

ALASKA STATE LEGISLATURE
SENATE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

April 4, 2005

1:33 p.m.

MEMBERS PRESENT

Senator Gary Stevens, Chair
Senator Bert Stedman
Senator Thomas Wagoner
Senator Johnny Ellis
Senator Albert Kookesh

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 108(FIN) am

"An Act relating to the regulation of water and sewer utilities of political subdivisions that are not in competition with other water and sewer utilities; and providing for an effective date."

MOVED SCS CSHB 108(CRA) OUT OF COMMITTEE

SENATE BILL NO. 114

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

HEARD AND HELD

SENATE BILL NO. 86

"An Act relating to the liability of the state and municipalities for attorney fees in certain civil actions and appeals; and providing for an effective date."

MOVED CSSB 86(CRA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 108

SHORT TITLE: WATER & SEWER UTILITIES OF POLIT. SUBDIV.

SPONSOR(s): LABOR & COMMERCE

01/26/05 (H) READ THE FIRST TIME - REFERRALS
01/26/05 (H) CRA, L&C

02/10/05 (H) CRA AT 8:00 AM CAPITOL 124
 02/10/05 (H) Moved Out of Committee
 02/10/05 (H) MINUTE(CRA)
 02/11/05 (H) CRA RPT 2DP 3NR 1AM
 02/11/05 (H) DP: CISSNA, THOMAS;
 02/11/05 (H) NR: LEDOUX, SALMON, NEUMAN;
 02/11/05 (H) AM: KOTT
 02/14/05 (H) FIN REFERRAL ADDED AFTER L&C
 02/16/05 (H) L&C AT 3:15 PM CAPITOL 17
 02/16/05 (H) Moved Out of Committee
 02/16/05 (H) MINUTE(L&C)
 02/18/05 (H) L&C RPT 1DP 3NR 3AM
 02/18/05 (H) DP: ANDERSON;
 02/18/05 (H) NR: CRAWFORD, LYNN, LEDOUX;
 02/18/05 (H) AM: KOTT, GUTTENBERG, ROKEBERG
 03/16/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/16/05 (H) Heard & Held
 03/16/05 (H) MINUTE(FIN)
 03/17/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/17/05 (H) Moved CSHB 108(FIN) Out of Committee
 03/17/05 (H) MINUTE(FIN)
 03/18/05 (H) FIN RPT CS(FIN) NT 3DP 6NR
 03/18/05 (H) DP: HAWKER, WEYHRAUCH, FOSTER;
 03/18/05 (H) NR: HOLM, STOLTZE, MOSES, KELLY, MEYER,
 CHENAULT
 03/22/05 (H) TRANSMITTED TO (S)
 03/22/05 (H) VERSION: CSHB 108(FIN) AM
 03/23/05 (S) READ THE FIRST TIME - REFERRALS
 03/23/05 (S) CRA, L&C, FIN
 03/30/05 (S) CRA AT 1:30 PM BELTZ 211
 03/30/05 (S) -- Meeting Canceled --
 04/04/05 (S) CRA AT 1:30 PM BELTZ 211

BILL: SB 114

SHORT TITLE: SERVICE AREAS IN SECOND CLASS BOROUGHES

SPONSOR(s): COMMUNITY & REGIONAL AFFAIRS

02/23/05 (S) READ THE FIRST TIME - REFERRALS
 02/23/05 (S) CRA
 03/09/05 (S) CRA AT 1:30 PM BELTZ 211
 03/09/05 (S) Heard & Held
 03/09/05 (S) MINUTE(CRA)
 04/04/05 (S) CRA AT 1:30 PM BELTZ 211

BILL: SB 86

SHORT TITLE: STATE/MUNI LIABILITY FOR ATTORNEY FEES

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/31/05 (S) READ THE FIRST TIME - REFERRALS
01/31/05 (S) CRA, JUD
02/09/05 (S) CRA AT 1:30 PM BELTZ 211
02/09/05 (S) Heard & Held
02/09/05 (S) MINUTE(CRA)
04/04/05 (S) CRA AT 1:30 PM BELTZ 211

