

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

January 30, 2001

8:05 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

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."

- MOVED SSHB 13 OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 13

SHORT TITLE: SERVICE AREAS:VOTER APPROVAL/TAX ZONES

SPONSOR(S): REPRESENTATIVE(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
01/25/01		(H)	CRA AT 8:00 AM CAPITOL 124
01/25/01		(H)	Heard & Held

01/30/01

(H)

MINUTE (CRA)

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.

TAM COOK, Director
Legal Services
Division of Legal and Research Services
Legislative Affairs Agency
State Capitol
Juneau, Alaska 99801

POSITION STATEMENT: Reviewed the memorandums she provided to the committee regarding SSHB 13.

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

POSITION STATEMENT: Offered the department's perspective.

MARGIE VANDOR, Assistant Attorney General
Governmental Affairs Section
Civil Division (Juneau)
Department of Law
PO Box 110300
Juneau, Alaska 99811-0300

POSITION STATEMENT: Expressed concerns with SSHB 13.

ACTION NARRATIVE

TAPE 01-6, SIDE A
Number 0001

CO-CHAIR KEVIN MEYER called the House Community and Regional Affairs Standing Committee meeting to order at 8:05 p.m. Representatives Morgan, Meyer, Scalzi, Murkowski, Guess, and Kerttula were present at the call to order. Representative Halcro arrived as the meeting was in progress.

[Please note that the recording does not begin until approximately two minutes into the tape due to technical difficulties. However, the recording does include the entire meeting.]

HB 13-SERVICE AREAS:VOTER APPROVAL/TAX ZONES

CO-CHAIR MEYER announced that the only order of business before the committee is 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." He noted that the committee would be discussing some memorandums provided by Legal Services. Co-Chair Meyer reminded the committee that the public testimony portion of SSHB 13 had been closed at the prior hearing on SSHB 13.

Number 0324

REPRESENTATIVE CON BUNDE, Alaska State Legislature, sponsor of SSHB 13, reminded the committee that, at one time, there were boroughs and cities. When the Anchorage Borough and City combined, there were some advantages for the greater Anchorage Borough and the City of Anchorage. However, those in the more remote areas of the borough realized that joining the combined borough and city would mean that the area would lose some of its autonomy. Therefore, in order to receive the majority of votes in both the [borough and the city], a charter was created and agreed upon. The charter provided that those in the then borough should continue to have access to their limited services, in particular, the limited road service. Such a situation is not unlike what SSHB 13 proposes. He emphasized that SSHB 13 restates that the limited road service areas have a right to continue to exist, unless there is a majority vote of both parties involved.

Number 0568

TAM COOK, Director, Legal Services, Division of Legal and Research Services, Legislative Affairs Agency, confirmed that she had provided Representative Bunde with three separate memorandums. Ms. Cook offered to answer any questions from the committee.

REPRESENTATIVE KERTTULA related her understanding that SSHB 13 would place limits on the home rule community, not the general [law municipality]. She asked if her understanding was correct.

MS. COOK said she believes that Representative Kerttula's understanding is incorrect. She explained that SSHB 13 exempts some categories of general [law municipalities], but will impose limits on other categories of general [law municipalities]. She used Haines, which is a third class borough, as an example.

REPRESENTATIVE KERTTULA asked if there could be impacts on all home rule entities.

MS. COOK said, "As far as I know, that's true."

Number 0697

REPRESENTATIVE KERTTULA turned to an opinion from the Department of Community and Economic Development (DCED), which is dated January 29, 2001. That opinion mentions [in a quotation from Governor Knowles' veto of HB 133] that when a home rule municipality is concerned with a matter of purely local concern, the charter and not a legislative act is looked to. However, Representative Kerttula recalled that one of Ms. Cook's memorandums noted that law can change how a municipality behaves. Therefore, Representative Kerttula wondered if the legislature could constitutionally pass a law that interferes with the behavior of the home rule municipality.

MS. COOK referred to Article X, Section 11 of the Alaska Constitution, which reads as follows: "A home rule borough or city may exercise all legislative powers not prohibited by law or by charter." The legislature prohibits home rule municipalities from doing many things. Ms. Cook maintained that the two most significant functions of a borough are the power of education and taxation, both of which "the legislature has completely occupied the field." The home rule municipality has no say as to whether it will be a school district; that is totally dependent upon its status as either a city and a borough or a borough. Ms. Cook said, "A home rule municipality exercises virtually no discretion in the world of taxation and education."

