HB

13

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 31, 2001 **FURTHER REFERRALS: Finance**

Date of Committee Action: 2/14/01

The JUDICIARY Committee considered: **SSHB 13**

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 13 SERVICE AREAS:VOTER APPROVAL/TAX ZONES

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

Recommends it be replaced with CS SSHB 13 (JUD) [✓] **Same Title** |] **New Title**

For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____

[ ] attach amendments
[ ] add new referral to _____ Committee
[ ] Letter of Intent _____Committee

List of Abbrev. For Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LAA
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *For Chief Clerk's Office Use Only				
FN# *	List by Dept(s):	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN #	Fiscal	Indet.	Zero
CED	1			✓

Signing with recommendations	Printed Name	DP	DNP	NR	AM
Scott Ogan	Ogan			✓	
Albert Kookesh	Kookesh		✓		
[illegible]	James				
John Coghill	Coghill	✓			
Kim Meyer	Meyer			✓	
Ed Berkowitz	Berkowitz		✓		
					✓
Chair: Norman Rokeberg	Rokeberg			✓	
Chair:					

AMENDMENT

OFFERED IN THE HOUSE by Representative Berkowitz

TO: CS SS HB 13

Page 1, line 4 through page 2, line 23

Delete all material

Renumber following sections accordingly

FAILED.

22-LS0164\F
Cook
2/3/01

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 13( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE BUNDE, Kohring, Dyson, Halcro, Fate, Coghill

A BILL

FOR AN ACT ENTITLED

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

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 29.10.200 is amended by adding a new paragraph to read:

(60) AS 29.35.450 (voter approval of alteration or abolishment of service areas).

*** Sec. 2.** AS 29.35.450(a) is amended to read:

(a) A service area to provide special services in a borough **or unified municipality** may be established, operated, altered, or abolished by ordinance**, subject to (c) of this section. Special services include services not provided by the unified municipality or a higher or different level of services**. Special services include services not provided **by a borough** on an areawide or nonareawide basis in the borough [,] or a higher or different level of **services** [SERVICE] than that provided on an areawide or nonareawide basis. **A** [THE] borough may include a city in a

New Text Underlined [DELETED TEXT BRACKETED]

service area if

(1) the city agrees by ordinance; or

(2) approval is granted by a majority of voters residing in the city, and by a majority of voters residing inside the boundaries of the proposed service area but outside of the city.

*** Sec. 3.** AS 29.35.450 is amended by adding new subsections to read:

(c) If voters reside within a service area that provides road or fire protection services, abolishment of the service area is subject to approval by the majority of the voters residing in the service area who vote on the question. A service area that provides road or fire protection services in which voters reside may not be abolished and replaced by a larger service area unless that proposal is approved, separately, by a majority of the voters who vote on the question residing in the existing service area and by a majority of the voters who vote on the question residing in the area proposed to be included within the new service area but outside of the existing service area. A service area that provides road or fire protection services in which voters reside may not be altered or combined with another service area unless that proposal is approved, separately, by a majority of the voters who vote on the question and who reside in each of the service areas or in the area outside of service areas that is affected by the proposal. This subsection does not apply to a proposed change to a service area that provides fire protection services that would result in increasing the number of parcels of land in the service area or successor service area if the increase is no more than six percent.

(d) This section applies to a home rule or general law municipality.

*** Sec. 4.** AS 29.35.470 is amended by adding a new subsection to read:

(b) 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.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SSHB 13
(H) Publish Date: 1/31/01

Revision Date/Time (Note if correction): 1/25/2001 1:20PM
Title: SERVICE AREAS: VOTER APPROVAL/ TAX ZONES
Sponsor: Representative Bunde
Requester: House CRA Committee

Dept. Affected: DCED
BRU: Com. Asst.& Econ. Dev.
Component: Community and Business Development
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

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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 <u>BUT OUTSIDE</u> 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.

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Sectional Analysis
SSHB 13

"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.

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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
Director TBC

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

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

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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 P.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

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 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 legislature 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

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

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MEMORANDUM January 31, 2001

SUBJECT: Legislative limitations on home rule powers (SSHB 13)

TO: Representative Con Bunde
Attn: Patti Swenson

FROM: Tamara Brandt Cook
Director TBC

You have supplied me with a letter dated January 29, 2001 from the Department of Community and Economic Development suggesting that it is unconstitutional for the legislature, by statute, to explicitly limit home rule powers especially with respect to a matter of local rather than statewide concern. An attachment to the letter cites as support for this position Lien v. City of Ketchikan, 383 P.2d 721 (Alaska 1963).

It appears that the department's reliance on the Lien case is misplaced. The court in that case simply held that a statute involving lease procedures that preexisted statehood and was adopted before home rule municipalities were established did not apply to home rule municipalities. The court in a later case, Jefferson v. State, 527 P.2d 37 (Alaska, 1974), carefully considered the relationship between statute and home rule powers in the context of Art. X, sec. 11 of the state constitution. The court concluded that our constitution explicitly rejects the test of statewide versus local concern in determining the scope of municipal power. Instead the question is to be resolved based upon whether a particular power or procedure has been prohibited to municipalities by statute. The statutory prohibition must be "either by express terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law." (Id, at page 43; see also Simpson v. Municipality of Anchorage, 635 P.2d 1197 (Alaska Ct. App. 1981) Obviously, SSHB 13 contains an express limitation on home rule municipalities. A copy of the Lien case and relevant portion of the Jefferson case is attached.

TBC:lmb
01-034.lmb

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LIEN

8. Constitutional Law ⇐69

Supreme court would not give abstract opinion on whether city's lease of hospital to religious order would be valid should it appear that its effect would be to give preference to church, where order had not commenced operation of hospital. Const. art. 1, § 4.

David J. Pree, Anchorage, for appellants.

E. E. Bailey, Stump & Bailey, Ketchikan, for City of Ketchikan.

R. L. Jernberg, Gore & Jernberg, Ketchikan, and George J. Toulouse, Jr., Seattle, Wash., for Sisters of St. Joseph.

Before NESBETT, C. J., and DIMOND and AREND, JJ.

DIMOND, Justice.

The City of Ketchikan has provided for the construction of a hospital with a combination of federal, state and local funds.[1] After approval by the voters at a special election, the city executed an agreement to lease the hospital to the Sisters of St. Joseph of Newark, a charitable, non-profit corporation, for a period of 10 years at a rental of $1.00 a year. Under the terms of the lease the Sisters are to operate and maintain the hospital at their own expense. In this action to cancel the lease the plaintiff-appellant, Lien, assailed the lease arrangement as being invalid on various grounds. The superior court held against plaintiff and dismissed his complaint, and he has appealed.

Public Purpose

Plaintiff contends that when a hospital constructed with public funds is leased to a non-profit corporation managed by a sectarian religious order, there is a violation of the public purpose section of the state constitution which provides:

> "No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose."[2]

[1, 2] The moneys used to construct the Ketchikan hospital were spent for a public purpose, since a community hospital serves the general welfare. That purpose does not become non-public when the hospital is turned over to a charitable, non-profit corporation for operation, rather than being operated by the city itself. The public purpose remains unchanged. This is apparent from those provisions of the lease which obligate the Sisters to not deny admission or care of patients on account of race, color or creed, and which require the Sisters to establish fair and equitable rates and charges "sufficient only to pay the cost of operation." And it is of no consequence that the members of this charitable corporation may belong to a sectarian religious order. The test of whether a public purpose is being served does not depend on the religious or non-religious nature of the agency that will operate the leased property, but upon the character of the use to which the property will be put. The use as a public hospital will not be changed by the lease to the Sisters. There is no violation of article IX, section 6 of the state constitution.

