature during the first ten days of any session and that they would "become effective at the end of the session unless disapproved by a resolution concurred in by a majority of all members of each house."⁵⁴ Subsequently, it was further provided that a change would be "effective forty-five days after presentation or at the end of the session, whichever is earlier . . ."⁵⁵ This amendment was adopted so that acceptable changes would not be unnecessarily delayed because of prolonged legislative sessions.

⁵⁰Minutes, 18th Meeting; *General Discussion*, pp. 6-7.

⁵¹Minutes, 19th Meeting; *General Discussion*, p. 6.

⁵²Minutes, 18th Meeting.

⁵³*Proceedings*, pp. 2667, 2752.

⁵⁴*Committee Proposal/6/a*.

⁵⁵*Constitution*, Article X, Section 12.

While the legislature is thus given the veto power over boundary revisions and is also required to prescribe standards and methods for establishment of boroughs, the constitution does not grant it authority over Boundary Commission activities⁵⁶ or over the manner in which boundary changes are effected. The Boundary Commission in addition has the authority, subject to law, to "establish procedures whereby boundaries may be adjusted by local action."⁵⁷

The Local Government Agency

The prominence that the convention gave to the state role in local affairs is evidenced by the fact that the "local government agency" is the only administrative agency specifically required under the constitution. Delegates generally subscribed to the principle that, unless a grave need existed, no agency, department, commission, or other body be specified in the constitution. As one delegate stated in regard to the local government agency, "Unless there is some very, very compelling reasons given for including such an agency as proposed in Section 14 in the constitution, I think we're violating the principles and policies we've already adopted here."⁵⁸ However, in view of the general belief that success of the local government plan was dependent upon existence of an effective agency at the state level, provision for a mandatory agency was included in the constitution.

Thus, Section 14 of Article X, establishing the local government agency, provides:

⁵⁶*Proceedings*, p. 2750.

⁵⁷*Constitution*, Article X, Section 12. It would appear questionable, therefore, whether the legislature has any direct or implied constitutional power to authorize annexation or other boundary changes by local action, since this power rests in the boundary commission.

⁵⁸*Proceedings*, p. 2670.

(f) A second class borough may establish a service area by ordinance which may include only vacant, unappropriated and unreserved land owned by the municipality. A second class borough may establish a service area, with the concurrence of the commissioner of natural resources, which may include only vacant, unappropriated and unreserved land owned by the state and classified for disposal to individuals. A second class borough may provide those services in a service area established under this subsection necessary to develop state or municipal land as required by the planning and platting ordinances of the borough. Exercise of the powers authorized by this subsection shall be by ordinance. (§ 2 ch 118 SLA 1972; am §§ 9, 10 ch 85 SLA 1979)

NOTES TO DECISIONS

Effect of 1979 amendments. — The 1979 amendments to the service area provisions found in subsections (a) and (f) of this section do not violate constitutional rights of borough residents. Wolfgang Falke v. Fairbanks North Star Borough, Sup. Ct. Op. No. 2530 (File Nos. 5761, 5781), 648 P.2d 597 (1982).

Collateral references. — Standing of municipal corporation or other governmental body to attack zoning of land lying outside its borders, 49 ALR3d 1126.

Chapter 68. Alteration of Boundaries.

Article

- 1. Annexation and Exclusion (§§ 29.68.010 — 29.68.020)
- 2. Merger and Consolidation (§§ 29.68.030 — 29.68.110)
- 3. Unification of Local Governments (§§ 29.68.240 — 29.68.440)
- 4. Dissolution (§§ 29.68.500 — 29.68.580)

Article 1. Annexation and Exclusion.

Section

- 10. Local boundary commission
- 20. Annexation of military reservations

Sec. 29.68.010. Local boundary commission. (a) The Local Boundary Commission may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first 10 days of any regular session. The change shall become effective 45 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.

(b) In addition to the regulations governing annexation by local action adopted under AS 44.47.567, the Local Boundary Commission shall, within 90 days of September 10, 1972, establish procedures for annexation and exclusion of territory by cities and boroughs by local

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action. The procedures established under this subsection shall include

(1) a provision requiring that a proposed annexation and exclusion must be approved by a majority of the voters voting on the question residing within the area proposed to be annexed or excluded;

(2) provisions that municipally-owned property adjoining the municipality may be annexed by ordinance without voter approval; and

(3) provisions that an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters within the area petition the assembly or council.

(c) A boundary change effected under (a) of this section prevails over a boundary change initiated by local action, without regard to priority in time. (§ 2 ch 118 SLA 1972)

Cross references. — For further provisions relating to local boundary commission procedures, see AS 44.47.565 — 44.47.583. For requirements of a hearing on local boundary changes, see AS 44.47.581.

NOTES TO DECISIONS

Defining boundaries is a legislative function. — The creation of municipalities, and the defining of the extent of the boundaries thereof, involve the exercise of legislative, not judicial, power. *Town of Fairbanks v. Barrack*, 282 F. 417 (9th Cir. 1922), cert. denied, 261 U.S. 615, 43 S. Ct. 361, 67 L. Ed. 828 (1923); *In re Annexation to City of Anchorage*, 16 Alaska 519, 146 F. Supp. 98 (D. Alaska 1956), decided under former, similar law.

The local action provision of Alaska Const., art. X, § 12 has been implemented by this section and by 19 AAC § 15.010 et seq. *Port Valdez Co. v. City of Valdez*, Sup. Ct. Op. No. 1044 (File No. 1996), 522 P.2d 1147 (1974).

Expansion of municipal boundaries is matter of statewide concern. — Those who reside or own property in the area to be annexed have no vested right to insist that annexation take place only with their consent. The subject of expansion of municipal boundaries is legitimately the concern of the state as a whole, and not just that of the local community. *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, Sup. Ct. Op. No. 61 (File Nos. 69, 71), 368 P.2d 540, appeal dismissed and cert. denied, 371 U.S. 5, 83 S. Ct. 39, 9 L. Ed. 2d 49 (1962), decided under former, similar law.

Annexation procedure may be changed. — The state may permit residents of local communities to determine annexation questions at an election. But

when this has been done, the state is not irrevocably committed to that arrangement. If the citizens of the state, in adopting a constitution, decide that it is in the public interest to establish another election procedure, there is no constitutional obstacle to that course of action. *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, Sup. Ct. Op. No. 61 (File Nos. 69, 71), 368 P.2d 540, appeal dismissed and cert. denied, 371 U.S. 5, 83 S. Ct. 39, 9 L. Ed. 2d 49 (1962), decided under former, similar law.

One proceeding for annexing several tracts. — See *In re Town of Sitka*, 11 Alaska 201 (1946), decided under former, similar law.

Areas in public utility district may be annexed. — The fact that the areas are embraced within a public utility district constitutes no bar to annexation. *In re Annexation to City of Anchorage*, 15 Alaska 504, 129 F. Supp. 551 (D. Alaska 1955). See *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, Sup. Ct. Op. No. 61 (File Nos. 69, 71), 368 P.2d 540, appeal dismissed and cert. denied, 371 U.S. 5, 83 S. Ct. 39, 9 L. Ed. 2d 49 (1962), decided under former, similar law.

