

**ALASKA STATE LEGISLATURE
HOUSE COMMUNITY & REGIONAL AFFAIRS STANDING
COMMITTEE**

January 25, 2001
8:07 a.m.

MEMBERS PRESENT

Representative Kevin Meyer, Co-Chair
Representative Carl Morgan, Co-Chair
Representative Andrew Halcro
Representative Lisa Murkowski
Representative Gretchen Guess
Representative Beth Kerttula

MEMBERS ABSENT

Representative Drew Scalzi

COMMITTEE CALENDAR

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 13

"An Act relating to municipal service areas and providing for voter approval of the formation, alteration, or abolishment of certain service areas."

- HEARD AND HELD

HOUSE BILL NO. 16

"An Act relating to cities incorporated under state law that are home rule communities."

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

BILL: HB 13

SHORT TITLE: SERVICE AREAS: VOTER APPROVAL/TAX ZONES

SPONSOR(S): BUNDE

Jrn-Date	Jrn-Page		Action
01/08/01	0027	(H)	PREFILE RELEASED 12/29/00
01/08/01	0027	(H)	READ THE FIRST TIME - REFERRALS
01/08/01	0027	(H)	CRA, FIN
01/10/01	0056	(H)	COSPONSOR(S): KOHRING
01/12/01	0066	(H)	SPONSOR SUBSTITUTE INTRODUCED

01/12/01	0066	(H)	READ THE FIRST TIME - REFERRALS
01/12/01	0066	(H)	CRA, FIN
01/12/01	0066	(H)	REFERRED TO CRA
01/25/01		(H)	CRA AT 8:00 AM CAPITOL 124

WITNESS REGISTER

REPRESENTATIVE CON BUNDE
Alaska State Legislature
Capitol Building, Room 501
Juneau, Alaska 99801

POSITION STATEMENT: Testified as sponsor of SSHB 13.

JEFF BUSH, Deputy Commissioner
Department of Community & Economic Development
PO Box 110800
Juneau, Alaska 99811-0800

POSITION STATEMENT: Testified that the Knowles Administration strongly opposes SSHB 13.

DAN BOCKHORST, Local Boundary Commission
Division of Community and Business Development
Department of Community & Economic Development
550 W 7th Avenue, Suite 1790
Anchorage, Alaska 99501-3510

POSITION STATEMENT: Answered questions.

BILL GREENE, Attorney
Municipality of Anchorage Department of Law
PO Box 196650
Anchorage, Alaska 99519

POSITION STATEMENT: Expressed concerns with SSHB 13.

MERLE JANTZ
1077 Vincent Court
North Pole, Alaska 99705

POSITION STATEMENT: Testified in support of SSHB 13.

RANDY FRANK, Chairman
Viewpointe Service Area
PO Box 81109
Fairbanks, Alaska 99708

POSITION STATEMENT: Testified on SSHB 13.

MICHAEL GATTI, Attorney
Matanuska-Susitna Borough

350 E Dahlia
Palmer, Alaska 99645
POSITION STATEMENT: Testified on behalf of the Mat-Su Borough
Administration in opposition to SSHB 13.

OCIE ADAMS
HC30 Box 200
Wasilla, Alaska 99654
POSITION STATEMENT: Testified in support of SSHB 13.

JIM SWING, Director
Public Works
Matanuska-Susitna Borough
350 E Dahlia Ave.
Palmer, Alaska 99645
POSITION STATEMENT: Testified on SSHB 13.

JOHN LETTOW, Supervisor
Road Service Area
Matanuska-Susitna Borough
HC31 Box 5265BA
Wasilla, Alaska 99654
POSITION STATEMENT: Testified in support of SSHB 13.

ACTION NARRATIVE

TAPE 01-4, SIDE A
Number 0001

CO-CHAIR KEVIN MEYER called the House Community & Regional
Affairs Standing Committee meeting to order at 8:07 a.m.
Representatives present at the call to order were
Representatives Morgan, Meyer, Halcro, Murkowski, Guess, and
Kerttula.

HB 13 - SERVICE AREAS:VOTER APPROVAL/TAX ZONES

CO-CHAIR MEYER announced that the first order of business would
be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 13, "An Act relating to
municipal service areas and providing for voter approval of the
formation, alteration, or abolishment of certain service areas."

Number 0183

REPRESENTATIVE CON BUNDE, Alaska State Legislature, testified as
the sponsor of SSHB 13. Representative Bunde referred to SSHB
13 as a "good government" bill as it gives more power to the

people. He explained that SSHB 13 would not allow the elimination or alteration of a limited road service area, and one case of fire service areas, without a majority vote of those affected. Under current law, 90 percent of the residents of a city could gerrymander a small road service out of existence. Such a situation does not seem fair. This legislation would require a majority vote of both entities affected, the surrounding community and the community that would be altered. Representative Bunde explained that, basically, an area would elect a representative who would contract with the public sector for limited road maintenance such as snow plowing and basic grading of unimproved roads. The area would assess itself for the cost of this service and the assessing group, the municipality that holds the election, would receive a service fee.