Authority to Lease

A statute authorizes municipalities to sell, lease or otherwise dispose of real estate and other property "when in the judgment of the city council it is no longer required for municipal purposes."[3] Relying upon this statute, plaintiff contends that since no finding was made that the hospital

1. The federal funds are made available by the Hospital Survey and Construction Act, commonly called the Hill-Burton Act. Act of August 13, 1946, ch. 958, 60 Stat. 1041 [42 U.S.C.A. § 291 (1957)]. The state funds are in the nature of matching funds with the federal and are available to local governments on a participating basis. AS 18.20.140–18.20.220; S.L.A.1959, ch. 182, § 2. The local funds were obtained through the sale of the City's general obligation bonds in an amount not to exceed $1,200,000.

2. Alaska Const. art. IX, § 6.

3. AS 29.10.132(a).

property was not required for municipal purposes, and that any such finding if made would not be justified by the facts, that the city had no authority to lease the property.

[3, 4] The statute relied upon by plaintiff has no application to this case. It was enacted prior to statehood when all cities derived their governmental powers from the legislature. Cities are now authorized by the state constitution to adopt home rule charters[4], and the City of Ketchikan had adopted a charter and was a home rule city prior to the time the lease was made. By constitutional provision cities have "the powers and functions conferred by law or charter."[5] The meaning of this provision is that where a home rule city is concerned the charter, and not a legislative act, is looked to in order to determine whether a particular power has been conferred upon the city. It would be incongruous to recognize the constitutional provision stating that a home rule city "may exercise all legislative powers not prohibited by law or by charter"[6], and then to say that the power of a home rule city is measured by a legislative act. We hold that AS 29.10.132(a), which authorizes municipalities to lease property, is not relevant where the powers of a home rule city are being considered. This statute is not the source of the city's power to lease its hospital to the Sisters. Therefore, the portion of that statute which requires a finding that property to be leased is not required for municipal purposes is not a limitation on the power of the City of Ketchikan to lease its hospital.

[5] Plaintiff contends that the lease is without effect because of the city's failure to comply with certain provisions of the charter relating to the establishment of a public utility and a granting of a franchise to furnish a public utility service. This contention must be rejected for the reason that the language of the charter dealing with utilities does not suggest that the term "public utility" was meant to include a hospital, and plaintiff has failed to show that this was contemplated by the framers of the charter.

Delegation of Power

The lease provides that "The Lessee shall have the responsibility for establishing the necessary rules, regulations and by-laws for the internal operation of the hospital and nothing in this lease may be construed as delegating this power to the Lessor." Plaintiff argues that this provision constitutes an invalid delegation of the city's power and duty to determine all matters of policy, in contravention of section 2–4 of the city charter which states:

> "Except as otherwise provided in this charter, all powers of the city, including the determination of all matters of policy, shall be vested in the council."

[6] We find no violation of this section of the charter. The city had the power to lease the hospital; it was under no obligation to operate it as a governmental institution, administered and staffed by municipal employees. It would be impracticable for the city to attempt to provide rules and regulations for the internal functioning of an institution which has been turned over to another for management and operation. The city has established policy in the lease by including provisions which adequately recognize and protect the public interest. The Sisters are obliged to operate and maintain the hospital and equipment at their own expense, and in such a manner that there will be compliance with minimum hospital standards prescribed by the state, and eligibility for accreditation by the Joint Commission on Accreditation of Hospitals. Provision must be made for the care of Indian patients as prescribed by federal law, and a reasonable volume of charity care must be provided to conform to the requirements of the federal Hill-Burton Act. No person

4. Alaska Const. art. X, § 9.

5. Alaska Const. art. X, § 7.

6. Alaska Const. art. X, § 11.

may be denied admission to the hospital on account of race, creed or color. The Sisters must establish fair and equitable rates and charges sufficient only to pay the costs of operation, and they must establish and maintain an adequate accounting system and provide the city with an annual audit of hospital accounts made by a certified public accountant.

The foregoing lease provisions demonstrate that the city has fulfilled, rather than abdicated, its duty of determining policy matters. There has been no invalid delegation of municipal power.

Freedom of Religion

Asserting that the Sisters are a sectarian order of the Catholic faith, plaintiff contends that the effect of the lease is to give a preference to the Catholic church. This, plaintiff argues, violates article I, section 4 of the state constitution which forbids the making of a law respecting the establishment of religion or prohibiting the free exercise thereof.[7]

[7] The Sisters are a non-profit corporation, organized for charitable purposes.[8] There is nothing in the articles of incorporation indicating that the corporation's objective is to further religious beliefs or dogmas of the Catholic church. The hospital was constructed and the lease made in order to provide for the care of the sick, without regard to race, color or creed, and thus accomplish a valid public purpose. There is nothing in this arrangement from which it can be inferred that a tax-established, public institution is to be utilized to aid a religious group to spread its faith or to interfere with the religious beliefs of others.[9] The city's action was not designed, nor does it have the effect by its nature, of promoting or giving a preferred position to whatever religious beliefs the individual members of the corporation might have. The fact that specific sectarian beliefs may be entertained by those persons does not bar the city from achieving its valid secular goal of caring for the sick.[10]

Plaintiff asserts that when the hospital has been completed and turned over to the Sisters in accordance with the lease [11], that the Sisters, as a matter of fact, will engage in the practice of teaching patients religion, and will operate the hospital under a sectarian code of ethics so as to give one sect preference over another and so as to interfere with the free exercise of plaintiff's own religious beliefs.

[8] If it should appear as an objective fact, after the Sisters commence operation of the hospital, that the operative effect of the lease arrangement is to violate the constitutional provision regarding the establishment of religion and religious freedom, then that will be time enough for the judiciary to intervene. Out of a proper regard for the right of the city to administer its affairs and serve the public need as it deems fit, this court will refuse to strike down the city's arrangement in the absence of a factual situation where judicial intervention becomes a practical necessity. At this time plaintiff is unable to show that he has sustained or is immediately in danger of sustaining some

7. Alaska Const. art. I, § 4 reads: "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof."

8. The articles of incorporation of the Sisters of St. Joseph of Newark provide in art. III: "The objects and purposes of this incorporation shall be to establish and maintain hospitals, orphanages, homes for young women, homes for the aged, the blind, or the infirm and with the further object and purpose of engaging generally in any such kindred charities as those concerned in this corporation may from time to time find necessary or convenient."

9. But cf. Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203, 210, 68 S.Ct. 461, 464, 92 L.Ed. 649, 658 (1948).

10. See McGowan v. Maryland, 366 U.S. 420, 445, 81 S.Ct. 1101, 1115, 6 L.Ed.2d 393, 410 (1961).

11. At the time the superior court rendered its decision the hospital was still under construction.

direct injury as a result of the city's plan for hospital care, which makes it incumbent upon the court to pass upon the constitutional question. What plaintiff asks us to do is to give an abstract opinion on what is in essence a hypothetical case, and that we shall not do.[12] Suffice it to say we find no violation of article I, section 4 of the constitution on the face of the city's arrangement to lease its hospital to the Sisters.

The remaining specifications of error raised by plaintiff in his brief do not warrant discussion—either because they have been disposed of by the points covered in this opinion, or because they are lacking in substance.

The judgment is affirmed.

12. See Poe v. Ullman, 367 U.S. 497, 81 S.Ct. 1752, 6 L.Ed.2d 989 (1961).

ough assembly. The statute had four sections. The first section dictated only the number of seats on the assembly; the remaining sections stated how those seats were to be apportioned among the voters. If those apportionment standards were unconstitutional,[13] they could have been declared void without affecting the first section, since the first section was clearly separable from the latter sections. The test for separability of a statute (where one part of it is invalid) is whether the remaining parts are so independent and complete that it may be presumed that the legislature would have enacted the valid parts without regard to the invalid part.[14] In this case the test is satisfied; we presume that the legislature undertook to establish the number of assemblymen for each class of borough and would have done so whether or not any particular apportionment formula be provided.

[10] Moreover, even were these provisions—the structure of the assembly and the apportionment of assembly seats—completely inseparable, we do not conclude that the lack of a valid legislative body would prevent the valid incorporation of the municipality. This conclusion is bolstered by noting that Alaska's newly-enacted Municipal Government Code[15] has completely separated the statutes relating to the incorporation procedure[16] from those relating to the borough's legislative body.[17] We agree with the legislature that the incorporation of a municipality is a process both conceptually and functionally distinct from that of establishing a legislative body for that corporation.

