

ALASKA STATE LEGISLATURE
SENATE COMMUNITY & REGIONAL AFFAIRS COMMITTEE

April 10, 2002
1:35 pm

MEMBERS PRESENT

Senator John Torgerson, Chair
Senator Alan Austerman
Senator Randy Phillips

MEMBERS ABSENT

Senator Georgianna Lincoln
Senator Pete Kelly

COMMITTEE CALENDAR

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 289 am
"An Act relating to the effective date of a municipal manager plan that has been adopted and to the effective date of the repeal of a municipal manager plan, and relating to a special election for mayor when municipal manager plans are adopted or repealed."

MOVED SSHB 289 am OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 296(CRA)

"An Act relating to mergers and consolidations of municipalities."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

HB 289 - No previous action to record.
HB 296 - No previous action to record.

WITNESS REGISTER

Representative Gary Stevens
Alaska State Capitol, Room 428
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of HB 289

Representative Jim Whittaker
Alaska State Capitol, Room 411
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of HB 296

Tamara Cook. Director
Legislative Legal and Research Services
Legislative Affairs Agency
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Testified on HB 296

Mayor Dave Black
P.O. Box 1049
Haines, AK 99827
POSITION STATEMENT: Testified on HB 296

Peter Goll
P.O. Box 261
Haines, AK 99827
POSITION STATEMENT: Testified on HB 296

Carolyn Weishahn
P.O. Box 60
Haines, AK 99827
POSITION STATEMENT: Testified on HB 296

Tim June
P.O. Box 672
Haines, AK 99827
POSITION STATEMENT: Testified on HB 296

Ron Weishahm
P.O. Box 261
Haines, AK 99827
POSITION STATEMENT: Testified on HB 296

ACTION NARRATIVE

TAPE 02-8, SIDE A

CHAIRMAN JOHN TORGERSON called the Senate Community & Regional Affairs Committee meeting to order at 1:35 pm. Present were Senators Austerman, Phillips and Chairman Torgerson.

He announced his intent to move HB 289 if it was the will of the committee and to hear testimony on HB 296.

#HB 289

HB 289-MUNICIPAL MANAGER PLAN

REPRESENTATIVE GARY STEVENS, bill sponsor, described the legislation as a clean up of state regulations. It is to make it clear to the voter to what position they are electing someone and to make it clear to the candidates the position for which they are running. It can be confusing when there is an election to change the form of a municipal government at the same time that a mayor is being elected. Voters are not sure whether they are electing a strong mayor or a ceremonial mayor and the mayoral candidates wouldn't know to which type of position they might be elected.

The bill adds a year in between the change of government so, if the people vote to change the form of government, the mayor would remain in that office under the old form for one year.

CHAIRMAN TORGERSON asked whether municipalities could, through ordinance, decide on the effective date of the switch.

REPRESENTATIVE STEVENS thought the community could do that.

CHAIRMAN TORGERSON said it looked as though the bill wouldn't allow communities to do that.

REPRESENTATIVE STEVENS said that wasn't the option that was offered to the public in elections he was involved in.

CHAIRMAN TORGERSON said he hadn't seen it offered either it was just a question.

SENATOR PHILLIPS asked for the genesis of the bill.

REPRESENTATIVE STEVENS said in Kodiak they were in the process of changing their form of government from a ceremonial mayor to strong mayor and voting for the mayor at the same time. It's an unfair position for the candidate because a strong mayor position is a full time job while the ceremonial mayor position is not. All mayoral candidates aren't necessarily looking for a full time job.

There was no further testimony.

SENATOR PHILLIPS made a motion to move SSHB 289 am and attached fiscal note from committee with individual recommendations.

There being no objection, it was so ordered.

#

#HB 296

HB 296-MUNICIPAL MERGER AND CONSOLIDATION

CHAIRMAN TORGERSON announced there was a proposed amendment that some people wanted to address. He didn't intend to pass the bill that day but wanted to start taking testimony.

REPRESENTATIVE WHITTAKER, bill sponsor, explained HB 296 does two things. First, with reference to mergers, consolidations, and petitions to bring about a merger or consolidation, the bill requires a 365 day time period rather than an open ended time period when signatures can be collected on a petition. Second, a community's right to self-determination is defended in Section 2. It does that by requiring that majorities of each municipal unit associated with a consolidation or merger approve separately before a merger or consolidation may occur.

Much to their surprise, after passing the bill through the House, they became aware that the language needed clarification thus the proposed amendment \F.2.

CHAIRMAN TORGERSON asked for a motion to adopt the amendment.

SENATOR AUSTERMAN made a motion to adopt amendment #1, version \F.2.

CHAIRMAN TORGERSON said he objected for discussion purposes.