Number 0411

REPRESENTATIVE BUNDE said [SSHB 13] is local government at its most basic form. He noted that there is the desire to be able to change these limited road service areas in order to achieve economy in administration. Such is the case in the Fairbanks area. He pointed out that SSHB 13 also allows for differential taxation rates. Under current law, these areas couldn't combine and have differential taxation. He explained that the differential taxation may be desired because some areas may want to maintain their roads at a higher level, while other areas may not wish to have improvements and thus would assess the area at a different rate. He pointed out that a majority vote of all involved entities would be required in order for this differential tax rate to occur.

Number 0550

REPRESENTATIVE BUNDE predicted that testimony would suggest that the local assembly should determine this rather than [the individual]. He said that the will of the people shouldn't be feared but rather encouraged.

REPRESENTATIVE HALCRO asked if SSHB 13 differed from the legislation that Representative Bunde introduced two years ago.

REPRESENTATIVE BUNDE stated that SSHB 13 differs slightly. Last year's legislation did not include those in the Mat-Su Valley, while SSHB 13 would include the Mat-Su Valley.

Number 0709

REPRESENTATIVE HALCRO turned to Governor Knowles' veto message for SCS CSHB 133(CRA) am S, which alludes to concerns regarding the constitutionality of SSHB 13. He asked if Legislative Legal Services has reviewed that possibility.

REPRESENTATIVE BUNDE replied yes. He said that one of the concerns is that SSHB 13 would create a new government entity. However, it does not because a limited road service area is a portion of an existing local government. He informed the committee that the Alaska Supreme Court holds the position that this legislation would not create more local government because limited road service areas aren't independent government units.

Number 0787

REPRESENTATIVE GUESS asked if a community could choose not to have basic services, which the surrounding areas would end up paying. She identified the basic services as fire, ambulance, or police.

REPRESENTATIVE BUNDE clarified that SSHB 13 is limited to local road service, except for the portion of the bill that refers to the Eagle River Volunteer Fire Department. Representative Bunde acknowledged that, in the past, there was a concern about the police service in his district. This legislation does not address police service. The police service issue was settled by the Alaska Supreme Court.

REPRESENTATIVE KERTTULA inquired as to what the Alaska Supreme Court said regarding the police service issue.

REPRESENTATIVE BUNDE explained that the Anchorage Borough and City combined and developed a charter, which specified that existing service areas outside the city limits would be allowed to continue. He said, "One of those existing service areas was this police service issue and the [Alaska] Supreme Court said, in layman's terms, ... that the charter was subservient to the greater need and they said that the services that people received, as far as police protection, were great enough that it just basically aggregated that portion of the charter."

Number 0966

REPRESENTATIVE BUNDE requested that the tax differential be explained.

REPRESENTATIVE BUNDE indicated that the tax differential would mainly apply in the Fairbanks area, which has 117 different road service areas. That many different road service areas is a large administrative burden and many of these road service areas would like to combine in order to have only one administrator. He noted that these road service areas have vastly different levels of service. He posed an example in which two entities could decide to combine. In such a case, the greater area would also get to vote and thus with a majority vote of all three parties, the two road service areas could combine. Once the two combine, the two road service areas could have different mill rates and maintain that existing mill rate because of the level of service that is maintained. However, the existing law would require the two combining entities to choose either the higher or the lower mill rate, not both.

REPRESENTATIVE KERTTULA said that is of concern to her.

Number 1079

REPRESENTATIVE HALCRO explained that when the city tried to impose police protection on the Hillside in 1996, part of the argument was that [those on the Hillside] benefited from police protection. It was also argued that Hillside residents basically live in town because [Anchorage] had grown and the area was no longer as it was during the consolidation when 3,000 people lived on the Hillside. Representative Halcro said that he didn't understand that argument because, historically, some segments of the Hillside had voted to accept police protection on their own free will. He returned to the argument that Hillside residents benefited from the police protection and pointed out that when the State Troopers couldn't respond to a call from the Hillside then the Anchorage Police Department would respond. Therefore, although [the Hillside residents] weren't paying for that police service, they received it. However, he indicated that SSHB 13 is a little different. He asked if there is a chance that a Municipality of Anchorage (MOA) plow would plow a street [in a road service area], if the private contractor didn't plow.

REPRESENTATIVE BUNDE replied no. In regard to the police protection issue on the Hillside, Representative Bunde said that residents of the Hillside and other areas were assessing themselves and paying for police protection. However, those areas viewed the area as rural and preferred having the State Troopers.

REPRESENTATIVE BUNDE returned to SSHB 13 and limited road service areas. He said that if the contractor to plow snow in his area doesn't provide service one day, then he has to wait or the [road service area] has to hire someone new. Therefore, the limited road service area's ability to hire someone new is valued by the residents of the area.

Number 1301

REPRESENTATIVE MURKOWSKI directed attention to the last sentence of Section 3(c), which refers to the exception applied to fire protection service. She asked if fire areas are being treated differently than road areas.

REPRESENTATIVE BUNDE replied yes. He said that fire service is different than road service and he didn't intend for an area to have an election every time a new house is built.

REPRESENTATIVE MURKOWSKI related her understanding that fire and road service could be provided by different entities. Therefore, she understood Representative Bunde to mean that he didn't want there to have to be two separate elections, if there are changes to the road area as well as the fire protection area.

REPRESENTATIVE BUNDE replied yes and noted that [SSHB 13] speaks to fire service areas that are served by volunteer fire departments. He informed the committee that there must be a substantive change in order to expand or change a fire service area.