We are satisfied that there was a valid statute under which the Borough could and did incorporate. Since Jefferson made no claim concerning the other three elements necessary to establish *de facto* municipal existence, the superior court properly ruled that the Borough was a valid entity as against a collateral attack.[18]

THE CITY'S CHARTER

Jefferson argues also that the sewer transfer was and is invalid, because the City's home rule charter prohibits the sale or disposition of the City's utility assets unless three-fifths of the City's voters approve the disposition.[19] No election was held.[20]

The Borough contends that the City's charter is over-ridden by state law in this area.[21] In particular, the Borough relies on former[22] AS 7.15.310, which provides in part:

"No city of any class, whether home rule or not, within an organized borough,

13. Judge Stewart ruled that this representational scheme was unconstitutional in City of Juneau v. Borough First Judicial District Cause No. 65-317 (1968), 6 Alaska L.J. 197-9 (1968).

14. *See* 2 J. Sutherland, Statutory Construction § 2404 (3rd ed. F. Horack 1943).

15. Chapter 118, S.L.A.1972 repealed and replaced the statutes under which the Borough was incorporated.

16. Chapter 18, of Title 20, entitled "Incorporation."

17. Chapter 23, Art. 1 of Title 20, entitled "Borough Assembly."

18. Our disposition of this issue makes it unnecessary to rule on the Borough's contention that Jefferson's complaint was never properly amended to include this attack on the Borough's existence.

19. The City of Anchorage has adopted a home rule charter which provides in § 13.4:
"The counsel may sell, lease or otherwise dispose of a municipal utility or of property and interest in property used or useful in the operation of a utility only after a proposition to do so is approved by three-fifths of the electors of the city voting on the proposition."

20. The Borough makes no claim that the areawide sewer election of 1966 satisfied the city charter requirement.

21. The City joins the Borough in making this contention.

22. This controversy must be decided with reference to the former statutes, *see* n. 5, *supra*, governing transfer of powers because Ch. 118, S.L.A.1972 had a savings clause:
"A right or liability of a home rule or general law city or borough existing on September 10, 1972 is not affected by the enactment of this Act."

> may exercise any areawide power provided in this section . . . once that power is being exercised by an organized borough." [23]

This court has dealt with conflicts between state law and a municipal home rule charter or ordinance in several cases.[24] The starting point for an analysis of this issue must be found in the Alaska constitution, Art. X, § 11:

> "A home rule borough or city may exercise all legislative powers not prohibited by law or charter."

The authors of this provision hoped that its simple language and sweeping grant of power would enable home rule municipalities to meet a multitude of legislative needs without depending on specific grants of power from a state legislature.[25] They were aware of the difficulties encountered in other jurisdictions where delegations of power to local government units were conferred in terms, such as "matters of local concern" or "of local affairs," which were intended to create an exclusive sphere of municipal action free from any intrusion by the state legislature.[26] Attempts by the courts in those jurisdictions to resolve conflicts between local enactments under such limited delegations of authority and state statutes relating generally to the same subject have often led to confusion and inconsistencies.[27] Then too, some commentators have suggested that constitutional or statutory home rule provisions had been rendered ineffective in other states because of restrictive court decisions.[28] With this all before them the constitutional delegates undertook to give Alaska home rule municipalities a wide range of powers to meet the differing needs of the varied and scattered communities of this state. It was hoped that the constitutional delegation of authority to local government units under the terms of Art. X, § 11 would lead the courts of this jurisdiction to take a new and independent approach when con-

23. Among the powers "provided in this section" are those transferred from city to borough pursuant to AS 7.15.350, which provides in part:
> "Second class boroughs acquire additional areawide powers in the same manner provided by §§ 710–800 of this chapter . . . except that the vote on the question is areawide."

24. It has been claimed our approach has not always been entirely consistent. *See* Sharp, Home Rule in Alaska: A Clash Between the Constitution and the Court, 3 U.S.L.A.—Alaska L.R. 1 (1973).

25. Art. X, section 1, the introductory section on home rule in the Alaska constitution reads: "The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdiction. A liberal construction shall be given to the powers of local government units."

26. *See* Sharp, *supra*, note 24 at 3. Most courts fail to distinguish between the types of home rule provisions. The provisions of other jurisdictions described in the text are sometimes designated as "shield" or "protection" provisions and usually require a court's determination of whether an exercise of municipal power is statewide or local in nature, when such exercise of power conflicts with a state statute. Alaska's home rule provision is a "grant" or "sword" of legislative power given to the municipality to be exercised as long as it is not prohibited by law. Art. X, § 11.

This difference between "shield" and "sword" provisions was implicitly recognized in Rubey v. City of Fairbanks, 456 P.2d 470, 475 (Alaska 1969) where the court declined to follow California's pre-emption-by-state-occupation-of-the-field doctrine because of the difference between California's and Alaska's home rule provisions. California's provision is a combination "shield" and "sword", while Alaska's is solely a "sword". *See* Duvall, Delineation of the Powers of the Alaska Home Rule City: The Need for a Beginning, 8 Alaska L.J. 232, 233–35 (Oct. 1970); Sato & Van Alstyne, State and Local Government Law 216–218 (1970).

27. Alaska Legislative Council and Local Affairs Agency, Final Report on Borough Government, 36 (1961).

28. *See* Fordham & Asher, Home Rule Powers in Theory and Practice, 9 Ohio St.L.J. 18 (1948); Richland, Courts Nullify Home Rule, 44 Nat'l Mun.Rev. 565–70 (1955); Sato, "Municipal Affairs" in California, 60 Cal. L.Rev. 1055 (1972). *But see also* Sandalow, The Limits of Municipal Powers Under Home Rule; A Role for the Courts, 48 Minn.L.R. 643 (1963–64).

flicts inevitably arose between the municipalities and the state.[29] The foundation for this new approach has been laid in the past decisions of this court which have favored the exercise of legislative powers by local government units.[30]

[11] However, to say that home rule powers are intended to be broadly applied in Alaska is not to say that they are intended to be pre-eminent. The constitution's authors did not intend to create "city states with mini-legislature."[31] They wrote into Art. X, § 11 the limitation of municipal authority "not prohibited by law or charter." The test we derive from Alaska's constitutional provisions is one of prohibition, rather than traditional tests such as statewide versus local concern.[32] A municipal ordinance is not necessarily invalid in Alaska because it is inconsistent or in conflict with a state statute. The question rests on whether the exercise of authority has been prohibited to municipalities. The prohibition must be either by express terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law.[33]

[12] In this case we find the prohibition to be express. The statutes established a procedure by which certain city powers could be transferred to a second class borough and precluded a city from exercising a power once that power was being exercised areawide.[34]

This then presents a clear case in which statutory authority overrides a provision in a home rule charter. Our conclusion is consistent with the new municipal code, which retains in large measure the relevant statutory provisions we have found controlling in this case.[35]

29. *See* Sharp, Home Rule in Alaska, *supra*, note 25, at 22–27.

30. *See* Lien v. City of Ketchikan, 383 P.2d 721–723 (Alaska 1963); City of Juneau v. Hixson, 373 P.2d 743 (Alaska 1962); Rubey v. City of Fairbanks, 456 P.2d 470–475 (Alaska 1969).

31. Duvall, Delineation of the Powers of the Alaska Home Rule City: The Need for a Beginning, 8 Alaska L.J. 232, 240 (Oct. 1970).

