

ALASKA STATE LEGISLATURE
SENATE COMMUNITY & REGIONAL AFFAIRS COMMITTEE

February 14, 2001
1:37 p.m.

MEMBERS PRESENT

Senator John Torgerson, Chair
Senator Alan Austerman
Senator Randy Phillips
Senator Georgianna Lincoln
Senator Pete Kelly

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

SENATE BILL NO. 75

"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

PREVIOUS COMMITTEE ACTION

SB 75 - No previous action recorded

WITNESS REGISTER

Senator Rick Halford
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Bill sponsor

Susan Gorski
Executive Director
Chugiak/Eagle River Chamber of Commerce
Chugiak, AK 99567

POSITION STATEMENT: Supports SB 75

Larry DeVilbiss
Chugiak, AK 99567

POSITION STATEMENT: Supports SB 75

Ocie Adams
Chugiak, AK 99567

POSITION STATEMENT: Supports SB 75

William Green
Municipal Attorney, Municipality of Anchorage
P.O. Box 196650
Anchorage, AK 99519

POSITION STATEMENT: Opposes SB 75

Kevin Ritchie
Alaska Municipal League
217 Seward
Juneau, AK 99801

POSITION STATEMENT: Opposes SB 75

Jeff Bush
Deputy Commissioner, Community & Economic Development
P.O. Box 110800
Juneau, AK 9981-0800

POSITION STATEMENT: Administration opposes SB 75

ACTION NARRATIVE

TAPE 01-6, SIDE A

Number 001

CHAIRMAN JOHN TORGERSON called the Senate Community & Regional Affairs Committee meeting to order at 1:37 p.m. Senators Austerman, Phillips, Lincoln and Chairman Torgerson were present.

There was one item on the agenda, SB 75. Senator Halford was present to give the sponsor's statement.

#SB 75

SB 75-SERVICE AREAS:VOTER APPROVAL/TAX ZONES

SENATOR HALFORD, bill sponsor, thanked the committee for hearing the bill on short notice. He said that SB 75 is similar to a House bill currently under consideration. His interest stems not just from the Chugiak/Eagle River area but also from watching happenings in the Mat Su Borough. The bill offers protection of service areas. This is particularly important in large areas such as the Mat Su Borough where population densities vary and there are wide variations in services wanted and needed between the different areas. He said there was difficulty getting voter approval for needs in the Palmer/Wasilla core from the residents of Trappers Creek and Talkeetna where that level of service isn't wanted. SB 75 aims to protect the service area system.

SENATOR HALFORD said he would answer any questions or have his

staff go through the bill line by line. It is his hope that a workable version of the bill that is not opposed by municipalities can be passed so that services can be provided at different levels within municipalities and boroughs.

CHAIRMAN TORGERSON asked for questions.

He noted that there are conflicting legal opinions, particularly about the House version, that had to be resolved. Tam Cook, legislative legal advisor, doesn't believe there is a constitutional problem.

He called off-net testifiers.

SUSAN GORSKI, executive director for the Chugiak/Eagle River Chamber of Commerce, represents 350 members. They want to go on record in support of SB 75. They feel that service areas are an excellent and cost effective way to provide services.

The wording in the bill reflects the chamber's sentiments. The community and the chamber value the philosophy of self-determination of government services.

CHAIRMAN TORGERSON thanked Ms. Gorski and called on the next testifier.

LARRY DeVILBISS, a local farmer from Mat Su, strongly supports SB 75. He's on the local assembly but isn't representing them because they haven't, as yet, taken a position.

He supports the bill because he is in favor of the "maximum amount of power to the lowest level of the people." In his opinion, this is how government should operate. Small service areas should be able to determine their level of services and not have to rely on the larger areas.

CHAIRMAN TORGERSON thanked Mr. DeVilbiss and asked for additional testimony.

OCIE ADAMS, supervisor for service area 17 Knik, advised that he was speaking for himself but said the residents do support SB 75 and are interested in seeing their rights protected from consolidation. They have raised their mill rate to maintain their road system and don't want to have their money help pay for areas that haven't done the same.

He thanked Senator Halford for addressing these issues and sponsoring SB 75.

CHAIRMAN TORGERSON thanked Mr. Adams and said the next testifier would be from the Municipality of Anchorage.

WILLIAM GREENE, municipal attorney for the Municipality of Anchorage, said the Anchorage Municipal Assembly has passed a resolution in support of HB 13, a bill similar to SB 75, and the municipality opposes it.

His purpose in testifying is to provide the same legal opinion that he has given to the Municipality of Anchorage and the Mayor and Administration. It is his opinion that both HB 13 and SB 75 violate article 10, sections 1 and 3. "It specifically impairs the grant of power to home rule municipalities of which Anchorage is one." It impedes and impairs Article 10, section 5 and violates Article 2, section 19. The latter covers boroughs, including home rule boroughs and unified municipalities, but does not cover home rule cities. There is no logical basis for this exclusion. Although home rule cities don't normally have service areas, they may establish differential tax zones, which are effectively the same as service areas in boroughs.