REPRESENTATIVE KERTTULA questioned [whether that would be the case] with a matter of purely local concern.

MS. COOK answered, "I don't think the court is going to be very willing to substitute its judgment for that of the legislature, as to whether a matter is of purely local concern. ... It would take ... some pretty strong facts, I think, to persuade a court."

REPRESENTATIVE KERTTULA turned to the "special areas" level of government and inquired as to what is the common interest of the entire state.

MS. COOK replied that she couldn't answer that question. She acknowledged that there may be some difficulty with SSHB 13 on that issue because the court has said that, with regard to special and local analysis, it decides on a case-by-case basis. Ms. Cook noted that she didn't have a grasp of the facts that exist with municipalities. However, she indicated that, in an abstract view of cases that deal with local and special [areas], the Eagle River case did have an effect that was extremely specific to a small area. Ms. Cook said, "This bill is not that specific; it is going to impact quite a few different municipalities, I think."

REPRESENTATIVE KERTTULA acknowledged that the legislation had been broadened since last year. However, she didn't find the common interest for the whole state, which leaves her in that special and local interest [quandary].

Number 1032

REPRESENTATIVE MURKOWSKI pointed out that DCED's letter dated January 29, 2001, says that "the Legislature should impose no home rule limitation, except where the Legislature could clearly demonstrate that there is overriding state interest involved." She asked if Ms. Cook disagreed with that statement and that, in fact, there are many areas, such as taxation and education, in which there are home rule limitations.

MS. COOK said that she doesn't disagree with the statement. However, Ms. Cook related her belief that DCED's statement is a policy statement, not a legal statement. The constitution clearly allows the legislature to grant home rule powers as it sees fit. Although the legislature may need to exercise caution when interfering with home rule governments, the legislature has, time and again, made the decision whether to limit home rule municipalities. Ms. Cook said:

I don't have the knowledge to conclude ... that the bill that you're considering isn't something that is a policy matter that shows some state interest. I can't see offhand that it necessarily follows that a court would disagree with the legislature ... if the legislature chooses to make the policy choice that

it's going to protect - in some fashion - the voters of existing service areas and that's what we have here. So ..., if you're alleging that's itself not a ... reasonable statewide goal, perhaps the court would agree. But I certainly wouldn't think ... that would necessarily follow.

REPRESENTATIVE MURKOWSKI surmised then that Ms. Cook would disagree with the statement that there is the standard of overriding state interest that must be established in order to impose limitations on a home rule borough.

MS. COOK answered that she had never seen such a case.

REPRESENTATIVE MURKOWSKI related her understanding that Ms. Cook is saying that this is a policy statement rather than a statement of law.

MS. COOK reiterated that she had never seen such a case.

REPRESENTATIVE MURKOWSKI commented that perhaps she could obtain more information from the author of the letter.

REPRESENTATIVE KERTTULA requested that the Deputy Commissioner of DCED speak to his letter, which has been the subject of discussion.

REPRESENTATIVE BUNDE noted that he had not received a copy of the letter from DCED.

JEFF BUSH, Deputy Commissioner, Office of the Commissioner, Department of Community & Economic Development, deferred to Margie Vandor, Department of Law, in regard to Representative Murkowski's question.

Number 1332

MARGIE VANDOR, Assistant Attorney General, Governmental Affairs Section, Civil Division (Juneau), Department of Law (DOL), turned to the case law regarding when home rule charters have been viewed as controlling law versus a legislative act. There are two cases that [DOL] believes to be the supreme court's reading of when a home rule charter will control over a legislative act. The first case, Lien v. City of Ketchikan, occurred in 1963 and that case was noted in the governor's veto message last year. The case of Lien v. City of Ketchikan involved a legislative act that was general across the state and

dealt with how a city could lease its property. The City of Ketchikan had its own charter provision as to how it could lease its property. In that case the supreme court stated that when a matter is truly of local concern, the charter rules over the legislative act. Ms. Vandor noted that this case was cited and expanded several times. Although the case was cited, it was overruled -- in the sense that it didn't apply in cases of schools -- in the McCauley v. Hildebrandt case, which determined that a home rule couldn't determine that it had an overriding concern as to how it would participate in certain statewide school functions and programs.

