

ALASKA STATE LEGISLATURE
SENATE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

May 2, 2005

1:38 p.m.

MEMBERS PRESENT

Senator Gary Stevens, Chair
Senator Thomas Wagoner
Senator Albert Kookesh

MEMBERS ABSENT

Senator Bert Stedman
Senator Johnny Ellis

COMMITTEE CALENDAR

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 133(JUD) am
"An Act relating to incorporation of boroughs, to annexation by local action, and to regulations of the Local Boundary Commission to provide standards and procedures for municipal incorporation, reclassification, dissolution, and certain municipal boundary changes; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 179

"An Act relating to the taxation of mining property; relating to contracts approved by municipalities for payments in lieu of taxes; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 133

SHORT TITLE: MUNICIPAL BOUNDARY CHANGES/ COMMISSION

SPONSOR(s): REPRESENTATIVE(s) COGHILL

02/09/05	(H)	READ THE FIRST TIME - REFERRALS
02/09/05	(H)	CRA, STA
02/16/05	(H)	SPONSOR SUBSTITUTE INTRODUCED
02/16/05	(H)	READ THE FIRST TIME - REFERRALS
02/16/05	(H)	CRA, STA
02/24/05	(H)	CRA AT 8:00 AM CAPITOL 124

02/24/05 (H) Heard & Held
 02/24/05 (H) MINUTE(CRA)
 03/03/05 (H) CRA AT 8:00 AM CAPITOL 124
 03/03/05 (H) Moved CSSSHB 133(CRA) Out of Committee
 03/03/05 (H) MINUTE(CRA)
 03/04/05 (H) CRA RPT CS(CRA) 5DP 2NR
 03/04/05 (H) DP: SALMON, NEUMAN, KOTT, THOMAS,
 OLSON;
 03/04/05 (H) NR: LEDOUX, CISSNA
 04/02/05 (H) STA AT 10:00 AM CAPITOL 106
 04/02/05 (H) Moved CSSSHB 133(STA) Out of Committee
 04/02/05 (H) MINUTE(STA)
 04/04/05 (H) STA RPT CS(STA) NT 3DP 2NR
 04/04/05 (H) DP: LYNN, ELKINS, SEATON;
 04/04/05 (H) NR: GARDNER, GRUENBERG
 04/04/05 (H) JUD REFERRAL ADDED AFTER STA
 04/04/05 (H) JUD RPT CS(JUD) NT 2DP 3NR
 04/13/05 (H) JUD AT 1:00 PM CAPITOL 120
 04/13/05 (H) <Bill Hearing Postponed to 4/18>
 04/18/05 (H) JUD AT 1:00 PM CAPITOL 120
 04/18/05 (H) Moved CSSSHB 133(JUD) Out of Committee
 04/18/05 (H) MINUTE(JUD)
 04/19/05 (H) DP: COGHILL, MCGUIRE;
 04/19/05 (H) NR: GRUENBERG, DAHLSTROM, GARA
 04/25/05 (H) TRANSMITTED TO (S)
 04/25/05 (H) VERSION: CSSSHB 133(JUD) AM
 04/26/05 (S) READ THE FIRST TIME - REFERRALS
 04/26/05 (S) CRA, STA
 05/02/05 (S) CRA AT 1:30 PM BELTZ 211

BILL: SB 179

SHORT TITLE: MINERALS TAX/PAYMENTS TO MUNIS IN LIEU
 SPONSOR(S): SENATOR(S) THERRIAULT

04/18/05 (S) READ THE FIRST TIME - REFERRALS
 04/18/05 (S) CRA, FIN
 04/18/05 (S) CRA AT 2:00 PM BELTZ 211
 04/18/05 (S) Heard & Held
 04/18/05 (S) MINUTE(CRA)
 04/22/05 (S) CRA AT 1:30 PM BELTZ 211
 04/22/05 (S) Heard & Held
 04/22/05 (S) MINUTE(CRA)
 04/27/05 (S) CRA AT 1:30 PM BELTZ 211
 04/27/05 (S) Heard & Held
 04/27/05 (S) MINUTE(CRA)
 05/02/05 (S) CRA AT 1:30 PM BELTZ 211

