

ALASKA STATE LEGISLATURE
SENATE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

April 13, 2005

2:20 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

SENATE BILL NO. 161

"An Act relating to a borough sales tax exemption for a source that is taxed by a city in that borough."

HEARD AND HELD

SENATE BILL NO. 120

"An Act exempting the state and its political subdivisions from daylight saving time."

MOVED SB 120 OUT OF COMMITTEE

Taxation of Mining Property; Contracts approved by municipalities for Payment in Lieu of Taxes

PENDING INTRODUCTION & REFFERAL

PREVIOUS COMMITTEE ACTION

BILL: SB 161

SHORT TITLE: BOROUGH SALES TAX EXEMPTIONS

SPONSOR(S): STATE AFFAIRS

04/04/05	(S)	READ THE FIRST TIME - REFERRALS
04/04/05	(S)	CRA, FIN
04/13/05	(S)	CRA AT 1:30 PM BELTZ 211

BILL: SB 120

SHORT TITLE: ELIMINATE DAYLIGHT SAVING TIME
SPONSOR(s): SENATOR(s) OLSON

02/28/05 (S) READ THE FIRST TIME - REFERRALS
02/28/05 (S) CRA, L&C
04/13/05 (S) CRA AT 1:30 PM BELTZ 211

WITNESS REGISTER

Dave Stancliff
Staff to Senator Therriault
Alaska Capitol Building
Juneau, AK 99801
POSITION STATEMENT: Introduced SB 161

Renee Broker, Attorney
Fairbanks North Star Borough
PO Box 71267
Fairbanks, Alaska 99707
POSITION STATEMENT: Supported SB 161

Linda Anderson, Lobbyist
Fairbanks North Star Borough
POSITION STATEMENT: Testified in support of SB 161

Senator Donald Olson
Alaska Capitol Building
Juneau, AK 99801
POSITION STATEMENT: Sponsor SB 120

Rich Poor
Juneau, AK 99801
POSITION STATEMENT: Testified on SB 120

Frank Norris
Anchorage, AK
POSITION STATEMENT: Testified on SB 120

Robert Weber
Mat-Su, AK
POSITION STATEMENT: Supported SB 120

Leland Fishback
Mat-Su, AK
POSITION STATEMENT: Supported SB 120

Paula Rak

Wrangell, AK

POSITION STATEMENT: Opposed SB 120

Lynn Willis

Eagle River, AK

POSITION STATEMENT: Supported SB 120

Joe Balash

Staff to Senator Therriault

Alaska Capitol Building

Juneau, AK 99801

POSITION STATEMENT: Taxation of Mining Property Presenter

Steve Borell

Alaska Miners

POSITION STATEMENT: Taxation of Mining Property Presenter

ACTION NARRATIVE

CHAIR GARY STEVENS called the Senate Community and Regional Affairs Standing Committee meeting to order at [2:20:11 PM](#). Present were Senators Kookesh, Ellis, Wagoner and Chair Gary Stevens. Senator Stedman arrived momentarily.

SB 161-BOROUGH SALES TAX EXEMPTIONS

CHAIR GARY STEVENS announced SB 161 to be up for consideration.

[2:21:05 PM](#)

DAVE STANCLIFF, Staff to Senator Therriault, said the Fairbanks North Star Borough has requested the ability to exempt the city within borough boundaries from duplicative taxation. The borough doesn't want to stack taxes, but a current court case suggests that they don't have that latitude; the Legislature hasn't given sufficient statutory direction one way or another.

SB 161 would clarify that local governments have maximum flexibility with regard to taxation. Fairbanks North Star Borough Attorney, Renee Broker, is available if there are technical legal questions.

[2:22:21 PM](#)

CHAIR GARY STEVENS asked for an example.

MR. STANCLIFF said if there is a tax at the city and the borough level, the borough should have the ability to exempt the municipal part of the tax to avoid double taxation. SB 161 would clarify that the authority exists within the borough boundaries.

CHAIR GARY STEVENS asked if this would affect the cap on education in any way.

MR. STANCLIFF said that is a question for Ms. Broker, but for the record he would read from the case that caused the sponsor to introduce the bill. He read:

Case law and code law have not varied in the 13 years since this court interpreted AS 04.21.010 (c) (2). It's never a sure thing to bet that the Legislature is satisfied with the state of the law because it has done nothing. It is worth noting, however, that this is the longest interval in the state's history in regulation of municipal taxation of alcoholic beverage sales during which the operative language of AS 04.21.010 (c) (2) has not been the subject of interpretation by either state lawmakers or the state's highest court.

