

HB

13

Tony Knowles, Governor



Office of the Commissioner

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January 29, 2001

The Honorable Lisa Murkowski
Member
House Community & Regional Affairs Committee
Alaska Legislature

RE: SSHB 13

Dear Representative Murkowski:

During the House C&RA Committee's January 25th hearing on SSHB 13, you raised the question whether this agency believes that aspects of SSHB 13 are "unconstitutional." We are aware that there appear to be conflicting views on that matter. According to Representative Bunde, Tamara Cook has indicated that there are no constitutional impediments to HB 13. However, the State Attorney General's office indicated that a similar bill last year (HB 133) had provisions that were contrary to the concept of borough government under Article X, Sections 1, 3, 4, 5, and 11 of Alaska's Constitution -- particularly as those provisions applied to home rule borough government. Those concerns are reflected in Governor Knowles' veto message of May 19, 2000 regarding HB 133.

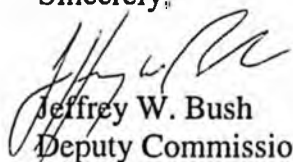
Notwithstanding the apparent differing legal opinions on this matter, we believe that the founders who wrote Alaska's constitutional provisions on local government clearly intended that the Legislature should impose no home rule limitation, except where the Legislature could clearly demonstrate that there is overriding state interest involved. It is noteworthy that the matters addressed by SSHB 13 have been left exclusively to local governments since State laws setting up the framework for the creation, alteration, and abolition of service area were first enacted forty years ago. We fail to discern what has changed over the past forty years to now create an overriding state interest in such matters.

Of even greater concern is the fact that SSHB 13 would limit all of Alaska's home rule boroughs, while it would continue to allow self-determination in such matters by most of Alaska's general law boroughs. Limiting home rule boroughs while exempting most general law boroughs is contrary to the principles of home rule in Alaska.

We have prepared the attached brief discussion of the nature of home rule government in Alaska for your further consideration. We also note that Victor Fischer, who served as a member of the Committee on Local Government at Alaska's Constitutional Convention, will be in Juneau on January 31 and February 1. You may wish to contact Mr. Fischer to discuss this matter with him directly. It may also be possible to arrange for Mr. Fischer to address the House C&RA Committee on this matter at its meeting on February 1.

If you have any further questions regarding this matter, please let me know.

Sincerely,


Jeffrey W. Bush
Deputy Commissioner

cc: The Honorable Kevin Meyer, Co-Chairman, House C&RA Committee
The Honorable Carl Morgan, Co-Chairman, House C&RA Committee
Tamara Cook, Director, Legislative Legal and Research Services
Marjorie Vandor, Assistant Attorney General

Ronald Cease, Director of Alaska's Local Affairs Agency from 1962 – 1966, emphasized that the provisions in Alaska's Constitution concerning municipal home rule were the strongest of any state in the nation.

Maximum local self-government is to be exercised under home rule charters which first class cities and boroughs may secure. The home rule provisions of the Alaska Constitution are broader than those of any other state, for "a home rule borough or city may exercise all legislative powers not prohibited by law or charter."⁶ This means that the legislative body of a home rule city or boroughs has any powers that is constitutionally available to the state legislature. (emphasis original)

(Ronald Clayton Cease, *Areawide Local Government in the State of Alaska – The Genesis, Establishment, and Organization of Borough Government*, pages 18-19 [1964]).

Mr. Cease addressed the State's interest in home rule municipalities as follows:

The home rule provisions, however, do not place any substantive home rule power beyond general legislative control. "Home rule should not mean the state's withdrawal from all obligations within the local area,"⁷ for Article X anticipates state concern with local problems. As one member of the Committee stated: "In Alaska it is particularly important that we provide a local government system that will have the maximum amount of flexibility, with a maximum amount of home rule, and at the same time with the maximum amount of state interest and participation in local affairs."⁸

The state has the power to establish and classify boroughs and cities, to prescribe powers of non-charter governments, to withhold authority from home rule boroughs and cities, and to exercise, review and control functions. Moreover, the state's interest in local government is recognized by the constitutional provisions for the creation of a boundary commission and a local government agency.

(Ibid. pages 20 – 21.)

