

ALASKA STATE LEGISLATURE
SENATE COMMUNITY & REGIONAL AFFAIRS COMMITTEE

March 7, 2001
1:37 p.m.

MEMBERS PRESENT

Senator John Torgerson, Chair
Senator Alan Austerman
Senator Randy Phillips

MEMBERS ABSENT

Senator Georgianna Lincoln
Senator Pete Kelly

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 48(CRA)

"An Act relating to the determination of full and true value of taxable municipal property for purposes of calculating funding for education and certain other programs, to incorporation of third class boroughs, to incorporation of certain boroughs in the unorganized borough and annexation of portions of the unorganized borough to boroughs and unified municipalities, and to the formation of separate unorganized boroughs; and providing for an effective date."

MOVED CS SB 48 (CRA) OUT OF COMMITTEE

SENATE BILL NO. 78

"An Act relating to municipal regulation of radio antennas."

HEARD AND HELD

SENATE BILL NO. 88

"An Act relating to metropolitan planning organizations and to establishment of a metropolitan planning organization for the Anchorage metropolitan area; and providing for an effective date."

MOVED SB 88 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

SB 48 - See Community & Regional Affairs minutes dated 1/31/01, 2/7/01 and 2/28/01.

SB 78 - No previous action recorded.

SB 88 - See Transportation minutes dated 2/20/01.

WITNESS REGISTER

Steve Ginnis
Tanana Chiefs Council
Fairbanks, AK 99701
POSITION STATEMENT: Testified on SB 48.

Pete Hallgren
Box 1625
Delta Junction, AK 99737
POSITION STATEMENT: Testified on SB 48.

John Glotfelty
HC 60 Box 4192
Delta Junction, AK 99737
POSITION STATEMENT: Testified on SB 48.

Russ Bowdre
P.O. Box 1048
Delta Junction, AK 99737
POSITION STATEMENT: Testified on SB 48.

Abigail Fuller
P.O. Box 2845
Homer AK 99603
POSITION STATEMENT: Testified on SB 48.

Glen Marunde
Tok, AK 99780
POSITION STATEMENT: Testified on SB 48.

John Kunik
P.O. Box 83
Glennallen, AK 99588
POSITION STATEMENT: Doesn't support SB 48.

Jane Brown
P.O. Box 92
Glennallen, AK 99588
POSITION STATEMENT: Testified on SB 48.

Art Griswold
HC 60 Box 4493
Delta Junction, AK 99737
POSITION STATEMENT: Testified on SB 48.

Kevin Waring
Chairman, Local Boundary Commission
550 W. 7th Ave Ste 1790
Anchorage, AK 99501-3510
POSITION STATEMENT: Testified on SB 48.

Dan Bockhorst
Local Boundary Commission staff
550 W. 7th Ave Ste 1790
Anchorage, AK 99501-3510
POSITION STATEMENT: Testified on SB 48.

Wayne Shafer
HC01 Box 538
Slana, AK 99586
POSITION STATEMENT: Testified on SB 48.

Albert Reyerse
SR Box 470
Slana, AK 99586
POSITION STATEMENT: Testified on SB 48.

Wayne MacMurry
P.O. Box 952
Slana, AK 99586
POSITION STATEMENT: Testified on SB 48.

Daniel Boone
P.O. Box 53
Chitina, AK 99566
POSITION STATEMENT: Testified on SB 48.

Sara Boario
Staff to Senator Lincoln
Capitol Building, Room 11
Juneau, AK 99801
POSITION STATEMENT: Explained amendment on SB 48.

Larry Halverson
346 W. Beluga Ave.
Soldotna, AK 99669
POSITION STATEMENT: Supports SB 78.

Ed Back
169 E. Beluga Ave
Soldotna, AK 99669
POSITION STATEMENT: Supports SB 78.

Kurt Parkan
Deputy Commissioner
Department of Transportation & Public Facilities
3132 Channel Drive
Juneau, AK 99801-7898
POSITION STATEMENT: Testified on SB 88.

Bill Cummings
Assistant Attorney General

Department of Law
Transportation Section
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Commented on SB 88.

ACTION NARRATIVE

TAPE 01-8, SIDE A

Number 001
#SB 48

SB 48-MUNICIPALITIES:INCORP/PROPERTY VALUATION

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

The first order of business was CSSB 48(CRA). The committee adopted the CS at the previous meeting so the working document was 22-LS0025\S Cook 2/27/01. Teleconference testimony was accepted and limited to three minutes. Written testimony was to be faxed to (907) 465-4779 for inclusion in information packets.