Consent of voters in district required if annexation proceeds under this article. — The provision of AS 42.35.370 providing for dissolution of a utility district with the consent of the voters when "the whole or the integral part of a district becomes annexed to an incorporated city"

has application only where annexation takes place under the petition-election procedure of this article and has no application where annexation takes place under a different method established by Alaska Const., art. X, § 12. Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, Sup. Ct. Op. No. 61 (File Nos. 69, 71), 368 P.2d 540, appeal dismissed and cert. denied, 371 U.S. 5, 83 S. Ct. 39, 9 L. Ed. 2d 49

(1962), decided under former, similar law.

Quoted in Pavlik v. State, Dep't of Community & Regional Affairs, Sup. Ct. Op. No. 2451 (File Nos. 4961, 4979), 637 P.2d 1045 (1981).

Stated in State, Dep't of Natural Resources v. City of Haines, Sup. Ct. Op. No. 2342 (File No. 5067), 627 P.2d 1047 (1981).

Collateral references. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 55 to 80, 137.

62 C.J.S., Municipal Corporations, §§ 42 to 46.

Capacity to attack the fixing or extension of municipal limits or boundary, 13 ALR2d 1279.

Proper remedy or procedure for

attacking legality of proceedings annexing territory to municipal corporation, 18 ALR2d 1255.

What land is contiguous or adjacent to municipality so as to be subject to annexation, 49 ALR3d 589.

What zoning regulations are applicable to territory annexed to a municipality, 41 ALR2d 1463.

Sec. 29.68.020. Annexation of military reservations. A military reservation may be annexed to a city or borough in the same manner as prescribed for any other territory under AS 29.68.010. If a city within an organized borough annexes a military reservation under this section, the territory encompassing the military reservation automatically is annexed to the borough of which the city is a part. (§ 1 ch 32 SLA 1973; am § 8 ch 72 SLA 1974)

Article 2. Merger and Consolidation.

Section

- 30. Methods of merger or consolidation
- 40. Petition
- 50. Review
- 60. Investigation
- 70. Report and hearing

Section

- 80. Decision
- 90. Election
- 100. Assets and liabilities
- 110. Ordinances

Sec. 29.68.030. Methods of merger or consolidation. Two methods may be used to initiate merger or consolidation of home rule and general law municipalities:

- (1) petition to the Local Boundary Commission under regulations adopted by the commission, or
- (2) the local option method specified in AS 29.68.040 — 29.68.110. (§ 2 ch 118 SLA 1972)

Collateral references. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 81, 82.

62 C.J.S., Municipal Corporations, §§ 47, 85 to 87.



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ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

HB-15

March 8, 1985

MEMORANDUM

TO: Representative Max Gruenberg

FROM: Jay Livey *JL*
Legislative Analyst

RE: Local Boundary Changes in Other States
Research Request 85-209

You asked that we describe the procedures used in other states to alter municipal boundaries. Although a variety of municipal boundary changes exist, we have concentrated on annexation and detachment. Information concerning these two types of boundary changes is provided for the following ten states: Alabama, Arizona, California, Colorado, Florida, Minnesota, Oregon, Texas, Virginia and Wyoming.

Alabama

In Alabama, there are two procedures that municipalities can use to annex territory. The first, which applies to all municipalities, is initiated when the governing body passes a resolution which declares that annexation of the described property is in the public good. An election is then held in the area to be annexed. Annexation occurs if a majority of the voters voting in the election approve the annexation. This procedure is also used to detach territory from municipalities.

The second annexation method applies to all municipalities with over 2,000 people. If the governing body of the municipality that wishes to annex territory passes a resolution supporting the annexation and all of the property owners in the area that is to be annexed sign a petition supporting the annexation, it can be ordered without an election.

Arizona

The governing body of a city or town may by ordinance, annex the territory if an annexation petition is signed by the owners of not less than one-half of the real and assessed personal property that would be subject to taxation in the event of annexation. The "one-half" rate refers to property value rather than to land area.

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Page Two

Detachment can be initiated by a city or town which passes an ordinance declaring the territory detached. The city must notify all of the landowners that the detachment is pending. If 50 percent or more of the landowners in the territory protest the detachment in writing, the detachment is denied.

California

In California, annexation can be initiated by either the residents of the area to be annexed or by the city that wants to annex the territory. In the first instance, a petition must be signed by not less than 5 percent of the number of registered voters residing in the area proposed to be annexed or by not less than 5 percent of the landowners within the territory proposed to be annexed who own at least 5 percent of the assessed value of the land within the area proposed to be annexed.

The second method allows the governing body of the city to pass a resolution requesting that the annexation take place. If the annexation is initiated in this way, the Local Agency Formation Commission must approve an annexation if either of the following conditions exist:

- The area to be annexed is contiguous territory which is either substantially surrounded by the city proposing the annexation, is not prime agricultural land, and is designated for urban growth by the development plan of the annexing city.
- The area to be annexed is located within an urban service area which has been identified and adopted by the boundary commission.

If these conditions do not exist, the conducting authority must hold hearings regardless of the method used to initiate the annexation.

If the territory to be annexed is inhabited, and does not meet the two conditions discussed above, the conducting authority shall do one of the following upon the conclusion of the public comment period:

- terminate the annexation proceedings if written protests have been filed and not withdrawn by 50 percent or more of the registered voters within the affected territory.
- call for a special election within the area to be annexed if written protests have been filed and not withdrawn by either 25 percent or more of the registered voters within the area, or by 25 percent or more of the number of owners of land, who also own not less than 25 percent of the total assessed land value within the territory.

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Page Three

- order the territory annexed without an election if written protests have been filed and not withdrawn by less than 25 percent of the registered voters within the territory and less than 25 percent of the owners of land who own less than 25 percent of the total assessed value of land within the territory.

If the territory to be annexed is uninhabited, the conducting authority shall take one of the following actions after the public comment period has concluded:

- terminate proceedings if written protests have been filed and not withdrawn by the owners of land and improvements who own not less than 50 percent of the total assessed value of land and improvements within the territory.
- order the territory annexed if written protests have been filed and not withdrawn by owners of the land and improvements who own less than 50 percent of the total assessed value of land and improvements within the territory.

These same procedures apply to detachment with the following exception. A petition for detachment must be signed by not less than 20 percent of the registered voters residing within the territory proposed to be detached or by not less than 20 percent of the number of owners of land within the territory proposed to be detached who also own 20 percent of the assessed value of the land within the territory.

Colorado

In Colorado, an area is eligible for annexation if the governing body determines that:

- not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous with the annexing municipality;
- a community of interest exists between the area proposed to be annexed and the annexing municipality;
- the area is urban in character or will be urbanized in the near future; and
- the area is capable of being integrated into the annexing municipality.