32. *See* Sharp, *supra* note 25, at 30–31; Duvall, *supra* note 27 at 235, 237–239. In Rubey v. City of Fairbanks, 456 P.2d 470, 475 (Alaska 1969) this court recognized a prohibition test for conflict resolution between state and local legislation:

> "Article X, section 11 of the Alaska constitution provides that a home rule city, such as Fairbanks, 'may exercise all legislative powers not prohibited by law or by charter.' There is no legislative enactment in Alaska that expressly prohibits a home rule city from making assignation a criminal offense. We do not find such prohibition from the fact that the Alaska legislature has extensively covered the field of sexual offenses. We believe there would have to be some additional factor from which the intent of the legislature to prohibit local regulation in this area could be reasonably inferred. We are not aware of any such factor in this case."

33. We reaffirm our rejection of the doctrine of state pre-emption by "occupying the field." We will not read into a scheme of statutory provisions any intention to prohibit the exercise of home rule authority in that area of the law. If the legislature wishes to "pre-empt" an entire field, they must so state. *See* Rubey v. City of Fairbanks, 456 P.2d 470 (Alaska 1969).

We note that the legislature has done this in its new Title 29, Municipal Code. AS 29.-13.100 provides in part:

> "Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise than as provided."

34. Formerly AS 7.15.350; AS 7.15.310. The statutes further provided that such boroughs (of which the Anchorage borough is one) shall acquire city powers in the manner provided in AS 7.15.710–7.15.800, except that the vote on the question is areawide.

AS 7.15.710–7.15.800 provided for the filing of a petition by the borough with the Local Affairs Agency (now the Dept. of Community and Regional Affairs), review of the approved (as to form) petition by the Local Boundary Commission, a hearing on the petition held by the Local Boundary Commission, and finally an election on the proposal.

35. AS 29.33.010(b) (exercise of areawide borough powers); AS 29.33.290(c) (acquisi-

Our decision in the case at bar is in accord with this court's opinions relating to cases of conflict between local ordinances and state enactments. In Lien v. City of Ketchikan,[36] we held that the home rule provisions of the state constitution validated a lease of a hospital to a charitable non-profit corporation despite non-compliance with a state statute governing leases by municipalities. The statute was held inapplicable and not a limitation upon the city's home rule authority, the source of which is found in Article X, section 7 of Alaska's constitution.

In Chugach Electric Association v. The City of Anchorage[37] the issue was whether the City of Anchorage could block the electric association from providing electrical service to a customer within the association's service area. The Alaska Public Service Commission had previously granted the association a certificate of convenience and necessity to provide electrical service within certain areas of the city. The City refused to issue to the Association a building permit on the grounds that the City's own electrical utility could better serve the customer. We resolved the conflict by application of a rule requiring the local enactment to yield where it directly or indirectly impeded implementation of statutes which sought to further a specific statewide policy. This court discerned in the statute a strong policy in favor of treating regulation of public utility service areas as a matter of statewide concern. The situation was one in which locally created variations from state regulation could have affected public utilities beyond the local area. In these circumstances we found a legislative intent that regulated utilities were to be within the exclusive jurisdiction of the Public Service Commission to the extent that such jurisdiction was conferred upon the Commission. Accordingly, municipalities were prohibited from regulating the same utilities to the extent of the Commission's proper jurisdiction.

In Macauley v. Hildebrand[38] a state statute permitted borough assemblies to centralize by ordinance their school district accounting systems with other borough operations with school board consent. An ordinance of the City and Borough of Juneau required the Juneau School District to centralize the district's accounting system without the school board's consent. Although the statutory prohibition in *Macauley* was direct, this court offered another reason for striking down the questioned ordinance. The statute involved in *Macauley* was an express delegation by the state legislature to municipal corporations of a constitutionally mandated legislative power.[39] We reasoned that the language of the state constitution mandating maintenance of a school system by the state vested the legislature with pervasive control over public education. Thus, home rule municipalities were precluded from exercising power over education unless, and to the extent, delegated by the state legislature; and the local ordinance was therefore overriden by the statute.

Affirmed.

CONNOR, J., concurs separately.

CONNOR, Justice (concurring separately).

I agree with the majority opinion, but wish to add some observations about judicial method in resolving conflicts between state statutes and municipal ordinances. More particularly I wish to discuss the "local activities rule", and the place it has in the process of determining the validity of ordinances of a home rule municipality.

tion of additional areawide powers). These are enumerated as specific prohibitions to municipalities in AS 29.13.100. *See* note 34 *supra*.

36. 383 P.2d 721 (Alaska 1963).

37. 476 P.2d 115 (Alaska 1970).

38. 491 P.2d 120 (Alaska 1971).

39. Alaska Const., Art. VII, § 1:
The legislature shall by general law establish and maintain a system of public schools open to all children of the State.

There is no question that we must adhere to the policy expressed in the constitution which requires that we give a broad reading to the powers of home rule cities and boroughs. That in itself poses no difficulty. This general policy, however, will not solve the real problem, which lies in the inherent potentiality of conflict between statutory law enacted by the legislature and local ordinances.

One possible solution is to hold that only where the legislature has expressly declared its intention to prohibit the exercise of municipal powers should we declare municipal ordinances void. Such an approach would have the advantage of simplicity. Unfortunately, such a mechanical jurisprudential technique is so simple that it would not serve the needs of the public. In extreme cases it probably would not survive constitutional attack.[1]

The state legislature has expressly prohibited the exercise of total local power in such areas as taxation, AS 29.73.040, AS 29.53.350, AS 29.53.400; utilities regulation, AS 29.48.040–29.48.100; security for bonds, AS 29.58.180(b); municipal elections, AS 29.28.010, AS 29.28.020(b)–29.28.030; and other matters of general state concern. *See,* AS 29.13.100. It is naive, however, to expect that these prohibitions contemplate each and every matter in which the legislature would properly wish to restrict local power. A home rule concept which relies only on express prohibition to define the scope of local power presupposes a degree of legislative foresight and draftsmanship ability which is completely unrealistic. *See* Duvall, Delineation of the Powers of the Alaska Home Rule City: The Need for a Beginning, 8 Alaska Law Journal 232, 239 (1970).

For example, the Uniform Commercial Code, AS 45.05.002 et seq., and the Insurance Code, AS 21.03.010 et seq., enacted by the legislature, no doubt were meant to operate upon a statewide basis, though nothing in those codes expressly prohibits municipal legislation in the field of commercial law or insurance law. Yet to say that a home rule city could alter the operation of such comprehensive statutory systems would be intolerable. Transactions whose reliability is vital to a functioning economy would become unsettled, to the detriment of the business community and the citizenry of the state. A conflict between the city and the state could not be ignored in this type of situation, despite the absence of an express prohibition.

In such instances the courts must resolve the conflict. There is no escape from our duty to adjudicate legal claims which arise from two constitutional provisions of equal dignity, *i. e.*, the grants of power to both the legislature and to home rule cities.

The question, then, is not the propriety of judicial action or abstention. Rather, the problem is what methods should be employed by courts when presented with those conflicts between municipal ordinances and state statutes which will inevitably occur. As with many questions of public law, the answer is to be found through an analysis and weighing of the various social and governmental interests which bear upon such a conflict.

One test we have used in determining whether the ordinance or the statute must yield, is the "local activities rule." This test, as applied in Chugach Electric Association v. City of Anchorage, 476 P.2d 115 (Alaska 1970), and Macauley v. Hildebrand, 491 P.2d 120 (Alaska 1971), should not be regarded, as it has been by one commentator,[2] as the rule the framers of the constitution rejected in establishing a broad home rule policy. Rather, it should

1. Examples are Turner v. Staggs, 510 P.2d 879 (Nev.1973), and Reich v. State Highway Department, 386 Mich. 617, 194 N.W.2d 700 (1972). These cases concern municipal ordinances barring suit by tort claimants unless notice is given within a certain period of time following the injury. Because the time periods provided by ordinance were shorter than the statutory period of limitation applicable to claimants against private persons, the ordinances were in these cases held unconstitutional as denying to tort claimants the equal protection of the laws.