STEVE GINNIS, President of the Tanana Chiefs Conference, supports Senator Lincoln's amendment to SB 48 requiring that local elections be held in areas under consideration for incorporation. In addition, wording on page 4, line 7, should be changed from "at least one meeting" to "an adequate number of meetings."

On February 3 [10], 2001 he testified before the committee and posed questions concerning the financial impacts this bill would have on the state government and he wondered whether his questions had generated discussion among committee members.

Number 65

CHAIRMAN TORGERSON said that there is some old data on model borough boundaries but the bill doesn't speak to that.

SENATOR PHILLIPS asked what number of meetings might be acceptable.

MR. GINNIS didn't have an absolute number but using the term adequate would work.

SENATOR PHILLIPS said "at least one meeting" created a floor not a ceiling on the number of meetings held.

MR. GINNIS said there are 43 villages in his region and he wants assurance that there wouldn't be just one meeting held in Fairbanks for the entire region.

CHAIRMAN TORGERSON said the Local Boundary Commission (LBC) has population guidelines governing where meetings would be held. He cautioned that there is no guarantee that the entire area under discussion would be in one borough.

Number 35

PETE HALLGREN, Economic Development Director from Delta Junction, said the city passed a resolution opposing SB 48 as currently written. However, they do have several recommendations that would make the legislation more palatable. Mr. Hallgren personally believes that if proper boundaries were drawn for the school district and the City of Delta Junction was dissolved when a borough was formed and there was no requirement to adhere to the model borough boundaries then there could be a good borough formed in the Delta Junction area. Requiring the new borough to encompass the entire model borough boundaries would create many problems.

The LBC appears to have a bias against individual community boroughs or municipalities expanding to borough size. He hopes the legislature aids borough formation by overturning the regulation favoring the model boroughs boundaries.

Next, boroughs shouldn't be forced to annex areas they don't want. Finally, "There's a provision in there saying that if you don't have a property tax in your borough and you're in the pipeline area, if you don't have property tax on the pipeline you don't have as much local school support. Sounds nice, but I don't know any areas along the pipeline which could take advantage of that provision, at this point."

JOHN GLOTFELTY from Delta said the LBC will hold the minimum number of meetings required so the Tanana Chief's concern is valid. He supports the idea that individuals should be able to vote for or against annexation. Next, he isn't in support of the model borough boundaries that combine large areas. People need options to determine organization rather than giving regulatory powers to the LBC.

Number 249

RUSS BOWDRE from Delta is particularly concerned about not being able to vote for or against annexation. To refute the charge that unorganized areas don't support schools and government, he read

from the 2/11/01 Fairbanks News Minor that referred to the amount of support outlying areas bring to both Anchorage and Fairbanks. He estimated that his family and families like his that live in outlying areas spend close to 80% of their incomes in the Anchorage and Fairbanks economies. He said that this money doesn't return to their local economies and they're not complaining but he resents hearing that they aren't paying their fair share. He says they're supporting both economies.

Abigail Fuller, representing Citizens Concerned About Annexation, said she has no objection to the new section but Section 4 is a different matter. "The people have the basic fundamental right to decide, for themselves, when they are ready for local government and what form it would take. For the state to impose it against their will is tyranny."

GLEN MARUNDE from Tok supports Senator Lincoln's amendment and would like an additional hearing and the opportunity to respond to the new information that has been presented. He then read a letter he sent to LBC Chairman Waring responding to the Chairman's discussion of disincentives to borough incorporation and annexation and his request that the legislature consider changing state law concerning incorporation and annexation. He doesn't feel that SB 48 deals with disincentives, instead, it forces boroughs on citizens without their approval or consent. He went on to say that HB 16 does more toward removing disincentives to the formation of boroughs. The two changes that the committee substitute for SB 48 appears to make are determining true property values and the recreation of third class boroughs. However, there is no clear guide for forming a third class borough and he thinks it's improper to add third class borough formation as a committee substitute.

He closed by urging Chairman Waring to support HB 16 and not SB 48.

Number 370

JOHN KUNIK, a Copper Basin resident, said he is against SB 48 for the same reasons given in previous testimony. The unorganized borough contributed \$26.3 million to the general fund last year and this doesn't include Payment in Lieu of Taxes (PILT) payments and timber and fisheries taxes. This shows that the unorganized borough does contribute.

