

ALASKA STATE LEGISLATURE
SENATE COMMUNITY & REGIONAL AFFAIRS COMMITTEE

February 27, 2002
1:33 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Alan Austerman

COMMITTEE CALENDAR

SENATE BILL NO. 323

"An Act relating to the mandatory incorporation of certain boroughs in the unorganized borough; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 264

"An Act relating to a reimbursement program for municipal bonds, notes, or other indebtedness incurred for school construction; and providing for an effective date."

MOVED SB 264 OUT OF COMMITTEE

SENATE BILL NO. 278

"An Act requiring a good faith effort to purchase property before that property is taken through eminent domain; and providing for an effective date."

MOVED SB 278 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

SB 323 - No previous action to record.

SB 264 - No previous action to record.

SB 278 - No previous action to record.

WITNESS REGISTER

Senator Gary Wilken

Alaska State Capitol, Room 514
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SB 323

Jerry Burnett
Staff to Senator Lyda Green
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced SB 264

Eddy Jeans
Finance Manager
Department of Education &
Early Development
801 W 10 St.
Juneau, AK 99801-1894
POSITION STATEMENT: Testified on SB 264

Kim Ognisty
Staff to Senator Torgerson
Alaska State Capitol, Room 427
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced SB 278

Phil Evans
P.O. Box 85103
Fairbanks, AK 99708
POSITION STATEMENT: Testified on SB 278

ACTION NARRATIVE

TAPE 02-4, SIDE A

CHAIRMAN JOHN TORGERSON called the Senate Community & Regional Affairs Committee meeting to order at 1:33 p.m. Present were Senators Lincoln, Phillips, Kelly and Chairman Torgerson.

#SB 323

SB 323-MANDATORY INCORPORATION OF BOROUGHES

SENATOR GARY WILKEN sponsor of SB 323 read the following sponsor statement into the record:

The Mandatory Borough Act of 2002 recognizes that there are six regions in Alaska that meet most, if not all, the standards for borough incorporation, and sets in motion a procedure to create six new boroughs by January 1, 2005. The identified areas have the

financial capability and stable populations needed to provide a local government with the power to plan, support local schools, and levy and collect taxes.

Senate Bill 323 allows the residents in the identified six locations to initiate borough incorporation proposals, hold extensive public hearings, and work closely with the Local Boundary Commission to determine the desired borough structure until the January 1, 2005 deadline. However, if a borough is not incorporated within each of the six regions by the stated timeframe, the following areas will be incorporated as second-class boroughs:

Copper River Basin Region
Glacier Bay Region
Prince of Wales Island Region
Prince William Sound Region
Upper Tanana Basin Region
Wrangell/Petersburg Region

Through the formation of these six boroughs, local residents, many for the first time, will be able to financially support their neighborhood schools. In addition, several school districts will be consolidated to enhance efficiencies and economies of scale. Alaska's K-12 public education system will benefit from the additional financial help and thus Alaska's students will benefit.

The best government is the government closest to the people. Senate Bill 323 continues what the framers of the Alaska State Constitution commenced over forty years ago, and by forming these six boroughs, it provides a way for local area residents to help with their children's education.

I respectfully request your consideration and support for this legislation.

SENATOR WILKEN called member's attention to the chart in their packets titled, "Standards for Borough Incorporation." [A copy of the chart is available in the committee file.] The chart lists 11 standards that need to be met for borough incorporation and he believes the six areas have already fulfilled 9 of those standards. The process that starts with the committee meeting will answer the questions regarding the final two standards, which are "Financial/Human Resources" and "Similar Geography."

Next he noted the "Model Borough Boundaries" pamphlet found in committee packets. Maps of the six areas referred to above are shown with current Rural Education Attendance Area (REAA) Boundaries and the model or proposed boundaries. [A copy of the pamphlet can be found in the bill file.]