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Page Four

If an unincorporated area is entirely contained within the boundaries of a municipality, the governing body may, by ordinance, annex the territory if the territory has been surrounded for three years. Unincorporated areas which have had more than two-thirds boundary contiguity with the annexing municipality for a period of not less than three years can be annexed by ordinance after an extensive public hearing process is completed.

In other cases, the landowners of more than 50 percent of the area to be annexed may petition the governing body of the municipality for annexation. After the completion of a public hearing process, the governing body of the municipality makes a determination concerning the annexation. This determination must state whether the annexation is accepted or rejected and whether an annexation election is required. If this petition is signed by the owners of 100 percent of the area to be annexed, the governing body can approve the annexation without a public hearing process or election.

A petition can also be initiated by the voters of the area to be annexed. If the area is located in a county with 25,000 or fewer residents, 75 voters or 25 percent of the voters in the area, whichever is less, must sign the petition. If the population of the county in which the area is located contains 25,000 or fewer residents, 40 voters or 25 percent of the voters in the area, whichever is less, must sign the petition. After the public hearing process is complete, an election is held in the area to be annexed. All registered voters residing in the area and any landowner owning land in the area may vote for or against annexation. A majority of all the votes cast in the election is required for annexation.

Detachments may be proposed to the governing body of the city by individual landowners who wish to detach their land. The governing body may detach the land by ordinance if it is in the best interests of the community to do so. If more than one owner wishes to detach land from the municipality, they must present a petition requesting detachment to the district court. The court then holds hearings on the request and makes a determination. However, if the city has maintained streets, lights, and other public utilities for a period of three years in the area to be detached, the court must rule against the detachment.

Florida

Annexation can be initiated either by the residents of the area to be annexed or by the city that wants to annex the territory. If all of the residents of an area to be annexed petition the local government, the local government may adopt an ordinance to annex the territory and re-define the boundary lines of the municipality.

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If the municipality initiates the annexation by passing an ordinance, a vote is taken in both the annexing municipality and the area to be annexed. A majority of the voters in both the annexing municipality and the area to be annexed must approve the annexation; if either of the two groups votes against the annexation, the proposal fails.

Detachment from the municipality can be initiated by either the governing body of the municipality or by 15 percent of the qualified voters in the area to be detached. In either case, an election is held in the area to be detached. A majority of the votes cast in the election are needed for detachment.

Minnesota

Proposals for either annexation or detachment are submitted to the Minnesota Municipal Board. Annexation may be initiated by any of the following methods:

- a resolution of the governing board of the annexing municipality;
- a resolution from the board of the township that contains the area to be annexed;
- a petition signed by 20 percent of the property owners or 100 property owners, whichever is less, in the area to be annexed; or
- a resolution of the municipal council together with a resolution from the township board stating their desires to have the entire township annexed to the municipality.

If the annexation is proposed by a petition signed by a majority of the property owners within the area to be annexed, the Minnesota Municipal Board may confirm the annexation without an election. If this is not the case, an election is held in the area to be annexed and a majority of the voters in that area must approve the annexation.

Detachment from a municipality can be initiated by a resolution from a municipality or by a petition signed by all the property owners in the area if the area is less than 40 acres. Seventy-five percent of the property owners must sign the petition if the area to be detached is more than 40 acres. If both a petition is submitted and a resolution is passed, the municipal board will approve the detachment. If either a petition or resolution is submitted, then the board may approve the detachment if:

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Page Six

- the required number of property owners have signed the petition if that method initiated the action;
- the property to be detached is rural and not developed for urban residential, industrial or commercial use; and
- the land is not needed for symmetry and not needed for reasonably anticipated future development.

The board may deny the detachment or reduce the area that is proposed to be detached if it concludes that the remainder of the municipality will suffer hardship as a result of the detachment.

Oregon

Oregon statutes contain two procedures for changing municipal boundaries; one applies to the metropolitan areas of Portland and Eugene and one applies to the rest of the state.

Boundary changes within the metropolitan areas of Portland and Eugene fall under the authority of the boundary commission. Annexation and detachment proposals can be submitted to the commission by:

- resolution of the governing body of the affected city or district;
- petition signed by 10 percent of the voters registered in the affected territory;
- petition signed by the owners of at least one-half of the land in the affected area; and
- resolution of the boundary commission having jurisdiction in the affected area.

The boundary commission must hold public hearings on the proposal and publish findings concerning the proposed change. The finding of the boundary commission takes effect unless an election is required due to either of the following:

- written objections to the change signed by not less than 10 percent or 100, whichever is less, of the voters in the affected territory are filed with the commission; and
- a resolution objecting to the change is adopted by the governing body of the city affected.

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Page Seven

In the case of objections from the residents of the area to be annexed, an election is held in that area. If objections are from the city governing body, an election is held in the city.

Annexations in the balance of the state can be initiated by either petition of the landowners in the area to be annexed or by the passage of a city ordinance in the city annexing the area. A petition that initiates the annexation must have triple majority: at least 50 percent of all landowners who own at least 50 percent of the land representing more than half of the assessed value of the land in the area to be annexed. If such a petition initiates the annexation, the municipality may annex the land by ordinance without an election.

If the annexation is initiated by ordinance, and the city chooses to dispense with an election in the city, the governing body of the city may do one of the following by ordinance:

- declare that the territory is annexed to the city upon the condition that the majority of the votes cast in the territory is in favor of the annexation;
- declare that the territory is annexed to the city if the triple majority of landowners has in writing supported the annexation;
- declare that the territory is annexed to the city where the Health Division has issued a finding that a danger exists to the public health because of the conditions within the territory.

Any of the ordinances that implements one of these three choices is subject to referendum. If the city annexing the territory wishes to submit the annexation to an election, a majority of voters in both the area to be annexed and the city annexing the area must favor the annexation.

Detachment can be initiated by the governing body of a city. After conducting a public hearing, the governing body can detach the area by ordinance. This ordinance is subject to referendum.

Texas

Residents of areas outside of cities can initiate annexation by presenting a petition from 50 percent of the property owners in the area to be annexed to the city council of the municipality. After a series of public hearings have been concluded, the municipal governing body has 6 months to approve the annexation. If it fails to approve the annexation, the residents of the proposed area to be annexed may initiate incorporation proceedings to form their own municipality.

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Page Eight

A second procedure allows 50 percent of the voters in the area proposed to be annexed to approve annexation and notify the municipality of this desire. The municipality may either accept or reject the offer.

Detachment can occur in the case of a municipality refusing or failing to provide services within an area of the municipality. A petition for detachment signed by 50 percent of the qualified voters residing within the specified area and 50 percent of the landowners within the area may be presented to the municipality's governing body. If the municipality fails to act on the petition, the residents of the area proposed to be detached may go to court requesting detachment. If the court finds that the services provided in the area are not comparable to the services provided in similar areas of the municipality, the court can order that area to be detached.