Number 1476

REPRESENTATIVE MURKOWSKI related her understanding that a spur to a subdivision that is outside a road service area would not qualify for this exemption, even when the [expansion of the service area] is less than six percent or the population is under 60,000.

REPRESENTATIVE BUNDE responded yes.

REPRESENTATIVE MURKOWSKI referred to a letter from the Alaska Municipal League (AML), which is included in the committee packet. The letter seems to imply that there could be substantial local costs in creating a new form of election. Therefore, she requested that Representative Bunde speak to the cost of an election.

REPRESENTATIVE BUNDE said that he didn't believe that implication is accurate because these elections would be held at the next scheduled municipal election. In response to Representative Murkowski, he indicated agreement that an area would operate as it had been until the regularly scheduled election. These issues do not require immediate attention and can wait until the next election.

Number 1603

JEFF BUSH, Deputy Commissioner, Department of Community & Economic Development, informed the committee that the [Knowles] Administration strongly opposes SSHB 13 for many of the same reasons identified in the governor's veto message last year. He said that Governor [Knowles] has legal and constitutional concerns with this legislation. More importantly, the governor feels that SSHB 13 is a bad government bill because it hinders the ability of local home rule boroughs to operate. Mr. Bush explained that Alaska's system of government was designed so as to maximize the authority and ability of home rule boroughs to exercise power. However, SSHB 13 limits that authority and ability, which is counter to Article X, Section 1 of the Alaska Constitution.

MR. BUSH pointed out that, generally, the supreme court does not view service areas as government units. However, SSHB 13 establishes service areas as something close to a government unit and thus takes away authority from the borough and gives it to the local service area unit. Furthermore, this legislation would foster inefficiency in local government activities.

Number 1752

MR. BUSH turned to the exemption for second class boroughs with a population of under 60,000. With respect to the Mat-Su Borough, there are conflicting population counts. Therefore, this legislation may or may not apply to the Mat-Su Borough. Mr. Bush said that, as far as [the department] can tell, there is no rational basis for a decision to place this exemption in the bill. He indicated that this exemption would actually empower small second class boroughs with more authority than home rule boroughs, which is contrary to the constitution. Therefore, there are legal and philosophical concerns.

REPRESENTATIVE HALCRO inquired as to what limitations this legislation would place on home rule boroughs. He related his

understanding that SSHB 13 only stops home rule boroughs from eliminating road service areas without a vote of the people in those road service areas.

MR. BUSH said that SSHB 13 would stop [home rule boroughs] from combining [road service areas] without local elections.

REPRESENTATIVE HALCRO related his understanding that a road service area could make changes with a majority of the vote within a service area. In regard to Mr. Bush's comment that SSHB 13 would create inefficiency for local governments, Representative Halcro was not convinced that limiting road service areas causes inefficiencies. Representative Halcro said he believes that road service areas are far more efficient than the city having to worry about street maintenance in those [service] areas.

MR. BUSH commented that SSHB 13 prevents the borough from making such decisions based upon what is most efficient for the borough as a whole.

Number 1983

REPRESENTATIVE KERTTULA remarked that different tax levels seems confusing and thus she requested further clarification. She went on to ask if Mr. Bush knew of any other example in which one unit of government has a different tax level than another.

MR. BUSH deferred to Mr. Bockhorst.

DAN BOCKHORST, Local Boundary Commission, Division of Community and Business Development, Department of Community & Economic Development, testified via teleconference. Mr. Bockhorst explained that presently, differential tax zones only exist in city governments. He was not aware of a situation in which a road service area had a differential tax zone.

REPRESENTATIVE KERTTULA asked if Mr. Bockhorst meant that within a municipal area there could be areas that have different taxes for the same service.

MR. BOCKHORST stated that current statutes allow for differential tax zones in order to reflect different levels of services and thus it would not be the same level of service with a different tax. He noted the potential for confusion with existing service areas that could have differential tax zones within a service area.

REPRESENTATIVE KERTTULA said she believes there would be potential constitutional problems as well.

MR. BOCKHORST deferred to Bill Greene, Attorney, Municipality of Anchorage.

Number 2103

BILL GREENE, Attorney, Municipality of Anchorage Department of Law, testified via teleconference. Mr. Greene pointed out that the differential tax zones within a service area was considered in 1975 when the Borough and the City of Anchorage were unified into one local government. He explained that [this differential tax zone] would allow one street in a service area to have a different tax than another street in the same service area, which creates a complex administration. Furthermore, he indicated possible problems with the constitutional provision to minimize the numbers of local taxing jurisdictions.

REPRESENTATIVE HALCRO inquired as to how this would relate to the existing mill rate structure in Anchorage. He noted that in his taxing district he pays a different mill rate for certain services than those in the downtown taxing district. He asked how that would compare to a limited road service area.

MR. GREENE stated that he would speak about Anchorage since he has the most knowledge there. He informed the committee that service areas are provided for in the state constitution, which further states that the goal is to limit the number of taxing jurisdictions. In Anchorage, a level of service is taxed at a uniform rate throughout the service area. Anchorage's charter requires that the rate of taxation within a service area be uniform in order that everyone similarly situated pay the same rate. However, that rate only applies to the service area. For areawide services, those services are required to have a uniform rate. Therefore, within a service area or for a particular level of service the taxation rates are uniform.

Number 2273

REPRESENTATIVE HALCRO related his understanding that Mr. Greene is concerned that within a limited road service area, the people on one street could be forced to pay a higher tax rate than those on another street. He asked if that is the concern.