Presently, there are 135 sections of State law that contain provisions regarding home rule municipal governments. Many of those are express limitations on municipal home rule authority. The 135 sections include provisions found in Alaska Statutes Title 9 (Code of Civil Procedure), Title 14 (Education, Libraries, and Museums), Title 15 (Elections), Title 18 (Health, Safety, and Housing), Title 19 (Highways and Ferries), Title 21 (Insurance), Title 23 (Labor and Workers' Compensation), Title 29 (Municipal Government), Title 30 (Navigation, Harbors, and Shipping), Title 37 (Public Finance), Title 38 (Public Land), Title 39 (Public Officers and Employees), Title 40 (Public Records and Recorders), Title 41 (Public Resources), Title 42 (Public Utilities and Carriers), Title 43 (Revenue and

⁶ Art. X, sec. 11.

⁷ *Minutes of the Committee on Local Government* No. 18.

⁸ *Proceedings*, p. 2617.

Taxation), Title 44 (State Government), Title 45 (Trade and Commerce) and Title 46 (Water, Air, Energy, and Environmental Conservation).

A number of the 135 individual sections noted in the preceding paragraph impose express limitations on home rule municipalities with regard to a multitude of specific sections of State law. For example, AS 29.45.800, provides that "AS 29.45.010 – 29.45.560 apply to home rule and general law municipalities." Thus, AS 29.45.800 alone imposes limitations on home rule municipalities contained in 56 separate sections of the statutes.

The limitations on home rule municipalities continues to grow. For example, since AS 29 underwent comprehensive revisions in 1985, sixteen additional home rule limitations have been added to AS 29.

Concern over the erosion of constitutional intent regarding home rule municipal authority led to the veto House Bill 133 adopted by the 2000 Legislature. The Governor noted in his veto message:

. . . for the first time since statehood, the rights of Alaska's home rule municipalities in forming, altering, and abolishing service areas are limited by statute.

This bill also raises serious constitutional concerns by imposing limitations on home rule boroughs and unified municipalities. Home rule municipalities have a constitutional grant of authority that gives them liberal control over matters purely of local concern. How service areas are established and governed has historically been dealt with in home rule charters as part of the organic law of a particular home rule municipality. And where a home rule municipality is concerned with a matter of purely local concern, the charter and not a legislative act is looked to in order to determine whether a particular power has been conferred upon the municipality. It would be incongruous to recognize the constitution provision that a home rule municipality "may exercise all legislative powers not prohibited by law or by charter", and then to say that the power of a home rule city is measured by a legislative act." *Lien v. City of Ketchikan*, 383 P.2d 721, 723 (Alaska 1963).

(Letters from Governor Tony Knowles to Senate President Drue Pearce and House Speaker Brian Porter, May 19, 2000.)



217 Second Street, Suite 200 ■ Juneau, Alaska 99801 ■ Tel (907)586-1325, Fax (907)-463-5480

January 23, 2001

Representative Kevin Meyer, Chair
Representative Carl Morgan, Chair
Community and Regional Affairs Committee
State Capitol
Juneau, AK 99811

Dear Representative Meyer & Morgan:

We are writing in opposition to HB 13, relating to municipal service areas and providing for voter approval of the formation, alteration, or abolishment of certain service areas. The 2001 AML Policy Statement adopted by the entire membership of the Alaska Municipal League, states:

Part II. Local Government Powers

A. Local Autonomy

5. State Mandated Vote on Service Area Consolidation and Alteration: The League strongly opposes any legislation to mandate fragmented service area votes in home rule, first class and second class boroughs. The Constitution mandates that municipal governments are "local government," not service areas. Mandating autonomy to service areas violates the intent of the Alaska Constitution by fragmenting local governments, eliminates a statutory home rule power, and may significantly increase costs and lower efficiency for taxpayers as a whole.

The Alaska Constitution states in Article X Section 2, "All local government powers shall be vested in cities and boroughs." It is important to make the distinction between municipalities and service areas. Municipalities are units of local government, while service areas are not. Passage of HB 13 would allow a minority of the population in a borough or unified municipality to veto an action that may be in the best interest of the people of the municipality as a whole.

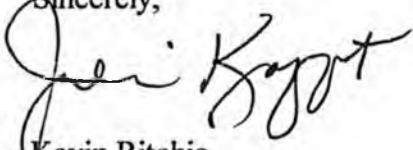
The framers of the Constitution addressed the issue of service areas as a dynamic local government process. The Local Government Committee's objective was to avoid having "a lot of separate little districts set up...handling only one problem..."; (P.2715 Proceedings). Instead, services were to be provided, wherever possible, by other jurisdictions capable of doing so.