For a year he has been asking the unorganized area whether they can help with K-12 education thereby relieving some of the burden placed on organized Alaska. Three areas of the state have stepped forward to do just that, but many areas of the state have chosen to ignore his request. This legislation asks those areas why they can't help. Given the amount of data available, he believes there is no reason not to start the process to analyze whether these six areas have the capability and capacity for government.

He asked members to examine the State of Alaska Local Boundary Commission January 2001 booklet titled, "The Need to Reform State Laws Concerning Borough Incorporation and Annexation." [A copy can be found in the bill file.] In particular, he asked members to read pages 7-20 then refer to page 10 and match the seven bulleted paragraphs to the appendix. It says that since 1963 Alaska has grown in population and wealth and it is time to revisit the idea of incorporations of local government and bring back the concept that the best government is the one that is closest to the people.

According to their annual publication, the Alaska Municipal League supports this concept and each year the Local Boundary Commission issues a report that talks about organization of unincorporated areas and how the Legislature might be able to eliminate some of the disincentives of incorporation and bring government close to the people.

He closed by saying this is the start of a very important piece of legislation and his office is ready to work on it and discuss it with all people that are affected.

SENATOR PHILLIPS said there is another way of accomplishing the same thing. Instead of passing bills, the Legislature can sit in joint session and act as the Assembly for the unorganized areas. Because this bill has several more committees of referral and it might not pass, he asked whether they shouldn't pursue this other avenue.

SENATOR WILKEN thought that was a good question, but his approach

has been to have the patience to do the work correctly. Obviously, there are areas of the state that have the capacity to fund education and have a minimal second-class borough level of government whereby they are able to choose the degree to which it affects the population. This hasn't worked very well so this is another step. His problem with the full Legislature sitting as the Assembly is that it doesn't recognize the capacity of different areas of the state and is therefore an unfair approach. He isn't after those areas that aren't able to support government, rather he wants those areas that are capable of helping themselves to step forward and help themselves. It's better to take a reasoned analysis, through the parts of the law that says, "Can you help yourselves?" That is what this bill suggests.

SENATOR LINCOLN informed Senator Wilken that the individuals in her district don't necessarily feel that having a borough actually creates a government that is closer to them and would therefore change how they do business in their area. She keeps hearing people ask, "How are we going to pay for that?" When she looks at some of the six target areas she doesn't see how they can afford government. There is an ongoing discussion, and she has confidence that the people will create new boroughs when they feel they have the economy to support one. She doesn't want to say, "You shall..." because that isn't necessarily the best form of government either.

With talk of budgetary cuts and considering the current fiscal gap, she asked how the cost of the bill could be justified.

SENATOR WILKEN replied the concept of saying, "You shall..." is not quite correct. There are 11 standards in law that an area must qualify under in order to become a borough. Few people would ever vote to become a borough but he believes that borough incorporation has increased the quality of life in the state. He knows Interior Alaska is better off with the Fairbanks North Star Borough than without because "Overall, 84% of the people have benefited by borough incorporation."

The push for incorporation began with education reform. In his area, they ask the people for a 4-mil tax equivalent so they can get education dollars from the state. This year the people in organized Alaska are paying \$154 million to have the benefit of incoming state money for their education. Because unorganized Alaska is paying nothing, he can safely say the people he represents are subsidizing education in the unorganized areas of Alaska. This is acceptable for those areas that are not able to pay, but it is not acceptable for those areas that can pay but won't.

The fiscal note is not important when you consider that this has more than a one or two year focus. It is a generation issue that will, over time, improve certain unorganized areas in the state just as it has in the North Star Borough.

SENATOR LINCOLN had difficulty with the criteria used and took issue with the term "mandatory" that was used in the title. She said there was a resources meeting the previous day that discussed mining and approximately 90 percent of the presenters presented the development of resources in Bush Alaska. That is a form of payment for services to education and other state programs. The statement that they aren't paying anything is in error.