He called Tamara Cook forward to discuss the amendment.

TAMARA COOK, Director of Legislative Legal and Research Services, explained the amendment corrects what was originally intended but not achieved in the original draft. It might also add another aspect to the bill that she never comprehended. The real concern with respect to municipalities that consolidate or merge with a city that is within the municipal boundary is that the vote be approved separately by the city within the borough and by the borough population that is outside of the city. That was not achieved in the original bill. A merger or consolidation can include any number of entities. For example, a borough might have more than one city proposed to be merged with that borough included in a petition. Under amendment #1, the result would be that if any one of the cities disapproved the entire package then the package would fall. This would place a burden on the individuals that are putting together a merger petition to ascertain whether the individual cities support the merger.

CHAIRMAN TORGERSON asked for verification that a merger

consolidation would mean the entire sum; it wouldn't be a borough or city trying to take some land from the borough and not the entire borough.

MS. COOK replied a merger occurs when two municipalities join and one gives up its identity and is taken over by the other. A consolidation occurs when two or more municipalities come together and both may change their identities and form yet a different municipality. For example, two second-class boroughs might consolidate and form one first-class borough. Another example would be a city that merges with a borough and ceases to be a city but becomes a part of the borough without changing the classification of the borough.

CHAIRMAN TORGERSON asked what would happen if two cities want to merge but there is some borough land in between their boundaries so three governments involved.

MS. COOK replied she didn't know how two cities could merge in that case without something being done with the borough land between them. If the borough wasn't merging with the cities rather it was retaining its own identity; it wouldn't properly be a municipality that was merging. You'd be faced with one or the other cities annexing that part of the borough land to make that merger work.

CHAIRMAN TORGERSON said he was quite familiar with this because of the Homer annexation issue, but there are two ways to join municipalities. One would be through the petition process, the other would be a direct request to the Local Boundary Commission (LBC), and this legislation doesn't affect their power.

MS. COOK agreed; this bill only amends the statutes that deal with local option mergers and consolidations. The local option mergers are authorized according to procedures established by the Legislature and they involve a local effort to achieve a boundary change. Those sorts of boundary changes don't go to the Legislature for ratification in the way that LBC initiated changes do.

SENATOR AUSTERMAN used the Kodiak Island Borough as an example. It has six or seven communities within the borough and the City of Kodiak and the borough talked about consolidation at one time. If someone wanted to include the other six village communities and one or two of those villages decided they didn't want to be included, would this cause the entire process to fail?

MS. COOK said yes, if proposed amendment #1 were adopted and

enacted into law, any one city that voted against the merger would keep the merger from occurring at all. It would not preclude the sponsor of the merger effort from filing another petition that excludes the dissenting city.

SENATOR AUSTERMAN asked if there would be a way of writing the amendment to allow the merger to go forward without the dissenting city rather than going through the entire process a second time and excluding the dissenting city.

MS. COOK said it could be drafted that way.

CHAIRMAN TORGERSON asked if it could be drafted both ways so the petitioner could choose the option. He suggested this because there could be a petition that included one city that was the "cash cow" of the area and everyone wanted to be a part of that city and voted favorably. There's potential for much discontent if the city with the highest assessed value voted no, but the merger went forward without them. For this reason, he would prefer that the merger would go forward at the option of the petitioner or that the willing parties could merge.

MS. COOK replied that is a possibility. She said he keyed in on the policy problem associated with taking the approach suggested by Senator Austerman. If you set up a system where it is automatic that one municipality would not be included in a merger or consolidation you might set up a situation where a merger consolidation should not go forward if a critical party declined to participate. Certainly it could be drafted to be at the option of the petitioner but if you take the approach of proposed amendment #1, there is nothing that precludes another petition from occurring and leaving out the area that disapproved. There is also nothing that precludes a petitioner from filing a number of separate petitions if they are confronted with this possibility and the petitioner feels a merger would be workable in any number of configurations. She didn't know that the petitioner needed the flexibility, but it could be done.

SENATOR PHILLIPS said there was a similar situation in the municipality of Anchorage regarding service area concepts. He asked whether there would be the possibility of having a "Hillside situation" in other parts of the state where one area of a community or area was using services of another's without paying for it. [Hillside residents were using city police services without paying for those services.] He asked whether the same set of circumstances would be applied here.

REPRESENTATIVE WHITTAKER replied they did not intend that the

bill be confused or viewed as being relative to service areas.

SENATOR PHILLIPS then said the Homer annexation issue might be relevant. One area would enjoy benefits without paying for those benefits because they didn't want to be consolidated.

REPRESENTATIVE WHITTAKER said it is not their intent to be obstructionists; it is their intent that each community has the right to determine its own path.