Our concerns are:

- ◆ HB 13 does not appear to meet the intent of the Alaska Constitution.
- ◆ A small portion of residents may preclude an action that benefits the community as a whole.
- ◆ At this point in time, it is not appropriate to change the ground rules for existing service areas. An Assembly might not have created service areas if they knew the power to alter them would be removed.
- ◆ There will be substantial local costs in creating a new form of election that includes both residents and property owners, and holding service area elections.

In summary, this is a decision best left to local voters in each municipality and their elected officials.

Sincerely,



Kevin Ritchie
Executive Director

cc. Members of Community & Regional Affairs Committee
Representative Con Bunde
AML Board of Directors/ Legislative Committee Chairs
Education and Local Government Subcommittee



Tony Knowles, Governor

**Department of Community
and Economic Development**

Office of the Commissioner

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Position Statement

Sponsor Substitute For House Bill No. 13

“An Act relating to municipal service areas and providing for voter approval of the formation, alteration, or abolishment of certain service areas.”

SSHB 13 would require approval by voters in certain service areas for the abolition, alteration, or consolidation of those service areas. The service areas to which the provisions would apply consist of road and fire protection service areas, except such service areas within second class boroughs with fewer than 60,000 residents. Additionally, the provisions would not apply to a change to a fire service area that increases the number of parcels of land in the service area by more than six percent. The bill also allows for the creation of differential tax zones in service areas.

The Knowles administration opposes SSHB 13 for the following four principal reasons:

- 1) It is difficult to discern the legitimate basis for substantial distinctions made in the bill. In particular:
 - a) The bill creates distinctions between classes of boroughs – most second class boroughs would be exempt from the provisions of the bill, but all other classes of boroughs would be subject to the bill's provisions. For example, the second class Ketchikan borough would be exempt from the bill's provisions. However, in a few months, voters in Ketchikan may approve a pending petition for municipal consolidation that would render the Ketchikan borough subject to the bill because it would change the borough classification. The administration questions whether differences in classification is a suitable basis to apply or exempt a borough from the bill.
 - b) The bill makes distinctions on the basis of population –second class boroughs with populations below 60,000 are exempt, while second class boroughs with populations of 60,000 or above are not exempt. Utilizing population thresholds does not appear to be a reasonable basis for applying or exempting a borough from the provisions of the bill. It does not appear that the use of population is a legitimate distinction for exempting boroughs from the provisions in the bill.

- c) The bill makes distinctions between types of service areas – it applies to road and fire protection service areas, but exempts all other service areas. Service areas can be created for any municipal service. Road and fire protection service areas are not unique in terms of local interest regarding their abolition, alteration, or consolidation. In fact, some of the more intense local debates over borough service areas have involved matters other than roads and fire protection. These are local matters, best addressed at the local level.
- 2) The bill imposes limits on home rule boroughs. Alaska's Constitution contains the strongest home rule provisions of any state in the nation. The State of Alaska should impose limitations on home rule municipal governments only in instances where there is clearly an overriding State interest. Historically, judgments concerning service areas in an organized borough have been left to organized boroughs – both home rule and general law. The administration is not aware of any circumstances that constitute an overriding state interest in such local matters.
- 3) Not only does the bill propose home rule limitations where there has been no clear State interest shown over the past 40 years, it does so in a manner that is incongruous in terms of the distinctions between home rule and general law governments. The bill limits the powers of home rule boroughs while exempting certain general law governments. The notion that the State would take away the rights of all eight home rule boroughs in Alaska to make basic determinations about certain service areas, yet allow three-quarters of Alaska's general law borough governments to make those same determinations, is inconsistent with the principles of home rule government. We are aware of no instance where the State imposes a limitation on the powers of a home rule government, yet allows self-determination on the same issue by a general law government. If the State has an overriding interest to impose restrictions on home rule borough, there is no reason why it should not also impose such restrictions on all general law boroughs.
- 4) The Knowles administration also shares concerns raised by the Alaska Municipal League regarding such legislation. The League's 2001 policy statement (page 12) opposes legislation of this type because, in effect, it grants a measure of autonomy to affected service areas. The League notes that this violates the intent of the Alaska Constitution by fragmenting local governments, eliminates a statutory home rule power, and may significantly increase costs and lower efficiency for taxpayers as a whole.

In summary, the Knowles administration opposes SSHB 13 because it creates distinctions between boroughs on the basis of characteristics that are irrelevant to the issues of the abolition, alteration, or consolidation of service areas. We see no overriding State interest to warrant the imposition of home rule limitations

regarding the abolition, alteration, or consolidation of service areas, and it is incongruous to limit home rule boroughs in that regard while giving self-determination to certain general law boroughs. Lastly, SSHB 13 can lead to fragmented and inefficient service delivery.