SENATOR WILKEN disagreed that the resources in a particular area belong to the people that live in that area. He believes that the resources in the state are the property of all the people of Alaska. That the resources come from a particular area provides no claim to that area of the state when you're talking about a local contribution to match people that are paying a property tax.

Areas that are not incorporated by 2005 will then be incorporated as second class boroughs under this Act but they must first come before the Legislature and they must also satisfy the best interest standard. "It is top down, but it brings people to the table to talk about what is in their best interest and today, that is very difficult to do."

CHAIRMAN TORGERSON asked whether he thought he could accomplish this by 2005.

SENATOR WILKEN said he doesn't know. He's comfortable with the fact that it will take time. It's important to get the process started.

CHAIRMAN TORGERSON said his point goes to ensure that due diligence is done before the deadline.

There was no further testimony.

The bill was held in committee.

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#SB 264

SB 264-MUNICIPAL BOND REIMBURSEMENT

JERRY BURNETT, Staff to Senator Lyda Green, introduced the bill and read the following sponsor statement into the record:

Senate Bill 264 would authorize 70 percent state reimbursement for \$113 million dollars of school projects that are funded by voter authorized debt issued by local government. The authorization would be distributed among school districts in the following manner; \$50 million for projects in Anchorage, \$15 million for projects in Fairbanks, \$13 million for projects in Mat-Su, \$10 million for projects in Kenai and \$25 million for projects in smaller school districts in organized Alaska. The amounts are intended to equal \$1,000 in projects per student rounded to the nearest million dollars in each district.

Debt reimbursement is one of the methods that have been used to fund school construction in Alaska for a number of years. Debt reimbursement has a unique advantage over other financing methods in that it allows for maximum local involvement and input in the decision of which specific projects should be funded. Municipal debt reimbursement insures that the projects funded in a school district are the highest priority of the voters in that district. Projects need to meet state standards for approval but do not need to be funded in the state's priority order.

SB 264 is not intended to serve as a complete school funding package. School districts in unorganized Alaska cannot use debt reimbursement. Individual school projects are often larger than the authorization in SB 264 for any school district. Other funding methods, such as general obligation debt, must be used for most school construction and major maintenance in Alaska. Municipal debt reimbursement is, however, the best method for many school districts to build and maintain the facilities most important to the people in their community.

EDDY JEANS, Finance Manager for the Department of Education and Early Development, said he was available to answer questions. For the record, he wanted to state that the Legislature has done a fine job at funding school construction the last two years and they have followed the department's priority list. He clarified that this bill would only fund school construction projects in municipal school districts once there is both voter and department approval.

SENATOR LINCOLN said she realizes this is for organized Alaska,

but wanted to know how this affects the Kasayulie Case in which the judge said that schools in the unorganized areas are treated unfairly in terms of bonding for school projects. She asked specifically what this bill does to correct that discrepancy.

MR. JEANS said he isn't a lawyer and can't make any specific comments, but the judge has been looking at the appropriations the Legislature has been making in the last two years and has looked favorably on the mechanisms. Additionally, he was pleased that the Legislature has followed the department's list. He expected the judge to continue to watch through this session and that is why the Governor introduced his funding proposal, which follows the department's priority list and includes municipal and rural school districts.

SENATOR LINCOLN said she didn't hear an answer to her question so she restated it.

MR. JEANS said this piece of legislation does not provide any funding for rural education attendance areas that do not have the capacity to bond. It provides a funding mechanism for municipal school districts that have bonding capacity.

SENATOR LINCOLN asked if the department is supportive of this legislation knowing about the judge's analysis.

MR. JEANS said he has not had that conversation with the governor's office. The Governor has submitted his own legislation that funds the department's priority list for both urban and rural school districts.

CHAIRMAN TORGERSON stated for the record, "So it won't go unchallenged, I do not agree with the judge's case on Kasayulie. We proved, by numbers, that he was using the wrong set of numbers. The facts in point are not correct so, therefore, his ruling is not correct."

There was no further testimony.