MR. GREENE believes this bill is contrary to the home rule form of government that has served this state so well.

He made reference to the documents that were presented to the House Community and Regional Affairs Committee:

1/23/01 letter from the Alaska Municipal League to Chairmen Meyer and Morgan.

5/19/00 veto letter from the Governor regarding SB 133.

2/05/01 Alaska Department of Law memorandum.

Testimony of Vic Fischer, Alaska Constitutional Convention participant and expert on home rule government in Alaska.

He said this bill has been opposed by the Governor, Anchorage Municipal League, Mayors of Anchorage and Fairbanks, State Department of Community and Regional Affairs, Local Boundary Commission and Mr. Vic Fischer. It overrides the Anchorage Municipal Charter and takes away the self-determination embodied in the Alaska Constitution.

The municipal charter and service areas in Anchorage are largely

governed by requirements for voter approval and this bill would limit their ability to determine the type of service area they would want.

He said he would answer questions or provide the committee with copies of the documents referred to and, if desired, a brief.

Number 245

CHAIRMAN TORGERSON thanked Mr. Greene and asked him whether he had read Tamara Cook's legal opinions and did he agree or disagree with her.

MR. GREENE said he has read the 1/25/01 and 1/26/01 opinions from Tamara Cook and he respectfully disagrees with her analysis and her view of the legislative history of the Alaska Constitution.

SENATOR PHILLIPS asked if he had seen the Attorney General's opinion of 2/5/01.

MR. GREENE said he has.

SENATOR PHILLIPS said the legislature wouldn't be deciding what was constitutional or not, that is a matter for the courts.

SENATOR LINCOLN apologized for not having HB 13 in front of her and said that she wasn't sure whether the bills were identical or not. She had Tam Cook's legal opinion on HB 13 and wanted to know if it was identical to SB 75.

CHAIRMAN TORGERSON read from Ms. Cook's letter dated 2/9/01 stating that she isn't concerned with the constitutionality of the bill. She cited Article 10, section 5, giving assemblies power over service areas, subject to provisions of law or charter, as a point for its constitutionality.

He asked Mr. Greene if he was the attorney for the assembly.

MR. GREENE said that as representative for the municipality, he represents both the assembly and the administration.

SENATOR PHILLIPS asked why the assembly passed a resolution in support of HB 13 and excluded parks and recreation.

MR. GREENE wasn't sure, but he suspects that section 3 of HB 13 did not apply to parks and recreation service areas, only to fire and road service areas. This is a difference between the two bills.

SENATOR PHILLIPS asked how many service areas there are in Anchorage that relate to parks and recreation.

MR. GREENE said there are three: Girdwood, Anchorage and Chugiak/Eagle River.

Number 921

CHAIRMAN TORGERSON said his job is to come up with a bill that isn't vetoed and caters to the wishes or intent of the sponsor without jeopardizing municipal powers. He asked for suggestions to change the bill to make it more satisfactory without "gutting it" entirely.

MR. GREENE said he'd like to look at the first sentence in section 3; it is a reflection of what is already in the Anchorage Municipal Charter.

The second sentence deals with the argument that occurred with the expansion of the Hillside Police Service Area. He noted that this bill does not apply to police service areas but the argument is applicable. That is that people outside the existing police service area should have a separate dual majority vote on whether or not they accept police services. In this instance, the existing police service area was dissolved and the new police service area that encompassed an additional area of the municipality was put before the voters as a whole and was approved. The second sentence would prohibit what the Supreme Court of Alaska has found permissible under the Anchorage Charter. This would override the Anchorage Municipal Charter, which was approved by the voters.

SENATOR PHILLIPS asked if he was talking about unification when he said "approved by the voters."

MR. GREENE said yes.

SENATOR PHILLIPS said, "In our neck of the woods, we did not even have an opportunity to vote on that, because we were in a vote of separation of the borough."

MR. GREENE said that statement is correct.

SENATOR PHILLIPS wanted that on the record.

MR. GREENE said that the third sentence, beginning on line 15, "requires an alteration of combination of service areas to be voted on by voters both within the existing service area as well as the second service if there is one. It also requires a vote by people

outside both of those service areas that are affected by the proposal." For instance, an assembly under municipal power could combine two fire service areas without a vote and this bill would prohibit this. This bill would also require a vote of people who are affected by that change of service area. From a legal perspective, it overrides the present status of the Anchorage Municipal Charter.

CHAIRMAN TORGERSON said that perhaps the wording could be improved for areas outside the service areas. He thanked Mr. Greene for his participation and called Kevin Ritchie to testify.

KEVIN RITCHIE, Alaska Municipal League (AML), said that the policy statement adopted by members of the AML, in November, was in the committee packets. It states opposition to the reduction of home rule powers that municipalities have to determine what would be best for service areas on a local level.