Virginia

Annexation can be proposed either by the residents of the area to be annexed or by the city or town council that wishes to annex the area. If residents initiate the procedure, 51 percent of the qualified voters in the area or 51 percent of the owners of real estate in land area and number located in the territory proposed to be annexed may petition the county court. Within a specified period of time, the city or town must accept or reject the petition. If accepted, the annexation proceeds. If rejected, the residents may proceed to a determination by the court.

A governing body of a city or town may also initiate annexation proceedings by adopting a resolution calling for the annexation of a certain area. This annexation proposal also proceeds to a determination by the court.

A special court composed of three judges designated by the State Supreme Court decides annexation cases. The court has the power to:

- authorize or deny the annexation and alter the proposed boundaries of the annexed territory; and
- determine any compensation due the county for the value of the public improvements found in the area to be annexed.

If the annexation proposal was initiated by the city or town council, the governing body of the city or council has the option to reject the terms of the annexation judgment prior to the annexation becoming final.

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Page Nine

Detachments may be initiated by the governing body of the town or city which then applies to the county court for an order confirming the ordinance. If the court determines that the contraction shall not leave the bonded indebtedness of the city more than 18 percent of the total assessed value of real estate left in the city and the court is satisfied that less than three-fourths of the freeholders in the territory oppose the proposed detachment and that no substantial injury will occur to persons owning real estate in the detached area, the court can order the detachment.

Wyoming

A petition for the annexation of territory in Wyoming can be initiated by either a majority of the landowners in the area to be annexed or by a resolution of the governing body of the municipality that wishes to annex the area. Regardless of the method of introduction, a public hearing is held concerning the proposal's conformity to the following eligibility criteria:

- The annexation must contribute to the health, welfare, and safety of the persons in the area to be annexed and the community annexing the area;
- The urban development of the area to be annexed would constitute a natural, geographical, economical and social part of the annexing town or city;
- The annexation is logical and feasible; and
- The area to be annexed is contiguous or adjacent to the annexing town.

After the public hearing process, the governing body of the municipality can annex the area by ordinance. However, any landowner in the area to be annexed can go to court if he or she believes that they will be harmed by the annexation of the area. The court then determines if the annexation should be allowed.

Detachment of land from a municipality requires all of the property owners in the proposed area and two-thirds of the real property owners in the remainder of the city to petition the city council. The governing body can detach the area by resolution if it rules that the detachment is in the best interests of the community.

Representative Gruenberg
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Page Ten

Summary

Of the ten states that we investigated, seven allow annexation proceedings to be initiated by a petition signed by either residents or landowners of the area to be annexed or by resolution or ordinance of the governing body of the city annexing the area. The three remaining states allow the process to be initiated only by a petition from landowners or residents of the area to be annexed.

In Alabama, the petition initiating the annexation must be signed by all the landowners in the area to be annexed. In Arizona, Virginia and Wyoming the petition must be signed by at least 50 percent of the landowners in the area to be annexed. In Colorado, Minnesota, Oregon, and Texas, either landowner or resident petitions can initiate annexation. In Florida, only resident petitions can initiate annexation procedures.

Six states--Alabama, California, Colorado, Florida, Oregon and Minnesota--require annexation elections to be held under various circumstances. In two of these states--Florida and Oregon--the election may be required in both the area to be annexed and the city annexing the territory. In four states--Arizona, Texas, Virginia and Wyoming--elections are not required for annexation. Arizona, Texas and Wyoming allow annexation decisions to be made by ordinance of the governing body annexing the territory; Virginia gives this authority to county courts.

Detachments can be initiated by petition in Texas and Wyoming; by ordinance or resolution in Alabama, Arizona, Oregon and Virginia; and by either method in Colorado, Florida and Minnesota. Determinations concerning detachments are made by elections in Florida and Alabama, by ordinance in Oregon and Arizona and by courts in Texas, Virginia and Wyoming. Detachment decisions in Minnesota are made by the Minnesota Municipal Board.

If you have any questions or want additional information, please contact our agency.

JL

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 485 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 20, 1985

SUBJECT: Advisory elections on annexations
(CSHB 15 (C&RA))

TO: Representative Peter Goll
Chair, Community & Regional Affairs Committee

FROM: Tamara Brandt Cook
Deputy Director *TBC*
Division of Legal Services

Here is a draft CS you requested for HB 15. I have concluded that HB 15 contains a potential constitutional problem and I have attempted to rectify it in this CS.

As you are aware, the powers of the Local Boundary Commission are established in the state constitution. Article X, section 12 provides in part:

The commission or board may consider any proposed local government boundary. (Emphasis added)

Under this language, it could be argued that a statute that prevents the Local Boundary Commission from voting on an annexation question before an advisory election on the proposal has taken place in the area to be annexed or from presenting a proposed annexation to the legislature before that election erodes the power of the commission to consider any proposed boundary change, and, thus, is unconstitutional.

Consequently, I have redrafted the committee substitute substantially to place the burden of conducting the advisory election on the municipality requesting the annexation, or, if no municipality requests the annexation, on the director of elections. The municipality or director of elections has the responsibility of presenting the election results to the Local Boundary Commission at the hearing held on the proposal. As a practical matter, the commission will then have to know of, and consider, the results of the election before deciding an annexation proposal, yet no direct burden

Representative Peter Goll
March 20, 1985
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has been placed on the commission itself. I think this approach is most likely to avoid the constitutional problem and still accomplish your purpose.

Subsection (b) has been added to allow, but not require, a municipality affected by the annexation proposal to conduct an additional advisory election within its boundaries if it so chooses. There seems to be no need to require that results of the optional election be presented to the Local Boundary Commission at any particular time because any municipality that voluntarily undertakes the expenses of conducting an advisory election will, undoubtedly, seek to make the results available as soon as practicable. This subsection encompasses the change to HB 15 you requested making these elections optional, not mandatory, and shifting the cost of the election from the state to the concerned municipality.

Since I have substantially redrafted this CS please review it carefully and contact me if you have any questions or would like any changes made.

TBC:csh
J13/010

Original sponsors: Goll and Marrou
by request

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IN THE HOUSE

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

CS FOR HOUSE BILL NO. 15 (C&RA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to advisory elections on certain
annexation proposals."

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

* Section 1. AS 29.13.100 is amended by adding a new paragraph to read:

(48) AS 29.68.025 (advisory elections on annexations)

* Sec. 2. AS 29.68 is amended by adding a new section to Article 1 to
read:

Sec. 29.68.025. ADVISORY ELECTIONS ON ANNEXATIONS. (a) If a
municipality requests an annexation proposed to be effected under
AS 29.68.010(a), the municipality shall present the results of an
advisory election on the proposal to the Local Boundary Commission at
the hearing conducted under AS 44.47.581. The advisory election shall
be conducted by the municipality in the area proposed for annexation
in accordance with procedures for a regular or special election.