MR. GREENE replied yes. He pointed out that the current

structure of SSHB 13 is such that a service area could be cut up into a number of differential tax zones. Therefore, one side of a street could have one mill levy and the other side another mill levy. There was extensive discussion about such a concept at the time of the municipal charter in 1975.

REPRESENTATIVE HALCRO asked if Mr. Greene's concern would be addressed if SSHB 13 were amended to ensure uniform taxation throughout the limited road service area.

MR. GREENE replied yes. In response to Representative Kerttula, Mr. Greene agreed that different mill rates within a municipality occur because different areas have different services.

REPRESENTATIVE BUNDE remarked that the notion that service areas would have block by block taxation [under SSHB 13] is not accurate. This legislation allows consolidation of existing service areas for the purposes of administration. Furthermore, such a change would require a majority vote of all involved, which would include those within the service areas and the surrounding area. Representative Bunde noted his confidence in the people not breaking this down to house by house taxation due to the majority vote requirement.

Number 2427

REPRESENTATIVE HALCRO informed the committee of a situation in his district in which there was a large cul-de-sac that had a sink hole in the middle of the street. If the majority of the area votes for the improvements, then even those who vote against the improvement would have to pay. Therefore, even those who vote against the improvement would agree that they are part of "democracy in action."

MR. GREENE said he believes Representative Halcro's question points to how assessment districts operate as opposed to road service areas. In regard to a capital improvement to a particular road, Anchorage, as do other municipalities, does that by an assessment district, which would not be impacted by SSHB 13. He noted that the present bill gives the assembly, not the voters, the power to create differential tax zones within an existing service area.

REPRESENTATIVE HALCRO remarked that his previous statement was to simply make a comparison. He said that he was attempting to address Mr. Greene's concerns regarding the different taxation

levels and ensure that everything is fair for everyone in the limited road service area.

Number 2565

MR. GREENE clarified that he was merely pointing out that the present bill would not allow voters to vote on a differential tax zone within a service area because the voters are not mentioned in that provision, Section 4, of the bill. Therefore, SSHB 13 allows further balkanization and fracturing of the taxing jurisdiction within the municipality, which could easily create inequalities in taxation as well as administrative problems.

REPRESENTATIVE KERTTULA related her understanding that a large service area would have to agree with a smaller service area who wishes to combine with it. However, at some point "they" could go to the assembly to switch the taxes, although they previously agreed on those taxes.

REPRESENTATIVE BUNDE said that [Mr. Greene] seems to be presenting two different arguments. However, Representative Bunde believes there are checks and balances. In response to Representative Kerttula, Representative Bunde agreed that both service areas would have to agree to combine.

Number 2666

MR. GREENE began his testimony and noted that this is the fourth time in three years that the concepts presented in SSHB 13 have been before this committee. [The Municipality of Anchorage] has presented its legal views in 1998 on HB 365 and SB 208 and in 2000 on HB 133. Mr. Greene said, "Like its predecessors, [SS]HB 13 strikes and substantially erodes, we believe, the fundamental nature of a unique, farsighted, and effective form of local government. That form of local government has served this state and its citizens very well for over 40 years." He informed the committee that SSHB 13 is the 60th proposed limitation on the home rule powers that were intended to be liberal and expansive per the state constitution. This is a system that was put into place by the voters of this state, voters who reside in the local municipalities as well as service areas throughout the state. This legislation appears to have a lack of confidence in the wisdom, judgment, and ability of local governments to govern themselves for their own benefit. He reiterated his belief that SSHB 13 substantially erodes and impairs the unique system of local government provided for in Article X of the Alaska

Constitution. Furthermore, this legislation raises [concern] as to whether SSHB 13 is local and special legislation, which is prohibited by the Alaska Constitution.

MR. GREENE pointed out that SSHB 13 is not limited to affecting limited road service areas. He explained that limited road service areas, which make up a large portion of Anchorage, are limited in two ways. Firstly, limited road service areas are limited to three years in duration, after which voters vote on whether to continue the limited road service area. Secondly, limited road service areas are limited in the type of service the area is authorized to provide. Limited road service areas are authorized to provide minimal road service areas for maintenance. However, SSHB 13 is not limited to limited road service areas as it also includes general service areas such as the Anchorage roads and drainage service area and the Chugach/Birchwood/Eagle River rural road service area. Furthermore, SSHB 13 is not limited to the Eagle River volunteer fire department service area but rather applies to fire service areas generally.

Number 2845

MR. GREENE noted that SSHB 13 does not cover home rule cities, other than unified municipalities, and exempts second class boroughs with a population under 60,000. The legislation only covers road and fire service areas rather than all service areas. Furthermore, this legislation exempts a six percent of the increase in a fire service area. Mr. Greene reiterated earlier comments regarding the belief that SSHB 13 violates the constitutional provision preventing local and special legislation, which was noted in the governor's veto message for HB 133 from last year. He also reiterated that SSHB 13 substantially increases the limitations on home rule powers, which is contrary to the provisions of the state constitution.