MS. VANDOR informed the committee that the Chugach Electric Association case refined the Lien v. City of Ketchikan rule by developing the local activity rule. She explained that the Chugach Electric Association case dealt with an electrical cooperative that had a service area that it wanted to extend into the City of Anchorage. The city didn't want to give a permit for that extension. In this case, Chugach Electric Association, the Alaska Supreme Court stated that this is a matter not of local concern only because the cooperative was created under the state law to exist and thus the progress [extension] could not be stopped based on a permitting code.

MS. VANDOR turned to the issue at hand, local service areas. Ms. Vandor said, "We don't see where it is a statewide interest as to how home rule versus a general law, with less than 60,000 people is a matter of statewide concern." How local service areas are set up is a matter for the borough assembly to perform. She indicated that allowing the borough assemblies to set up the local service area would mean that a minority of people would be controlling the general, areawide, borough assembly in this matter. However, advisory boards would be fine. Ms. Vandor didn't see that the statewide interest would be upheld since the legislation exempts entities with populations of 60,000 and less. She said that she wasn't sure why this legislation would only apply to certain classes of boroughs and certain populations, especially when [the legislation] impedes on a home rule borough, which has special status in the constitution. Furthermore, the Alaska Supreme Court has analyzed when a charter provision versus a legislative act will control.

Number 1642

REPRESENTATIVE SCALZI inquired as to what would happen if a borough assembly wanted to create a service area with different

taxing jurisdictions; that cannot be done under current law. Therefore, Representative Scalzi viewed SSHB 13 as a tool allowing more expansion of local control versus a hindrance to local control.

MS. VANDOR indicated that it would be one thing if the bill is a tool that is an option versus a mandate as to how a service area must be operated. She said, "The difference here is that it's either a limitation on their power -- they have to do it this way -- or it's a matter of choice that they could do."

REPRESENTATIVE SCALZI commented that a [borough assembly] doesn't have the choice now.

MS. VANDOR said it would be fine to make it a choice. She commented that she has not taken a stand as to whether combining service areas with one service area board doing oversight would establish differential tax zones within a service area. "It seems to me, it's combining several and maybe you're having administrative oversight over the three," she said.

Number 1734

REPRESENTATIVE SCALZI related his understanding that SSHB 13 leaves it for the service area to decide rather than the assembly.

MS. VANDOR explained that [this bill] limits how a home rule or general borough can alter, abolish, or combine their service areas. This reminded Ms. Vandor of Local Boundary Commission rulings. She remarked that sometimes the local people are not the best to decide what is really [appropriate] for the broader good. Therefore, the Local Boundary Commission does have the authority to review issues on a statewide level and decide whether an area should be incorporated or annexed for the broader good. Such a structure is no different than how borough governments are set up with an assembly that is elected from the general populous. Therefore, allowing a minority of the borough to decide whether a service area could join the area or not seems to be in opposition to what is done at the borough level.

Number 1848

REPRESENTATIVE SCALZI pointed out that the assembly would maintain the power as to whether the service area would be created or not and thus the assembly would maintain overall oversight as to what and how service areas are created.

MS. VANDOR agreed that would be the case when service areas are initially established. However, SSHB 13 addresses the situation of altering a service area.

REPRESENTATIVE HALCRO recalled that, at a prior hearing, the sponsor mentioned that currently the state imposes 53 restrictions, aside from their charter, on local governments. He inquired as to why this [restriction imposed by SSHB 13] would be any different.

MS. VANDOR said she assumed that Representative Halcro was referring to limitations placed on home rule boroughs. Ms. Vandor returned to her opinion on the court cases and what is a matter that is of local concern versus a general law that will be applied statewide and of statewide concern. Ms. Vandor said, "It really goes back to analysis of the 'local activity rule' and whether or not mandating how a home rule borough or other boroughs, except for a certain class of boroughs, has to deal with their road service areas ... [and] whether that's a matter of general application statewide and is of statewide concern." Ms. Vandor noted that from the case law she has read, she hasn't heard any analysis as to why this is a statewide issue since the road service areas are established to deal with the local services.

