

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 5, 2001

1:15 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative Scott Ogan, Vice Chair
Representative Jeannette James
Representative John Coghill
Representative Kevin Meyer
Representative Ethan Berkowitz
Representative Albert Kookesh

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."

- HEARD AND HELD

HOUSE BILL NO. 52

"An Act relating to the Interstate Compact for Adult Offender Supervision and the State Council for Interstate Adult Offender Supervision; amending Rules 4 and 24, Alaska Rules of Civil Procedure; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

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 MINUTES(CRA)
01/30/01		(H)	CRA AT 8:00 AM CAPITOL 124
01/30/01		(H)	Moved SSHB 13 Out of Committee MINUTES(CRA)
01/31/01	0209	(H)	CRA RPT 2DP 1DNP 4NR
01/31/01	0209	(H)	DP: SCALZI, MORGAN; DNP: KERTTULA;
01/31/01	0209	(H)	NR: HALCRO, MURKOWSKI, GUESS, MEYER
01/31/01	0209	(H)	FN1: ZERO (CED)
01/31/01	0209	(H)	ADDITIONAL REFERRAL TO JUD
01/31/01	0209	(H)	JUD REFERRAL ADDED AFTER CRA
01/31/01	0209	(H)	REFERRED TO JUDICIARY
02/05/01		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE CON BUNDE
Alaska State Legislature
Capitol Building, Room 501
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of HB 13.

JEFFREY W. BUSH, Deputy Commissioner
Office of the Commissioner
Department of Community & Economic Development
PO Box 110800
Juneau, Alaska 99811-0800
POSITION STATEMENT: Provided department's position on SSHB 13
and answered questions.

TAMARA COOK, Director
Legislative Legal and Research Services
Legislative Affairs Agency
Alaska State Legislature
Terry Miller Building, Room 329
Juneau, Alaska 99801-1182
POSITION STATEMENT: Provided legal opinions and answered
questions on SSHB 13.

WILLIAM A. GREENE, Municipal Attorney
Municipality of Anchorage Department of Law
632 West 6th Avenue, Suite 730
PO Box 196650
Anchorage, Alaska 99519-6650
POSITION STATEMENT: Provided Municipality of Anchorage's
position on SSHB 13.

VICTOR FISCHER
PO Box 201348
Anchorage, Alaska 99520
POSITION STATEMENT: Testified in opposition to SSHB 13.

GAIL DIAL, Birchwood Supervisor
Chugiak, Birchwood, Eagle River Rural Road Board of Supervisors
(Street address not provided)
Chugiak, Alaska 99567
POSITION STATEMENT: Testified in support of SSHB 13.

EDWARD C. WILLIS
10235 Willis Drive
Eagle River, Alaska 99577
POSITION STATEMENT: Testified in support of SSHB 13.

LEE JORDAN
20610 Jayhawk Drive
Chugiak, Alaska 99567
POSITION STATEMENT: Testified in support of SSHB 13.

BOBBI WELLS, Officer
Birchwood Community Council
19213 Sprucecrest
Chugiak, Alaska 99567
POSITION STATEMENT: Testified in support of SSHB 13.

FINIS SHELDON
PO Box 671087
Chugiak, Alaska 99567
POSITION STATEMENT: Testified in support of SSHB 13.

BONNIE NELSON
20615 White Birch Road
Chugiak, Alaska 99567
POSITION STATEMENT: Testified in support of SSHB 13.

DARYL NELSON

20615 White Birch Road
Chugiak, Alaska 99567
POSITION STATEMENT: Testified in support of SSHB 13.

JAMES SWING, Director
Public Works Department
Matanuska-Susitna Borough
350 East Dahlia Avenue
Palmer, Alaska 99645
POSITION STATEMENT: Testified in opposition to SSHB 13.

MICHAEL GATTI, Borough Attorney
Matanuska-Susitna Borough
350 East Dahlia Avenue
Palmer, Alaska 99645
POSITION STATEMENT: Testified in opposition to SSHB 13.

OCIE ADAMS,
HC 30 PO Box 200
Wasilla, Alaska 99654
POSITION STATEMENT: Testified in support of SSHB 13 and
recommended an amendment.

ABIGAIL FULLER, Vice President
Kachemak Area Coalition Inc. DBA
Citizens Concerned About Annexation
PO Box 2845
Homer, Alaska 99603
POSITION STATEMENT: Testified in support of SSHB 13.

SALLY DODD-BUTTERS
Citizens Concerned About Annexation
PO Box 1223
Homer, Alaska 99603
POSITION STATEMENT: Testified in support of SSHB 13.

RICK NAVIN, Director
Direct Service Department
Fairbanks North Star Borough
1109 O'Connor Road
Fairbanks, Alaska 99701
POSITION STATEMENT: Testified in opposition to SSHB 13 with the
exception that he favored the differential taxation provision.