(b) If an annexation that is not requested by a municipality is
proposed to be effected under AS 29.68.010(a), the director of elec-
tions shall present the results of an advisory election on the pro-
posal to the Local Boundary Commission at the hearing conducted under
AS 44.47.581. The advisory election shall be conducted by the direc-
tor of elections in the area proposed for annexation in the general
manner prescribed by the Alaska Election Code (AS 15). The state
shall pay all election costs for elections under this subsection.

(c) A municipality may conduct an advisory election on an annex-
ation proposal in which all municipal voters may participate and the

1
2 municipality may present the results of the election to the Local
3 Boundary Commission if the area of the proposed annexation is

4 (1) located within the municipality; or

5 (2) proposed to be annexed to the municipality.

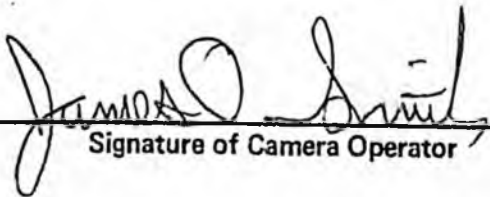
6 (d) This section applies to home rule and general law municipal-
7 ities.
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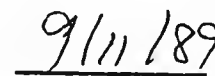


RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

H B

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STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House State Affairs Committee 3/13/85, 3:00 p.m.



Official Business

Alaska State Legislature

House of Representatives

Committee on State Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

(907) 452-4883

Letter of Intent HB 26

It is the intent of the House State Affairs Committee, in passing HB 26, that the Division of Elections maintain its impartial status.

It is the further intent of the House State Affairs Committee that the Division of Elections restrict residency verification inquiries to inconsistencies between a candidate's sworn affidavit and any documents executed under oath submitted to the State and available for review by the Division of Elections.

Katie Hurley
Chair, House State Affairs Committee

REP. TERRY MARTIN

ELECTIVE DISTRICT 13
MOUNTAIN VIEW
RUSSIAN JACK SPRINGS
NUNAKA VALLEY
ELMENDORF A.F.B.
CREEKSIDE
EAST ANCHORAGE



HOME
3960 REKA DRIVE-86
ANCHORAGE, AK 99508
PHONE 333-6990

DURING SESSION
POUCH V
STATE CAPITOL BUILDING
JUNEAU, AK 99611
PHONE 465-3783

Alaska House of Representatives

MEMORANDUM

To: Representative Katie Hurley, Chairman
House State Affairs Committee

From: Representative Terry Martin *T. Martin*

Date: April 23, 1985

Subject: HB 26

"An Act relating to the verification of residency of candidates for certain public offices."

The Constitution of the State of Alaska, Article II, Section 2, requires that "a member of the legislature shall be a qualified voter who has been a resident of Alaska for at least three years and of the district from which elected for at least one year, immediately preceding his filing for office." HB 26 is necessary in order to give the Division of Elections (the agency which receives declarations of candidacy) the statutory authority to investigate a declared candidate's eligibility to seek office.

Under current law, no state agency is authorized to check a candidate's claim of residency when a citizen of Alaska questions the matter. If a complaint is lodged with the Division of Elections, the Division usually states that certification is only based on the face value of the candidate's declaration of candidacy. Neither the Alaska Public Offices Commission nor the Division of Elections has authority to investigate further. The party questioning the candidate's filing must take the issue to court if the matter is to be pursued.

I refer you to the attached Memorandum from Rodger Pegues, Assistant Attorney General, to Terry Miller, Lieutenant Governor, dated January 22, 1980:

As a general rule, you should accept filings which are valid on their face, and it is neither your duty nor your function to question their validity



. . . The Election Code makes no provision for the election officials to reject an application which is valid on its face and timely filed

On page 2 of that same memorandum, paragraph 2, Mr. Pegues goes on to say that, even if a candidate states that he is not sure he does meet residency requirements, but later "repudiates" that statement, the Division of Elections has no authority to question residency, because an admission of disqualification could be "dead wrong", and because "proof of residence consists of both objective facts and subjective feelings" (page 2, paragraph 1). In fact, the last sentence of page 2 states:

And, indeed, if they [election officials] are convinced at the outset that a candidate's admission of disqualification is in error, they can and should disregard it and accept a timely and properly filed declaration of candidacy from the candidate.

So in the same paragraph, the Attorney General states that Division of Elections has no duty to question or determine residency, yet the Division can and should make a determination of residency if it thinks a candidate is mistaken in admitting disqualification.

The Division of Elections has suggested that the Alaska Public Offices Commission already has investigative powers, and so this function should lie with APOC. However, AS 15.13.030(8), which does give APOC investigative powers, limits those powers to AS 15.13, AS 24.45 or AS 39.50. None of these chapters covers a candidate's declaration of candidacy.

I cannot find any agency which has specific or implied authority to investigate a candidate's residency. This is inconsistent with state policy in other residency-based programs, such as the permanent fund dividend distribution. If a permanent fund applicant does not appear to meet residency requirements, the state not only has the authority, but has an obligation to question the applicant's legal residence. If we can question every permanent fund applicant, every longevity bonus recipient, every student loan applicant to determine legal Alaskan residency, then surely we should empower our election officials to determine whether a candidate meets the Constitutional residency requirements to run for office.

Your careful consideration of this legislation and its passage will be a great step toward protecting the voter in choosing a candidate who has fulfilled the legal requirements of residency for elective office.

OFFICE OF THE LIEUTENANT GOVERNOR

Rod Pegues
Assistant Attorney General
Dept. of Law

January 18, 1980

Terry Miller
Lieutenant Governor

Constitutional Residency
Requirements for Filing
for Office

Rod, as you already know, my office has had many requests for the necessary forms for filing for office for the 1980 elections. Along with these requests have been several questions regarding the residency requirements outlined in the State Constitution. For example, one gentleman has lived in California since 1977; however, he has maintained a permanent residence address in Alaska and has voted by absentee ballot. According to the constitution, he qualifies as being a resident of the state for three years and a resident of the district for one year although in reality he no longer lives here.

I am requesting an opinion from the Department of Law on the residency requirement, what my position is in accepting an individual's declaration base on these requirements, and what the appropriate response may be to individuals in this situation.

I would appreciate your prompt attention to this matter.

Thanks!

MEMORANDUM

LIEUTENANT GOVERNOR

RECEIVED
STATE OF ALASKA
JAN 23 1980
08 23 80

TO: [Honorable Terry Miller
Lieutenant Governor

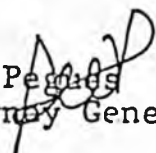
DATE: January 22, 1980

FILE NO: J-66-412-80

TELEPHONE NO.

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT: Constitutional resi-
dency requirements
for elective state
office

By: 
Rodger W. Pegues
Assistant Attorney General

You have asked what you, as Lieutenant Governor and the state's chief election officer, should do with respect to the application of the constitution's residency requirements to those who file for elective state office.

As a general rule, you should accept filings which are valid on their face, and it is neither your duty nor your function to question their validity.