P.O. Box 81109
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(907) 479-4394

January 19, 2001

Rep. Con Bunde
Alaska State House of Representatives
Juneau, AK

Dear Rep. Bunde,

I have been on the Viewpointe Service Area Commission since 1981, and chairman since 1983. Also, since 1982, I have been employed driving a heating oil delivery truck throughout many of the service areas and the neighborhoods not in service areas around the Fairbanks North Star Borough. Road improvements brought about by service areas greatly enhance safe driving and make living outside the city of Fairbanks much more enjoyable than prior to their existence. Usually service area roads are in as good or better condition than the roads in downtown Fairbanks, especially during winters with heavy snow.

I strongly support HB13 that you have filed for the 2001 session of the Alaska State Legislature. The changes in Alaska State Law provided by this bill will alleviate some serious problems experienced when new neighborhoods join existing service areas. After reading the bill it looks very similar, if not identical, to a bill filed by you last year (2000), HB 133. I wrote a letter in support of that bill also. I hope the Governor will see fit to sign the bill this year.

Presently the Fairbanks North Star Borough does not want to add to the high number of existing service areas. New neighborhoods that want to better maintain or improve their roads by using the Borough as a vehicle to collect taxes for these improvements are forced to join existing service areas. The process we have now is very unfair and undemocratic, since only the residents of the area that is seeking to join an existing service area are allowed to vote on the issue. The residents of the existing service area are given no voice in the process. In the past this process has resulted in well run and financially sound service areas being forced to absorb another neighborhood sometimes not contiguous and always with roads that are in poor condition, needing many dollars to upgrade to meet Borough standards. In all these cases, tax money from the existing service areas has gone to the new areas for road improvements because there cannot be two levels of road conditions within a single service area. Sometimes property taxes had to be raised in the older part of the service area along with the new part to cover the road improvement costs of the new part. The existing process naturally creates ill feelings and tension between the residents of the old and the new parts of the newly merged service area, often putting the commissioners, who are just trying to do their jobs, in the middle.

America does have a history of wealth redistribution, especially in the last eight years, to make the country supposedly a better place, but the wealthy residents of our country have always been allowed a vote in the process. As it is now in the State of Alaska, the residents of the existing service area have no vote and could very likely see their tax dollars go to improving roads that they do not even drive on. The residents of existing service areas, who have been left out of the voting process, often angrily turned to the FNS Borough Assembly to stop the whole the process. When the existing service area residents were successful, the new neighborhood was left with no efficient way to collect funds to improve their roads and make them safer to drive on.

House Bill 13 provides a solution for this unjust situation. Not only does it allow both the residents of the new and existing parts of a combined service area to vote on the merger; it allows for differing levels of taxation within the newly formed service area. Two levels of taxation would allow the new part of the service area to temporarily have a higher tax assessment to defray the costs of improvements needed to upgrade the roads in the new part of the service area. This seems to me to be a fair and reasonable solution to what is now a very unfair and unreasonable process.

In 1999, Fairbanks North Star Borough Mayor Hank Hove introduced a plan that would set up a loan fund to allow newer parts of merging service areas to borrow from it to speed up their improvement schedule, if HB133 was passed and signed into law in 2000. Since we now have a new Mayor, Rhonda Boyles, and new leadership on the Assembly, I do not know if this loan fund will still be available. I thought it was a great idea, and will be urging the new Assembly and Mayor Boyles to bring this idea forward again if HB13 becomes law. Some of us commissioners met with Mayor Boyles about this service area problem before she was elected, and since Ms. Boyles is a former commissioner herself, she was very receptive to our suggestions for a solution.

Sincerely,

Randy Frank
Chairman
Viewpointe Service Area

Cc: Governor Tony Knowles
Sen. Gary Wilken
Sen. Pete Kelly
Sen. Gene Therriault
Rep. John Davies
Rep. Hugh Fate
Rep. Eldon Mulder
Rep. Lisa Murkowski
FNSB Mayor Rhonda Boyles

Subject: [Fwd: Legislative Update - Upcoming Public Meetings]
Date: Mon, 22 Jan 2001 08:37:39 -0900
From: Representative Con Bunde <Representative_Con_Bunde@legis.state.ak.us>
Organization: Alaska State Legislature
To: Patti Swenson <Patti_Swenson@legis.state.ak.us>

From:
"plotsaas" <plotsaas@alaska.net>

plotsaas wrote:

Dear MR. BUNDE, Thanks for your input on the local road service area concern. I support the concept of retaining local control, over the past 20 years our contractor has provided very good and timely service. I might suggest to the Municipal League that they consider other areas of Anchorage to be allowed to establish their own areas of control. The result may be a more responsive and efficient service. Michael Singaas

Road Service Areas

Subject: Road Service Areas
Date: Mon, 22 Jan 2001 06:15:18 -0900
From: "James E. Spohn" <boondox@gci.net>
To: Patti_Swenson@legis.state.ak.us

Rep Con Bunde

I support your SSHB13. Please use my support for this legislation to assist in the passage of this bill.

James E. Spohn
Chairman
Moose Creek Service Area
3417 Baker Road
North Pole, AK 99705-6930
907-377-2354=wk #
907-488-2384= Hm #

HB 13

Subject: HB 13
Date: Sun, 21 Jan 2001 18:56:26 -0900
From: "Stephen Routh" <srouth@rcflegal.com>
To: <Patti_Swenson@legis.state.ak.us>

Patti-I am chairman of the Rockhill LRSA Board of Supervisors, and write in support of Con's bill, HB 13. I think people living within an LRSA should be entitled to vote on matters concerning the abolishment or alteration of their service areas.

Stephen Routh
907-222-4333

Alaska State Legislature

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REPRESENTATIVE CON BUNDE District 18

VICE-CHAIR: HOUSE FINANCE COMMITTEE
MEMBER: LEGISLATIVE BUDGET & AUDIT COMMITTEE

Sectional Analysis SSHB 133

“An Act relating to municipal service areas and providing for voter approval of the formation, alteration, or abolishment of certain service areas.”

Sec. 1. This adds AS 29.35.450 to the list of statutes that apply as limitations on the power to home rule municipalities. The result of this is to require home rule municipalities to adhere to AS 29.10.450, which now applies only to general law municipalities.

Sec. 2. This addresses service areas in unified municipalities and contains a cross-reference to subsection (c), added in this draft. There are three unified municipalities in the state: Anchorage, Juneau, and Sitka.

Sec. 3. This adds subsection (c) to AS 29.10.450 which requires, before a service area is expanded, a separate vote to be held in the area of the existing service area and in the area proposed to be added. A separate vote is also required when a service area is altered or combined with another service area. Before the service area change may occur it must be approved in each of the areas that votes separately on the question. This section does not apply when a fire service area is increased in size by no more than 6% or to a second class borough with a population that is under 60,000.

Sec. 4. Adds a new subsection to AS 29.35.470, which is not a home rule limitation. This allows borough assemblies to set up differential tax zones in service areas, so that different rates of taxes may be levied in different portions of a service area. Under existing law, only cities set up differential tax zones.

Alaska State Legislature

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REPRESENTATIVE CON BUNDE

District 18

VICE-CHAIR: HOUSE FINANCE COMMITTEE
MEMBER: LEGISLATIVE BUDGET & AUDIT COMMITTEE

SPONSOR STATEMENT

SSHB 13

" An Act relating to municipal service areas and providing for voter approval of the formation, alteration, or abolishment of certain service areas."

Alaska's Constitution provides for maximum local self-government (Art. X sec. 1) and for the creation, alteration, or abolishment of service areas subject to the provisions of law (Art. X sec. 5).

AS 29.35.450 codifies these Constitutional provisions and establishes the mechanism by which service areas are created, altered, and abolished.

Alaska has approximately 200 service areas; in these areas the local residents use private contractors for necessary services and assess themselves to pay for a desired level of service.

HB 133 amends, AS 29.35.450 to support local control by clearly identifying whom should vote on the abolishment and alteration of a service area under three scenarios:

- 1. Abolishment of a service area.**
Subject to approval by the majority of the voters residing in the service area.
- 2. Abolishment and replacement of a service area.**
Must be approved separately by a majority of voters inside an existing service area and by a majority of the voters residing in the proposed service area **BUT OUTSIDE** the existing service area.
- 3. Alteration of service area or combining it with another service area.**
Must be approved, separately, by a majority of the voters who vote on the question and who reside in each of the service areas or in a proposed service area affected by the proposal.

This proposed legislation would settle a long time debate about who is entitled to vote during the creation, alteration or abolishment of a service area. This legislation has support throughout service areas in Alaska and I urge the favorable consideration of this committee.