WITNESS REGISTER

Josh Appleby
Staff to Representative Tom Anderson
Alaska Capitol Building
Juneau, AK 99801
POSITION STATEMENT: Introduced CSHB 108 for the sponsor

Mark Prima, General Manager
Anchorage Water and Wastewater Utility (AWWU)
Municipality of Anchorage
4501 South Bragaw
Anchorage, Alaska 99508
POSITION STATEMENT: Supported CSHB 108

Virginia Rush, Attorney
AARP in Fairbanks
Fairbanks, AK
POSITION STATEMENT: Opposed CSHB 108

Kate Giard
Regulatory Commission of Alaska
701 W Eighth Ave Ste 300
Anchorage, AK 99501
POSITION STATEMENT: Opposed CSHB 108

Kathie Wasserman
Policy and Program Coordinator
Alaska Municipal League
216 Seward Street
Juneau, AK 99801
POSITION STATEMENT: Spoke in support of CSHB 108

Melanie Lesh
Staff to Senator Gary Stevens
Alaska Capitol Building
Juneau, AK 99801
POSITION STATEMENT: Introduced SB 114 and explained change to SB 86

Athena Logan
Local Government Specialist
Department of Commerce, Community & Economic Development
PO Box 110800
Juneau, AK 99811-0800

POSITION STATEMENT:

Rene Broker, Attorney
Fairbanks North Star Borough
PO Box 71267
Fairbanks, Alaska 99707
POSITION STATEMENT: Testified on SB 114

ACTION NARRATIVE

CHAIR GARY STEVENS called the Senate Community and Regional Affairs Standing Committee meeting to order at [1:33:27 PM](#). Present were Senators Stedman, Wagoner, Ellis and Chair Gary Stevens. Senator Kookesh arrived momentarily.

CSHB 108(FIN)am-WATER & SEWER UTILITIES OF POLIT. SUBDIV.

CHAIR GARY STEVENS announced CSHB 108(FIN)am to be up for consideration.

[1:33:56 PM](#)

JOSH APPLEBY, Staff to Representative Tom Anderson, introduced the bill as an issue of local control. Adding lines 6-9 on page 2 changes existing law and exempts the Anchorage Water and Wastewater Utility (AWWU) from regulation by the Regulatory Commission of Alaska (RCA). The language states that a water or sewer utility owned by a political subdivision, but not competing directly with another water or sewer utility is exempt from RCA regulation.

He said there isn't any evidence that consumers in Anchorage are any better off with state oversight than with local oversight. The sponsor has been working with AWWU, the mayor's office, the assembly, and Anchorage legislators to develop a plan for an oversight authority for the utility to maintain the level of consumer protection while encouraging and fostering better local governance of the locally controlled and owned water utilities.

He noted that Mr. Prima was available for technical questions and to answer specific questions on the proposed Senate committee substitute (CS).

The House Finance Committee added Section 2, which would continue any pending measures before the RCA so they would not be affected with this legislation. Section 3 was also added allowing this language to take effect only if the governing body established a separate body to continue the fair and open process of setting rates based on standard industry practices. Section 4 establishes the effective date.

The bill was amended on the House floor to include language on page 2, lines 29-30 requiring that the new separate body include a role for consumer advocates to represent taxpayers.

[1:37:08 PM](#)

MARK PRIMA, General Manager, Anchorage Water and Wastewater Utility (AWWU), spoke in support of HB 108. The bill would exempt AWWU from RCA economic regulation, but not service area regulation. This would give AWWU the same status as every other municipally owned water and wastewater utility in Alaska except Pelican. Anchorage would like this exemption because the current RCA regulation process and procedures are slow and expensive and because the regulations and procedures are non-responsive to local needs.

From 1993-2003 AWWU filed only minor procedural matters with the RCA and never requested a rate increase, but during this period AWWU ratepayers have paid about \$2.8 million in regulatory assessments to the RCA as part of every monthly bill. In 2005 AWWU estimates the assessment will be about \$500,000.