Under the Alaska Constitution, one who files for elective public office must have been a resident of the State (and, for legislators, of the election district) for a prescribed period. */ A candidate's eligibility for filing is determined "immediately preceding his filing for office." Alaska Const., art. II, § 2, art. III, § 2. The requisite information is entered on the declaration of candidacy which is filed by the candidate. AS 15.25.030(8).

The Election Code makes no provision for the election officials to reject an application which is valid on its face and timely filed. Under AS 15.25.040, an untimely filed declaration of candidacy clearly must be rejected. But there is no similar provision for rejecting a declaration which substantially complies with the prescribed requirements for filing for office. With respect to residency, those requirements are that, in substance, the candidate states that he meets "the specific residency requirements of the office for which he is a candidate." AS 15.25.030(8). Given substantial compliance by the candidate, his name must

*/ For the legislature, three years in the State and one in the district is required. Alaska Const., art. II, § 2. For governor and lieutenant governor, seven years in the State is required. Alaska Const., art. III, §§ 2, 7.

Honorable Terry Miller
January 22, 1980
Page #2

be placed on the ballot. AS 15.25.060.

For the most part, the Alaska Election Code, like many others, depends upon the adversarial nature of the election process for enforcement. The law reasonably assumes that a candidate's opponents will be the first to raise complaints against any false or fraudulent filing. Residence (domicile) is an elusive legal concept. Proof of residence consists of both objective facts and subjective feelings. A determination requires a full blown hearing and an independent, nonpartisan decision maker. The Election Code quite wisely does not provide for the election officials to make such determinations.

Of course, if a declared or would-be candidate states to the election officials that in his own mind he does not believe he is a resident of the state or of the election district or that he believes that he no longer meets the constitution's residency requirements, then the officials -- on the basis of that admission -- may reject a declaration of candidacy from that person unless it is preceded or accompanied by a withdrawal or repudiation of the admission of disqualification. While election officials have no duty to question or determine residency, they are not compelled to ignore admissions of disqualification. However, whether one is qualified or not is a legal question and an admission of disqualification could be dead wrong. Therefore, the election officials must honor any subsequent withdrawal or repudiation of such an admission. And, indeed, if they are convinced at the outset that a candidate's admission of disqualification is in error, they can and should disregard it and accept a timely and properly filed declaration of candidacy from the candidate.

RWP/pjg

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 463-3500

July 8, 1982

The Honorable Terry Martin
3960 Reka Drive-B6
Anchorage, Alaska 99504

Re: ██████████'s candidacy
Our file 366-029-83

Dear Representative Martin:

In a letter dated June 24, 1982 (received in this office on June 28, 1982), you requested that we review certain aspects of ██████████'s candidacy for the office of Representative from Election District 13, Seat B. Although you pose a number of specific questions, you appear to have two primary concerns: (1) was ██████████ a resident of Election District 13 for one year, as required by Article II, Section 2 of the Alaska Constitution, at the time she refiled her declaration of candidacy on June 1, 1982; and (2) because she was not properly a candidate before June 1, 1982, having not been a resident for a full year in Election District 13, must her campaign committee (or, in the alternative, contributors to that committee) repay to the state any campaign contribution refunds under AS 43.20.013(a)?

In brief, the Attorney General's office cannot make the residency determination you desire. We are the attorney for the Division of Elections, and as such have no greater powers than the division possesses to make such inquiries. As you note in your letter, the division cannot go beyond the statements in the declaration of candidacy. If you have a disagreement with the statements in that declaration of candidacy, one remedy which you may pursue is to file a lawsuit in the Superior Court. The answer to your question regarding repayment to the state for refunds given to campaign contributors is not as clear. However, on the basis of our research and consideration of the facts presented, we believe it is extremely unlikely that a court would require contributors to repay the refunds, and even more unlikely that the court would require the campaign committee to do so. A more detailed analysis of these issues follows.

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4453/4530

2201 ROOSEVELT DRIVE
ANCHORAGE, ALASKA 99503
(907) 248-4234



MEMBER
HOUSE RESOURCES COMMITTEE
MEMBER
HOUSE STATE AFFAIRS COMMITTEE

Representative Roger Jenkins

DISTRICT 11

April 22, 1985

MEMORANDUM

TO : Representative Katie Hurley, Chairman, State Affairs
Representative Mike Navarre, Vice Chairman
Representative Bette Cato
Representative Virginia Collins
Representative Red Boucher
Representative M. M. Miller

FROM : Representative Roger Jenkins

A handwritten signature in cursive script that reads "Roger Jenkins".

SUBJECT: HB 26 - Verification of Residency of Candidates for Certain
Public Offices

Under current law no state agency is authorized to check a candidates' eligibility to seek office. The Constitution of the State of Alaska clearly lists the requirements that a person must meet in order to be a member of the legislature. However, it does not address who will verify the statements made by a candidate on the filing affidavit upon filing for office and before certification for the election ballot.

This problem has never been addressed by the legislature although the courts have time and time again said the legislature must define residency and determine who will check the information provided by candidates. Please note the attached memorandums which outline the problems and opinions expressed in January, 1980.

I am aware that the question of residency does not come up in small communities where the general population is much more aware of a person's resident status but it is a problem in Anchorage. This is an area of election law that has been abused on at least 5 different occasions that may have altered the outcome of an election.

The first instance of problem with residency that I am aware of occurred in the 1970 election. I believe the time has come for the legislature to address this issue and provide the necessary guidance to potential candidates.

sla

Introduced: 1/14/85
Referred: State Affairs and
Judiciary

1 IN THE HOUSE

BY MARTIN AND JENKINS

2

HOUSE BILL NO. 26

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the verification of residency of
7 candidates for certain public offices."

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

9 * Section 1. AS 15.25 is amended by adding a new section to read:

10 Sec. 15.25.031. VERIFICATION OF RESIDENCY OF CANDIDATE. (a)

11 The director shall verify that each candidate who files a declaration
12 of candidacy under AS 15.25.030 meets the specific residency require-
13 ments for the office for which the declaration is filed.

14 (b) The director shall adopt regulations establishing procedures
15 for the verification of residency under this section.

16 * Sec. 2. AS 15.25 is amended by adding a new section to read:

17 Sec. 15.25.181. VERIFICATION OF RESIDENCY OF CANDIDATE. (a)

18 The director shall verify that each candidate who files a petition for
19 nomination under AS 15.25.180 meets the specific residency require-
20 ments for the office for which the petition is filed.

21 (b) The director shall adopt regulations that establish the
22 procedures for the verification of residency.

OFFICE OF THE LIEUTENANT GOVERNOR

Rod Pegues
Assistant Attorney General
Dept. of Law

January 18, 1980

Terry Miller
Lieutenant Governor

Constitutional Residency
Requirements for Filing
for Office

Rod, as you already know, my office has had many requests for the necessary forms for filing for office for the 1980 elections. Along with these requests have been several questions regarding the residency requirements outlined in the State Constitution. For example, one gentleman has lived in California since 1977; however, he has maintained a permanent residence address in Alaska and has voted by absentee ballot. According to the constitution, he qualifies as being a resident of the state for three years and a resident of the district for one year although in reality he no longer lives here.