CHAIRMAN TORGERSON announced it was his intent to move the bill since it was largely a finance issue.

SENATOR KELLY made a motion to move SB 264 and accompanying fiscal note from committee with individual recommendations.

There being no objection, SB 264 moved from committee.

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#SB 278

SB 278-TAKING PROPERTY BY EMINENT DOMAIN

KIM OGNISTY, Staff to Senator Torgerson, read the following sponsor's statement into the record:

SB 278 is concerned with the eminent domain and declaration of taking proceedings in Alaska statute. The bill introduces a "reasonable and diligent effort" clause that attempts to place the condemner of land and the private landholder in an equal negotiating position. The bill is not trying to remove the authority of the state to acquire land by eminent domain or in any way complicate existing proceedings. Currently, Alaska law does not require the state to engage in a good faith effort to negotiate with private landowners. Without an incentive to negotiate, state officials are free to make only an unreasonable offer or none at all. They can end discussions at their caprice and they are under no obligation to take the landowner seriously. Initiating communication from an equitable bargaining position will promote productive negotiations, facilitate dialog over reasonable concerns and encourage suggestions from all parties involved. The phrase, "reasonable and diligent effort" or similar language has been adopted by at least 23 other states. This clause will reduce the amount of litigation by encouraging more cases to be settled up front thereby promoting expediency in government.

PHIL EVANS testified via teleconference as the representative and president of the Northgate Square Mall in Fairbanks. He wanted to tell about his experience with land taking and then his reaction to SB 278. He read the following into the record:

The State of Alaska, Department of Transportation recently took a portion of my commercial property to use for a road construction project. I would like to make you aware of the experience I had with them. Prior to condemnation being filed, the person representing the state was courteous but misleading in attempting to convince me to accept the settlement that was completely unfair. Also prior to the condemnation being filed, the state appraiser provided no meaningful information. She was quite insistent about her authority to be on my property and utilized a space in a business in the mall for her office. She was deceptively courteous and misleading in her attempt to promote an unfair evaluation of the property.

The state did not provide me with a copy of her completed appraisal record and market data book. I was unable to settle with the state, based on that

appraisal, because of the compensation being inadequate and unfair. The appraisal did not fairly set forth the value of the taking and the consequences to the remainder property. In the appraisal of my property, the "before the taking" value was based on the current use of the property rather than the highest and best use of that property. The following items were not fairly considered when analyzing the affects of the right-of-way taking on my property: loss of parking, change in highest and best use, decline in market appeal, change in business use of the property, decline in market value. But when it became apparent the state was misleading and unfair in their attempts to reach settlement, I hired an attorney and an appraiser to provide me accurate and fair counsel. The state appraiser concluded that just compensation for the property taken and damages was \$80,000. The appraiser for Northgate Square and myself concluded the just compensation for the property taken and damages was \$676,000, eight times more than the state's appraisal. As a consequence, we proceeded to hearing. Frank King, an appraiser, was appointed by the state to preside over the masters hearing. At the conclusion of the hearing, Mr. King rendered a decision awarding \$324,000 for property taken and damages. Although this was approximately half of the amount sought, I decided rather than continue with litigation, I would settle. The state subsequently appealed. The state's decision to appeal will significantly increase costs not only for me, but also for the state.

2:05 p.m.

He said SB 278 is encouraging, but he would like to see more change. He feels the state is able to totally take over private property with no respect or concern for the rights of the owner.

RON WOLF, Sealaska Corporation Corporate Forester, testified in favor of the bill. They had some suggestions on the language concerning how the bill defines "reasonable and diligent effort" but it could be brought up in the Judiciary Committee.

CHAIRMAN TORGERSON agreed.

There was no further testimony.

SENATOR KELLY made a motion to move SB 278 from committee with individual recommendations.

There being no objection, SB 278 moved from committee.

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CHAIRMAN TORGERSON adjourned the meeting at 2:11 p.m.