2. *See,* Sharp, Home Rule in Alaska: A Clash Between the Constitution and the Court, 3 UCLA Alaska Law Review 1, 53 (1973).

be recognized as a realistic tool by which to interpret this policy. The "local activities rule" requires the court to focus upon whether the particular subject under consideration is of such statewide concern that the exercise of municipal power is inconsistent with the effectuation of statewide policy, as expressed by statute. Some matters are obviously of statewide concern, some less so. Some matters are so traditionally and readily classified as matters of local government that there will be no difficulty in finding that they are within municipal competence. Here, too, the municipal code adopted by the legislature is of great help in delineating the areas of permissible local action.

Inevitably, there will be cases which fall within a gray area. As to those the courts must attempt to balance competing interests, bearing in mind the constitutionally stated policy of permitting maximum home rule and yet preventing the chaotic state of affairs which would result if each home rule municipality were allowed to legislate as though it were a feudal city-state. When dealing with cases in the gray area, the courts must strike a balance as best they can, after careful consideration of the competing interests and public policies which bear upon the outcome. Thus in Chugach Electric Association, *supra*, 476 P.2d at 123, we spoke of balancing "the needs of the entire state against the desirable autonomy which only home rule can provide." The ultimate question, of course, is whether, from an examination of the statutes, a prohibition against home rule powers can be discerned, either expressly or by implication. Fortunately, if the judicial decision in such cases is unacceptable, relief may still be sought from the legislature, which can, if it chooses, alter the determination. A judicial decision of such a question is not, therefore, the end of the controversy.

Those who advocate that the conflict between statutes and ordinances should be resolved by simply holding in favor of home rule in all instances where the legislature has not stated an express prohibition are seeking an illusionary, unworkable solution to a problem which is quite complex and which is, like many things in modern life, not susceptible to decision by mere slogans or mechanical formulae. "The price of certainty is too high when it involves a failure to face the real policy questions involved." [3]

I favor the "local activities rule" applied in *Macauley* and *Chugach*, for the rule is, in my opinion, a useful one in resolving the conflict between statute and ordinance.

3. Calif. Governor's Comm'n on the Law of Preemption. Report and Recommendations, 6 (1967), cited in Duvall, *supra*, at 244.

Sec. 29.10.200. Limitation of home rule powers.

Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise than as provided. These provisions supersede existing and prohibit future home rule enactments that provide otherwise:

(1) AS 29.05.140 (transition);
(2) AS 29.06.010 (change of municipal name);
(3) AS 29.06.040 - 29.06.060 (annexation and detachment);
(4) AS 29.06.090 - 29.06.170 (merger and consolidation);
(5) AS 29.06.190 - 29.06.420 (unification of municipalities);
(6) AS 29.06.450 - 29.06.530 (dissolution);
(7) AS 29.10.100 (charter amendment);
(8) AS 29.20.010 (conflict of interest);
(9) AS 29.20.020 (meetings public);
(10) AS 29.20.050 (legislative power);
(11) AS 29.20.060 - 29.20.120 (assembly composition and apportionment);
(12) AS 29.20.140 (qualifications of members of governing bodies);
(13) AS 29.20.150 (term of office);
(14) AS 29.20.220 (executive power);
(15) AS 29.20.270(e) (ordinance veto by mayor);
(16) AS 29.20.630 (prohibited discrimination);
(17) AS 29.20.640 (reports);
(18) AS 29.25.010(a)(10) (municipal exemption on contractor bond requirements);
(19) AS 29.25.050 (codification);
(20) AS 29.25.060 (resolutions);
(21) AS 29.25.070(e) (notices of certain civil actions).
(22) AS 29.25.074 (surcharge).
(23) AS 29.25.080 (breast-feeding);
(24) AS 29.26.030 (notice of elections);
(25) AS 29.26.050 (voter qualification);
(26) AS 29.26.250 - 29.26.360 (recall);
(27) AS 29.35.020 (extraterritorial jurisdiction);
(28) AS 29.35.030 (eminent domain);
(29) AS 29.35.050 (garbage and solid waste services);
(30) AS 29.35.055 (local air quality control program);
(31) AS 29.35.060 (franchises and permits);
(32) AS 29.35.070 (public utilities);
(33) AS 29.35.080 (alcoholic beverages);
(34) AS 29.35.090(b) (certain vacations of rights-of-way prohibited);
(35) AS 29.35.120 (post audit);
(36) AS 29.35.131 (enhanced 911 system);
(37) AS 29.35.145 (regulation of firearms);
(38) AS 29.35.160 (education);

(39) AS 29.35.170(b) (assessment and collection of taxes);
(40) AS 29.35.180(b) (land use regulation);
(41) AS 29.35.250 (cities inside boroughs);
(42) AS 29.35.260 (cities outside boroughs);
(43) AS 29.35.340 (acquisition of areawide power);
(44) AS 29.35.500 - 29.35.590 (hazardous materials and wastes);
(45) AS 29.40.160(a) - (c) (title to vacated areas);
(46) AS 29.40.200 (subdivisions of state land);
(47) AS 29.45.010 - 29.45.570 (property taxes);
(48) AS 29.45.650(c), (d), (e), and (f) (sales and use tax);
(49) AS 29.45.700(d) (sales and use tax);
(50) AS 29.45.810 (exemption from municipal taxation);
(51) AS 29.46.010(b) (exemption from municipal assessment).
(52) AS 29.47.200(b) (security for bonds);
(53) AS 29.47.260 (construction);
(54) AS 29.47.470 (air carriers);
(55) AS 29.60.050(a) (limitation on computation and use of payment);
(56) AS 29.60.120(a) and (c) (priority revenue sharing for health facilities and hospitals);
(57) AS 29.65 (general grant land);
(58) AS 29.71.040 (procurement preference for state agricultural and fisheries products);
(59) AS 29.71.050 (procurement preference for recycled Alaska products).

(§ 6 ch 74 SLA 1985; am §§ 1, 2 ch 38 SLA 1986; am § 6 ch 70 SLA 1986; am § 12 ch 80 SLA 1986; am § 3 ch 108 SLA 1986; am § 49 ch 14 SLA 1987; am § 1 ch 30 SLA 1988; am § 2 ch 63 SLA 1988; am § 1 ch 64 SLA 1988; am § 3 ch 57 SLA 1993; am § 5 ch 74 SLA 1993; am § 1 ch 29 SLA 1994; am § 1 ch 75 SLA 1997; am § 7 ch 56 SLA 1998; am § 3 ch 78 SLA 1998; am § 4 ch 104 SLA 1998; am § 1 ch 107 SLA 1998; am § 2 ch 94 SLA 1999)

Revisor's notes. Reorganized in 1986 and 1998 to restore numerical order to the referenced provisions. Paragraph (53) was enacted as (49) and renumbered as (50) in 1988, (52) in 1993, and again in 1994. Paragraphs (27) and (32) were each enacted as (51) and renumbered in 1993. Paragraph (48) was enacted as (53) and renumbered in 1994. Paragraphs (21), (22), and (49) were all enacted as (54); (23) was enacted as (21); and (50) was enacted as (55). Renumbered in 1998, at which time former (21)-(45) were renumbered as (24)-(48), respectively, and former (46)-(53) were renumbered as (51)-(58), respectively.

The reference to "AS 29.25.074" in paragraph (22) was substituted for "AS 29.25.072" in 1998 to reflect the 1998 renumbering of that section.

Paragraph (34) was enacted as (59). Renumbered in 1999, at which time former paragraphs (34)-(58) were renumbered as (35)-(59).

Effect of amendments. The first 1993 amendment, effective June 9, 1993, added paragraph (32).

The second 1993 amendment, effective June 26, 1993, added paragraph (27).

The 1994 amendment, effective May 8, 1994, added present paragraph (48).

The 1997 amendment, effective July 1, 1997, substituted "priority revenue sharing" for "state aid" in

paragraph (50).

The first 1998 amendment, effective August 27, 1998, added paragraph (22).

The second 1998 amendment, effective September 6, 1998, added paragraph (23) and renumbered the subsequent paragraphs accordingly.

The third 1998 amendment, effective June 18, 1998, added paragraphs (49) and (50).