MR. GREENE noted that Anchorage has a tax cap, which limits the total amount of taxes that may be levied. He explained that within that calculation, taxes levied within a service area are included. He said, "To the extent that service areas control their individual level of taxation, they limit or diminish the level of taxation for the remainder of the municipality and other service areas as well as areawide." Therefore, the assembly's authority to allocate municipal assets amongst competing needs throughout the municipality is limited. Mr. Greene pointed out that there is much legislative history and commentary [on this issue], not only from the Constitutional

Convention's original article on local governments, but also from commentary by Vic Fischer, Chairman, Alaska Constitutional Convention's Committee on Local Government.

MR. GREENE quoted the following from the "Final Report on Borough Government":

Service areas will be under the jurisdiction of the borough assembly. The borough assembly may establish adversary or administrative agencies to a service area. The levying of taxes, budgetary review authority and the allocation of funds will rest with the borough governing body. Thus, a "single-wide" agency will be responsible for fiscal matters and will ensure balanced taxation for the entire area.

MR. GREENE quoted the following portion of the "Final Report on Borough Government":

Article X, Section 11 of the Alaska Constitution allows municipal governments to take on home rule status broader than those of any other state. It being the intent of the constitutional delegate...

TAPE 01-4, SIDE B

MR. GREENE remarked that prior testimony by the then Department of Community & Regional Affairs and the current Department of Community & Economic Development all lend credence and support to the proposition that SSHB 13 severely restricts local home rule authority and the authority of voters to determine their own destiny within the context of Alaska's efficient and effective local government.

Number 2955

REPRESENTATIVE HALCRO asked Mr. Greene to expand his remarks regarding how service areas limit the ability of the assembly, with regard to taxation.

MR. GREENE explained that the calculation for the tax cap in Anchorage includes the taxes levied in all service areas. Therefore, the taxation level of a service area impacts the level of taxation that can be levied in other service areas or in the municipality, areawide, for services under the following year's budget.

REPRESENTATIVE HALCRO related his understanding of Mr. Greene's argument that since service areas can negotiate the service for a lower price and thus tax those within the service area less for the service, their contribution to the city is less. In other words, because the service area is not taxing its people enough the assembly is limited in its ability to determine the taxation level.

MR. GREENE clarified that when local government is considered, it must be viewed as a portion of the whole. He reiterated that the level of taxation in a service area is directly related to calculations regarding the limit of taxation permitted under the municipal charter; in Anchorage's case, for the level of taxation throughout the municipality. He said, "So, it's a matter of allocating assets amongst competing needs and that is traditionally, and by our state constitution, reserved to the assembly."

REPRESENTATIVE HALCRO assumed that within a service area the level of taxation is commensurate with the cost of the service. For example, an individual in a limited road service area would be taxed as much as it would cost to maintain the roads in that individual's limited road service area.

MR. GREENE agreed that would be the case.

REPRESENTATIVE HALCRO said, then, he was not sure how that negatively impacted the assembly. Therefore, he surmised [the problem] to be that those in the limited service area would not be taxed enough to support the rest of the city.

Number 2775

MR. GREENE clarified that he is merely saying that in the consideration of how to allocate the resources within the municipality, the tax in the service area is one of the components. Therefore, the extent to which SSHB 13 restricts the assembly from allocating resources according to areawide needs, the bill would impair the assembly's ability to balance the needs of competing interests. In response to Representative Halcro, Mr. GREENE defined competing interests as all the government services that compete for the local tax dollar.

REPRESENTATIVE HALCRO pointed out that there is a separate mill rate for fire and police service. Therefore, an individual in a limited road service area would still pay for fire and police, areawide parks and recreation, schools, et cetera. The limited

road service area would just pay what the limited road service area contractor costs.

MR. GREENE reiterated that when the assembly determines the priorities that should be addressed when allocating funds, the assembly must consider the taxes levied for schools, fire service, roads, parks and recreation, and limited road service areas. He restated, "To the extent that the assembly is restricted or limited in any way in determining at what level to provide those services, they are, by nature, limiting or increasing services in another area within the tax cap."

Number 2637

REPRESENTATIVE KERTTULA posed a situation in which there was a mill rate of ten and the service area decided to increase its services, which resulted in a mill rate of three [for the service area], then the city would only be able to have a mill rate of seven for those in this particular service area.

MR. GREENE said that Representative Kerttula's concept is correct. If a [service area] is taxed at the maximum levy requested by the members of that service area and, for instance, it is an increase of three mills for a given year, then [the municipality] would have to calculate that increased three mills into the tax cap. Therefore, if [the municipality] is at the tax cap, [the tax] would have come from some other service in order to stay underneath the tax cap.

REPRESENTATIVE GUESS inquired as to how SSHB 13 would change the current practice and place more limitations on the assembly.

MR. GREENE answered that SSHB 13 limits the ability of the majority of voters in a given area. He noted that this is not just a consolidation of existing service areas because SSHB 13 would prohibit the alteration of an existing service area unless the alteration is approved by people living outside the service area, who are impacted by the alteration. Mr. Greene said:

What the bill would do is to limit the ability of both the voters on the one hand, and the assembly in the areas of consolidation to make more efficient use of the service areas, either in consolidation or in expansion unless they have the approval of a minority of voters.

REPRESENTATIVE BUNDE remarked that the notion that a limited

service area would increase its taxes in order to eliminate the municipality's ability to tax to the tax cap is a stretch for him. Most limited road service areas have lower mill rates and that is one of the reasons these limited road service areas want to maintain a limited road service area.