KEVIN RITCHIE, Executive Director
Alaska Municipal League
217 Second Street, Suite 200

Juneau, Alaska 99801

POSITION STATEMENT: Testified in opposition to SSHB 13 with the exception that he favored the differential taxation provision.

ACTION NARRATIVE

TAPE 01-12, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:15 p.m. Representatives Rokeberg, James, Ogan, Coghill, and Meyer were present at the call to order. Representatives Berkowitz and Kookesh arrived as the meeting was in progress.

HB 13 - SERVICE AREAS:VOTER APPROVAL/TAX ZONES

Number 0091

CHAIR ROKEBERG announced that the committee would hear 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 0107

REPRESENTATIVE CON BUNDE, Alaska State Legislature, sponsor, explained that SSHB 13 was about local control, empowering voters, and privatization. He pointed out that in the packets was a letter from former Representative Willis detailing the situation in Anchorage. The charter that created the borough/city of Anchorage had to address the needs and interests of people outside the city. One such interest was maintaining the ability to have control of local road service. Currently, there is some concern about a "tyranny of the majority;" that local areas, particularly on issues of road service, aren't able to maintain their level of service if the surrounding area chooses to vote them out of existence. He ventured that if a decision was to be advantageous to all parties, then all parties must be involved in the process of reaching said decision. In terms of service area issues, if both the surrounding area and the affected area agree, then reaching a majority vote would not be a problem. However, if the local [affected] area objected to proposals, it should not be subject to them simply because the surrounding areas voted in favor of the proposals. As an analogy, why should people in Virginia make decisions on our [Alaska] exploration of the Arctic National Wildlife Refuge

(ANWR). Or similarly, why should people in Anchorage, which has half the population of Alaska, make decisions for the entire state. He felt that SSHB 13 comes down to a definition of local control and is perhaps also a policy issue. While there are those that define local control as the local government, he subscribes to the notion that local control should come from the local voters - power should emanate from the people, not the government.

Number 0400

REPRESENTATIVE BUNDE added that SSHB 13 would not have any impact on the Hillside Police issue because the Alaska Supreme Court had already resolved that case and this legislation is not retroactive. In closing, he assured the committee that this was not special interest legislation for a small part of Alaska [Anchorage], but that, in fact, Fairbanks and the Matanuska-Susitna (Mat-Su) regions also have interest in these issues. He pointed out that in addition to defining what constitutes a majority vote, SSHB 13 also allows areas to have differential taxation. This is of particular interest to Fairbanks because it has 117 local road service areas. And while many of those areas would like to consolidate for administrative savings, current law prohibits this because of the differential taxation issue. As an example, an area with improved streets and one with gravel streets could each [after joining together under SSHB 13] assess themselves for their particular level of service needs and then elect one local road board representative to oversee the maintenance contracts of both areas. That local road board representative would then ensure that each area was getting its needs fulfilled. Thus, the people in each road service area would only be paying for the services for which they vote.

Number 0637

REPRESENTATIVE COGHILL made a motion to adopt the proposed committee substitute (CS) for SSHB 13, version 22-LS0164\F, Cook, 2/3/01, as a work draft.

REPRESENTATIVE BERKOWITZ objected for the purpose of discussing the specific changes in the proposed CS.

REPRESENTATIVE BUNDE said that the only change encompassed in the proposed CS is the deletion of the language referring to second class boroughs with a population under 60,000.

Number 0730

REPRESENTATIVE BERKOWITZ removed his objection. Therefore, the proposed CS was before the committee.

REPRESENTATIVE BUNDE responded to questions from Representative James by affirming that, to his knowledge, there were no second class boroughs with a population less than 60,000 that had road service areas. And while he did not know if such boroughs would want road service areas in the future, nothing in the proposed CS would preclude their establishment.

REPRESENTATIVE BUNDE clarified for Representative Berkowitz that the four second class boroughs with a population under 60,000 were Aleutians East, Bristol Bay, Ketchikan Gateway, and Kodiak Island.

REPRESENTATIVE BUNDE explained that his motivation for bringing this issue before the committee was to maintain flexibility and preserve the right of the individual faced with manipulation by voters outside his or her service area. To highlight his own circumstance, he did not want his local road service areas to be changed or absorbed into the municipality, i.e., voted out of existence without a majority vote of the people both inside the affected service areas and in the surrounding areas. As another example, Representative Ogan's district has a number of people with highly-valued limited road service areas that they wish to maintain control of without undue influence from distant borough seats of government.

Number 950

REPRESENTATIVE BUNDE further explained that if two or more existing service areas wanted to join together to effect administrative cost savings, a majority of each area must agree on the consolidation; however, the existing mill rates would not change. In response to questions from Chair Rokeberg, Representative Bunde indicated that he was not aware of any statutorily imposed size limitations for service areas. He reiterated his earlier explanation regarding the differential taxation provision. It was also pointed out that the proposed CS deals only with the alteration or abolishment of existing road service areas and not with their creation.