He maintained that the RCA process wasn't designed for municipal utilities and that it wouldn't ever be as responsive and accountable to ratepayers as the municipality, which has provided its customers with excellent service, stable rates and sound finances for many years. Ratepayers have benefited as AWWU has reduced expenses by leveraging technology and improving business processes while increasing spending on system repairs. The Municipality of Anchorage administration supports a strong oversight authority to regulate AWWU in lieu of the RCA. The Water and Wastewater Advisory Commission and Mayor Begich have reached consensus on a draft authority structure with strong consumer protection provisions and will present that to the assembly this week. Ultimately the administration's goal is to

have an ordinance establishing AWWU authority approved by the municipal assembly.

MR. PRIMA noted the letter of intent from Mayor Begich establishing his commitment to establishing an AWWU authority with strong consumer protection provided by a board of experts. The board would be responsible for operation and management of AWWU under the oversight of the municipal assembly. The board and assembly would both hold public hearings on rate increases.

[1:42:33 PM](#)

CHAIR GARY STEVENS asked for a motion to adopt the Senate CS.

[1:42:48 PM](#)

SENATOR THOMAS WAGONER motioned to adopt SCS CSHB 108 \I version.

SENATOR ELLIS objected for discussion and explanation purposes.

MR. PRIMA said page 2, end of line 19 through line 22 were added to address concerns regarding pending rate cases. The language ensures there is a process of rate review by a public body and establishes the test year for looking back at operational expenses as not earlier than 2004.

[1:44:48 PM](#)

SENATOR JOHNNY ELLIS asked for the specific meaning of rate review in the context of the bill and what powers would be granted.

MR. PRIMA replied it's the mechanism by which rates would be established.

SENATOR BERT STEDMAN asked why the Municipality of Anchorage was placed under RCA review.

MR. PRIMA explained that at the time of unification there were multiple publicly owned and highly competitive utilities within the municipality. To avoid cross subsidy, which is using ratemaking powers of one utility to siphon funds to subsidize rates and put competing utilities at a disadvantage, state law required regulation of all utilities contained by the political subdivision.

With regard to whether the same conditions exist today, he said the issue of utility self-regulation has been before the RCA previously and they took no action. However, the issue wasn't with respect to the water and sewer utility and they didn't reference monopolistic concerns at that time.

[1:47:55 PM](#)

SENATOR STEDMAN asked if there was a consolidation of utilities with unification.

MR. PRIMA said there was and the cross subsidy issue was with regard to the municipal light and power utility and the Anchorage telephone utility. The Municipality of Anchorage no longer owns the Anchorage telephone utility; it was privatized in the early 1990s.

CHAIR GARY STEVENS asked if there wouldn't be a cost attached to the AWWU rate studies.

MR. PRIMA replied the estimated \$500,000 is a regulatory cost surcharge, which is paid by every RCA regulated utility in Alaska for RCA operations. Ratepayers wouldn't pay that surcharge under municipal authority because there would be no RCA to support. However, the real cost savings would occur because a self regulated municipal authority wouldn't operate in the quasi-judicial style of the RCA.

CHAIR GARY STEVENS summarized the RCA charges \$500,000 as a member fee and rate hearings bring additional charges.

MR. PRIMA clarified it's the costs that the utility incurs in preparing for a rate filing. This includes expert witnesses, testimony, and studies. The calculations and justifications would be the same as per industry standards, but there wouldn't be the cost associated with a formal judicial process.

CHAIR GARY STEVENS asked if the rate changes would have to be approved by the Anchorage Borough Assembly.

MR. PRIMA said yes. The proposal is to create a separate independent authority and a two-step procedure for rate setting. The seven-member authority would hold a public process before making recommendations to the Anchorage Assembly. The assembly, through ordinance and public process, would approve modify or deny the suggestion.

SENATOR STEDMAN noted RCA is looking at a \$345,000 change in revenue and questioned the difference between that and \$500,000.

MR. PRIMA replied one fiscal note reflects the \$345,000 RCA oversight cost reduction and the \$500,000 is the municipal percentage calculation based on RCA costs to date against gross billings.