Alaska State Legislature

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REPRESENTATIVE CON BUNDE District 18

VICE-CHAIR: HOUSE FINANCE COMMITTEE
MEMBER: LEGISLATIVE BUDGET & AUDIT COMMITTEE

MEMORANDUM

DATE: January 17, 2001

TO: Representative Kevin Meyer
Co-Chairman, House Community and Regional Affairs Committee

FROM: Representative Con Bunde
Vice-Chair, House Finance Committee

RE: SSHB 133

The purpose of this memo is to respectfully request a committee hearing for SSHB 133, "An Act relating to municipal service areas and providing for voter approval of the formation, alteration, or abolishment of certain service areas".

Some backup information supporting this legislation is included with this memo. More information will be made available to the committee as it becomes available to the sponsor. If you need any further information or have any questions, please call Patti at ext. 6824.

Thank you for your cooperation with the scheduling of this bill.



Municipal Policy Statement and Resolutions



Year 2001

LOCAL GOVERNMENT POWERS

The goal is to preserve the greatest degree and number of local government options and prerogatives so that municipal government can be highly responsive to unique local circumstances and the mandate of the Alaska Constitution "to provide for maximum local self-government."

A. LOCAL AUTONOMY

1. **Effective and Independent Local Government:** The League supports legislative and regulatory action that promotes more effective and independent local government in all cities, and organized and unorganized boroughs.

2. **Lobbying:** The League supports the continued exemption of municipal officials and employees from the lobbying reporting requirements under the lobbying sections of Title 24, the Legislative Code (AS 24.45).

3. **Anti-Trust Laws:** The League supports legislation at both the state and federal levels placing municipalities in an equal position with state governments with respect to federal anti-trust laws.

4. **Public Records:** The League supports open access to public records but requests legislation ensuring that local governments are free to adopt, through ordinance or resolution, their own policies and procedures concerning local public records.

5. **State Mandated Vote on Service Area Consolidation and Alteration:** The League strongly opposes any legislation to mandate fragmented service area votes in home rule, first class and second class bor-

oughs. The Constitution mandates that municipal governments are "local government," not service areas. Mandating autonomy to service areas violates the intent of the Alaska Constitution by fragmenting local governments, eliminates a statutory home rule power, and may significantly increase costs and lower efficiency for taxpayers as a whole.

6. **Local Construction:** The League supports amendments to Title 36, the Public Contracts Code, to permit local governments to establish their own notice, reporting, local hire, and prevailing wage requirements and methods for local construction.

7. **Plumbing and Electrical Codes:** The League supports the expeditious updating of state safety codes to eliminate the conflict between state and local plumbing and electrical codes.

8. **Delegation of Powers:** The League supports an amendment to Title 29 to permit a borough to delegate to a city the authority to exercise a part of an areawide power, providing the city accepts the delegated power.

B. ELECTIONS AND REAPPORTIONMENT

1. **Amendment to National Voter Registration Act (Motor Voter):** The League supports efforts by the Division of Elections



Alaska State Legislature

HOUSE COMMITTEE ON COMMUNITY AND REGIONAL AFFAIRS

Representative Carl Morgan
Co-Chairman
Committee Aide, Bill Lawrence
(907) 465-3882

Representative Kevin Meyer
Co-Chairman
Committee Aide, Lorali Meier
(907) 465-6588

MEMORANDUM

DATE: January 30, 2001

TO: Representative Brian Porter, Speaker of the House

FROM: Representative Kevin Meyer, Co-Chairman *KM*
Representative Carl Morgan, Co-Chairman *Carl Morgan*

RE: Judiciary Referral for SSHB13

Last Thursday, January 25, 2001, the House Community and Regional Affairs Committee heard testimony on a number of legal questions raised by the Department of Community and Economic Development, the Alaska Municipal League, the Municipality of Anchorage, the Matanuska-Susitna Borough, and members of our committee. It was the desire of the committee to hear responses from Legislative Legal Services on to the raised legal questions.

In today's hearing of the House Community and Regional Affairs Committee, our members unanimously recommended a House Judiciary Committee referral for Sponsor Substitute House Bill 13. The recommendation resulted from opposing legal opinions submitted by Legislative Legal Services, and the Department of Community and Economic Development.

SSHB13 was moved from HC&RA with individual recommendations, attached fiscal notes, and the recommendation to the Speaker of the House for a House Judiciary Committee referral.

Please see the attached legal memorandums for detail on the legal questions, as well as the committee report.