REPRESENTATIVE BUNDE stated his belief that municipalities would like to have power over local road service areas in order to convert them to "cash cows." Therefore, the municipalities could force the elimination of the limited road service area and force people to pay a higher mill rate and thus the municipalities can use the money where it feels most appropriate.

Number 2405

MERLE JANTZ testified via teleconference. Mr. Jantz spoke in favor of SSHB 13 and rejected the notion that local government is more important than the people. He noted that he has been involved in his road service area for over 20 years and has been a road service area commissioner. He informed the committee that his road service area has about six-tenths of a mile of road with an assessed evaluation of about \$1.2 million. A couple of years ago, an adjoining area wished to have a road service area. The Fairbanks North Star Borough policy is to adjoin two existing areas. He explained that the new area had 1.7 miles of road with an assessed evaluation of \$400,000. In such a case three-quarters of the revenue would be generated in the original road service area and two-thirds to three-quarters would be used to support roads in the adjoining area. Furthermore, the roads in the adjoining area were in poor condition and thus that area wanted a road service area in order to improve the roads. Mr. Jantz related his belief that such a situation is taxation without representation because there was not an opportunity to vote. If SSHB 13 passes, then there would have been a vote.

MR. JANTZ informed the committee that he has been the chair of an ad hoc committee that has addressed this issue for the past two to three years. This ad hoc committee has yet to find any individual in the [Fairbanks North Star] road service areas that want to change their service or the level at which those decisions are made. Mr. Jantz said that he has not found anyone who can tell him the administrative advantages to reducing the number of service areas. In most cases, when the number of service areas are reduced, the voluntary labor is reduced and [becomes] paid labor. The aforementioned situation is not

positive. However, work is still being done to determine whether [consolidation] can be accomplished. Mr. Jantz concluded by noting the importance of allowing everyone to vote and allowing different mill levies, which would allow review of ways to combine road service areas and improve those roads that need such, while allowing different levels of service.

Number 2179

RANDY FRANK, Chairman, Viewpointe Service Area [in Fairbanks], testified via teleconference. He informed the committee that he has been involved with this issue for about 18 years. In response to some of Mr. Greene's earlier comments, Mr. Frank said that [the Viewpointe] service area taxes itself more than the service area spends on maintenance costs in order to establish a fund to pay for future capital improvements. Furthermore, Mr. Frank remarked that the Fairbanks road service areas have better service than the City of Fairbanks because the road service areas use private contractors, who must respond and complete the job within 24 hours of the call to service the roads.

MR. FRANK said that in the past couple of years the Fairbanks North Star Borough has been trying to merge service areas. However, he didn't know if such a consolidation would be possible because each service area has a different tax level. Therefore, a vote of all merging service areas would be required in order to establish one taxation level. Such a consolidation would result in the consolidation of service areas with various levels of roads, some paved and some unpaved. He predicted that consolidation would be problematic unless SSHB 13 passes because SSHB 13 would allow differing levels of taxation.

MR. FRANK noted that he wrote Representative Bunde a letter, which is included in the bill packet. He echoed comments from that letter regarding America's wealth redistribution. He noted that the wealthy have always been able to vote in the process. However, in the current situation, a service area that will be joined by a new service area does not have the right to vote in the process. Mr. Frank said that such a situation is very "un-American" and should not be allowed to continue.

Number 1945

MICHAEL GATTI, Attorney, Matanuska-Susitna Borough, testified via teleconference. He informed the committee that he is present on behalf of the borough administration, who is opposed

to SSHB 13. The borough administration is opposed to SSHB 13 for many of the reasons expressed by Mr. Greene and Mr. Bush. In the borough's opinion, SSHB 13 eliminates local control and raises constitutional issues pertaining to maximum local self-government with minimum local government units. Furthermore, [this bill] would impact the supreme court decisions in the HALO (Area G Home and Landowners Organization, Inc.(HALO) v. Anchorage) case, the Hillside police protection case, and the North Kenai case. In the North Kenai case, the Alaska Supreme Court said that the consolidation of service areas is permissible without a vote of the people.

MR. GATTI noted that the Mat-Su Valley is one of the fastest growing boroughs in the state. Traditionally, the issue of service areas is one that has been within the province of the local assembly and administered through the local road service area advisory boards, who have a substantial voice with regard to what takes place with those road service areas. Mr. Gatti indicated that the [Mat-Su] assembly is very responsive to the concerns of the local road service area boards.

Number 1845

MR. GATTI said, "This bill is really a regressive bill because it takes away from the liberal construction of municipal powers and places you back in a situation that occurred years and years ago and still occurs in some municipalities throughout the state; that's based on the principle under a case called Dillon(ph)." Under Dillon(ph), the rule is that municipalities cannot do anything unless the legislature says so. However, in Alaska the system is that municipalities can do anything not prohibited by law. In the Mat-Su Borough, a second class borough, there are a few more restrictions. However, service areas are important and the question regarding the need for new service areas will be debated by the Mat-Su Borough Assembly in the future. If SSHB 13 is passed, the legislative authority of the borough assembly could be limited. He pointed out that the legislature often gets into arguments with the governor in regard to executive versus legislative authority. He indicated the need for the committee to carefully consider the principle that local control requires local assemblies to make decisions on local issues. Furthermore, SSHB 13 requires a dual majority vote and would, in some cases, allow the minority to control what the majority really wants. He pointed out that in America, the majority rules.