CHAIR GARY STEVENS noted Ms. Lesh was passing out an indeterminate fiscal note from the Department of Law.

SENATOR STEDMAN asked if there might be less upward pressure on rate increases and perhaps even a rate decrease.

MR. PRIMA replied there is no question that there would be less pressure on rates, but he couldn't say rates would decrease. However, the \$500,000 surcharge wouldn't be there and the expense of filing and dealing with the RCA formal process wouldn't be there either.

SENATOR THOMAS WAGONER remarked the indeterminate fiscal note has a different connotation than the other three, which reflect a savings associated with deregulating the Anchorage utility.

SENATOR ELLIS removed his objection to adopting the committee substitute.

CHAIR GARY STEVENS announced SCS CSHB 108, \I version, to be before the committee.

[1:57:00 PM](#)

KATE GIARD, Chair, Regulatory Commission of Alaska, said she was available for questions, but she wasn't prepared to comment on the Senate CS.

She clarified that RCCs are collected from all regulated utilities and the funds go into a pool and that the AWWU ratepayers have been paying into the general pool to support the regulatory effort of the RCA. As far as regulatory costs going down, she agreed that Anchorage ratepayers would pay about \$500,000 less in RCCs according to the AWWU calculations. That money is comprised of the amount that is paid to the RCA and to the attorney general for public advocacy.

Certainly those fees would be reduced in exchange for the local control, but she wasn't sure all the costs would go away because the new structure might be similar.

She said the RCA has provided the utility some protection from transfer of costs from local government over to the public utility. She mentioned that because it has been an issue in the instance of Fairbanks.

[2:03:41 PM](#)

VIRGINIA RUSH testified that she is an attorney working on behalf of the AARP. She advised she has worked in the utility regulation field for many years and although she represented the RCA previously, she no longer has any connection to the commission.

AARP opposes HB 108 including the language of the Senate CS because it is not consistent with AARP principles on utilities. Those principles include:

- Regulatory Authority - Independent fully funded and staffed regulators that are focused on residential ratepayers and empowered to initiate investigations and enforce laws and regulations
- Public Participation - Broadly publicized hearings on proposed changes in public utility rates that are conducted locally with consumer participation
- Consumer Representation - Independent fully funded and adequately staffed consumer advocacy organizations empowered to initiate investigations and authorized to represent residential ratepayers before state and federal regulators and in the courts.

AARP intends to work with the city to develop a process that meets principles, but they don't know if the new rate making body will be independent of the municipality's own financial interests. That's important so that the body isn't under pressure to shift taxpayer costs to utility ratepayers. It's also unclear whether the consumer advocate would be independent and fully funded and have necessary access to information to examine the utility rate cases.

Of major concern is the effect the bill will have on the current rate case before the RCA. AWWU should not be able to ask for new rates the day after the RCA decision if it doesn't like them and HB 108 and the proposed committee substitute would allow that.

Relating the rate case before the RCA to help members understand the concern, she said:

AWWU is seeking a total increase of over \$10 million per year from its ratepayers and 18 percent increase in rates. ... \$6 million of that \$10 million is due to a change that's already been approved by the Anchorage Assembly that increases the municipal utility surcharge assessment, which is the payment in lieu of taxes that's charged to these utilities. What that means is that this large rate increase reflects rates through which ratepayers pay more than \$6 million in additional taxes to the municipality through their utility rates.

The consumer advocate - which is the AG or RAPPAs as Mr. Prima called it - the AGs position is that this increase shouldn't be allowed and with other costs that the AG says should be disallowed, the consumer advocates position before the RCA is that this utility doesn't need a rate increase at all.

The RCA process does follow the AARP principles promoting a public process, public participation, consumer representation, and an independent decision maker. Any rates the RCA adopts should have a reasonable life before AWWU is able to file a new rate case. There aren't any cost savings if AWWU files a new rate case the day after the RCA issues its decision. The only reason for doing that would be the desire to have a second bite at the apple because it doesn't like the decision.