He quoted the constitution saying, "Service areas to provide special services within an organized borough may be established, altered or abolished by the assembly, subject to the provisions of the law or charter." Municipalities have different needs and views that may change over time. It's the same position the AML took on the tax cap issue. Local communities could vote for their own tax caps and the AML looks upon that as a local decision. However, a statewide tax cap was opposed because it violates local choice.

He said that the Constitutional Convention addresses this issue. Section 4 of the bill allows assemblies the authority to create different tax rates within service areas and is thought to be desirable to help make services more efficient in different service areas. Section 3 is different, as Mr. Greene enumerated in his testimony. It will affect different municipalities differently but it is his understanding that "a home rule municipality can make that decision by charter or ordinance and a second class borough can make the decision by ordinance if that's how they want to treat service area issues in their community."

Number 432

SENATOR LINCOLN said that in reading the letter from Mr. Ritchie she understands that there is not opposition to the legislation per say but to Section 3 of the legislation due to constitutional issues. She asked Mr. Ritchie whether he had read the response from Ms. Cook, legal counsel to the legislature and, if so, to give his response to her opinion.

MR. RITCHIE said he had read the opinion and he doesn't debate

attorneys on legal issues. However, it is his understanding that this bill would make decisions for municipalities whether the voters and assemblies were in favor of those decisions or not. This would limit the options of municipalities. He said that Juneau has consolidated 15 service areas into 2 and provisions in this legislation could have made it difficult to accomplish this consolidation. Each community should be able to make this type of decision locally.

Number 450

SENATOR PHILLIPS said Mr. Ritchie made the point that decisions are best made on a local level but then he contradicts himself when it comes to service areas because they are "the local of the local." He asked why they didn't favor giving service areas self-determination. He said that in his area, the service areas are running parks and recreation, schools and roads "whether the Municipality of Anchorage knows it or not," and they're doing a fine job. People in his area are satisfied with local determination and the unification of government won't be readily accepted.

CHAIRMAN TORGERSON thanked Mr. Ritchie and said again that it is his intention to work through the bill. He then called Jeff Bush to testify.

JEFF BUSH, Deputy Commissioner to Department of Community and Economic Development, testified, on behalf of the Administration, in opposition to the bill for the same reasons as those given in last year's veto letter for HB 133. They are much more comfortable with the current legislation than either HB 133 from last year or this year's HB 13. However, the Attorney General's office is on record stating that there are constitutional issues raised by section 3 just as Mr. Greene outlined. It isn't uncommon for there to be differing legal opinions and the Attorney General disagrees with legislative legal counsel on the constitutionality arguments.

He said that the following is his understanding of the legal analysis. "Before the legislature can restrict a home rule municipal government authority they must demonstrate an overriding state interest. To date, there has been no evidence of the state interest as opposed to local interest that would justify those limitations." Of course there can be a difference of opinion of what is an overriding state opinion but that from a policy standpoint, the administration opposes the bill for the same reasons. His department continues to support the municipal form of government and the strength of municipalities to make decisions as the "ultimate local entity in this state." Service areas are not a government entity rather, municipalities create them and they

shouldn't have the powers given to the borough. They are a smaller unit within the borough. As a matter of policy, the appropriate place for decisions to be made is at the municipal level and not at the service area level.

The Administration has no objection to Section 4, relating to different tax zones. Having differential tax zones allows multiple service areas to share administration costs. This provision makes it clear that this is acceptable.

Number 530

"Nothing in this bill can not currently be done at the local level by the municipalities if they were to choose to do so."

His last point relates to borough formation and the appropriateness of the borough form of government. It is a philosophical decision that the borough is an appropriate form of government and that form of government should be empowered. There should be fewer disincentives to forming new boroughs. This bill seems to be philosophically opposed to this position and actually takes away the powers of the borough and gives it to smaller entities in the same region. He wants the Legislature to consider these philosophical issues when it considers the bill.

CHAIRMAN TORGERSON said that borough powers are area wide and these powers are non-area wide so they're different.

MR. BUSH said that is correct but that this bill is taking away area wide powers and redistributing them at a smaller level.

CHAIRMAN TORGERSON said "possibly in a home rule but not in the second class boroughs."

CHAIRMAN PHILLIPS read the conclusion from the Attorney General's legal opinion. It said, "This bill raises complex policy and legal concerns, some of which have yet to be decided by the courts."

MR. BUSH said that was written in response to the original HB 13 so part two of the opinion no longer applies to either SB 75 or the current version of HB 13. The local and special legislation analysis doesn't apply.

The first section of the opinion relating to Section 3 still does apply and it concludes that, "In sum, we believe there are serious issues as to whether this bill improperly limits home rule municipality's powers to control their service areas as matters of local concern." It doesn't say that it is unconstitutional; it says

it raises serious issues.

Number 573

SENATOR LINCOLN said that she finds it ironic that this legislation supports more local control and allows voting on such issues and yet SB 48 says people can't vote on matters such as whether they will join or form a borough.

CHAIRMAN TORGERSON said he's working on that too. He supports the intent of the bill and is interested in working through the issues to come to some sort of compromise.

The bill was held in committee and the meeting was adjourned at 2:25 p.m.

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