MR. GATTI noted that Jim Swing, Director, Mat-Su Public Works,

is present and could address the practical consequences his department may suffer if SSHB 16 passes. In regard to the differential taxation, Mr. Gatti said he believes that Representative Kerttula's concern is well taken because differential taxation within a service area would pose some substantial administrative problems. He informed the committee of two Alaska Supreme Court cases that dealt with differential taxation of oil and gas property; one case involved Valdez and the other case involved Kenai. In both of those cases, under the facts of those cases, the Alaska Supreme Court said that differential taxation is unconstitutional due to its lack of uniformity in regard to the taxation on property. He acknowledged that cities do have differential taxation for various services as they are merely large service areas. He pointed out that service areas in the Mat-Su Valley do have differential taxation rates based upon the recommendations on the road service area supervisors. He doubted that the borough assembly would disagree very often with the recommendations of those supervisors regarding the rate of taxation for a particular service area.

Number 1603

MR. GATTI turned to the issues of consolidation and abolishment of road service areas. Once the assembly has acquired a power, it is up to the local government to determine how best to administer that power. If there should be a consolidation of service areas that provide basically the same level of services, that should be accomplished by ordinance rather than through artificial prohibitions. This [belief is supported] by the constitution and Title 29 as well as case law, Liberati v. Bristol Bay Borough(ph). In conclusion, Mr. Gatti reiterated that the Mat-Su Administration disagrees with SSHB 13. The entire state shouldn't be impacted by a bill for a local concern, which should be debated on the local level.

Number 1488

OCIE ADAMS testified via teleconference in support of SSHB 13. He was depressed by the fact that the local government could so easily rationalize why it is important to express the will of the people. He remarked that the people where he lives [Knik] are "definitely interested in seeing this bill supported." He hoped that the Mat-Su Borough would be included in this legislation.

Number 1400

JIM SWING, Director, Public Works, Matanuska-Susitna Borough, testified via teleconference. Mr. Swing echoed earlier comments regarding the Mat-Su Borough being one of the fastest growing areas in the state. Much of the land in the Mat-Su Borough is being subdivided extensively. He could foresee a subdivision being proposed that would extend across road service areas or even extend inside and outside of road service areas. He pointed out that there are already requirements for road construction in subdivisions. Therefore, a vote of an entire service area seems to be burdensome and serves no practical purpose.

MR. SWING informed the committee that when driving from Palmer to Wasilla, one drives through three road service areas, which have roads that are practically in the same condition and with the same mill levies. He related his belief that combining those three service areas should be left up to the assembly.

Number 1215

JOHN LETTOW, Supervisor, Road Service Area, Matanuska-Susitna Borough, testified via teleconference. Mr. Lettow said that he believes that local service areas provide the maximum flexibility for individuals to choose what lifestyles to participate in and fund. He pointed out that not everyone that moves into the Mat-Su Valley does so for curbs, gutters, sidewalks, and street lights. Some people move to the Mat-Su Valley for the absence of those features. Mr. Lettow indicated that consolidation of road service areas could result in areas of lower assessed property values, who may prefer to have ditches and darkness, having their monetary contributions [taxes] be used to put in curbs and street lights in other areas.

MR. LETTOW turned to the issue of differential taxation and referred to Section 4(b). He informed the committee that [differential taxation for different level of services] already occurs due to areas that may be required to have public water and sewer when subdivided. When that occurs, an assessment is made and incorporated and would result in a different level of assessment for those services in individual subdivisions. Mr. Lettow indicated that the aforementioned situation is a necessary remedy so that owners in those locations actually pay for those improvements rather than spreading the cost to others who do not benefit from those improvements.

MR. LETTOW noted his support of SSHB 13, although Section 3(d) would seemingly impact the Mat-Su Borough. He acknowledged the difficulty in putting things to a vote and suggested that possibly there is a remedy between SSHB 13 and the encumbrance stated by Mr. Swing.

Number 0883

JULIE KRAFFT, Director, Member Services, Alaska Municipal League (AML), noted that the committee should have a letter from AML, which states its opposition to SSHB 13. She also noted that this issue has been discussed with AML's members several times and thus a policy position has been established and is included in the committee packet. The bottom line for AML is that this is a local control issue. She said that issues regarding service areas should be resolved at the local level and should not be a statewide mandate. She pointed out that the 10 mill tax cap election, a "one size fits all" solution does not work.

REPRESENTATIVE HALCRO said that he understood AML's concern that this should remain a local issue. However, the folks that live within these local road service areas are locals, who want to retain local control. Representative Halcro emphasized that [SSHB 13] protects the locals that live within the local road service area. He pointed out, "It's not as if the state is going to step in and be in charge of the operations of the limited road service area. We're simply saying, the folks that live in these areas ought to have local control."

MS. KRAFFT echoed earlier comments regarding the fact that the municipal government, as set out in the constitution, is given the authority to run the government. She indicated that local government officials, who have been elected to be responsible for the borough as a whole, aren't able to live up to those responsibilities [under SSHB 13] because a small group is allowed to prevent a possible consolidation that may be appropriate for the government as a whole.

CO-CHAIR MEYER turned to the teleconference list and found that Mr. Bockhorst, Local Boundary Commission, Division of Community and Business Development, Department of Community & Economic Development, and Mr. Poland, Director, Division of Community and Business Development, Department of Community & Economic Development, were available to offer information or technical assistance.