[2:26:35 PM](#)

SENATOR THOMAS WAGONER said doing this creates two different classes of citizens. One class is comprised of borough residents living outside the municipality that have to pay sales tax for borough services and the other is the people living in the municipality that are exempted.

MR. STANCLIFF replied the concept is that no one should pay double tax. If it takes an exemption to prevent a double tax, then this would grant the explicit authority to make the exemption.

CHAIR GARY STEVENS said this could create a number of problems and he wasn't sure he understood the full ramifications.

MR. STANCLIFF said a residual concern is that this could spill over into issues other than alcohol tax. For instance it could spill over to the bed tax and jeopardize some of that funding.

SENATOR KOOKESH asked whether the parties in the court case had commented on the legislation.

MR. STANCLIFF said they haven't received comments from the petitioner and they have asked for clarification from the borough.

SENATOR KOOKESH suggested they get clarification from both parties because the Legislature certainly doesn't want to get in the middle of a lawsuit unless both parties agree that would solve the problem.

[2:29:50 PM](#)

RENEE BROKER, Borough Attorney for the Fairbanks North Star Borough, explained that the borough assembly adopted sales tax in the form of a bed tax and an alcoholic beverage tax. When the assembly adopted those taxes, they used their general exemption power to exempt transactions that were already taxed within the borough. This was done to ensure that those two items would be equally taxed throughout the borough. The purpose was to maintain a level playing field throughout the borough.

A group brought suit claiming that an exemption to avoid stacking taxes is illegal. They argue that current state law requires the borough to stack sales taxes and effectively double the tax burden within the city. The case is before the Alaska Supreme Court now and if it is successful, the borough will have just two options. They could eliminate the tax and forgo \$3.2 million in annual revenue or could stack the tax and subject the citizens and visitors to double taxation within the city.

The borough supports the legislation because the parties don't agree on the legislative intent and this would make it clear. The plaintiff argues that the legislative intent is to require boroughs, as a condition of adopting a sales tax, to stack taxes. The bill not only clarifies the intent, it also supports the public policy expressed in the constitution, which is against duplication of tax levy in jurisdictions.

CHAIR GARY STEVENS said the bill doesn't mention duplicate taxation; it talks about allowing a borough to make its own decision.

MS. BROKER replied the borough makes its own decision by wholly or partially exempting a transaction that is already being taxed by a city.

CHAIR GARY STEVENS said although that might be the outcome, the bill isn't asking the Legislature to take a position on duplication of taxes.

MS. BROKER agreed; the request is to allow the borough to give the exemption.

SENATOR WAGONER reiterated this creates two different groups within the borough and gives them different treatment.

MS. BROKER respectfully disagreed. It would be true if it was a property tax, but this is a sales tax. People don't necessarily shop where they live. If you shop within the borough, regardless of whether you live within or outside the city, you will pay the same amount of tax. Before the borough tax was imposed, one group didn't pay tax and the other did.

SENATOR WAGONER asked if this is an overall sales tax.

MS. BROKER replied within the Fairbanks North Star Borough the discussion is with regard to alcoholic beverages and bed tax. The research the borough did indicates that not many boroughs stack taxes.

SENATOR WAGONER remarked tax stacking is commonly done throughout the state and this is asking for an exception to the rule in Alaska.

MR. STANCLIFF said the term "may" makes this permissive. This doesn't create a new policy. It has been done and it was sustained by the lower court ruling. He suggested that it's appropriate that the Legislature weigh in to clarify what the latitude should be for borough governments.

SENATOR BERT STEDMAN asked what the alcohol tax is in Fairbanks.

MS. BROKER replied the alcohol tax is 5 percent and the bed tax is 8 percent. With the exemption in effect, the bed tax is 8 percent in the city and outside the city.

The litigation relates to legislative intent so the borough is asking the Legislature to clarify the intent when it authorized the borough to give exemptions.

SENATOR STEDMAN asked if the borough gets any of the 8 percent bed tax that's paid in the city and vice versa.

MS. BROKER said no, it's exempt in both cases.

CHAIR GARY STEVENS asked what happens to the money that's collected in the borough.

MS. BROKER said it is primarily used for economic development for the city and the borough.