REPRESENTATIVE BUNDE responded to the concerns of Representative Berkowitz by saying that in this instance, state involvement through the proposed CS, would act to confirm what local

charters originally intended rather than circumventing those intentions. He also reminded members that home rule governments do not have carte blanche; currently the state has imposed "some 53 limitations." In addition, he did not feel that the proposed CS would bestow privileges based on residency to just the few in the local service area, because voters in the surrounding service areas would also get to vote on changes. In this way, changes would only occur with the approval of the majority in each of the areas involved with, and affected by, the decision.

REPRESENTATIVE JAMES pointed out that the current practice of surrounding boroughs making decisions for local road service areas, would be similar to the state coming in and combining two small boroughs

Number 1488

CHAIR ROKEBERG communicated that the referral to the House Judiciary Standing Committee (HJUD) came at the request of the House Community and Regional Affairs Standing Committee (HCRA) because [HCRA] saw the need for HJUD to focus primarily on the constitutional issues of the proposed CS.

JEFFREY W. BUSH, Deputy Commissioner, Office of the Commissioner, Department of Community & Economic Development (DCED), provided handouts to the committee and noted that the proposed CS dealt with two of four the points that the department had issues with. He conveyed that the administration opposes this legislation for many of the same reasons that were expressed in the veto last year of HB 133. He touched on the two different aspects of the bill, which are as follows: provisions dealing with voter rights within service areas, and the provisions that allow for differential tax rates within a service area. The administration does not have objections to the taxation differential contained in Section 4. He elaborated on this point, saying that under existing law, service areas can combine for administrative savings though they could not at, this time, have different tax rates.

Number 1725

MR. BUSH explained that both the DCED and the Attorney General's Office feel the proposed CS has failed to demonstrate a clear, overriding state interest; without this demonstration, the Alaska State Constitution prohibits limiting the powers of home rule municipalities.

TAMARA COOK, Director, Legislative Legal and Research Services, Legislative Affairs Agency, Alaska State Legislature, provided the committee with handouts of legal opinions that related to the constitutional aspects of the proposed CS. Addressing the issue of whether the legislature has the constitutional authority to limit a home rule power as the proposed CS does, she referred to the Jefferson v State case, wherein the court spoke of the confusion it had created with respect to the relative power of home rule municipalities and state control over home rule municipalities. She believed the case clearly said that the legislature or the state by direct statement, has the authority to preempt home rule power. She indicated that the proposed CS would have that effect because it contained a statement that applies to home rule municipalities. Ms. Cook felt that the cases cited in the letter written by Marjorie Vandor, Assistant Attorney General, applied only to situations where the state has not, by law, specifically stated that a statute preempts a municipal ordinance or municipal charter. She was of the opinion, based on the outcome of the Jefferson case, that the state was completely free to make a policy choice on the extent that home rule powers could be curtailed. To clarify for Representative Berkowitz, she acknowledged that with regard to the proposed CS, state statute would directly supersede a municipal charter if any conflict arose; in fact, on numerous other occasions state statute had already done so.

Number 1994

MS. COOK directed members to Article X, Section 5, of the Alaska State Constitution, which requires that the formation of service areas be curtailed; if service can be provided by an existing service area or city, a new service area can not be formed. The preference is to either incorporate as a city or expand existing service areas. In response to questions by Representative Berkowitz, she explained that the proposed CS would not have any application outside the context of the "service area", except if there was some form of an existing service area. Further, a service area is specifically formed through a formal process to provide either special services or a higher level of services than those already performed on an areawide basis by a borough or municipality.

MS. COOK clarified for Representative James that, even if a borough should be granted, by a vote of the people, the ability to exercise a nonareawide power, it might choose not to do so. If, however, the borough did choose to exercise its power on a

nonareawide basis, it would not preclude existing service areas from providing a higher level of services.

REPRESENTATIVE COGHILL asked if there were any prohibitions, under the proposed CS, against another service area providing services that municipalities or boroughs were not delivering due to their current charters.

Number 2323

MS. COOK warned the committee that she was not that familiar with the home rule situation, but pointed out that other types of boroughs had quite limited powers. For example, some of the second class boroughs are restricted to the point that they don't even have road powers. In the case of Haines, the state's only third class borough, it can only provide education and tax for education, on an areawide basis; according to current statute, no other services can be provided except on a service area basis. The large number of second class boroughs in Alaska have assumed a variety of powers. Some of these powers, such as road, fire, and police protection, were assumed during original incorporation and some were powers acquired after a borough was formed using the mechanism of a boroughwide vote. And occasionally, a city exercising a power in a borough might transfer that power to the borough. But generally there are a variety of existing boroughs that don't have "road making powers."

REPRESENTATIVE COGHILL expressed concern that if a home rule [municipality] or borough was prohibiting the expansion or use of service areas, then the state could run into serious trouble [because the proposed CS would not have any effect].