Number 0551

REPRESENTATIVE MURKOWSKI agreed that there seem to be some constitutional issues. From Representative Bunde's comments, Representative Murkowski understood that a legal opinion on some of these constitutional issues has been requested; however, she has not seen it. Furthermore, she noticed that the next committee of referral for SSHB 13 is the House Finance Committee. Therefore, she felt that it is not the jurisdiction of the House Community & Regional Affairs Standing Committee to resolve legal issues and thus she asked if Representative Bunde would object to having SSHB 13 referred to the House Judiciary Standing Committee.

REPRESENTATIVE BUNDE informed the committee that Tam Cook, Director, Legislative Legal Services, Legislative Affairs Agency, has provided information [to the effect] that these constitutional concerns are not germane. Representative Bunde reminded the committee that this legislation was passed by the legislature last year. He questioned some of the comments embodied in the governor's veto message. Representative Bunde assured the committee that he would request that these questions be addressed in the House Finance Committee. Furthermore, this legislation went through Legislative Drafting and Legal, both of which did not find a constitutional problem.

Number 0227

REPRESENTATIVE MURKOWSKI asked if Representative Bunde had an opinion from Ms. Cook that he would be willing to release. [Representative Bunde indicated that an opinion is in the works.]

CO-CHAIR MEYER asked if Representative Murkowski wanted to hold SSHB 13 until she has reviewed the [opinion] from Ms. Cook.

REPRESENTATIVE MURKOWSKI answered that she would feel more comfortable seeing that opinion or talking with Ms. Cook. Although she appreciated Representative Bunde's offer to bring these concerns to the House Finance Committee, she didn't believe that [constitutional issues] fall under the jurisdiction of the House Finance Committee either.

CO-CHAIR MEYER asked if Representative Bunde could provide the committee with an opinion from Ms. Cook by the next meeting

REPRESENTATIVE BUNDE agreed to obtain written communication from Ms. Cook, if the committee wishes.

TAPE 01-5, SIDE A

CO-CHAIR MEYER announced that SSHB 13 would be on next Tuesday's agenda.

Number 0040

REPRESENTATIVE BUNDE began his closing remarks by saying that SSHB 13 basically protects the status quo. Representative Bunde noted that although the local government officials are not evil, their job is made easier with more power. He said, "This is a bill about the tyranny of the majority." Representative Bunde then turned to the issue of home rule cities and noted that home rule cities have 53 limitations. With regard to the notion that this is merely a Hillside issue, it is not because good government and local control is a statewide issue.

REPRESENTATIVE BUNDE pointed out that the definition of the term "local control" has varied throughout the testimony. From one point of view, local control is the power of the assembly. From another point of view, local control refers to [the local residents]. Representative Bunde noted that although the argument that [an area] is not paying its fair share did not come up, [it is not appropriate] because if the neighborhood maintains its roads and the state maintains its roads, then it will be a quid pro quo situation. In conclusion, Representative Bunde said that one shouldn't fear the voters. He remarked that the government's job is to allow people the greatest input in the process.

Number 0367

REPRESENTATIVE MURKOWSKI returned the legal opinion and remarked that if it is easier, Ms. Cook could merely be present at the meeting.

CO-CHAIR MEYER requested Ms. Cook's presence at the next hearing on SSHB 13.

REPRESENTATIVE KERTTULA expressed interest in Ms. Cook's opinion addressing the executive versus the legislative functions of municipalities.

Number 0450

REPRESENTATIVE HALCRO remarked that this a very fine line. He

noted that his district has a number of people that are on septic and well systems. Due to [Anchorage's] expansion the city has placed a water line down one of the main streets in his district. Currently, the majority of the citizens in that area have to vote in favor of hooking up to the [city's] water and sewer. Representative Halcro said that he didn't want to have the city impose hooking up to city water and sewer on those who don't wish to hook up to it. He informed the committee that the Municipality of Anchorage's Citizen Budget Book, which says, "The Municipality of Anchorage operates under a service area concept whereby taxpayers in different areas or taxing districts of the municipality pay property taxes only for those services which are either required by law or which they vote to receive." Therefore, he surmised that the municipality [of Anchorage] accepts that it operates under a service area concept and [this legislation] is merely trying to protect that. Furthermore, the [Alaska] Supreme Court has already ruled - on the police protection issue - that it was for the greater good for police protection to be imposed on the Hillside. Representative Halcro understood that ruling in regard to police and fire protection.

REPRESENTATIVE HALCRO turned to Mr. Greene's testimony that [SSHB 13] could limit the local assembly's ability to raise taxes. Representative Halcro did not agree with Mr. Greene's testimony. Furthermore, he said that the people in the road service areas pay a commensurate [tax] for school districts, areawide mill rate, and police [protection]. Therefore, he believes that self-determination [by local residents] is the ultimate "local control." In regard to the argument that different taxation levels are unfair, Representative Halcro pointed out that he pays the same tax for roads as someone living in downtown Anchorage; however, Representative Halcro lives on a gravel road. In conclusion, Representative Halcro felt that [SSHB 13] protects the status quo and is important.

Number 0832

CO-CHAIR MEYER announced that public testimony would be closed and SSHB 13 would be heard at the next meeting.

ADJOURNMENT

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 9:52 a.m.