CHAIRMAN TORGERSON didn't think this was similar to either Hillside or the Homer annexation.

SENATOR PHILLIPS was "trying to formulate a situation in the state where one group of people that are outside the boundaries are taking the benefits of everyone else who are paying for it-roads and police service whatever-parks libraries, swimming pools."

REPRESENTATIVE WHITTAKER said that is the gray area between annexation and consolidation and merging and it is not a perfect black and white situation. However, the situation he is referring to is probably more appropriately an annexation issue as opposed to separate municipal entities.

CHAIRMAN TORGERSON added the issues in the areas of Haines, Ketchikan and Saxman and perhaps North Pole are more appropriate examples. He asked Ms. Cook what would happen if a city and a borough consolidated and there were other cities outside.

MS. COOK replied the other cities could continue to function as cities. When you're dealing with a situation where the municipality takes the step to go to Home Rule then unification is appropriate. The merger and consolidation comes up more in situations where there are a variety of municipalities that are not prepared to take the step of going to a Home Rule situation. They don't want to adopt a charter.

SENATOR AUSTERMAN said his preference is that the amendment allows the different options to take place whether everyone is in or out or whether two are in and one is out or five are in and one is out. He didn't want all or nothing, which would require that the process start over entirely if one area disapproved.

CHAIRMAN TORGERSON asked whether the petition had to be approved by the LBC before it goes to a vote.

MS. COOK thought it did need LBC approval first.

CHAIRMAN TORGERSON said he agrees the petitioner should have an option of how many communities must approve, but care should be taken so that if a community between two other communities drops out, the petition becomes invalid.

MS. COOK said the department and the LBC review a merger and consolidation petition like all other local action boundary changes. The LBC has to hold a hearing and make a finding that the petition is appropriate and the reconfigured municipality meets the standards for incorporation for that type of municipality. Furthermore, they must make a best interest finding. She also thought the LBC has the authority to make changes to a petition to accomplish those purposes if it so chooses.

SENATOR AUSTERMAN asked whether the effective date would be 90 days after the Governor signed the bill.

REPRESENTATIVE WHITTAKER said that is correct, but he is concerned with the Haines situation. The intention of the bill is to protect an area such as those outside the City of Haines. If they choose not to be part of a merger or consolidation they should have that right. If changing the effective date would give them that right, then it is incumbent upon the Legislature to give them that right.

SENATOR AUSTERMAN said they have been going through the process for a long time and to change now isn't necessarily the correct thing to do either.

CHAIRMAN TORGERSON asked Ms. Cook if changing the effective date is a technical change.

MS. COOK replied the Senate could add an effective date to a bill and that is a technical change within the Uniform Rules. However, the House can decline to vote to pass the effective date and still enact the bill. It's viewed as a technical change when one house or the other adds an effective date because it doesn't prevent the defeat of that effective date separately by the second house.

CHAIRMAN TORGERSON said the threshold for them is the two-thirds vote, not a simple majority.

MS. COOK said a special effective date must be adopted by two-thirds vote of each house.

CHAIRMAN TORGERSON asked Mayor Black to give a brief explanation of the Haines situation.

MAYOR DAVE BLACK explained they have gone through the process twice. The first time they were at odds with the borough over some litigation between the city and some private parties and the borough didn't support the city in their original petition. The consolidation failed by just three votes. Since that time, they have reestablished a rapport between the borough and the city. Haines Borough is a third class borough and the City of Haines represents about 75 percent of the vote.

The vote on the second consolidation petition has been a 27 month process and the vote should be scheduled soon. With the passage of this legislation, they find the potential to derail the intentions of both the City of Haines and the Borough Assembly of Haines.

CHAIRMAN TORGERSON verified that the Mayor was not in favor of an immediate effective date.

MAYOR BLACK replied it wouldn't affect them at all unless there was a date or moratorium that stopped the due process they have diligently followed for the last 27 months.

CHAIRMAN TORGERSON asked whether he anticipated a special election.

MAYOR BLACK replied they did anticipate a special election.

CHAIRMAN TORGERSON asked Ms. Cook for confirmation that this legislation would take effect 90 days after the Governor signed the bill.

MS. COOK confirmed it would be effective 90 days after the bill was signed or 90 days after enactment if the Governor elected not to sign it.

MAYOR BLACK stated they would like to be specifically exempted if this legislation is enacted and it might apply to their current petition.

CHAIRMAN TORGERSON announced a short at ease at 2:15 pm.

CHAIRMAN TORGERSON gaveled the meeting back to order at 2:16 pm

and called for teleconferenced testimony.