The fourth 1998 amendment, effective July 1, 1998, added paragraph (21).

The 1999 amendment, effective July 10, 1999, added paragraph (34).

Sec. 29.35.450. Service areas.

(a) A service area to provide special services in a borough may be established, operated, altered, or abolished by ordinance. Special services include services not provided on an areawide or nonareawide basis in the borough, or a higher or different level of service than that provided on an areawide or nonareawide basis. The borough may include a city in a service area if

(1) the city agrees by ordinance; or

(2) approval is granted by a majority of voters residing in the city, and by a majority of voters residing inside the boundaries of the proposed service area but outside of the city.

(b) A new service area may not be established if, consistent with the purposes of Alaska Const., art. X, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.

(§ 10 ch 74 SLA 1985)

Opinions of attorney general. While local emergency planning districts may have the same geographical boundaries as service areas, the districts and the LEPCs cannot take the form of service areas. May 29, 1992 Op. Att'y Gen.

Sec. 29.35.470. Financing.

The assembly may levy or authorize the levying of taxes, charges, or assessments in a service area to finance the special services. If the assembly authorizes the levying of taxes, charges, or assessments, the rate of taxation and the issuance of bonds are subject to assembly approval.

(§ 10 ch 74 SLA 1985)

Sec. 43.56.010. Levy of tax.

(a) An annual tax of 20 mills is levied each tax year beginning January 1, 1974, on the full and true value of taxable property taxable under this chapter.

(b) A municipality may levy and collect a tax under AS 29.45.080 at the rate of taxation that applies to other property taxed by the municipality. The tax shall be levied at a rate no higher than the rate applicable to other property taxable by the municipality. A municipality may not exempt from taxation property authorized to be taxed under this chapter. Exemptions shall be limited to those in AS 29.45.030, 29.45.050, and AS 43.56.020.

(c) If the total value of assessed property of a municipality taxing under AS 29.45.080(c) exceeds the product of 225 percent of the average per capita assessed full and true value of property in the state, to be determined by the department and reported to each municipality by January 15 of each year, multiplied by the number of residents of the taxing municipality, the department shall designate the portion of the tax base against which the local tax may be applied.

(d) A tax paid to a municipality under AS 29.45.080 or former AS 29.53.045 on or before June 30 of the tax year shall be credited against the tax levied under (a) of this section for that tax year. If, however, a tax is not paid to a municipality until after June 30 of the taxable year, the department upon application shall refund to the taxpayer the amount of tax paid to the municipality under AS 29.45.080 or former AS 29.53.045. The credit or refund of taxes paid to a municipality may not exceed the total amount of tax levied by the department upon the taxpayer for the tax year, under (a) of this section.

(§ 1 ch 1 FSSLA 1973; am § 7 ch 159 SLA 1975; am §§ 1, 2 ch 107 SLA 1976; am §§ 69 - 71 ch 74 SLA 1985)

Opinions of attorney general. Municipal tax ordinance which established three differential tax zones but levied a higher mill rate in Tax Zone III, a zone consisting entirely of oil and gas property owned by Alyeska and assessed by the State of Alaska, Department of Revenue, under AS 43.56, violated the uniform rate provision of subsection (b). December 8, 1986 Op. Att'y Gen.

In the event that creation of a tax zone consisting entirely of oil and gas property was proper and was thereby taxed at a higher mill rate than other property in the city under AS 29.45.580 because it received different services than those generally provided in the city, the municipality's collection of the higher tax from Alyeska in 1986 failed to meet the requirement of a rational relationship between the benefits conferred and the costs to the taxpayer in 1986. December 8, 1986 Op. Att'y Gen.

AS 43.56 property annexed to a municipality after the statutorily prescribed January 1 property assessment deadline, but before a municipality finalizes its tax roll, is taxable under AS 29.45.080 and the tax paid to the municipality will be a credit against that oil company's corporate state tax for that year under subsection (d) of this section. March 1, 1989 Op. Att'y Gen.

Sec. 29.45.580. Differential tax zones.

A city may by ordinance establish, alter, and abolish differential tax zones to provide and levy property taxes for services not provided generally in the city or a different level of service than that provided generally in the city.

(§ 12 ch 74 SLA 1985)

Opinions of attorney general. Although this section permits a city to levy a differential rate in tax zones "for services not provided generally in the city . . . ", such an arrangement as to oil and gas property appears to violate the uniformity provision of AS 43.56.010(b), which states that a tax on oil and gas property "shall be levied at a rate no higher than the rate applicable to other property taxable by the municipality." December 8, 1986 Op. Att'y Gen.

In the event that creation of a tax zone consisting entirely of oil and gas property was proper and was thereby taxed at a higher mill rate than other property in the city under this section because it received different services than those generally provided in the city, the municipality's collection of the higher tax from Alyeska in 1986 failed to meet the requirement of a rational relationship between the benefits conferred and the costs of the taxpayer in 1986. December 8, 1986 Op. Att'y Gen.

Section 11. Home Rule Powers.

A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.

Opinions of attorney general. A home rule municipality duly incorporated under the laws of Alaska may establish and operate a local housing authority so as to fall within the definition of "public housing agencies" under the 1974 revision of the United States Housing Act of 1937, P.L. 93-388, 42 U.S.C.A. §§ 1437, 1437a(6). February 2, 1976 Op. Att'y Gen.

Mere inconsistency with a state statute is not sufficient to invalidate a municipal ordinance as unconstitutional. May 12, 1980 Op. Att'y Gen.

A home rule city has the power to enact an ordinance exempting from local taxation any class of real personal property, if such an exemption is not prohibited by the city's home rule charter. 1969 Op. Att'y Gen. No. 1.

A Proposition 13 initiative which reads: "The municipality of _____ may not levy and tax for any purpose in excess of one percent of the assessed value of property within the municipality" would, as a practical matter, unconstitutionally impair the obligation of existing contracts any municipality has made to borrow money by general obligation bonds, and, additionally, would directly conflict with the policy adopted by AS 29.53.055 (now see AS 29.45.100) to levy such taxes at such rates as are required to repay general obligation bonds; as such, it would be void. August 29, 1978 Op. Att'y Gen.

A municipality enacting a local district coastal management program may restrict or exclude a use of state concern without falling afoul of the constitutional limitations in this section on the exercise of municipal authority if that restriction or exclusion is reasonable, within the meaning of AS 46.40.070(c). May 12, 1980 Op. Att'y Gen.

Municipal authority to regulate oil and gas activities of federal lessees depends upon whether the leases are on-shore or off-shore. In the case of the former, the doctrine of federal preemption may prohibit local coastal zone ordinances from affecting any measure of control. In the case of the latter, local coastal management programs which are approved by the Alaska Coastal Policy Council and thus part of the Alaska Coastal Management Program will become one of the touchstones in the state consistency determination required by section 307(c)(3) of the Coastal Zone Management Act, 16 U.S.C. § 1451 et seq. May 12, 1980 Op. Att'y Gen.

Section 5. Service Areas.

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. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services.

Opinions of attorney general. The legislature could establish school service areas in an unorganized borough by general law subject to the restrictive limitations of this section. 1961 Op. Att'y Gen. No. 24.

A home rule city does not have unreined authority to create service areas and impose a tax rate on that service area without complying with statutory law. December 8, 1986 Op. Att'y Gen.

MATANUSKA-SUSITNA BOROUGH

350 East Dahlia Avenue, Palmer, Alaska 99645-6488
Borough Attorney's Office

February 9, 2001

House Judiciary:
Chair: Representative Rokeberg
Vice Chair: Representative Ogan
Member: Representative James
Member: Representative Coghill
Member: Representative Meyer
Member: Representative Berkowitz
Member: Representative Kookesh
State Capitol
Juneau, Alaska 99801-1182

Re: Sponsor Substitute for House Bill 13

Dear Committee Members:

At the February 6, 2001 teleconference on SSHB 13 you asked for an explanation of the constitutional principles implicated by the bill. First Article X, § 1 provides that there should be a maximum local self-government with a minimum of local government units to prevent duplication of tax levying jurisdictions. This section also provides that a liberal construction shall be given to the powers of local government units. SSHB 13 will have the effect of undermining the principles enumerated in this constitutional requirement by limiting the ability of municipalities to provide a maximum self-government with a minimum of local government units, since it will be extremely difficult to abolish, consolidate or alter service areas should the bill pass.