Attachments.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 26, 2001

SUBJECT: Constitutional prohibition against local or special legislation
(SSHB 13)

TO: Representative Con Bunde
Attn: Patti Swenson

FROM: Tamara Brandt Cook
Director *TBC*

You ask for an explanation of the constitutional prohibition against local and special legislation in connection with SSHB 13. Bill section 3 adds a new voting requirement that applies before certain changes may be made to service area boundaries if the service area provides road or fire protection services. Furthermore, the new voting requirement does not apply to a second class borough with a population that is under 60,000 although it applies to other boroughs. While bill section 3 is limited in application, the limitations are worded in general terms and do not have the effect of confining the new provision to only one or very few service areas or boroughs. Therefore, I do not think the bill would be held to violate the constitutional prohibition against local and special legislation contained in Art. II, sec. 19 of the state constitution. That section states in relevant part:

The legis'ature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination.

The test employed by the Alaska Supreme Court to determine whether an act violates the prohibition against local or special acts is substantially the same as that applied under nonsuspect class equal protection analysis. Upon examining the legislative goals and the means used to advance them, the court determines whether the legislation bears a fair and substantial relationship to a legitimate state purpose. State v. Lewis, 559 P.2d 630, 643 (Alaska 1977), cert. denied, 432 US 901, 53 L.Ed.2d 1073 (1977). To satisfy the "fair and substantial relationship" standard, the classification established by the legislation must be tailored to the purpose of the legislation. The classification must be neither overinclusive nor underinclusive. Isakson v. Rickey, 550 P.2d 350, 362 (Alaska 1976). If the "fair and substantial relationship" standard is met, the bill will not be invalidated because of incidental local or private advantages. Lewis, 559 P.2d at 643.

In Lewis, the court agreed that legislation of statewide significance need not have an effect in all parts of the state; legislation does not become "local" merely because it

Representative Con Bunde

January 26, 2001

Page 2

operates only on a limited number of geographical areas rather than on a statewide geographical basis. The Lewis case involved the Cook Inlet land exchange and the court accepted the premise that the land exchange, while only affecting land in Southcentral Alaska, required legislation to be accomplished and was of common interest to the whole state. The court relied heavily on the record developed by the legislature in support of the need for the land exchange and the decision to resolve serious issues surrounding Alaska Native land selections under the Alaska Native Claim Settlement Act through legislation authorizing the Cook Inlet land exchange.

In a case where a violation of sec. 19 was found, the court said that legislation establishing the Eagle River Borough was special and peculiar to the locality where the borough was established. Since there was nothing in the nature of the Eagle River-Chugiak area that justified a departure from the general law scheme for the establishment of boroughs, the statute violated sec. 19. Abrams v. State, 534 P.2d 91 (Alaska 1975).

Recently the court upheld an act modifying oil and gas leases on the Northstar field because "the Act's exclusive focus on the Northstar leases reflects their unique nature, and because the Act fairly and substantially relates to legitimate state purposes." Baxley v. State, 958 P.2d 422 at 431 (Alaska 1998)

TBC:lmb
01-029.lmb

LEGAL SERVICES

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Mail Stop 3101

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Juneau, Alaska 99801-1182
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MEMORANDUM

January 26, 2001

SUBJECT: Differential Tax Zones (SSHB 13)

TO: Representative Con Bunde
Attn: Patti Swenson

FROM: Tamara Brandt Cook
Director *TBC*

Bill section 4 of SSHB 13 adds a new provision that states: "The assembly may by ordinance establish, alter, and abolish differential tax zones within a service area to provide and levy property taxes for a different level of services than that provided generally in the service area." You ask if differential tax zones are unconstitutional. While it is possible, that under certain facts, a particular differential tax zone may be problematical, I am aware of no constitutional problem that generally arises in connection with differential tax zones. (Op. Att'y Gen, December 8, 1986, pointing out in connection with a differential tax zone the requirement of a rational relationship between the benefits conferred and the additional costs imposed on the taxpayer)

The language in the bill is almost identical to a provision that has existed for many years: AS 29.45.580 allowing cities to establish differential tax zones. That provision became the subject of litigation when the City of Valdez imposed a tax on oil and gas property that was higher than the tax imposed on other property and claimed it could do so by treating the oil and gas property as a differential tax zone. The court concluded that Valdez could not impose higher taxes on oil and gas property, because another provision, AS 43.56.010(d), specifically prohibits a municipal tax rate on oil and gas property that is higher than that on other property. Because AS 43.56.010(d) is specific to oil and gas property whereas AS 29.45.580 is generally applicable to all property, the court decided that AS 43.56.010(d) controlled. While the precise issue of the constitutionality of differential tax zones was not addressed, the court took a close look at AS 29.45.580 and made no suggestion that the statute suffers from constitutional infirmity. (City of Valdez v. State, Dept. of Community and Regional Affairs, 793 F.2d 532 (Alaska 1990))