PETER GOLL, representing himself, testified from Haines in support of HB 296. He was Chairman of the House Community and Regional Affairs Committee in 1985 and 1986 when the municipal code revision took place. At that time, they overlooked the local option of consolidation. This bill and issue is limited to local option as far as the utilization of municipal services by people not living in a municipality. When that issue becomes sever, it is an opportunity for annexation and legislative oversight. However, with a local option such as in Haines, there is no opportunity for legislative oversight and they depend on the will of the people to determine how their government will be structured. He supports the legislative as a correction of an oversight that should have been addressed in 1985 or before.

The legislation with proposed amendment #1 is vital because without it citizens could find themselves moved into a municipal structure without their consent and without the opportunity of legislative oversight as exists with an annexation.

In this case, the municipality has 75 percent voting margin over a group of other individuals in the non-city part of the Haines Borough. That 25 percent has the right to be heard independently. The issue of representation is key here.

He thought the effective date is important and is necessary if the intent of the bill is to cover everything that goes forward from passage. Otherwise, the bill will pass and the intent will not be implemented.

CAROLYN WEISHAHM, resident outside the City of Haines, testified that the Borough Assembly has vacillated on the present petition to consolidate. A year ago they voted to oppose the petition and although they are now supporting the petition, the support is not unanimous. She urged passage of the bill with proposed amendment #1 and with an effective that would include the upcoming consolidation. Consolidation as it currently exists doesn't encourage meaningful dialog for all residents whose lives would be greatly affected by the consolidation.

SIDE B
2:25 pm

TIM JUNE testified via teleconference and voiced his support for HB 296 and the proposed amendment #1. The city population was about 1,250 three years ago when the city annexed about 600 people. In that annexed area there were about 80 percent that

were opposed to the annexation, but they are now part of the city. There are now about 1800 people in the city and 600 outside. The two borough assembly members that voted against the consolidation are representatives from the outside area and they would lose that representation if the consolidation moves forward because there would be no districting.

RON WEISHAHM, representing himself, testified from Haines in support of HB 296 amended to reflect its original intent and revised so a consolidation must pass both in the city and outside the city. In consideration of Haines, the law should be enacted when signing by the Governor. There is good reason why no consolidation effort in the state has ever passed, but passage of this legislation could change that. "If consolidation is not brought up to standard by amending HB 296 then I ask for your best effort to abolish consolidation as a method of joining communities."

SENATOR PHILLIPS asked the sponsor whether his intent was to change policy or to take care of the situation in Haines.

REPRESENTATIVE WHITTAKER replied he had not been aware of the situation in Haines initially.

CHAIRMAN TORGERSON said the LBC brought up several points in their letter and he asked Ms. Cook to read the questions and respond to them.

MS. COOK responded to the following points:

- The change would disenfranchise borough voters who are also residents of the city proposed for consolidation from voting in a borough election. **Response:** She had no particular reaction to that statement. For example, the residents of the City of Haines are also residents of the Borough of Haines and they would not be permitted to vote with respect to their status as borough residents.
- The proposed amendment repudiates the principle of "one person, one vote" and the principle of majority rule. **Response:** She thought that too was philosophical and dependant upon your point of view. Certainly everyone involved gets to vote, it's just that this requires that approval occur in smaller categories than in existing law. In that sense, it could perhaps be argued that it dilutes the one person, one vote principle.
- The proposed amendment may contravene the provisions of the federal Voting Rights Act. **Response:** Her understanding of the act is that it is intended to prevent

discrimination based on race so she wasn't sure how that would play out in this type of election unless they are suggesting that an urban area consists more predominantly of one racial group than the rural part of the borough. That point was too attenuated for a reaction.

CHAIRMAN TORGERSON said the last point wasn't really a question and not appropriate to ask her to answer. It stated, "Application of the change on an expedited basis to a pending election would be unfair."

He asked Ms. Cook to draft the amendment for Senator Austerman that gives the petitioner the option of accepting all or nothing in the petition as discussed earlier.

He said it was his intent to hold the bill and bring it back for final action the following week.

SENATOR PHILLIPS asked whether he wanted to decide the effective date at that time as well.

CHAIRMAN TORGERSON wasn't sure he wanted to see an effective date but he would follow Senator Austerman's lead on that point.

SENATOR PHILLIPS thought since it was unrelated to the situation in Haines, and since they were trying to establish public policy in the future, January 1, 2003 would set new rules for anybody in the future.

CHAIRMAN TORGERSON said you would simply say it doesn't affect any petitions that are pending.

SENATOR AUSTERMAN thought that should be included in an amendment.

CHAIRMAN TORGERSON asked Ms. Cook to draft two amendments, one for himself and one for Senator Austerman.

Proposed amendment #1 was left on the table and HB 296 was held in committee.

#

ADJOURNMENT

There being no further business before the committee, the Community and Regional Affairs Committee meeting was adjourned at 2:37 pm.