SENATOR KOOKESH reiterated the committee should hear from both the defendant and plaintiff before moving forward. He asked why the plaintiff wasn't represented here.

MS. BROKER said she wasn't speaking for the plaintiff, but she thought the committee could accurately predict that the plaintiff would agree that this would resolve the issue, but that they wouldn't agree that this is the way the issue should be resolved. Their goal is to force the borough to stack taxes within the city.

SENATOR WAGONER asked the name of the plaintiffs.

MS. BROKER said it's a local group called ICHRRA [Interior Cabaret Hotel, Restaurant and Retailers Association]. They are a group of individuals, bar owners, and corporations that sell alcoholic beverages.

SENATOR WAGONER stated he would like to talk to communities in his district that have a similar sales tax to find out if this would have any affect on their tax structure. He cautioned that the issue could be larger than anticipated.

SENATOR STEDMAN said he too was reluctant to jump in because of the litigation.

CHAIR GARY STEVENS noted the hesitation around table and said it wasn't his intent to move the bill that day. More scrutiny was in order.

LINDA ANDERSON, Lobbyist for the Fairbanks North Star Borough, acknowledged this does affect all second-class boroughs and she understands the hesitation. However, this isn't the first time the Legislature has addressed an issue that was in the courts to try to prevent something that might be catastrophic. If the borough were to lose the case because the Legislature decided not to give second-class boroughs the powers to partially or wholly exempt, the Fairbanks borough would have to undo millions of dollars of damage. If a second-class borough were not able to

equalize taxes if they choose to do so, it would jeopardize millions of dollars in the various boroughs.

CHAIR GARY STEVENS asked if there might not be grounds for a lawsuit either way.

MS. ANDERSON replied the city has economic development powers.

MS. BROKER added the borough has an agreement with the city to mutually share the power to benefit all citizens.

MS. ANDERSON noted legislation was passed several years ago so cities and boroughs can agree to exchange powers and use revenues between the two. Title 29 sets up the structure to do that.

SENATOR WAGONER noted the law was amended several years ago to allow the Fairbanks North Star Borough and the city to share in those funds jointly. He recalled they were the only borough to utilize that power.

MS. ANDERSON said when the Fairbanks citizens voted to raise the bed tax the intent was not to end up with a 16 percent bed tax in the city and 8 percent in the borough.

CHAIR GARY STEVENS asked if there is an upper limit on the tax that could be charged.

MS. BROKER said she didn't know because there is no general sales tax in Fairbanks, but there is no upper limit on the bed or alcoholic beverage taxes.

SENATOR WAGONER said he didn't understand why the local ICHRRA would want to force a different level of taxation in the city unless there is a business advantage to do that.

MS. BROKER speculated that if ICHRRA believes this would make the tax more expensive then the citizens wouldn't vote to impose that tax.

SENATOR STEDMAN said it's a local issue and the two bodies should work it out.

MS. ANDERSON said the two bodies did get together and made the decision that they don't want to impose a higher tax in the city than in the borough. The court case challenges the local government's authority to partially or wholly exempt a city.

SENATOR WAGONER asked if the borough has discussed the issue with the Alaska Municipal League, the Kenai Peninsula Borough attorney or any others.

MS. BROKER replied yes; the Alaska Municipal Attorneys Association discussed the issue and a number of other municipal attorneys expressed interest in the resolution. They all see the public policy benefit of equalizing tax and working with cities even if you aren't a unified municipality. Specifically they have been working with Kodiak because they do the same thing with their bed tax. They exempt their cities from the bed tax. This would clarify the issue for them too.

SENATOR WAGONER reiterated he wanted time to consult with community leaders in his district.

CHAIR GARY STEVENS announced he would hold SB 161 in committee and schedule it at a future time.

CHAIR GARY STEVENS announced a brief at ease from [2:56:54 PM](#) to [2:57:36 PM](#).

SB 120-ELIMINATE DAYLIGHT SAVING TIME

CHAIR GARY STEVENS announced SB 120 to be up for consideration.

[2:57:49 PM](#)

SENATOR DONALD OLSON, Sponsor, paraphrased the sponsor statement:

I have introduced this bill because of conversations with friends and constituents questioning the necessity for the state of Alaska to change our clocks twice a year for the "leap forward" and the "rolling back" that marks Daylight Saving Time.