WITNESS REGISTER

Rynniewa Moss
Legislative Aide to Representative Coghill
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced HB 133

Steve Thompson, Mayor
800 Cushman Street
Fairbanks, AK 99701
POSITION STATEMENT: Opposed HB 133

Steve Van Sant, State Assessor
Department of Commerce, Community & Economic Development (DCCED)
550 W. 7th Street, Suite 1770
Anchorage, AK 99501-3510
POSITION STATEMENT: Answered questions on SB 179

Senator Gene Therriault
Alaska State Capitol
Juneau, AK 99801
POSITION STATEMENT: Sponsor SB 179

Joe Balash
Staff to Legislative Budget & Audit Committee and Senator
Therriault
Alaska State Capitol
Juneau, AK 99801
POSITION STATEMENT: Explained changes to SB 179

ACTION NARRATIVE

CHAIR GARY STEVENS called the Senate Community and Regional Affairs Standing Committee meeting to order at [1:38:29 PM](#). Present was Chair Gary Stevens. Senator Kookesh and Wagoner arrived shortly.

CSSSHB 133(JUD) AM-MUNICIPAL BOUNDARY CHANGES/ COMMISSION

CHAIR GARY STEVENS announced HB 133 to be up for consideration.

[1:38:51 PM](#)

RYNNIEVA MOSS, Legislative Aide to Representative Coghill, explained that HB 133 started as a single subject piece of legislation addressing aggregate votes. Existing regulation

provides for annexation by aggregate vote. This means that votes from an area to be annexed and the votes from the existing area are counted in aggregate to determine whether or not an area will be annexed. Representative Coghill believes that is contrary to intent and statute because existing statute says the people in the area to be annexed must approve the annexation by a majority vote.

Section 4 says that regulations providing standards and procedures are subject to state law, which is consistent with the constitution.

The original draft required a public vote for the Local Boundary Commission (LBC) to bring a proposal to the Legislature. Legislative Legal said that would probably not stand up to legal challenge. The committee substitute requires two public hearings if the LBC comes to the Legislature with a proposal.

Another change is the language prohibiting the LBC from changing or adding requirements to the petition. The current proposal requires the LBC to publicly notice the changes and provide time for public comment.

The final addition to the statute is the requirement that the people in the existing municipality would have to approve an annexation by majority vote. The reason for this is that a large area could force itself into an existing borough through the annexation. As currently drafted, the bill requires two separate votes. One vote would be the area to be annexed and one vote would be from the existing municipality. Each would have to approve the annexation separately.

[1:42:18 PM](#)

CHAIR GARY STEVENS noted Senator Kookesh was present.

He recapped and remarked this gives annexation veto power to what could be a very few people.

MS MOSS replied that power already exists under existing law. The bill changes that by requiring the existing municipality to vote in favor of the annexation.

STEVE THOMPSON, Fairbanks Mayor, stated three points opposing the bill:

- Some of the earliest lawsuits in Fairbanks were over annexations and the same probably holds true in Anchorage. Nonetheless, local adjacent annexations do in fact work out to be the best for the communities.

- Fairbanks has run out of property and is looking at adjacent areas amounting to between 500 and 1,000 acres areas to expand and grow the community. The borough would like to improve the area to the point that it could be developed as an industrial area or a housing subdivision. Under the proposed legislation, if there's just one person living in the area, he or she could vote no and that would be the end of the expansion.

- In Fairbanks 30,000 people live inside the city limits, but 80,000 live in the immediate area. Jobs are inside the city limits so about 50,000 people travel into the community where they work every day. They expect to have police, fire and ambulance protection and they want the roads plowed and maintained. However, those 50,000 people provide none of the funding that it takes to provide those services. People coming into town to work in the community work for employers in buildings that are tax-exempt. The Fairbanks Memorial Hospital, the federal building, state court house, borough buildings, school district headquarters, and schools are all big employers of people that live outside the city and the city is left with no way to recover any costs. Annexing the immediate area around a town that really is part of the community would help solve the problem.