REPRESENTATIVE HALCRO recalled discussion from last week's hearing regarding the Alaska Supreme Court's ruling on the police protection issue in Anchorage. The Alaska Supreme Court ruled that police protection was for the greater good of the community. However, he had difficulty believing that the courts would rule in a similar fashion in regard to local road service areas.

Number 2059

MS. VANDOR directed attention to the Kenai Peninsula case in which a service area tried to sue, although a service area [board] doesn't have any legal standing separate from the borough. Ms. Vandor didn't see where that would change [under SSHB 13], although she supposed that the local citizens themselves could sue. In response to Representative Halcro, Ms. Vandor could not recall the facts surrounding the Kenai Peninsula case.

REPRESENTATIVE KERTTULA returned to the issue of taxes versus service areas, which she believes are two different issues.

Under SSHB 13, the service areas would, in essence, be allowed to decide whether or not to combine. However, the tax returns to the assembly for the decision. She asked if that distinction was correct.

MS. VANDOR replied, "I believe so."

REPRESENTATIVE SCALZI indicated his understanding that the assembly has overall oversight on the taxing mill rate. If a service area comes up, even with a differential tax mill rate, and proposes a differential tax, that would still have to go before the assembly for approval. He asked if his understanding is correct.

MS. VANDOR replied, yes.

Number 2170

MR. BUSH directed the committee's attention to Ms. Cook's opinion dated January 26, 2001, regarding local and special legislation. Ms. Cook's opinion, in regard to the exemption of populations 60,000 and under, says, "Upon examining the legislative goals and the means used to advance them, the court determines whether the legislation bears a fair and substantial relationship to a legitimate state purpose." From the [department's] perspective, [the department] has yet to see or understand a state purpose in the distinctions being made between the smaller general law boroughs versus home rule boroughs. As Ms. Cook says, there has to be a legitimate state purpose and the record has to reflect it.

REPRESENTATIVE BUNDE remarked that he found it amazing that government officials say that local people are not qualified to decide what is good for them. With regard to the overriding statewide concern, Representative Bunde questioned, "What greater concern could there be in this state, than empowering local voters."

Number 2275

REPRESENTATIVE KERTTULA inquired as to why SSHB 13 shouldn't be applied across the board, to all home rule and general law [boroughs]. She further inquired as to the reasoning behind having the distinctions.

REPRESENTATIVE BUNDE answered that [the bill] focuses where the problem is. The smaller boroughs do not seem to have these problems with local service areas.

REPRESENTATIVE MURKOWSKI asked whether there could be problems for these smaller boroughs in the future and would it appropriate to address that now.

REPRESENTATIVE BUNDE pointed out that the local service areas don't exist [in the smaller boroughs] and he didn't expect them [to develop in the smaller boroughs]. Representative Bunde reiterated that SSHB 13 focuses on the problems that arose when boroughs and cities combined.

Number 2365

REPRESENTATIVE SCALZI commented that he knew of areas with populations under 60,000 that could use this statute change. Representative Scalzi asked if Representative Bunde would be amenable to allowing SSHB 13 to apply to areas with populations under 60,000.

REPRESENTATIVE BUNDE indicated he was amenable to such. However, he explained that he didn't want to create a burden for local governments by requiring additional elections.

REPRESENTATIVE MURKOWSKI recalled that the additional expense of elections would not be an issue because these elections would be held at the next scheduled election; there would not be special elections when a new subdivision was added.

REPRESENTATIVE BUNDE agreed with Representative Murkowski's understanding. Representative Bunde clarified that his earlier remark spoke to his concern that [a smaller area] with limited resources would be asked to perform a broader election.

Number 2470

REPRESENTATIVE HALCRO asked if Representative Scalzi wanted to pursue an amendment.

REPRESENTATIVE SCALZI answered that he didn't want to pursue an amendment in this committee. However, he wanted to point out that there are [smaller] areas that [may want to utilize the process embodied in SSHB 13]. He noted that if other members wanted to change [SSHB 13] so that it would apply statewide, he

would support that. Representative Scalzi announced that he would support SSHB 13 and recommend a "Do Pass."

CO-CHAIR MEYER asked, "Are you making a motion that we move the bill?"