MS. COOK noted that a municipality with the right to form its [own] charter could elect to place restrictions on itself via the charter, as well as grant itself powers. So conceptually, there could be a municipality whose charter restricted offering road powers. In spite of this, if this hypothetical municipality granted itself the ability to form service areas, then this proposed CS would still apply. She elaborated with the example of a home rule municipality with an areawide power whose charter did not allow the home rule municipality to provide road service on an areawide basis, meaning that [the home rule municipality] won't plow the streets in cities. Or the charter might be even more restrictive by saying that [the home rule municipality] won't provide road service on either an areawide or nonareawide basis. Also, perhaps a charter might be

restrictive to the point of not allowing the formation of service areas. She acknowledged that although conceptually this last example was possible, she was not aware of any charters so restrictive.

Number 2480

MS. COOK further explained that while there are some mandatory powers that a charter can not avoid, such as planning and zoning responsibilities, and education, most powers are discretionary.

TAPE 01-12, SIDE B

Number 2463

REPRESENTATIVE OGAN asked if there was any distinction in the proposed CS between home rule boroughs and general law boroughs. He also asked for descriptions of third class, second class, and home rule [boroughs], and their powers.

MS. COOK pointed out that the proposed CS would apply equally to all classes of municipalities. Therefore, DCED's concern regarding the different treatment of home rule boroughs as compared to general law boroughs was no longer an issue. In describing the different classes of municipalities that exist now and leaving aside the question of cities, she recognized that there is the theoretical possibility of a first class borough, though none exist. She went on to say that there were several second class boroughs, one third class borough, several home rule boroughs, and three unified municipalities - a type of home rule borough that has a charter, but which has dissolved the city within its jurisdiction. With regard to powers, the third class borough of Haines can only provide an education system and has no other powers. Statutorily, no other third class boroughs may be formed. A home rule municipality has the power to adopt a charter for its own government. A second class borough does not adopt a charter for its government; instead, it has the powers specifically granted to it by state law.

MS. COOK went on to say that in her view, the distinction between a general law municipality and home rule municipality has been dramatically eroded over time, particularly since 1985 when the municipal code was rewritten. In addition, there was the tendency to grant a great deal of local control to general law boroughs, rather than take away control from home rule boroughs. Prior to 1985, general law boroughs had their powers specifically listed according to what class they were. In 1985 the legislature added a provision [to the municipal code]

allowing general law boroughs to acquire additional powers not previously on the list. Therefore, a general law municipality can exercise a great degree of individual autonomy in determining what functions are performed, even in the absence of adopting a charter.

MS. COOK confirmed for Representative Berkowitz that there is nothing to preclude a home rule municipality from enacting the provisions of Section 3, subsection (c), of the proposed CS as either an ordinance or a charter amendment.

Number 2175

WILLIAM A. GREENE, Municipal Attorney, Municipality of Anchorage Department of Law, testified via teleconference. Elaborating on a prior topic, he pointed out that a home rule municipality has all legislative powers not prohibited by law or charter. A general law municipality has only those powers granted to it by the Alaska State Legislature. He maintained his belief that there is still a problem [with the proposed CS] regarding the issue of local and special legislation. He turned to the issue of constitutional intent, which he indicated was clear; that home rule municipalities have all powers not prohibited by law or charter. He pointed out that the constitutional convention intended for matters of local concern to be handled by local voters, which is clearly the case here [with road service areas]. He also pointed out that Anchorage voters have adopted a charter, portions of which the proposed CS would override. [The proposed CS] would supplant the local charter and allow home rule cities to install differential tax zones for the same purpose that boroughs install service areas, while not requiring a vote. Thus, giving the entire authority to install differential tax zones to the assembly alone. He also noted that the proposed CS would affect not just the limited road service areas predominant in Anchorage, but also all service areas that are road or fire, except for nonroad, nonfire service areas such as parks and recreation service areas.

Number 2023

MR. GREENE referred to "areas affected" language located on page 2, line 18. He pointed out that there was no indication [in the proposed CS] if persons outside an addition to a service area, who would be affected by the addition, could vote on the change. He would argue that the proposed CS provides for a minority veto and prohibits majority rule within the local government. Further, [the proposed CS] violates Article X, Section 5, of the

Alaska State Constitution in that it impairs or impedes the annexation of an area into the city or another service area. Finally, he related his belief that the Jefferson case does not address the issue before the committee, but, instead, simply provides that for conflicts between local and state law, local law would be overridden only when it impairs or impedes the full and effective functioning of state law; otherwise, state and local laws could coexist side by side.

Number 1917

VICTOR FISCHER testified via teleconference. After confirming that he was formerly an Alaska State Senator, a member of the Territorial House of Representatives, and a delegate of the Constitutional Convention, he expressed his opinion that the proposed CS flies directly in the face of the Alaska State Constitution. [The proposed CS] undermines the local government article [Article X] and it violates the very basic principal of constitutional home rule. The letter and intent of the local government article are perfectly clear; all government powers are vested in boroughs and cities. They [boroughs and cities] are to exercise maximum self-government - ideally, full home rule. The powers of local government shall be construed liberally, that is, with least restriction. The proposed CS goes against all of these [ideals]. If the legislature doesn't like the constitutional principals and policies, then let them change [the constitution] because it is very clear that there are only boroughs and cities. Service areas are provided in the constitution as service areas of boroughs, and nothing more. [Service areas] are not units of local government, nor are they autonomous. [Service areas] are units of their boroughs and that is all. Service areas were established by borough assemblies over many years to meet local needs within their jurisdiction. Different municipalities and different boroughs follow different policies in creating service areas.

