

**ALASKA STATE LEGISLATURE
HOUSE RULES STANDING COMMITTEE**

March 16, 2005

9:07 a.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative John Harris
Representative John Coghill
Representative Vic Kohring
Representative Ethan Berkowitz
Representative Beth Kerttula

MEMBERS ABSENT

Representative Lesil McGuire

COMMITTEE CALENDAR

HOUSE BILL NO. 121

"An Act relating to consolidating or abolishing certain service areas in second class boroughs."

- MOVED CSHB 121(RLS) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 121

SHORT TITLE: SERVICE AREAS IN SECOND CLASS BOROUGHS

SPONSOR(S): COMMUNITY & REGIONAL AFFAIRS

02/02/05	(H)	READ THE FIRST TIME - REFERRALS
02/02/05	(H)	CRA, STA
02/15/05	(H)	CRA AT 8:00 AM CAPITOL 124
02/15/05	(H)	Heard & Held
02/15/05	(H)	MINUTE(CRA)
02/24/05	(H)	CRA RPT CS(CRA) NT 1DP 5NR
02/24/05	(H)	DP: THOMAS;
02/24/05	(H)	NR: CISSNA, NEUMAN, SALMON, LEDOUX, OLSON
02/24/05	(H)	CRA AT 8:00 AM CAPITOL 124
02/24/05	(H)	Moved CSHB 121(CRA) Out of Committee
02/24/05	(H)	MINUTE(CRA)
03/01/05	(H)	STA AT 8:00 AM CAPITOL 106
03/01/05	(H)	Heard & Held
03/01/05	(H)	MINUTE(STA)

03/05/05 (H) STA AT 9:30 AM CAPITOL 106
03/05/05 (H) Moved CSHB 121(CRA) Out of Committee
03/05/05 (H) MINUTE(STA)
03/07/05 (H) STA RPT CS(CRA) NT 4DP 1NR
03/07/05 (H) DP: LYNN, RAMRAS, GRUENBERG, SEATON;
03/07/05 (H) NR: GATTO
03/16/05 (H) RLS AT 9:00 AM BELTZ 211

WITNESS REGISTER

KACI SCHROEDER, Staff
to Representative Bill Thomas
House Community and Regional Affairs Standing Committee
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 121 on behalf of the House
Community and Regional Affairs Standing Committee, sponsor.

REPRESENTATIVE BILL STOLTZE
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Expressed concerns with HB 121 and
suggested that the committee adopt Amendment 1.

REPRESENTATIVE MARK NEUMAN
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Testified in support of Amendment 1 to CSHB
121(CRA).

SALLY SADDLER
Legislative Liaison
Office of the Commissioner
Department of Commerce, Community, & Economic Development
Juneau, Alaska
POSITION STATEMENT: During discussion of HB 121, answered
questions.

MARGORIE VANDOR, Assistant Attorney General
Labor and State Affairs Section
Civil Division (Juneau)
Department of Law
Juneau, Alaska
POSITION STATEMENT: Discussed constitutional concerns with HB
121.

ACTION NARRATIVE

CHAIR NORMAN ROKEBERG called the House Rules Standing Committee meeting to order at [9:07:55 AM](#). Representatives Rokeberg, Harris, Coghill, Kohring, Berkowitz, and Kerttula were present at the call to order.

HB 121-SERVICE AREAS IN SECOND CLASS BOROUGHES

[9:08:06 AM](#)

CHAIR ROKEBERG announced that the only order of business would be HOUSE BILL NO. 121, "An Act relating to consolidating or abolishing certain service areas in second class boroughs."

[9:08:22 AM](#)

KACI SCHROEDER, Staff to Representative Bill Thomas, House Community and Regional Affairs Standing Committee, Alaska State Legislature, explained that when state revenue sharing was in place, residents living in subdivisions outside of city limits were able to establish service areas and relied on revenue sharing funds to function. However, now the state revenue sharing program has ended and some of these road services areas aren't taxing the area adequately enough to provide service to the area. Therefore, the lack of service is leading to unsafe roads in these service areas. Ms. Schroeder reminded the committee that these service areas are not separate legal entities from the borough and thus the borough bears the ultimate financial responsibility for these service areas. However, a borough can't assess a boroughwide tax and apply it to specific service areas. She highlighted that although the borough bears the ultimate financial responsibility for these service areas, it lacks the power to dissolve or remedy the problems that exist when service areas don't adequately maintain the roads. This legislation allows second class boroughs to consolidate or abolish service areas not providing adequate services while protecting those service areas that are providing adequate services.

[9:10:25 AM](#)

REPRESENTATIVE KOHRING moved that the committee adopt Amendment 1 [labeled 24-LS0396\Y.5, Cook, 3/14/05], which read:

Page 2, line 9:
Delete all material.