Number 387

JANE BROWN, a Copper River resident against bureaucracy, would like SB 48 amended to allow citizens the opportunity to vote before annexation. In addition, she would like another hearing on the bill

so the public has time to testify on the changes. She then asked why the additional level of bureaucracy was added on page 3, line 26. Since the Constitution states that the legislature is supposed to act as the representative of the unorganized borough, why must the Department of Community and Economic Development and the LBC be inserted?

ART GRISWOLD from Delta Junction said that SB 48 is an annexation bill for existing boroughs and that wealthy areas will be annexed and areas that are small or with no economic base will remain. He would like to see the annexation portion of the bill removed or better yet drop the bill entirely.

KEVIN WARING, Chairman of the Local Boundary Commission, said he would like to give the commission's view of some of the concerns expressed during the hearing. First, the commission would implement SB 48 by taking up, at most, one or two petitions per year. Second, the bill requires the commission to hold at least one public hearing. In practice, the commission would hold meetings at regional centers and, at minimum, in communities with 400 or more residents. It is customary for meetings to be held in areas that are significantly affected. Third, areas with no economic resources to support municipal services will not be forced into unworkable situations. The LBC will work with the Department of Community and Economic Development (DCED) to set up criteria to determine an area's economic viability. Areas that don't meet a certain threshold won't be nominated for borough formation. Finally, he would like the committee to consider a change in the timetable as set forth in Section 6. He would like the date to be moved forward to November 30, 2001 from September 30, 2001 to allow DCED more time to submit a proposal to the LBC for division of the unorganized borough.

CHAIRMAN TORGERSON said conversation between his staff and the LBC indicated that the timeline is tight but workable.

MR. WARING said the LBC is comfortable with the reporting requirement during the first 10 days of the Second Session of the Twenty-Second Alaska Legislature" but more latitude is needed on the September 30, 2001 date.

DAN BOCKHORST, staff to the Local Boundary Commission from DCED, urged that the date set forth in Section 6 be changed to allow more time for the department to send recommendations to the LBC for the division of the unorganized borough. Additionally, the January 23, 2002 deadline for dividing the unorganized borough into multiple unorganized boroughs with boundaries conforming to the standards set out in law will occupy the commission and staff fully until

that date so it is questionable that the department could meet the September 30, 2001 deadline to identify which unorganized areas reasonably meet the standards for borough incorporation and annexation.

CHAIRMAN TORGERSON said they were working on an amendment to change the September dates on pages 3 and 5 to November 30, 2001.

MR. BOCKHORST wanted to make it clear that there are two separate issues. As Mr. Waring explained, Section 6, line 25 needs to be changed from September 30, 2001 to November 30, 2001. Mr. Bockhorst was speaking about the fact that, in addition to and separate from the provisions in Section 6, which divides the single unorganized borough into multiple unorganized boroughs, Section 4 requires the department to make the determination as to which areas of the unorganized borough appear to meet the standards for borough incorporation and annexation.

CHAIRMAN TORGERSON asked Mr. Bockhorst whether changing the dates on page 3, line 29 and page 5, line 25 to November 30, 2001 would suit him.

MR. BOCKHORST continued his explanation that the dates were problematic.

CHAIRMAN TORGERSON said that they weren't going out to the year 2002. They'd change the dates to November 30, 2001 so both sections would agree.

He asked whether there were any questions for Mr. Bockhorst. There were none.

WAYNE SCHAFFER from Slana said Senator Lincoln's amendment was a step in the right direction but he is still adamantly opposed to the bill.

ALBERT REYERSE from Slana testified that the state constitution does not mandate that all areas incorporate into boroughs. If more money is needed for education then 1 percent of each permanent fund dividend check should be allocated for that purpose.

WAYNE MACMURRAY of Slana charged that there wasn't enough public notice given that public testimony would be taken at this meeting. He's not in favor of SB 48.

Number 566

SENATOR PHILLIPS responded to the last testimony by saying that

legislative uniform rules outline specific public notification times requirements.

DANIEL BOONE testified that there wasn't sufficient notice given for this meeting. He expressed concern about the effect SB 48 would have on revenue sharing and matched grants for rural communities.

PAMELA BABISH testified that she is against SB 48 primarily because government is interfering in citizens' lives.