MR. FISCHER envisioned that the proposed CS would interpose the legislature into the local government system, and say that all service areas heretofore established are frozen as of this year, 2001. And then from now on, there would be overwhelming obstacles to change. Currently, the whole local government article refers to establishing a local government system that is flexible and adaptable to changing times and different geographic conditions. Local government boundaries are not frozen, unlike counties in other states. There is a specific constitutional provision for changing local government boundaries. It is assumed that service area boundaries are

limited to jurisdictions of boroughs and they are subject to the jurisdiction of assemblies. The proposed CS would make it harder to revise service area boundaries than to revise borough and city boundaries, an idea he finds preposterous. [The proposed CS] treads on the basic prerogatives of home rule municipalities, whose charters currently provide for service areas, as well as rules for boundary changes with varying voting provisions. He related his belief that the legislature does not have any business telling home rule municipalities that they must follow the legislature's rules instead of their own. He noted that he has recently worked on a consolidation charter for Ketchikan that provides more or less the same provisions, though better phrased, as [subsection] (c). He commented that the proposed CS has the same concept as last year's tax cap initiative that was overwhelmingly defeated. [The proposed CS] would, by state law, impose a "one size fits all" rule on all municipalities in Alaska and would override borough ordinances and home rule charters. He asserted that it is improper to fight parochial battles using legislation when someone is not pleased with local solutions. Further, the judgment of local elected officials should not be substituted with the judgment of the legislature. He advised the committee to reject the proposed CS and instead, focus on strengthening Alaska's local government for the benefit of all the people at the local level.

Number 1691

CHAIR ROKEBERG asked if members of the Constitutional Convention's Local Government Committee had envisioned that the entire state would be organized in boroughs, without any unorganized boroughs, which would explain why the local government provisions were written as they are.

MR. FISCHER informed the committee that the Alaska State Constitution clearly set forth the intention that the entire state was to be divided into boroughs, in plural. He said, "There was never conceived to be one unorganized borough." The minutes [of the Constitutional Convention's Local Government Committee], which he had just recently reviewed, clearly reflect that the first step (indisc.) taken was the division of the state into regional boroughs, and then there would be a process for determining which regional boroughs would organize and which would remain unorganized on a regional basis. Mr. Fischer referred to SB 48, which he felt would address this [unorganized boroughs] or at least move in that direction.

REPRESENTATIVE BERKOWITZ stated "I just want to note ... that after hearing the Speaker [of the House] today, say how wonderful it was [that] we could have the folks who wrote the constitution come and tell us how to interpret it, and hearing Representative Coghill say more or less the same thing, I'm looking forward to see how they look at Senator Fischer's testimony here today and how they view this bill in it's totalities." Representative Berkowitz thanked Mr. Fischer.

Number 1585

GAIL DIAL, Birchwood Supervisor, Chugiak, Birchwood, Eagle River Rural Road Board of Supervisors (CBERRRSA), testified via teleconference. She clarified that the Anchorage Municipal Assembly passed a resolution last Tuesday supporting SSHB 13. She noted that the Municipality of Anchorage operates under a service area concept, which means that the residents of particular areas have voted on whether to receive and pay taxes for a particular service from the municipality. The issue in the proposed CS is simply one of clarifying the existing state laws and the municipal charter. She believes that is an issue supported by the Anchorage Assembly. The only difference she sees between the existing laws (indisc.) to the service districts and the proposed CS is that varied mill levies within a service district would be allowed. She went on to say that the service district of her area has 20 percent of the population of the Municipality of Anchorage, with landmass equal to the area of people (indisc.) Anchorage. In addition, her area is separated [from the city] by two military bases, a mountain, and a river. She pointed out that Girdwood was another area in the same situation. Her area has road maintenance, fire, and park services, which are all managed by separate, volunteer boards. The ability to have a tax variation within a service district would be a benefit to both their service district and the Municipality of Anchorage, which is also a road service district. There are 26 separate service districts that provide road and drainage services in the Municipality of Anchorage. She explained that because their [CBERRRSA] area is so large, with approximately 200 miles of road to be maintained under a variety of circumstances, it would be advantageous to have one service district with different levels of service. She does not believe that passage of the proposed CS will result in mass confusion

EDWARD C. WILLIS testified via teleconference. He informed the committee that he had submitted his [supporting] testimony in writing and wished to yield his time to other speakers.