Insert "or more service areas if the
(1) borough's population in 2005 was less
than 65,000 or more than 75,000; and
(2) assembly first determines that the
abolishment or"

REPRESENTATIVE HARRIS objected for discussion purposes.

[9:11:11 AM](#)

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, informed the committee that he represents the largest home rule municipality that is also a second class borough. Service areas have been very effective in areas such as the Matanuska-Susitna Borough because the area can tailor the level of service. Representative Stoltze related that he wants to excise out the Matanuska-Susitna Borough, which doesn't have the problems [expressed in earlier testimony] with services areas. He urged the committee to hold harmless [the Matanuska-Susitna Borough] from the good intent of this legislation. Representative Stoltze said he hesitated to tie [the proposal in HB 121] to population.

[9:13:54 AM](#)

REPRESENTATIVE COGHILL asked if there is a service district in the Matanuska-Susitna Borough.

REPRESENTATIVE STOLTZE stated that there are numerous types of service districts, some of which provide road service, recreational service, and erosion services. He characterized service areas as an important tool.

[9:15:04 AM](#)

REPRESENTATIVE HARRIS turned attention to Amendment 1 and inquired as to whether the amendment means to delete all the material on page 2, line 9.

REPRESENTATIVE STOLTZE confirmed that the amendment only deletes the language on line 9, page 2.

[9:16:00 AM](#)

REPRESENTATIVE COGHILL recalled that in the Fairbanks North Star Borough the problem is that after [revenue sharing funds weren't available] the service area didn't tax itself and the service

area [didn't provide services], and others couldn't provide services in that area either. He asked if the aforementioned could happen in Representative Stoltze's district.

REPRESENTATIVE STOLTZE replied no, and stated that the service areas [in his district] work very well. He explained that Amendment 1 would allow him to support HB 121, but not harm his own district.

[9:17:47 AM](#)

REPRESENTATIVE KERTTULA opined that if there are no problems in the Matanuska-Susitna Borough, an exemption wouldn't be necessary. However, she suggested that perhaps the area will need it in the future.

REPRESENTATIVE STOLTZE related his belief that any assembly with an ordinance could say that there is a more cost efficient way without the protection that current statute affords.

[9:19:26 AM](#)

REPRESENTATIVE BERKOWITZ opined that if an assembly doesn't act under the current proposed legislation, then [Amendment 1] isn't necessary. Representative Berkowitz highlighted the concern that this legislation runs afoul of the constitutional prohibition against special legislation and Amendment 1 seems to place the legislation even further afoul of the constitution. Representative Berkowitz emphasized the need to protect the constitution.

[9:21:13 AM](#)

REPRESENTATIVE STOLTZE reminded the committee that, not with standing constitutional concerns, the governor signed Senate Bill 13.

[9:21:42 AM](#)

REPRESENTATIVE MARK NEUMAN, Alaska State Legislature, related his support as well as the support of members of the Matanuska-Susitna Borough Assembly for Amendment 1. Representative Neuman said that he supports HB 121, although it doesn't seem to work for all communities. He related that a member of the Matanuska-Susitna Borough felt that this bill wouldn't be good for the Matanuska-Susitna Borough.

[9:22:54 AM](#)

REPRESENTATIVE HARRIS inquired as to what would happen if the Matanuska-Susitna Borough population increases to over 75,000. He asked if the amendment merely speaks to a snap shot in time.

REPRESENTATIVE NEUMAN deferred to Representative Stoltze.

CHAIR ROKEBERG noted that Representative Stoltze, in response to Representative Harris, nodded his head in the affirmative.

[9:24:01 AM](#)

SALLY SADDLER, Legislative Liaison, Office of the Commissioner, Department of Commerce, Community, & Economic Development (DCCED), offered to answer any questions from the committee.

CHAIR ROKEBERG returned to Representative Harris' earlier question regarding the snap shot in time, and asked if DCCED publishes population figures for the various boroughs so that there would be a baseline point at which this [legislation] would be effective.

MS. SADDLER said that she wasn't sure with regard to the date, although she confirmed that the department does publish population figures on an annual basis.

[9:24:40 AM](#)

REPRESENTATIVE BERKOWITZ asked if any other boroughs would be impacted by the population specifications in Amendment 1. He asked if any boroughs would even come close to the population specifications.

MS. SADDLER replied no to both questions.

[9:25:08 AM](#)

CHAIR ROKEBERG surmised that due to the sentence structure, the borough's population in 2005 would be a specific date in time and wouldn't evolve or change over time. He then asked if DCCED has a position on this legislation.

[9:25:26 AM](#)

MS. SADDLER stated that the department endorses any measures that provide flexibility to local government for the delivery of

services. However, she informed the committee that DCCED highlighted in the House State Affairs Standing Committee that HB 121 would provide more flexibility to second class boroughs than home rule boroughs. The aforementioned is merely a point for the committee to consider, she said.