The Bill also implicates Article X § 2, which provides that all local government powers shall be vested in boroughs and cities. The service areas are not separate governments that should have ultimate responsibility for the provision of municipal services. *North Kenai Peninsula Road Maintenance Service Area v. Kenai Peninsula Borough*, 850 P.2d 636 (Alaska 1993). Instead service areas are individual taxing jurisdictions that allow for a higher or different level of service within that jurisdictional area. *Keane v. Local Boundary Commission*, 893 P.2d 1239 (Alaska 1995). SSHB 13 has the effect of vesting local government power in the service area and undermines the constitutional principle enumerated in Article X § 2.

Article X § 5 pertaining to service areas is also implicated since this section provides that services areas to provide special services within an organized borough may be established, altered or abolished by the Assembly. It also provides that a new service area shall not be established if consistent with the purposes of this article the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. SSHB 13 also undermines this constitutional provision since it vests the ability to abolish, consolidate or alter a service area with a minority of individuals.

SSHB 13 impacts Article X, § 11 which provides that a home rule borough or a city may exercise all legislative powers not prohibited by law or by charter. SSHB 13 is regressive legislation that returns the State of Alaska to the archaic view of municipalities that they may not do anything except as specifically authorized by the legislature. In contrast, the basic constitutional format for municipalities in Alaska is broad construction of municipal powers, rather than narrow construction of municipal powers. SSHB 13 operates in contradiction to the important precepts enumerated above and is an unwarranted limitation of municipal authority. Instead of legislatively imposed limitations on the exercise of municipal power the legislature should defer to the local governing body to decide, on a local level, how best to operate in the public's interest on matters of local concern.

In a jurisdiction such as the Matanuska-Susitna Borough, which highly respects its service areas and supervisors, guidance for service areas is found in the Borough Code. MSB 5.15.015 sets forth duties of the Boards of Supervisors and provides:

DUTIES OF BOARDS OF SUPERVISORS

(A) Boards of supervisors for all service areas shall:

(1) after public hearing, recommend an annual budget to the manager; and

(2) make recommendations to the manager and the assembly on building programs, equipment acquisition and disposal, administrative policies and procedures, contracts, maintenance needs, and other matters as the manager or the assembly may request.

(B) In addition to those duties described in subsection (A), boards of supervisors of fire service areas shall also:

(1) make recommendations to the manager and assembly on the appointment and supervision of volunteer fire chiefs appointed to administer the fire service area; and

(2) submit an annual efficiency report on volunteer fire chiefs to the manager.

(C) A board of supervisors for an area for which fire services are provided through contract may not make recommendations on the following:

(1) whether the services should be provided by contract;
(2) the terms of the contract;
(3) the appointment, supervision, and efficiency of the fire chief; and
(4) fees or other reimbursement paid to volunteers for firefighting duties.

The MSB also provides for a dual majority vote under certain circumstances pursuant to MSB 5.10.035 which provides:

ELECTION

(A) Ballot propositions proposing the establishment or the abolition of service areas shall be submitted only to the qualified voters residing within the proposed service area or the service area to be abolished.

(B) Ballot propositions proposing the annexation of territory to an existing service area shall be submitted only to the qualified voters residing within the area proposed for annexation. If, however, the assembly finds, based on public testimony and other information received in connection with consideration of an ordinance proposing modification of a service area and the analysis and recommendation of an existing board of supervisors having jurisdiction over the area in question, that the area affected by the proposed annexation includes the existing service area, the proposition must be approved by a majority of the voters within each area before it is effective. In determining the area affected by service area modification, the assembly shall consider its effect on the level of services, the cost of services, and public policy favoring maximum local self-government through a minimum of local government units.

A similar rule appends to the alteration of service area boundaries set forth at MSB 5.20.005. This ordinance states:

> **ALTERATION OF SERVICE AREA BOUNDARIES**
>
> (A) Territory may be annexed to a service area in the same manner that territory can be made a service area under MSB 5.10.
>
> (B) Territory may be deleted from a service area and a service area may be divided into two or more service areas by ordinance or by vote of the qualified voters living within the areas affected. Unless otherwise provided by the ordinance calling for an election on the question of deletion or division, a separate affirmative majority vote is required in the area to be deleted and in the area remaining in the case of a deletion, and in each of the proposed new service areas in the case of a division.

The Borough Assembly has also set forth rules pertaining to the consolidation and abolition of service areas which authorizes the consolidation of service areas by ordinance or authorizes the abolition of service areas by ordinance or by a vote of the qualified voters living within the service area in the same manner they may be established under MSB 5.10. *See* MSB 5.20.010 - 020. As evident, the Borough Assembly has adopted a comprehensive Code of Ordinances pertaining to the treatment of service areas within its boundaries. It has discretion to handle service areas either by ordinance or through a dual majority vote under certain circumstances and, as noted above, carefully considers the advice of the service area Board of Supervisors before formulating judgments on service area issues. SSHB 13 detracts from this local discretion to control local area decisions by providing unnecessary state mandates in an area where there is no problem to resolve.

If you should have any questions, please do not hesitate to call.

Sincerely,

MATANUSKA-SUSITNA BOROUGH
Michael Gatti, Borough Attorney

MG/mz

cc: Mayor & Borough Assembly
John Duffy, Borough Manager

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MATANUSKA-SUSITNA BOROUGH

350 East Dahlia Avenue, Palmer, Alaska 99645-6488
BOROUGH ATTORNEY'S OFFICE
Phone 745-9677 Fax 745-6070

FAX TRANSMITTAL PAGE

TO: √ Representative Rokeberg; 465-2040

FIRM: Representative Egan; 465-3265

FAX NO: _____ PHONE NO: _____

FROM: MICHAEL GATTI, BOROUGH ATTORNEY

DATE: 2-9-01

NO. OF PAGES (Including cover): 6

REMARKS:

Representative Jones; 465-2381
Representative Coghill; 465-3258
Representative Berkowitz; 465-2137
Representative Kerbesh; 465-2827
Representative Meyer; 465-3476

MEMORANDUM

State of Alaska
Department of Law

TO: The Honorable Deborah Sedwick
Commissioner
Department of Community &
Economic Development

DATE: February 5, 2001

FILE NO.:

TELEPHONE NO.: 465-3600

FROM: Marjorie Vandor
Assistant Attorney General
Governmental Affairs Section –
Juneau

SUBJECT: SSHB 13 -- relating to municipal service areas

As requested, we are providing our legal analysis of constitutional issues that we believe are present in SSHB 13. A similar bill, SCS CSHB 133 (CRA) am S was vetoed by the governor last year due to the same constitutional issues we believe are now present in SSHB 13. Our legal analysis of these issues is presented below.

1. Limitation on Home Rule Municipalities

The requirements made in section 3 of this bill as to abolishing, altering, combining, or replacing existing services, is made applicable to all home rule municipalities (regardless of population). We are concerned that the limitations of AS 29.35.470(c) imposed on home rule municipalities through AS 29.10.200 (Sec. 1 of the bill), may be contrary to the constitutional grant of authority to home rule municipalities to have liberal control over matters of purely local concern.

Service areas are established for the purposes of dealing with matters of local concern that are unique to an area in a borough. How service areas have been established, governed, altered, abolished, or combined are local matters historically dealt with by home rule municipalities in their charters. A home rule charter is considered the organic law of the particular home rule municipality. Vol. 2 McQuillin *Municipal Corporations*, sec. 9.03 (3rd Ed, 1988 Rev).