AARP specifically objects to the provision that would make the affect of the RCA decision end immediately if AWWU files a new rate case. She thought the CS says AWWU could file a new rate case based on the 2004 test year so they could start preparing a rate case immediately and present it immediately after the RCA decision if they don't like it.

AARP suggested a version that would allow AWWU to file a new rate case only after a full test year after HB 108 passes. That would mean the earliest filing would be about 2007.

She noted that the ratemaking system that Anchorage is proposing is similar to that used when Fairbanks received APUC approval to sell its utilities to a private entity. The problem in that instance was that the city could not or would not raise rates high enough to cover the tax payments the city drew off and also

provide needed repairs and investments for the utility. Armed with that knowledge, she couldn't understand why Anchorage was so eager to enter into a similar situation.

[2:14:19 PM](#)

SENATOR WAGONER took issue with the underlying assumption that municipalities should all have regulated utilities because some do indeed do a good job of running their own water and utility systems. He said the Kenai and Soldotna systems are very healthy and he questioned why she would think that the City of Anchorage isn't capable of having a similarly healthy system.

MS. RUSH clarified she was not addressing any regulatory system not covered by this bill. AARP is only concerned about whether the City of Anchorage would regulate its utilities in a way that is in line with the AARP principles.

[2:16:28 PM](#)

KATHY WASSERMAN, Policy and Program Director, Alaska Municipal League (AML), said AML always advocates for local decisions and control to be made locally. The RCA is an extra layer that imposes extra cost and work. As the former mayor of Pelican, the only other Alaska community that is regulated by RCA, she has first hand knowledge of the extra work and money that the extra layer entails.

When Pelican received the utility from a private interest, the maintenance was deplorable and the rates weren't enough to keep the utility alive. At that time and in that instance, the RCA certainly didn't do what Ms. Giard says they will do. Local elected officials are more responsive, make wiser choices and usually can make more efficient, effective and timely decisions.

As the state looks for ways to pass costs on to local governments, this would be a positive and beneficial way to do just that, she concluded.

[2:18:57 PM](#)

SENATOR WAGONER referenced a fiscal note analysis and told Ms. Giard he questions charging other regulated bodies more money if the RCA were to lose the money paid in by the AWWU.

MS. GIARD asked if that statement was from the Department of Law (DOL) because the fiscal note analysis filed by the RCA stated

that the loss in revenue would be equivalent to about three positions.

SENATOR WAGONER said it was from the Department of Law.

MS. GIARD clarified that the RCA didn't say that and they don't support the DOL statement. RCA believes it is inappropriate to try to maintain regulatory control over an entity to simply receive revenue and not provide regulatory service.

SENATOR WAGONER thanked her for the clarification.

MS. GIARD said RCA revenues aren't as much as were anticipated and they have already released eight staff members in an effort to stay within budget. Certainly they wouldn't advocate increasing revenues or holding onto a utility to get revenue.

CHAIR GARY STEVENS asked Mr. Prima to respond to the concern about the potential for cost shifting to the Anchorage ratepayers and what would happen if the bill were to pass.

MR. PRIMA said the decision in the current RCA rate case will go into effect regardless of the effective date of the bill and that the utility will abide by the RCA rate case decisions.

Cost shifting is always a concern for municipal departments and the best prevention is to have local control and local assemblies. Local officials tend to be very responsive he said.

He referenced the letter from Mayor Begich regarding how the authority would be set up and suggested that it does speak to the principles of the AARP.

There were no further questions or comments.

[2:26:21 PM](#)

CHAIR GARY STEVENS asked for a motion.

SENATOR WAGONER motioned to report SCS CSHB 108(CRA) \I version and attached 4 fiscal notes from committee with individual recommendations. There being no objection, it was so ordered.

SB 114-SERVICE AREAS IN SECOND CLASS BOROUGHS

[2:27:50 PM](#)

CHAIR GARY STEVENS announced SB 114 to be up for consideration.

MELANIE LESH, Staff to Senator Gary Stevens, informed members the committee substitute (CS) \G version was adopted at the March 9, 2005 meeting.