Number 1280

LEE JORDAN testified via teleconference. He felt the proposed CS would protect the rights of people who live in service areas and depend on those services. As an example, he brought up the formation in 1964 of the Greater Anchorage Area Borough, during which, the people of Chugiak saw an opportunity to provide their fire department with a working mechanism that would allow them to operate successfully. He believes the proposed CS deals with the dual majority vote in service area questions, whether one is created, altered, or abolished; and he feels the dual majority vote should be protected.

BOBBI WELLS, Officer, Birchwood Community Council, testified via teleconference. She did not see any problems with enacting the proposed CS. She feels the state has the authority and the duty to safeguard the right of its citizens to choose, and nothing in the proposed CS precludes the state from doing this. She supports the proposed CS.

FINIS SHELDON testified via teleconference in support of the proposed CS. Also, he wondered if the proposed CS would deal with the court's concerns.

REPRESENTATIVE BUNDE answered "No, that was for area wide greater good and this, of course is for neighborhood roads, so I don't think that arguments there were germane." As he understood, the Alaska Supreme Court case on police protection abrogated the charter, saying it was for a greater good. He suspected that the court would not feel that a neighborhood road was at the same level as police protection. He confirmed for Chair Rokeberg that the proposed CS only pertained to existing road and fire service areas.

Number 0854

BONNIE NELSON testified via teleconference in support of the proposed CS. In addition, she strongly supported any legislation that would strengthen local control on all services, such as parks and recreation, transit, and sidewalks in downtown Eagle River.

DARYL NELSON testified via teleconference. He noted his support of local control and belief that the Chugiak/Eagle River area should maintain its own services. He pointed out that 30 years ago the Chugiak/Eagle River area voted to have its own

community, while Anchorage had voted it down. He would rather maintain his own services as much as possible because, in his view, Anchorage is providing less and less when Chugiak/Eagle River requests services.

Number 0658

JAMES SWING, Director, Public Works Department, Matanuska-Susitna (Mat-Su) Borough, testified via teleconference. He explained that the voters of the Mat-Su borough, a second class borough, chose the service area concept to provide road maintenance services. The 16 road service areas of the Mat-Su valley, though of varying sizes, all have in common: the same powers granted by ordinance, contracts with contractors specifying the same maintenance requirements, and roads maintained at the same level of service. In addition, these areas have similar mill rates and similar road conditions. The borough administers all contracts and in some cases, such as patching potholes and sealing cracks, performs the maintenance service as well. He also pointed out that their service area supervisors are not elected. Rather, they are appointed by the borough mayor and confirmed by the assembly. These supervisors act only as advisors to the assembly, recommending capital improvements and projects, and mill rates; for all practical purposes, it is the borough that contracts and controls all activity within service areas. Mr. Swing noted that [the Mat-Su Public Works Department] is opposed to the proposed CS primarily due to the rapid growth experienced in their area, because there would be too much delay while waiting for voter approval on service area issues. For example, if a proposed subdivision crosses service area boundaries, particularly since all roads are built to borough standards, why wait to provide road maintenance services until the next general election. In conclusion, Mr. Swing recommended that should the proposed CS move out of committee, that it be amended to include a six percent factor in road service areas similar to fire service areas.

MR. SWING, in response to questions and statements posed by Representative James, related that the Mat-Su Borough did not have areawide powers; it has road powers only through the service areas. However, because [the borough] has been working over the years to ensure that the roads in their contiguous service areas have the same level of service, it appears, to the casual observer, as though the Mat-Su valley does have areawide service powers. He noted that these service areas were formed in the 1980's when the state provided a lot of money for

maintenance, and often the boundaries don't seem to make much sense. He acknowledged that consolidation of some service areas might be an advantage to the people in those areas. As an explanation of what road service commissioners do, Mr. Swing reiterated that they are advisory only, though they do provide the important function of being the eyes and ears of the community. Addressing the question of why a service area may have money left over at the end of the year, he recounted situations whereby a service area taxes itself above and beyond the cost of maintenance and thus has money left for capital improvements within that specific road service area.

MR. SWING further explained for Representative Rokeberg that the Mat-Su Borough has separate fire service areas with variable mill rates, with the mill levies being based on the assessed valuation of the service area. Emergency Medical service, however, is an areawide function because the people voted it to be such.

[Please note that the tape was changed early and thus there is a brief pause in recording.]

TAPE 01-13, SIDE A
Number 0009

MICHAEL GATTI, Borough Attorney, Matanuska-Susitna Borough, testified via teleconference in opposition to the proposed CS. He said he feels [the proposed CS] is regressive and detracts from local control in that it takes away the authority of the assembly to determine what is to occur or not occur. Also, that it raises serious constitutional and policy considerations for the administration of local government, as well as questions as to how the constitution fits into this particular proposed CS. He found former Senator Fischer's testimony to be quite apt and compelling in demonstrating why service areas were adopted. Other testimony, both pro and con, has illustrated the distinctions found throughout the state in the way that local municipalities treat service areas. These distinctions between service areas as they exercise maximum local control, are a result of how individual municipalities want to see functions accomplished. He maintained that the proposed CS would take away from local self-control. Elaborating on the issue of fire service areas, he pointed out that under Title 18 there is an allowance for mutual aid so that fire service responsibilities can be shared among the various fire services. This is an example of creating efficiencies on the local side for services. He related his belief that in these instances it is not "charged

back." However, he noted that fire service is different from road service.