CHAIRMAN TORGERSON said there were three amendments and a corrected fiscal note before the committee. The corrected fiscal note is the result of the committee substitute, which changes the unorganized borough into multiple unorganized boroughs thereby adding \$30,000 in the first year.

SENATOR PHILLIPS made a motion to adopt amendment 1, providing an effective date. There were no objections.

On behalf of Senator Lincoln, Senator Phillips made a motion to adopt amendment 2.

CHAIRMAN TORGERSON asked Sara Boario to explain the amendment.

SARA BOARIO, staff for Senator Lincoln, read the following:

"It is ironic that a piece of legislation that intends to bring government closer to the dinner table would take away the right of those sitting at that table to vote. I believe that taking away the right of citizens to vote on the shape of their local government is poor public policy. The Department of Community and Regional Affairs (DCRA) summarized in 1998 that 'This agencies experience with mandatory boroughs is that because there is so much resentment and animosity revolving around their creation, the borough is seen as an enemy to be fought against for years after its initial creation.' On the other hand, there are boroughs that we can point to today that successfully organized voluntarily, such as the Northwest Arctic Borough, Yakutat Borough and Aleutians East Borough. When the time was right, the resources were adequate and common interests identified, these people added borough government. I believe that the people will make the best decisions for their communities based on local and regional economic and human resources. I believe the people have a greater understanding of differences that must be resolved and common interests that must be defined before borough incorporation can proceed. While there is a role for the state to assist in

evaluating the resources and common interests of a region, the final decision should ultimately be made by the residents within these boundaries. My amendment ensures that the right of Alaskan citizens to vote on their future is preserved."

If the amendment passes, there would be no further legislative review, rather, there would be a local vote.

SENATOR WILKEN, bill sponsor, had two comments. He wanted it to be clear that this doesn't change current law. The organized areas will remain as such but SB 48 enables the LBC and appropriate state agencies to determine the appropriateness of organization for the areas that choose "not to be responsible for their own government". He said the right to vote isn't withdrawn with this legislation, this simply provides another way "to help people pull their weight as far as local government including education" is concerned. He went on to point out that 83 percent of Alaskans reside in boroughs that they didn't vote on in 1963. State law mandates that organized areas not be penalized because of their organization and he believes that the organized areas are being penalized by having to "carry the weight" of areas without organized government.

With the forgoing in mind, Senator Wilken is against amendment 2 for SB 48 and recommends a no vote.

SENATOR PHILLIPS agreed that organized areas weren't given the right to vote on organization.

CHAIRMAN TORGERSON noted that there was objection to the amendment and asked for a roll call.

Senator Austerman, Phillips and Chairman Torgerson voted no. Senators Lincoln and Kelley were absent. Amendment 2 failed to be adopted by a 3 to 0 margin.

SENATOR PHILLIPS made a motion that amendment 3 read as follows: On page 5, line 25 delete "September" replace with "November" and on page 3, line 29, delete "September" replace with "November".

There were no objections so amendment #3 was adopted.

SENATOR PHILLIPS made a motion to move CSSB 48(CRA) with the revised fiscal note from committee. There were no objections.

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SB 78

SB 78-MUNICIPAL REGULATION OF RADIO ANTENNAS

SENATOR AUSTERMAN, co-sponsor, explained that SB 78 requires that local zoning authorities reasonably accommodate the antenna needs of amateur radio operators thus following the Federal Communications Commission (FCC) 1985 ruling.

Historically, amateur radio operators are there to aid communities during times of disaster working along side government agencies and officials. Their role was important in the 1964 earthquake, Miller's Reach Fire, Juneau/Thane Avalanche and the Turnagain Pass Avalanche.

SB 78 assures that amateur radio will be there to provide emergency and public service communications support when it is next needed.

SENATOR PHILLIPS said he has 1964 earthquake experience and he supports the bill.

CHAIRMAN TORGERSON made note of the sponsor's statement and letters of support included in committee packets. He then called for public testimony.

LARRY HALVERSON, Kenai Peninsula Amateur Radio Club member, testified in support of the bill in theory but questioned "reasonable and customary engineering practices" on page 1, line 9, because this doesn't make clear who will make that determination. Next, he asked for clarification on page 1 line 15, where tower height restrictions are addressed. He thought current wording might be misinterpreted as limiting minimum tower heights to those listed. It would be clearer if it said "should not be in excess of 75 feet 140 feet and 200 feet as stated." He next asked whether this would supersede any current borough or city restrictions. Finally, he asked whether a grandfather clause was implied.