HB 133 could be renamed the anti-economic development bill, he quipped.

[1:47:23 PM](#)

CHAIR GARY STEVENS said it sounds as though you believe this bill would cause more trouble than you already have.

MAYOR THOMPSON replied yes it would. It would slow down the ability to develop areas for economic development and it would be burdensome for the city if it were to try to expand.

CHAIR GARY STEVENS noted Mike Black with Department of Community & Economic Development (DCCED) was available for questions.

[1:48:47 PM](#)

MS MOSS said she wanted to address Mayor Thompson's concerns. She explained that under current state statute, people living in the annexed area would have to vote on the annexation. HB 133 takes nothing away from the current process, but it takes away the concern that Representative Coghill has about a regulation that is inconsistent with state statute. That is a regulation that dilutes the voice of the people in the area to be annexed.

She disagreed that people living outside the city aren't contributing to the services and facilities inside the city. Contribution examples include user fees, fuel tax, and driver's licenses. She also pointed out that the state puts a lot of money into facilities in the city. HB 133 won't slow down the city's process. It simply ensures there are not regulations that are inconsistent with state statute.

CHAIR GARY STEVENS asked if it's correct that currently a majority of the aggregate vote rules.

MS MOSS clarified it's currently a vote of the people in the annexed area. In Fairbanks, Mayor Whitaker made the statement that according to regulation he could do an aggregate vote to annex everything south of the Yukon River. The regulation is indeed on the books and Representative Coghill is concerned because that regulation is inconsistent with state statute. The LBC has said that it has never used the aggregate vote, but she hasn't verified that point.

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CHAIR GARY STEVENS noted Senator Wagoner had joined the meeting. He announced he would hold HB 133 in committee.

SB 179-MINERALS TAX/PAYMENTS TO MUNIS IN LIEU

[1:52:15 PM](#)

CHAIR GARY STEVENS announced SB 179 to be up for consideration. He asked Mr. Van Sant to come forward and discuss the issue of prohibiting communities from having a severance tax on minerals and mining and how that would be implemented.

STEVE VAN SANT, State Assessor, Department of Commerce, Community & Economic Development (DCCED), introduced himself and explained that original bill exempted nearly every tax you could think of. The committee substitute (CS) made a number of changes that his office recommended one of which was the severance tax

issue. It appeared as though a municipality could hold a mining operation hostage by threatening a severance tax. DCCED contends that resources belong to the people of the State of Alaska and therefore a severance tax should be reserved to the state rather than a local municipality. If the state decided to levy a severance tax, it could do so statewide or by category.

Looking at other changes made in the CS, he said they are acceptable to the department at this time. The primary point was that one entity should not carry the total tax burden for a community or proposed borough. All residents of an area should share the burden.

CHAIR GARY STEVENS asked how property tax is established.

MR. VAN SANT explained that when speaking about property tax everything is taxable unless state law specifically exempts it. Obviously state property, federal property, city property, and borough property would be exempt from property tax unless a private entity uses the property for its own purpose. For example, the railroad pays a possessory-interest tax on land it leases from the state.

Ownership on January 1 dictates taxability of a property. If a church owned a piece of property on January 1 and used it for religious purposes until January 5 and then sold the property, the exemption would carry through for the entire year. But if the church purchased a property on January 5, it would be taxable the entire year.

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The Red Dog Mine itself is taxable. When he put the full value on the mine it amounted to about \$130 million in property including the road, the port, the storage facilities. That was all property not owned by the Red Dog Mine, but they had an interest in it and were therefore subject to possessory-interest property tax. Subsequently, the Legislature specifically exempted that interest, but any other operation that came in would pay a local property tax. If they didn't have a local property tax the assessor would include it in the full value determination for educational funding.

CHAIR GARY STEVENS recalled that the Alaska Municipal League (AML) testified that there is a perfect balance here if there is a new borough. If a property tax were assessed against the mine then residents would have to pay a similar property tax on their

homes. He asked whether that would be true or would many homes be exempt.