MR. SWING informed the committee that the Mat-Su Borough, a second class borough, has areawide, nonareawide, and service area powers that are exercised. Because of the way in which those powers are exercised, eventually the Mat-Su Borough will have to review the form of governance it is engaged in. Therefore, the borough may find that changing from second class status would be advantageous in the future. The consolidation of service areas by the assembly is one tool that determines governmental efficiencies. In an era of rapid growth, the proposed CS detracts from the ability of local assemblies to accomplish governmental efficiencies - an already difficult task.

CHAIR ROKEBERG turned over the gavel to Vice Chair Ogan.

Number 0318

MR. GATTI cautioned the committee that it must carefully scrutinize the proposed CS, and any similar legislation, due to the serious constitutional issues raised. Recognizing that, should a court case come about because of the constitutional concerns of the proposed CS, lawyers on each side of the issue will have opposing viewpoints; therefore, he didn't see any need to take the risk of having [the proposed CS] struck down in court to begin with. Mr. Gatti mentioned that nothing in the proposed CS would preclude attempts of annexation in the Knik/Fairview area, because it is the local boundary commission that governs annexation procedures.

Number 0481

MR. GATTI, in response to Vice Chair Ogan, predicted that the proposed CS would conflict with the following sections of Article X. Section 1, because it calls for maximum local government with a minimum of local units, as well as liberally construed municipal powers. Section 2, because service areas are not units of local government. And Section 5, because of service area/municipality issues. In response to Representative James, Mr. Gatti clarified that he did not consider service areas to be local government, simply a geographical taxing area that allows for exercising a higher or different level of service within the boundaries of that service area. Traditionally, local assemblies have had the ability to abolish and consolidate service areas without a minority vote of the

people. He pointed out that in the majority ruled democracy of America, even if some members of the minority disagree, the majority determines what happens. The proposed CS does exactly the opposite.

REPRESENTATIVE JAMES remarked that it appears to her as if, in some instances, the concepts and abilities of road service areas have been misrepresented; whereby, the road service areas often behave more like units of local government.

MR. GATTI offered the argument that, at least in the Mat-Su Borough, the advisory road service area supervisors and their opinions are highly respected by the Mat-Su Borough Assembly. It is a rare day that the assembly ignores the opinions of the road service area supervisors. He related his belief that the supervisors perform a tremendous service and do an excellent job. Nevertheless, they are not another form of local government, and to consider them so is wrong

VICE CHAIR OGAN returned the gavel to Chair Rokeberg.

Number 0830

OCIE ADAMS testified via teleconference. He asked whether or not the proposed CS would, by requiring a vote of the people, preclude the Anchorage Borough from annexing a portion of the Knik road service area.

REPRESENTATIVE BUNDE related his view that it could not happen if they were already part of the Anchorage area, without a majority vote of both entities involved.

CHAIR ROKEBERG pointed out that this particular situation appeared to be an annexation/boundary issue and was not germane to the topic of service areas.

MR. ADAMS concluded by saying that he shared some of the same concerns expressed by the Matanuska-Susitna Borough. He noted however, that he was there to speak on behalf of the people of the road service areas, who support the proposed CS. He himself would support it if it were to include a six percent limit on the size of changes to a road service area.

Number 0968

ABIGAIL FULLER, Vice President, Kachemak Area Coalition Inc. DBA, Citizens Concerned About Annexation, testified via

teleconference in support of the proposed CS. Her testimony is as follows:

You may wonder what this bill has to do with annexation, but the basic issue is the same - who gets to decide. And we do have a service area that may be affected by annexation.

I understand the gist of this bill is that the people within a special service area should be the ones to approve any changes to the service area, rather than have the changes imposed by the ruling municipality. (I'm including boroughs in the term municipality.) Service areas, like municipalities, are about collecting taxes and providing services. Changes to a service area, or a municipality, aren't just lines on a map; they involve changing the taxes paid and services received by a group of people. In a free country, it is the people who make these choices, not some branch of government. Making changes without a vote is socialism. This concept applies equally for boundary changes to cities and boroughs; the affected people have a right to vote on what they will have for local government.

As an example, last year we established a new fire and emergency services area, which was approved by the voters residing in the area. The City of Homer is trying to annex a portion of the new service area, which if approved would take a significant bite out of it. Under current law it is entirely up to the state to make this decision. We get no vote whatsoever. We voted to set up this service area but it can be taken away against our will, without a vote, at the whim of the government. This is wrong, and needs to be changed. Not only should the service area itself have to approve this change, but the people who will have their service area replaced by city government have a right to vote on this change.