MS. LESH recapped the issue briefly explaining that a great number of road service areas were created when state revenue sharing was distributed by road mile. With the termination of revenue sharing, a number of road service areas have insufficient funding to conduct road maintenance. SB 114 was introduced to allow second-class boroughs to consolidate or dissolve such service areas that are nonfunctioning or functioning below standard under AS 29. Any service areas that are taxing themselves adequately to maintain safe roads are not affected. Local assemblies would make consolidation or dissolution decisions.

CHAIR GARY STEVENS called a brief at ease from [2:29:54 PM](#) to [2:31:18 PM](#)

CHAIR GARY STEVENS reconvened the meeting and asked Ms. Logan to give testimony.

[2:31:37 PM](#)

ATHENA LOGAN, Local Government Specialist with the Department of Commerce Community and Economic Development (DCCED), reported that the department endorses measures to give local governments flexibility to provide an efficient delivery of services and SB 114 does so for second-class boroughs.

She observed that the bill gives greater flexibility and authority to second-class boroughs than it does to home rule boroughs. Under the Alaska Constitution, home rule represents maximum self-governance. State law doesn't place a greater restriction on a home rule local government than it does on general law, local governments, but SB 114 does just that. This seems contrary to the intent of home rule local government, she said.

She also observed that there is nothing unique about a second-class borough that would suggest that the measures in SB 114 are needed for that particular class of borough but not the other classes of boroughs.

The Ketchikan Gateway Borough is a second-class borough and under this bill the local assembly would gain needed flexibility. However, a petition is currently pending before the Local Boundary Commission (LBC) that would convert the Ketchikan Gateway Borough into a home rule borough if approved by the commission and the voters. If that occurs and the bill passes as currently written, the Ketchikan Borough Assembly would lose the flexibility accorded to second-class boroughs.

MS. LOGAN reiterated the department endorses measures that would give borough government flexibility needed to provide for the efficient delivery of services, but SB 114 does so only for second-class boroughs.

She noted members had copies of a March 9, 2005 legal opinion from Marjorie Vandor, Assistant Attorney General, supporting DCCED's understanding of the bill.

[2:33:46 PM](#)

CHAIR GARY STEVENS asked Ms. Broker to respond to Ms. Logan's comments regarding second-class and home rule boroughs.

RENE BROKER, Attorney for the Fairbanks North Star Borough replied SB 114 addresses a problem that only second-class boroughs face. Home rule boroughs do have more powers than second-class boroughs, but with more power comes greater flexibility and ability to deal with problems that second-class boroughs don't have. Second-class boroughs don't have road powers in particular so they can only exercise road powers through service areas so second-class boroughs have an issue and problem that home rule municipalities aren't experiencing.

[2:35:12 PM](#)

CHAIR GARY STEVENS said the issue might take more thought and announced he would hold SB 114 in committee.

SB 86-STATE/MUNI LIABILITY FOR ATTORNEY FEES

[2:35:48 PM](#)

CHAIR GARY STEVENS announced SB 86 to be up for consideration. He noted the committee amended the bill at the previous hearing.

CHAIR GARY STEVENS called a brief at ease at [2:36:31 PM](#).

MELANIE LESH, staff to Senator Gary Stevens, explained that the change occurred on page 2, line 5. Mr. Brandt-Erichsen, Ketchikan Gateway Borough Attorney, suggested deleting the words, "costs or" and inserting "attorney" because the bill addresses attorney fees rather than costs.

CHAIR GARY STEVENS noted there were no questions and asked for a motion.

[2:42:09 PM](#)

SENATOR WAGONER motioned to report the \G version CSSB 86(CRA) and attached fiscal notes from committee with individual recommendations.

SENATOR ELLIS objected.

CHAIR GARY STEVENS called for a roll call vote. The motion passed with Senators Kookesh and Ellis voting nay and Senators Stedman, Wagoner and Chair Gary Stevens voting yea.

CSSB 86(CRA) \G version and attached fiscal notes moved from committee.

[2:42:47 PM](#)

There being no further business to come before the committee, Chair Gary Stevens adjourned the meeting at [2:42:49 PM](#).