MR. VAN SANT explained that most property in those areas is exempt because it is state or federal land. Private homes on restricted deeds, Native allotments or ANCSA property would be exempt unless leased to third parties. Restricted deeds are exempt and ANCSA property would be exempt unless it's developed. The same thing applies and is done in Anchorage, Fairbanks and Kodiak.

A question that typically arises relates to HUD homes. An attorney general opinion says that while the underlying fee is exempt the possessory interest that the purchaser has in the property is taxable. As a result, the Legislature passed a bill allowing a municipality to exempt those interests because collection may be problematic and the cost of collection more than it's worth. Nonetheless, that value is included in the full value determination for school funding. "Even if we have \$100,000 or \$150 million of those properties, we would include them in the full value so they are going to have to raise the 4 mills equivalency somehow on those."

CHAIR GARY STEVENS observed that there is probably no definitive answer as to whether that is a control. AML says it is a good control over how much property tax a mine would be charged and you say it's not a control.

[2:01:54 PM](#)

MR. VAN SANT replied it is a control to some extent. He suggested the City of Valdez provides a good example. It levies a 20 mill tax, which is quite high but that's the tax rate the state levies against oil and gas properties. The City of Valdez takes all the tax dollars for oil and gas within city boundaries, but every person living in Valdez pays 20 mills on their property as well. Certainly that's a control. People that do pay property tax are well cognizant of the fact that the tax comes from their pocket and if the city wants to levy a property tax against a mine it can't get around the fact that residents will pay the same rate.

CHAIR GARY STEVENS asked if 4 mills is enough or a fair amount.

MR. VAN SANT replied 4 mills is the minimum required contribution, "but if you're looking at doing your own schools - I don't know of anybody that goes 4 mills." Typically when a

community funds its own schools the millage rate isn't just the minimum. He noted that the CS changes that rate if an area chooses to organize.

[2:04:49 PM](#)

SENATOR GENE THERRIAULT, Sponsor, stated agreement that the severance tax should be reserved to the state as the supreme taxing authority. He continued to say:

Certainly, those minerals are reserved to the state and that's one of the concerns that there has been. That if you allowed the mine to be the only entity that's taxed, then what they do is they use that jointly owned property - which my 32,000 people own part of and your 32,000 people own part of - and they pay their entire burden off of that jointly owned resource. We'd rather have them tax the enterprise, tax the activity that's going on as that jointly owned resource is developed and mined.

He suggested that the CS is a good work product that addresses many of the concerns that have been raised and that Mr. Balash could answer any technical questions.

CHAIR GARY STEVENS asked Mr. Balash to explain how the CS changes the original bill.

[2:07:06 PM](#)

JOE BALASH, Staff to the Legislative Budget & Audit Committee and to Senator Therriault, explained that a different approach was taken on the committee substitute. They took language suggested by Mr. Van Sant and "jumped between Title 29 and Title 43 as appropriate."

Section 1 simply adds a reference.

Section 2 describes the way - through Title 29 - the tax would affect mines in the unorganized area.

Section 3 reserves the severance tax to the state, but it grandfathers in those severance taxes that are currently in place or that come into being by January 1, 2006. It doesn't go back to January 1, 2005 because that would necessitate a retroactive effective date.

Section 4 has a few changes. The mill-rate is still linked to the foundation formula. It is 4 mills when a mine is located in an unorganized borough or it is the mill rate levied by a newly incorporated municipality or the municipality into which the mine is annexed. The levy is the same as all other property in that municipality. If the Pogo Mine were annexed into the Fairbanks North Star Borough, it would be assessed 15 mills just like every other piece of property in the borough. If the Deltana Charter Commission were to be successful in incorporating a new borough with a 10 mill property tax, then that would be the mill rate. The tax would still be assessed and collected by the state but it would be payable to that municipality.

In addition, there is a provision for the negotiation of a state PILT in place of the property tax. Likewise, the newly incorporated government or the annexing government could negotiate a PILT with the mine.

The 15-year exemption on particular things that you could otherwise tax on the mine after production commences remains the same.