All people deserve the level of autonomy promised by this bill. Governor Knowles was wrong to veto last year's version. Taking power from government, at whatever level, and giving it to the people is a good thing. It all boils down to the same question - who gets to decide local government issues - the state or the people? It should be the people.

I want to thank you for removing the restriction on second class boroughs of under 60,000 population. This does need to apply to all boroughs, and all service areas. And we do support this bill. Thank you.

Number 1086

SALLY DODD-BUTTERS, Citizens Concerned About Annexation, testified via teleconference. She declared, that with the change removing the 60,000 population limit, she was wholeheartedly in favor of the proposed CS. She raised the point that local control should be by the voters, not "control of the voters," on issues of self determination that directly affect their lives. She contended that if the proposed CS flies in the face of state law or policy, and the Alaska State Constitution, then it is time to correct the state law, policy, and constitution. In regard to the issue of annexation or taxation without representation, Ms. Dodd-Butters felt that needed to be changed.

Number 1228

RICK NAVIN, Director, Direct Service Department, Fairbanks North Star Borough, testified via teleconference. He acknowledged that former Senator Fischer's testimony reflected his understanding of the origin of the authority to create service areas, and how they are completed and administered. He noted that in Fairbanks, appointed officials, not elected ones, run the service areas. With regard to Article X, Section 5, of the Alaska State Constitution, he feels the proposed CS would put a unique stricture on a creating body. Currently, there are mechanisms that allow for creation of a borough government, as well as allow changes to a portion of a borough government to occur. Passage of the proposed CS would take away this authority to effect change. Furthermore, even though a number of service areas exist other than fire and road, the proposed CS only addresses those two authorities. He also expressed concern with the concept of exempting fire service areas of six percent or fewer parcels from annexation. In spite of these concerns, he was in favor of allowing for disparate tax rates within a service area. He anticipated that it would become a valuable tool to the borough as they bring new service areas, or parts of service areas, to parity with existing service area conditions. He is not sure however, if it would be utilized much to allow for different levels of service within service areas.

MR. NAVIN reported that there are 111 service districts in the Fairbanks North Star Borough: 5 fire service areas; 2 specialty areas, one streetlight, one sewer; and 104 road service areas. He added that the bulk of the road service areas connect to either other service areas or to state maintained highways, but he did not have specific numbers with him. He noted the concept of requiring elections as [more support] for opposing the Proposed CS because the costs [for the elections] would have to be absorbed by the local government who in turn, would pass them on to existing service areas.

Number 1550

KEVIN RITCHIE, Executive Director, Alaska Municipal League (AML), said he appreciated the opportunity to discuss the issues raised by the proposed CS, particularly with regard to the Alaska State Constitution and its meaning. Another area of concern that has engendered thoughtful discussion is the issue of balance between where local decisions ought to be made and at what level. He directed members to the letter that outlines the position of AML.

MR. RITCHIE pointed out that the proposed CS would overrule local charters, which form the basis of local government. Furthermore, assemblies can already do what is proposed in the proposed CS, and thus he feels that the proper place for that type of discussion is at the local level. He also pointed out that though Section 3 is problematic, as the previous testimony illustrated, Section 4 [differential taxation] seems like a good tool to give local governments. He used an example of where different response times in a fire service district result in differential "ISO ratings" for fire insurance.

MR. RITCHIE, in response to a question from Representative Coghill, said that the proposed CS appears to impose a "one time solution" on all the municipalities at the same time, even though voters in different areas might benefit more from solutions derived locally and tailored to their specific needs. He related his belief that the spirit of what the constitutional framers intended, was for those types of issues to be handled by local governments through ordinances, charters, and initiatives. And while he recognized that community councils and service areas have a lot of political power, he reiterated that the individual needs of the community should be looked at as a whole, at the local level, rather than mandated at the state

level. His view is that the proposed CS is based on theoretical problems, rather than addressing any current problems.

Number 1886

REPRESENTATIVE JAMES expressed frustration with the current way in which road service powers are viewed and treated, both by the municipalities, and the people in road service areas.

CHAIR ROKEBERG reiterated that he feels the proposed CS raises policy issues notwithstanding any constitutional issues. And on the point of policy, it is how far to devolve the rights of democracy down to the lowest denominator of people. In contrast to the position he perceives the AML holds, he believes that the legislature should not be restricted from overriding a charter simply because all the local people voted on it [the charter].

MR. RITCHIE clarified that the question raised is, between the state level and the assembly level, who should set the rules for the framework of how decisions are made. He elaborated that at the local level people actually do have a vote because they can change the representatives or they can bring forth an initiative petition.

REPRESENTATIVE JAMES commented that when people are not getting a desired response from their local government, they come to the legislature.

CHAIR ROKEBERG noted that sometimes it is easier to change a charter at the state level or through the courts, then at the local level.

Number 2079

CHAIR ROKEBERG closed public testimony and indicated the proposed CS would be held over until the next available meeting, at which time questions by the committee could be addressed though no additional public testimony would be taken.

ADJOURNMENT

Number 2095

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:30 p.m.