REPRESENTATIVE SCALZI replied yes. Representative Scalzi mentioned that he has experience in local governments. He informed the committee that the City of Homer has an annexation proposal that came about because [the city] could not have a differential tax mill rate with Homer's fire service area. He explained that in Homer's case the [annexed area] was large, which made it difficult to bring everyone in under one mill rate; it wasn't going to be a fair system. The law's limitation as well as the assembly's inability to create a differential tax mill rate caused the fire service area to fail. Therefore, Representative Scalzi viewed SSHB 13 as a tool for local government. Furthermore, he believes that the assembly maintains control since the assembly sets the mill rate and has ultimate influence in regard to how a service area is formed and thus Representative Scalzi viewed SSHB 13 as providing more local control rather than less.

Number 2605

CO-CHAIR MEYER noted that Representative Scalzi has moved that the committee report SSHB 13 from committee with the attached fiscal notes.

REPRESENTATIVE MURKOWSKI said that it isn't clear, in her mind, that SSHB 13 doesn't have constitutional problems. The issue as to whether SSHB 13 meets the local versus state test seems to remain and thus she indicated that Representative Scalzi's recommendation would be worth review. Therefore, she suggested that Representative Bunde look into Representative Scalzi's recommendation in order to avoid constitutional problems in the future.

REPRESENTATIVE KERTTULA noted her objection to reporting SSHB 13 from committee due to the constitutional problems. Furthermore, she noted that she had not heard any resolution to the statewide interest issue. Representative Kerttula said she also believes that SSHB 13 should be referred to the House Judiciary Standing Committee in order to address the constitutional issues.

The committee took an at-ease from 8:47 a.m. to 8:48 a.m.

REPRESENTATIVE HALCRO asked if the sponsor would accept an additional committee of referral for SSHB 13.

CO-CHAIR MEYER said that the committee should first vote on the motion to move SSHB 13 out of committee and pending the results of the vote, the decision will be made as to whether to add an additional committee of referral.

REPRESENTATIVE HALCRO requested that the committee first decide whether to give SSHB 13 an additional committee of referral because that would determine whether or not he would sign the bill report with a "Do Pass." Representative Halcro expressed his concerns regarding the constitutionality of SSHB 13 and he also expressed his desire to give SSHB 13 a referral to the House Judiciary Standing Committee. He announced that if a referral to the House Judiciary Standing Committee was added he would sign the bill report with a "Do Pass."

The committee took another at-ease from 8:50 a.m. to 8:52 a.m.

Number 2832

REPRESENTATIVE SCALZI withdrew his motion to report SSHB 13 from committee. There were no objections and thus the committee returned to committee discussion.

REPRESENTATIVE HALCRO remarked that the opposing legal opinions indicate the need for more time on [the constitutional concerns]. He said he believes it to be in the best interest of the sponsor to make the bill air tight before it is sent to the governor.

REPRESENTATIVE KERTTULA said that it would be helpful to determine whether there are any cases with regard to voting rights and whether [voting rights] alone result in a statewide interest. Representative Kerttula reiterated the need for a House Judiciary Standing Committee referral. With such a referral, she said that she wouldn't object to moving the bill from committee.

CO-CHAIR MEYER announced that he and Co-Chair Morgan feel that requesting a House Judiciary Standing Committee referral should be a committee decision.

Number 2967

REPRESENTATIVE KERTTULA moved that the committee recommend that SSHB 13 receive a House Judiciary Standing Committee referral.

TAPE 01-6, SIDE B

CO-CHAIR MEYER announced that there was no objection to Representative Kerttula's motion and thus the committee recommended that SSHB 13 receive a House Judiciary Standing Committee referral.

The committee took an at-ease from 8:57 a.m. to 8:58 a.m.

Number 2936

REPRESENTATIVE HALCRO moved to report SSHB 13 out of committee with individual recommendations, the accompanying zero fiscal note, and the recommendation for a House Judiciary Standing Committee referral.

REPRESENTATIVE SCALZI suggested that [the request for the referral] to the House Judiciary Standing Committee include some language regarding the specific [judicial concerns] of the House Community and Regional Affairs Standing Committee.

CO-CHAIR MEYER announced that the committee aides would draft a memorandum to that effect. Co-Chair Meyer also announced that hearing no objections, SSHB 13 would be reported from the House Community and Regional Affairs Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 8:58 a.m.