CHAIRMAN TORGERSON said there was no grandfather clause. His interpretation of wording on line 9, is that application to a planning commission would be required to receive a city permit for a tower. He thought wording on line 15 should read "not higher than" instead of "not lower than." He thanked Mr. Halverson for his participation and asked whether there were any radio towers he knew of that are higher than 200 feet.

MR. HALVERSON said he didn't know of any that exceeded 200 feet but there is one in the city limits of Kenai that is 125 feet so it would not be legal under subsection (3).

CHAIRMAN TORGERSON said he supports the bill and the intent is not to force operators to dismantle their antennas. He said he would work on a grandfather clause.

ED BLACK, Kenai Peninsula Amateur Radio Club, said he agrees with Mr. Halverson's comments.

CHAIRMAN TORGERSON said he would hold the bill to make the changes and bring it back before the committee the following week.

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Number 408

#SB 88

SB 88-METROPOLITAN PLANNING ORGANIZATIONS

SENATOR PHILLIPS, bill sponsor, said that SB 88 would add one Senate member and one House member to the Anchorage Metropolitan Area Transportation Study (AMATS) policy committee. There are currently 5 members of AMATS; one appointed by the mayor, two elected members from the assembly and one each appointed from Department of Transportation and Department of Environmental Conservation. He feels that the policy committee would be more responsive to its constituents if there were two more elected officials present.

The Federal Highway Administration has raised no objection to this change but the Anchorage Municipal Assembly has expressed opposition.

KURT PARKAN, Deputy Commissioner for the Department of Transportation and Public Facilities, said he had no prepared comments but the department doesn't support the legislation. Dave Eberle, central region regional director and DOT representative on the AMATS policy committee, was available to answer questions if needed. He acknowledged that there is frustration with the AMATS process but SB 88 doesn't represent a fix for the problems.

CHAIRMAN TORGERSON expressed frustration that this legislation is brought up every year and DOT opposes it every time but doesn't offer solutions for a compromise.

MR. PARKAN said Mr. Eberle could speak to the specific issues.

SENATOR PHILLIPS said that the State of Hawaii has legislative representation on their version of the AMATS committee so this isn't unusual. The members, most of whom are not elected officials, make decisions and he must answer to his constituents for their

unpopular decisions. It's frustrating to receive the blame and have no means to fix the problem. Adding the two Anchorage area legislators doesn't lessen any current member's power so he doesn't understand the opposition. There is a 5 to 10 percent local contribution to the matched federal funds so there is direct legislative responsibility to constituents for projects and there should be input from local legislators.

Number 342

BILL CUMMINGS, Assistant Attorney General, Transportation Section, spoke to the constitutionality of SB 88. He said it violates the dual office holding provision of Article 2, section 5 of the state constitution. Because this is a second office under the state where policy and fiscal decisions are made about state programs, legislators could not be AMATS committee members.

SENATOR PHILLIPS asked about the Postsecondary Education Commission that has two legislative members.

MR. CUMMINGS said "that can be distinguished. We do have that example before us."

SENATOR PHILLIPS asked how Hawaii was doing the same thing.

MR. CUMMINGS said they have different provisions and that his research from last year indicated the city of Honolulu was in danger of losing federal highway dollars so they had to act quickly to garner as much support as possible and this method seemed expedient.

It's his understanding that the city of Anchorage is changing its method of doing business so that AMATS may be dealt with differently. He thought it was best to give this new process a chance before taking "this obviously illegal approach."

SENATOR PHILLIPS commented that it's not illegal until it's judged so in a court of law.

CHAIRMAN TORGERSON said this is a municipal board, not a governor's board so the dual office restriction doesn't apply.

MR. CUMMINGS was pleased that point was raised because "under existing practice, it is a municipal board. After the passage of this legislation, it would make it, sort of, an adjunct to the Department of Transportation & Public Facilities. This is a far cry from what we have now and it gets into local control."

CHAIRMAN TORGERSON respectfully disagreed. He asked for the will of the committee.

SENATOR PHILLIPS made a motion to move SB 88 with no changes to the next committee of referral. There were no objections.

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CHAIRMAN TORGERSON adjourned the meeting at 2:52 p.m.