I am requesting an opinion from the Department of Law on the residency requirement, what my position is in accepting an individual's declaration base on these requirements, and what the appropriate response may be to individuals in this situation.

I would appreciate your prompt attention to this matter.

Thanks!

STATE
OF ALASKA

MEMORANDUM

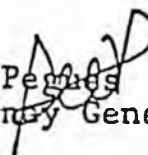
TO: [Honorable Terry Miller
Lieutenant Governor

DATE: January 27, 1980

FILE NO:

J-66-412-8

TELEPHONE NO.

FROM: AVRUM M. GROSS
ATTORNEY GENERALSUBJECT: Constitutional resi-
dency requirements
for elective state
officeBy: 
Rodger W. Pegues
Assistant Attorney General

You have asked what you, as Lieutenant Governor and the state's chief election officer, should do with respect to the application of the constitution's residency requirements to those who file for elective state office.

As a general rule, you should accept filings which are valid on their face, and it is neither your duty nor your function to question their validity.

Under the Alaska Constitution, one who files for elective public office must have been a resident of the State (and, for legislators, of the election district) for a prescribed period. */ A candidate's eligibility for filing is determined "immediately preceding his filing for office." Alaska Const., art. II, § 2, art. III, § 2. The requisite information is entered on the declaration of candidacy which is filed by the candidate. AS 15.25.030(8).

The Election Code makes no provision for the election officials to reject an application which is valid on its face and timely filed. AS 15.25.040, an untimely filed declaration of candidacy, must be rejected. But there is no similar provision for rejecting a declaration which substantially complies with the prescribed requirements for filing for office. With respect to residency, those requirements are that, in substance, the candidate states that he meets "the specific residency requirements of the office for which he is a candidate." AS 15.25.030(8). Given substantial compliance by the candidate, his name must

*/ For the legislature, three years in the State and one in the district is required. Alaska Const., art. II, § 2. For governor and lieutenant governor, seven years in the State is required. Alaska Const., art. III, §§ 2, 7.

Honorable Terry Miller
January 22, 1980
Page #2

be placed on the ballot. AS 15.25.060.

For the most part, the Alaska Election Code, like many others, depends upon the adversarial nature of the election process for enforcement. The law reasonably assumes that a candidate's opponents will be the first to raise complaints against any false or fraudulent filing. Residence (domicile) is an elusive legal concept. Proof of residence consists of both objective facts and subjective feelings. A determination requires a full blown hearing and an independent, nonpartisan decision maker. The Election Code quite wisely does not provide for the election officials to make such determinations.

Of course, if a declared or would-be candidate states to the election officials that in his own mind he does not believe he is a resident of the state or of the election district or that he believes that he no longer meets the constitution's residency requirements, then the officials -- on the basis of that admission -- may reject a declaration of candidacy from that person unless it is preceded or accompanied by a withdrawal or repudiation of the admission of disqualification. While election officials have no duty to question or determine residency, they are not compelled to ignore admissions of disqualification. However, whether one is qualified or not is a legal question and an admission of disqualification could be dead wrong. Therefore, the election officials must honor any subsequent withdrawal or repudiation of such an admission. And, indeed, if they are convinced at the outset that a candidate's admission of disqualification is in error, they can and should disregard it and accept a timely and properly filed declaration of candidacy from the candidate.

RWP/pjg

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 26
 Title: Relating to verification of
residency of candidates for . . .
 Sponsor: Martin & Jenkins
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Administration
 Program Category Affected: _____
Independent Operations
 BRU, Program or Subprogram(s) Affected: _____
Alaska Public Offices Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING	-	-	-	-	-	-
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LAND & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-
POSITIONS:	-0-	-0-	-0-	-0-	-0-	-0-
FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: Attach a separate page if necessary

No affect on the Alaska Public Offices Commission, Department of Administration.

Prepared By: Theda S. Pittman Phone: 276-4176
 Division: Alaska Public Offices Commission Date: 2/11/85
 Approved by Commissioner: Lisa Rudd Date: 2-21-85
 Agency: Department of Administration

Distribution (by Agency preparing fiscal note):

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

7/1/84

Alaska State Legislature

REPRESENTATIVE
TERRY MARTIN
DISTRICT 3
CHAIRMAN—LABOR AND COMMERCE COMMITTEE
PHONE 463-3873



3750 NEKA DRIVE—D6
ANCHORAGE AK 99504
PHONE 333-6996

DURING LEGISLATURE
POUCH V
STATE CAPITOL
JUNEAU, AK 99811
PHONE 465-3754

MEMORANDUM

To: Senator Vic Fischer, Chairman
Senate State Affairs Committee

From: Representative Terry Martin *THA*

Date: February 3, 1984

Subject: HB 29

"An Act relating to the verification of residency of candidates for certain public offices."

The Constitution of the State of Alaska, Article II, Section 2, requires that "a member of the legislature shall be a qualified voter who has been a resident of Alaska for at least three years and of the district from which elected for at least one year, immediately preceding his filing for office." HB 29 is necessary in order to give the Division of Elections statutory authority to investigate a declared candidate's eligibility to seek office.

Under current law, no state agency is authorized to check a candidate's claims of residency when a citizen of Alaska questions the matter. If a complaint is lodged with the Division, the Division asks the candidate to verify the statements made at the time of filing for office. If the candidate says that the the statements made are true, then neither the Alaska Public Offices Commission nor the Division of Elections has authority to investigate further. The party questioning the candidate's filing must take the issue to court if the matter is to be pursued. I refer you to the attached Memorandum from Rodger Pegues, Assistant Attorney General, to Terry Miller, Lieutenant Governor, dated January 22, 1980:

"As a general rule, you should accept filings which are valid on their face, and it is neither your duty nor your function to question their validity....

...The Election Code makes no provision for the election officials to reject an application which is valid on its face and timely filed....

On page 2 of that same memorandum, paragraph 2, Mr. Pegues goes on to say that, even if a candidate states that he is not sure he does meet residency requirements, but later "repudiates" that statement, the Division of Elections has no authority to question residency, because an admission of disqualification could be "dead wrong", and because "proof of residence consists of both objective facts and subjective feelings" (page 2, para. 1).

This is inconsistent with state policy in other residency-based programs, such as the permanent fund dividend distribution. If a permanent fund applicant does not appear to meet residency requirements, the state not only has the authority, but has an obligation to question the applicant's legal residence. If we can question every permanent fund applicant's right to a permanent fund dividend based on that applicant's legal Alaskan residency, then we surely should enable our election officials to determine whether a candidate meets the Constitutional residency requirements to run for office.

Your careful consideration of this legislation is greatly appreciated. Please contact me if I can offer any assistance to you with regard to HB 29. It is most important to expedite hearing on this bill so that implementation can be assured before the upcoming election.