Assuming that a city may be authorized to establish differential tax zones without creating a constitutional problem, then it would seem that the legislature could permit a differential tax zone to be established in a service area as well. Note that the assembly has explicit constitutional authority to impose a tax in a service area and that the tax revenue must be used "to finance the special services." (Art. X, sec. 5, Constitution of

Representative Con Bunde

January 26, 2001

Page 2

the State of Alaska) Any tax levied in a differential tax zone would, I believe, be subject to this provision and have to be used for the special services in that tax zone.

TBC:lmb
01-027.lmb

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MEMORANDUM

January 25, 2001

SUBJECT: Municipal service areas; Art. X, sec. 5 of the State Constitution (SSHB 13)

TO: Representative Con Bunde
Attn: Patti Swenson

FROM: Tamara Brandt Cook *TBC*
Director

SSHB 13 provides for voter approval of formation of or certain changes to municipal service areas. You ask whether the requirement of voter approval with respect to service areas runs afoul of Art. X, sec. 5 of the state constitution. The provision of concern is "Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter.

The extent of the constitutional power granted to the assembly and the degree that the power may be limited by law or charter under this provision has not been squarely addressed by the Supreme Court. However, a recent case suggests that the power of the assembly may be limited by a charter provision imposing a requirement of voter approval. Area G Home and Landowners Organization, Inc. (HALO) v. Anchorage, 927 P.2d 728 (Alaska 1996) U.S. cert. denied 137 L.Ed 2 821, 117 S.C. 1694). That case involved the application of a charter provision requiring voter approval of certain changes to service areas. The court held that the charter provision permitting expansion of a service area upon approval of a majority of those voting within the area affected permitted the municipality to expand its police service area by abolishing its old service area and creating a new service area that included a region that had previously voted against expansion, without giving residents of that included region a separate vote on the expansion. In reaching its decision the court considered both the charter and Art. X, sec. 5. While the application of a voter approval requirement in the charter was the focus of the case, the court never suggested that the requirement of voter approval itself was prohibited under Art. X, sec. 5.

Recall the language of Art. X, sec. 5 making the power of an assembly over service areas "subject to the provisions of law or charter." If, as the court appears to have decided, a charter can impose a requirement of voter approval in these situations, then it appears under the language of the constitution that the law may also impose a such a requirement, as will be done if HB 13 is enacted. While the precise question was not decided, based

Representative Con Bunde
January 25, 2001
Page 2

on the reasoning in the HALO case, I do not think that a court would find HB 13 unconstitutional under Art. X, sec. 5.

TBC:glc
01-059.glc

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: SSHB 13
 () Publish Date: _____

Revision Date/Time (Note if correction): 1/25/2001 1:20PM Dept. Affected: DCED
 Title: SERVICE AREAS: VOTER APPROVAL/ TAX BRU: Com. Asst.& Econ. Dev.
ZONES Component: Community and
 Sponsor: Representative Bunde Business Development
 Requester: House CRA Committee Component Number: 2486

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation provides for voter approval of the formation, alteration, or abolishment of certain municipal service areas. This legislation would have no fiscal impact on the department.

Prepared by: Pat Poland, Director Phone 907-269-4580
 Division: DCED, Community & Business Development Date/Time 1/25/2001 1:20PM
 Approved by: Commissioner Deborah B. Sedwick Date 1/25/2001
 Agency: Department of Community & Economic Development

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: SSHB 13
 () Publish Date: _____

Revision Date/Time (Note if correction): 1/22/01 10:45AM Dept. Affected: DCED
 Title: SERVICE AREAS: VOTER APPROVAL/TAX BRU: Comm Asst & Econ Dev
ZONES Component: Comm & Bus Devel
 Sponsor: BUNDE, Kohring, Dyson, Halcro, Fate, Coghill
 Requester: House CRA Committee Component Number: 2486

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()						
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Estimate of any current year (FY2001) cost: 0.0

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Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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Prepared by: Pat Poland, Director Phone 907-269-4580
 Division: DCED, Community & Business Development Date/Time 1/22/2001 10:45AM
 Approved by: Commissioner, Deborah B. Sedwick Date 1/22/2001
 Agency: Department of Community & Economic Development

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