[9:26:20 AM](#)

REPRESENTATIVE KERTTULA said that after reading the Department of Law's opinion on the Senate companion bill to HB 121, she is concerned about HB 121, particularly with the adoption of Amendment 1, running afoul of the home rule powers for boroughs as well as the restriction on special legislation. She requested that the Department of Law representative speak to the aforementioned concerns.

[9:26:59 AM](#)

MARGORIE VANDOR, Assistant Attorney General, Labor and State Affairs Section, Civil Division (Juneau), Department of Law, first addressed the special legislation issue. She said that Amendment 1 would make the legislation more specific to a particular area by specifically exempting another area without any rational reason. The aforementioned is special legislation. She explained that the test for special legislation is whether there is a rational basis for exemption from the requirements specified in the legislation. Furthermore, population doesn't seem to be the basis upon which to allow a more strict exemption, she said.

[9:28:21 AM](#)

REPRESENTATIVE COGHILL inquired as to what other boroughs might have in the service district makeup. Although he related his understanding that the second class borough in Fairbanks has a specific issue that it's trying to address, he asked if the legislation could be broadly applied to all service area districts. Representative Coghill asked, "If you had a service area that was abandoned for some other reason, is there legal issues that they would also need the flexibility to say if you have a service area designed and then refuse to manage it, that they could consolidate it?" He further asked whether other boroughs fall into the aforementioned category.

MS. VANDOR replied, "Yes, they would." She reminded the committee that the power [being discussed] is given to a borough, service areas don't have any powers except as "voted

in." Service areas aren't the legal representative that can be sued, and therefore [the responsibility] ultimately lays with the borough. Why [this legislation] only restricts the proposed flexibility to second class boroughs, a general law borough, and not home rule boroughs is the Department of Law's other concern. Home rule boroughs are meant to be independent and powerful municipalities for which one looks to the home rule borough's charter, rather than Title 29, for its organic law. She noted that the Department of Law has always held the position that to restrict how home rule boroughs deal with their local service areas is a matter of local concern. When this statute became law in 2001/2002, the population restriction was taken out because of the concern that it was special legislation.

[9:31:09 AM](#)

REPRESENTATIVE BERKOWITZ pointed out that Title 29 uses the language, "the borough by ordinance", to conduct certain actions. However, Amendment 1 and the legislation use the following language: "if the assembly determines". He questioned the shift in language and noted that he wasn't sure of the definition of "determines".

MS. VANDOR pointed out that a second class borough can only take action by ordinance, and therefore by default any action would have to be by ordinance.

REPRESENTATIVE BERKOWITZ questioned what would happen if there is no assembly. He inquired as to the definition of "determines", and highlighted that the legislature may make informal determinations. Representative Berkowitz expressed concern with changing the terms that are usually used in Title 29 to those proposed in Amendment 1.

[9:33:34 AM](#)

A roll call vote was taken. Representatives Kohring, Harris, Coghill, and Rokeberg voted in favor of adopting Amendment 1. Representatives Berkowitz and Kerttula voted against it. Therefore, Amendment 1 was adopted by a vote of 4-2.

[9:34:09 AM](#)

REPRESENTATIVE BERKOWITZ moved that the committee adopt Amendment 2, as follows:

Line 6 as numbered on Amendment 1;

Delete "first determines"
Insert "the borough by ordinance determines"

REPRESENTATIVE HARRIS objected.

REPRESENTATIVE BERKOWITZ explained that the legislation should use the same language used in Title 29.

REPRESENTATIVE HARRIS withdrew his objection.

There being no further objection, Amendment 2 was adopted.

[9:35:43 AM](#)

REPRESENTATIVE HARRIS moved to report CSHB 121 (CRA), as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE KERTTULA objected and commented that perhaps legislation of general applicability could be written so that all boroughs have the authority proposed in HB 121. She opined that HB 121 is special legislation, which is made even more so with the adoption of Amendment 1. Therefore, she said she believes it's unconstitutional.

[9:36:27 AM](#)

REPRESENTATIVE BERKOWITZ predicted that [if this legislation passes] the legislature will end up appropriating a lot of money, money that could be appropriated to education or other worthy causes, to attorneys to fight this matter in court.

[9:36:56 AM](#)

CHAIR ROKEBERG indicated the need for the sponsors and those interested to seriously review the legislation regarding whether the legislation requires further work before it's calendared.

[9:37:17 AM](#)

A roll call vote was taken. Representatives Harris, Coghill, Kohring, and Rokeberg voted in favor of reporting CSHB 121(CRA), as amended, out of committee. Representatives Berkowitz and Kerttula voted against it. Therefore, CSHB 121(RLS) was reported out of the House Rules Standing Committee by a vote of 4-2.

ADJOURNMENT

There being no further business before the committee, the House Rules Standing Committee meeting was adjourned at [9:37:49 AM](#).