STATE OF ALASKA

DIVISION OF ELECTIONS
POUCH AF
JUNEAU, ALASKA 99811-9974

OFFICE OF THE GOVERNOR

PHONE: (907) 586-6181

POSITION PAPER HB 26

Prepared by
Division of Elections
April 23, 1985

The Division of Elections has reviewed House Bill 26, and raises certain concerns for consideration by the committee in its deliberations. The division offers no opinion as to the circumstances or specific concerns which prompted the introduction of this bill, however, poses its concerns on the basis of critically important legal and philosophic issues.

Our first concern is that this bill offers no guidelines as to what would constitute adequate "verification" of residency. The state's experience with the residency issue has left us with definitions as nebulous and vague as "intent to return". Because of the legal complexities of the residency question, it does not lend itself to resolution through rote application of uniform rules implemented through regulation, as this bill proposes. We could anticipate that virtually any determination made by the division would be open to legal challenge, especially where individuals were denied access to the ballot on the basis of such a determination.


Our major concern regarding this bill is rooted in a critically important philosophic point. Under our current structure, the Division of Elections serves strictly as an administering agency responsible for the conduct of the election itself. In that role, the division remains totally impartial with no discretionary influence as to any candidate's access to the ballot, or the final outcome of the election. We believe that our impartiality is crucial to the conduct of fair and open elections, and critical in maintaining public confidence in the election process. We feel this bill would erode that confidence by jeopardizing the integrity of our neutral status.

Under the current procedures, the division accepts the sworn affidavit of the candidate on its face value. Because of the adversarial nature of the campaign process, any claims made by one candidate are occasionally challenged by an opposing

candidate. Under Title 15 candidates or 10 qualified voters may contest the nomination or election of a person on various grounds, including issues of their qualification. AS 15.20.550 places the jurisdiction for such contests with the superior court. While these challenges usually occur following certification, there is nothing to preempt a candidate from filing a declaratory action with the court prior to the election.

Because of the legal complexities of the residency issue, the courts are better able to interpret the validity of a candidate's residency claim on a case by case basis.

We believe that the authority given to the division under the provisions of this bill are misplaced. The division must be left free to fulfill the responsibility with which we are charged; that is, the impartial administration of the election process. We would hope that the committee places equal value to our neutrality in the performance of this critical function.



Sandra J. Stout, Director
Division of Elections

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 26
 Title: An Act relating to verification of residency/candidates
 Sponsor: Martin
 Requestor: Martin
 Date of Request: 4/23/85

FISCAL DETAIL

Agency Affected: Office of Governor
 Program Category Affected: Elections
 BRU, Program or Subprogram(s) Affected: Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES	0	0	176.6	145.1	194.2	159.6
200 TRAVEL	0	0	39.6	15.8	43.6	17.4
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING			216.2	160.9	237.8	177.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND			216.2	160.9	237.8	177.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME			1	1	1	1
PART-TIME						
TEMPORARY			5	3	5	3

ANALYSIS: Attach a separate page if necessary

SEE ATTACHED

Prepared By: Linda Edgeworth Phone: 465-4611
 Division: Division of Elections Date: 4-24-85

Approved by Commissioner: *Linda Edgeworth* Date: 4-24-85
 Agency: Office of the Governor

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

7/1/84

Fiscal Note Detail

House Bill 26

The accompanying fiscal note for House Bill 26 includes costs for staffing which would be required to create an investigative arm for the Division of Elections. The staffing anticipated is described as follows:

MAJOR ELECTION YEARS

- 1 Full Time Investigator
Range 18
- 1 Temporary Investigator, 6 months
Range 16, Juneau
- 2 Temporary Investigator, 6 months
Range 16, Anchorage
- 1 Temporary Investigator, 6 months
Range 16, Fairbanks
- 1 Temporary Investigator, 6 months
Range 16, Nome

Travel is calculated at 10 trips per person @ \$500 ea. plus \$80 per diem x 2 days.

INTERIM YEARS

- 1 Full Time Investigator
Range 18
- 1 Temporary Investigator, 6 months
Range 16, Juneau
- 1 Temporary Investigator, 6 months
Range 16, Fairbanks
- 1 Temporary Investigator, 6 months
Range 16, Nome

Travel is calculated at 6 trips per person @ \$500 ea. plus \$80 per diem x 2 days.

In addition, the Department of Law informs us that there would be extensive legal fees anticipated to be charged back to the division based on challenges to our determinations as to residency qualifications.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 26
 Title: Relating to verification of
residency of candidates for . . .
 Sponsor: Martin & Jenkins
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Administration
 Program Category Affected: _____
Independent Operations
 BRU, Program or Subprogram(s) Affected: _____
Alaska Public Offices Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING	-	-	-	-	-	-
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LAND & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS: -0- -0- -0- -0- -0- -0-

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

ANALYSIS: Attach a separate page if necessary

No effect on the Alaska Public Offices Commission, Department of Administration.

Prepared By: Theda S. Pittman Phone: 276-4176
 Division: Alaska Public Offices Commission Date: 2/11/85
 Approved by Commissioner: Lisa Rudd Date: 2-21-85
 Agency: Department of Administration

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

7/1/84

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 4/29/85

REQUEST

Bill/resolution No.: HB 26
 Title: An act relating to
verification of residency/Candidates
 Sponsor: Martin
 Requestor: House State Affairs
 Date of Request: 4/26/85

FISCAL DETAIL

Agency Affected: Office of the Governor
 Program Category Affected: Elections
 BRU, Program or Subprogram(s) Affected: Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		-0-	16.6	8.3	18.2	9.1
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES			1.5			
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS			4.2			
TOTAL OPERATING			22.3	8.3	18.2	9.1

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND			22.3	8.3	18.2	9.1
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See attached

Prepared By: Linda Eggen Phone: 465-4611
 Division: Division of Elections Date: 4/29/85

Approved by Commissioner: Nancy Stewart Date: 4/29/85
 Agency: Office of the Governor

Distribution (by Agency preparing fiscal note):

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

7/1/84

HOUSE BILL 26

Amended Fiscal Note

Division of Elections

This fiscal note has been amended to reflect reduced costs based on the restricted level of responsibility as described in the letter of intent which accompanies this bill. Because the realm of responsibility is to be restricted to those levels of verification which can be handled through normal administrative channels, the division has anticipated that this function can be handled by one seasonal Range 13 assistant. During fiscal years covering major election cycles this individual would be utilized over a 6 month period. During even fiscal years these services would be covered for a 3 month period.

Other costs included in FY87 include costs of reprinting "Running for Office" books to include new residency verification requirements and procedures, as well as new filing forms which include revised residency data. During the first year in which the new procedures would be implemented an allowance is made for advertising the regulatory changes statewide.

This fiscal note does not cover legal costs charged back to the division to cover legal review and representation which the Department of Law anticipates will be necessary as candidates challenge the determinations made by the division on the basis of the verification process mandated by this bill.