The State Assessor will do the assessment and much of the language Mr. Van Sant recommended is included.

[2:11:13 PM](#)

Referencing page 6, line 24, he noted that the CS does not incorporate Mr. Van Sant's recommendation to reduce the exemption on property valuation to \$1 million. The original \$10 million exemption remains unchanged. The Alaska Miners Association has weighed in and although he hasn't had the opportunity for a direct conversation, the provision was intended to shield small mining operations that have made substantial investments.

[2:12:42 PM](#)

CHAIR GARY STEVENS referenced the \$10 million exemption and asked if that includes just the value of the land or the value of the facilities built on the land.

MR. BALASH replied it would include those facilities that aren't open to the public.

CHAIR GARY STEVENS asked if it would be the physical structure that the mine installs.

MR. BALASH said that's correct. At Fort Knox in the Fairbanks North Star Borough, the assessor taxes everything that has been added to the property. This includes the power poles and power lines on the property. Similarly, the road beyond the security gate leading to the mine is taxed while the part of the road leading up to the gate is not taxed.

[2:14:25 PM](#)

MR. BALASH explained that the mechanism used to negotiate a PILT agreement with the state directs the Commissioner to follow the procedures in AS 43.82 - the Stranded Gas Act - and then submit it to the Legislature for approval. In no way does this contract away the state's right to levy, change or remove a tax. The Legislature would still have the full ability to modify the terms of the PILT agreement.

CHAIR GARY STEVENS noted that a question was raised earlier about the issue in the constitution about not contracting away the right to tax. He asked if a legal opinion was received as to whether PILT agreements are included.

MR. BALASH replied there is specific language regarding the state PILT. Although he didn't have anything in writing with regard to a municipal PILT the bill drafter posited the question to him. He suggested that the municipality's authority to put in place a PILT was implied, as it exists today. The proposed legislation gives a mechanism authorizing municipalities to go through a process and do the same thing, which would then be binding. "However, that contract wouldn't be absolute in its binding effect. The municipality could appeal to the Legislature for relief." The drafter thought that was a plausible remedy. He said he didn't ask for an opinion beyond that.

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SENATOR THERRIAULT referenced the issue of property subject to taxation and emphasized that property that has limited public access should be taxable.

With regard to the \$10 million threshold, the determination would be the same. If the public had free access it wouldn't be taxed, but if a company exerts control as part of the operation then it's part of the calculation to determine whether or not

the \$10 million threshold is met. Large mines and small mines are treated the same with regard to valuation of the property itself.

CHAIR GARY STEVENS asked for an explanation of when a tax would be levied as it relates to beginning production.

MR. BALASH read page 3, line 23 then pointed to the definition section on page 6, line 29. The date on which the initial shipment of product is made is the year that the tax begins. No tax would be levied during construction.

SENATOR THERRIAULT added there might be concern that companies would delay the initial shipment, but because the upfront investment is huge, companies will rush to get minerals to market so that they can service their debt.

[2:21:15 PM](#)

CHAIR GARY STEVENS asked if he had any final comments.

SENATOR THERRIAULT said the till is tied to the Stranded Gas Act so that that structure could be used.

CHAIR GARY STEVENS asked Mr. Van Sant if he had any response or questions.

[2:22:16 PM](#)

MR. VAN SANT acknowledged he did have several questions. First he referenced the change in wording for exemptions on page 6, line 20 and questioned the intent. He interprets the language as saying that if it's within a borough it's going to be exempt. "And I'm not sure that that was the intent," he said.

MR. BALASH said he would have to review his notes.

MR. VAN SANT referenced page 6, line 18 and asked if that is unlimited use by the public.

MR. BALASH replied yes. The original draft had "limited public use". Senator Therriault wasn't comfortable with the phrase. He wanted it clear that the property would be open to public use.

There were no further questions.

[2:24:41 PM](#)

CHAIR GARY STEVENS announced he would hold SB 179 in committee.

There being no further business to come before the committee,
Chair Gary Stevens adjourned the meeting at [2:24:58 PM](#).