The main complaint that I have heard associated with Daylight Saving Time is the disruption of sleeping habits. There have been numerous letters to the editor in the Anchorage Daily news over the years complaining about children and adults having difficulty adjusting to waking up an hour earlier than they have for 6 months. According to the National Sleep Foundation there is a 7% increase in accidents the day after Daylight Saving Time goes into effect.

The other complaint most often voiced is the annoyance people feel towards the changing of clocks in the households and offices. People simply do not enjoy the task and because of that often are against Daylight Saving Time.

I thank the committee for it's consideration and respectfully I urge your support on Senate Bill 120.

3:00:53 PM

SENATOR BERT STEDMAN commented the history in the packet was interesting. He questioned how many time zones Southeast Alaska would differ from Seattle if this were to pass.

SENATOR OLSON replied under this proposal, Southeast Alaska would be one hour different for six months of the year and two hours different the other six months. People doing business in the Russian Far East and Asia would be an hour closer, which might be advantageous.

SENATOR WAGONER said he was in favor of the change.

RICH POOR, Douglas resident, stated opposition to the bill and asked the committee to consider the value of the extra hour of daylight at the end of the day. Also, Alaska does a great deal of business with the West Coast and if Alaska were to be two hours behind that region for seven months a year, it wouldn't be easier to do business.

He suggested it would be beneficial keeping the state on Alaska Daylight Time or Pacific Standard Time year round for summer activities and communication with Seattle. In the winter the state would be on Pacific Time and that would benefit business. He presented the committee with his letter and asked members to give the issue serious consideration. Most people aren't aware of the bill, but there's bound to be a reaction if this passes.

3:08:19 PM

CHAIR GARY STEVENS asked when it would get dark in Southeast in the summer if there were no Daylight Savings Time.

MR. POOR said now gets dark at about 10:00 pm in Juneau and if this passes it would get dark at about 9:00 pm. That would be tough for outdoor activities when August rolls around.

SENATOR WAGONER commented that Mr. Poor's suggestion was a novel approach and he liked it.

[3:11:19 PM](#)

FRANK NORRIS, Anchorage resident, told members he sent the committee a version of an article he wrote for the Alaska History Journal called "Keeping Time in Alaska; National Directives, Local Responses." A copy is in the bill file.

He offered the generalization that because Alaska spans 60 degrees on longitude and 20 degrees of latitude, there is so much ground to be covered that no one will ever be happy with a time zone arrangement regardless of the structure. You would lose political viability, or commercial advantages with West Coast trading partners, or other difficulties would crop up.

[3:13:35 PM](#)

CHAIR GARY STEVENS noted Mr. Norris is a well-known historian from Kodiak. He heard him say there is no best solution.

MR. NORRIS said that's correct, the rationale is different depending on where you are in the state.

[3:14:49 PM](#)

ROBERT WEBER, Mat-Su resident, stated support for SB 120.

[3:19:29 PM](#)

LELAND FISHBACK, Mat-Su resident, testified in support of SB 120.

PAULA RAK, Wrangell resident, spoke in opposition to SB 120.

[3:26:13 PM](#)

LYNN WILLIS, Eagle River resident, testified in strong support of SB 120 and said he testified on similar legislation in the House.

CHAIR GARY STEVENS asked for comments.

SENATOR WAGONER said he liked the suggestion Mr. Poor presented and he would like to hear from the sponsor.

[3:29:25 PM](#)

SENATOR OLSON explained that time zones are federally mandated by the Department of Transportation. States may move forward, but it would take a federal mandate for Alaska to move to Pacific Standard Time.

[3:31:02 PM](#)

CHAIR GARY STEVENS asked for a motion.

SENATOR WAGONER motioned to report SB 120 and attached fiscal notes from committee with individual recommendations. There being no objection, it was so ordered.

[3:31:19 PM](#)

Taxation of Mining Property; Contracts approved by municipalities for Payment in Lieu of Taxes

[3:31:47 PM](#)

CHAIR GARY STEVENS announced the committee was scheduled to hear an overview, but he was the only member left in the room. He asked Mr. Balash if he would like to continue or wait for another hearing.

JOE BALASH, Staff to Senator Therriault, stated his preference to wait and present when a quorum was present.

STEVE BORELL, Alaska Miners, spoke via teleconference to say he and the other presenters would hold their testimony for another time.

There being no further business to come before the committee, Chair Gary Stevens adjourned the meeting at [3:33:23 PM](#)