As stated by the Alaska Supreme Court in *Lien v. City of Ketchikan,* 383 P.2d 271 (Alaska 1963), when dealing with a matter of purely local concern, a municipality's 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 constitutional provision stating that a home rule municipality "may exercise all

legislative powers not prohibited by law or by charter" (Alaska Const. Art. X, sec. 11)[1], and then to say that the power to a home rule municipality is measured by a legislative act. *Id.* at 723. In *Lien,* the issue concerned the leasing of city property. The charter provision allowing the lease of city property was ruled to be controlling over a statute that prohibited the lease. The Alaska Supreme Court found the lease of city property was clearly an issue of local, not statewide, concern. *Id.* Similar to the issue in *Lien,* we believe that service areas of a home rule borough may be found by our court to fall into the category of matters of local, not statewide, concern, due to the very fact service areas are created for the purpose of dealing with uniquely local conditions.

In addition to the "purely local concern" test in *Lien,* the court in *Chugach Electric Assoc. v. City of Anchorage*, 476 P.2d 115 (Alaska 1970) and *McCauley v. Hildebrand*, 491 P.2d 120 (Alaska 1971), adopted the "local activity rule" as an expedient method for resolving impasses between state statutes which sought to further a specific policy and municipal ordinances which either directly or collaterally impeded this implementation. The court essentially determined in *Chugach* that the issue of whether a public utility could operate was a matter of statewide concern and the local ordinance was superceded. The court explicitly contrasts its finding in *Lien*, where it held that the lease of city property was clearly a matter of local concern. And, in *McCauley*, a second constitutional provision came into play that was not present in *Chugach* or *Lien,* by which the court determined the outcome of the "local activity" test was dictated. In *McCauley*, the court noted that Art. VII, sec.1 of the AK Const., mandated that "[t]he legislature shall by general law establish and maintain a system of public schools open to all children of the State . . . ." Thus, the court noted that education was a matter of statewide concern. 491 P.2d at 122 n.5.

Alaska is one of many states which has granted, through its constitution, broad legislative powers to its home rule municipalities. Further, the courts in those states have had numerous occasions to rule on situations as to whether a matter is of statewide or local concern in determining if a statute or local provision controls. These states' test are substantially similar to Alaska's. For example, *see Johnson v. Bradly,* 841 P.2d 990 (CA 1992) (first step in determining whether city charter provision can be upheld, notwithstanding alleged conflict with general state law, under "home rule" provisions of

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[1] It is noteworthy to point out that the Constitution does not state that a statute will prevail over a charter provision. Art. X, Sec. 11 reads: "A home rule borough or city may exercise all legislative powers not prohibited by law **or** by charter." The issue arises when a statute and a charter provision are in conflict and whether one prevails over the other due to the statewide nature of the interest versus a purely local interest.

State Constitution is to determine whether there is, in fact, any conflict between charter provision and general state law); *Englewood Police Ben. Ass'n v. Englewood*, 811 P.2d 464 (Colo. 1991) (municipality's home rule charter is the controlling law on local matters; issue related to special election restrictions in charter); *Committee of Seven Thousand v. Superior Court (City of Irvine)*, 754 P.2d 708 (CA 1988) (ordinances enacted in a charter city relating to matters which are purely municipal affairs prevail over state laws covering the same subject); *City and County of Denver by and Through Bd of Water Com'rs v. Colorado River Water Conservation Dist.*, 696 P.2d 730(Colo. 1985) (in purely local and municipal matters, as contrasted with matters of statewide concern, charter provisions and legislation of home rule city supersede conflicting state statutes; *Oliver v. City of Tulsa*, 654 P.2d 607 (Okla. 1982) (conflict between supremacy of state law and exercise of municipal power under its charter is resolved by determining whether such law pertains to general matters of state and its government or pertains to municipal affairs.).

In sum, we believe there are serious issues as to whether this bill improperly limits home rule municipalities' powers to control their service areas as matters of local concern.

2. Local and Special Legislation

Another constitutional concern is raised by AS 29.35.450(d), which exempts a class of general law boroughs, with a specific population requirement, from the requirements of AS 29.35.450(c). We are concerned that this exemption may violate the constitutional prohibition against special and local legislation under the Alaska Constitution. Such a specific classification of borough (particularly a general law borough) coupled with the population limitation, and resulting in only a few boroughs qualifying to be exempt, raises issues of whether this provision violates the prohibition in art. II, sec. 19 of the Alaska Constitution against local and special acts. Art. II, sec. 19 states, in pertinent part:

> The legislature 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 ultimate question to be asked is whether the legislature's special treatment of a few boroughs is "reasonably related to a matter of common interest to the whole state." *Abrams v. State*, 534 P.2d 91, 94 (Alaska 1975) *citing Boucher v. Engstrom*, 528 P.2d 456, 463 (Alaska 1974). In *Abrams*, the statute was found to violate art. II, sec. 19 of the

Alaska Constitution because it created a borough in a manner different from that for incorporating other boroughs and no evidence was presented indicating any valid reason for special incorporation procedures applicable only to the one proposed borough. In *State v. Lewis*, 559 P.2d 630 (Alaska 1977), *cert. denied*, 432 U.S. 901 (1977), the court found the statute authorizing a trade of land between the federal government, the state and a Native regional corporation did not violate art. II, sec. 19 of the Alaska Constitution. The court found that the land trade was unique, was of statewide concern, and that the legislation was "as broad as the conditions to which it respond[ed]" could allow. *Lewis*, 559 P.2d at 644.

Applying the *Lewis* standards to this bill, it is questionable that there is a rational basis to exempt certain population-related general law boroughs (but not home rule boroughs of the same population) from the requirements for the municipal service areas addressed in this bill. And, it is questionable that either the class of borough (i.e. second class) or the population restrictions set out in this bill are "as broad as the conditions to which it [this bill] responded" could allow. The court in *Lewis* propounded a test to be used in determining whether a statute violates the special and local prohibition and it is substantially the same as the test used to determine the validity of nonsuspect classifications challenged as violative of equal protection. The legislature must show a rational basis, a good reason, to justify the special treatment.[2] And, while it is the province of the court to determine if a statute violates the prohibition against special and local legislation, we are uncertain as to the constitutionality of the special treatment in this bill. Alaska Const. art. II, sec. 19.

3. Conclusion

In summary, this bill raises complex policy and legal concerns, some of which have yet to be decided by the courts,

MV:bw
cc: Michael Abbot, Legislative Director
Office of the Governor

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[2] In 1978, the court articulated a unified equal protection analysis that utilizes a sliding scale to weigh the interest involved in any classification that avoids distinguishing between suspect and nonsuspect classifications. *State v. Erickson*, 574 P.2d 1 (Alaska 1978). We note that there has not been a case involving the local and special legislation prohibition since the unified equal protection test was adopted in *Erickson*.

TALKING POINTS REGARDING HB 13

HB 13 FAILS TO DEMONSTRATE AN OVERRIDING STATE INTEREST. Alaska's Constitution contains the strongest home rule provisions of any state in the nation. The founders who wrote Alaska's Constitution intended that the State would impose limitations on home rule municipal governments only in instances where there is clearly an overriding State interest. No such interest has been put in the record at any hearings on this bill, and we are unaware of any State interest in dictating to borough assemblies how they may alter service areas that the assemblies themselves created.

HB 13 TURNS THE CONCEPT OF HOME RULE ON ITS HEAD. The most egregious aspect of the bill is that it limits the powers of home rule boroughs while exempting most general law boroughs. It is untenable that the State would limit the rights of home rule boroughs, yet allow self-determination on the same issue by most general law boroughs.

HB 13 MAKES UNJUST DISTINCTIONS AMONG BOROUGHS. The bill creates unwarranted distinctions among boroughs. Paramount among them is the distinction based on classification and population. Second class boroughs with fewer than 60,000 residents are exempt from the bill, while all others are not. (The attachment shows which boroughs would currently be exempt from the provisions of the bill.) Even if a significant State interest could be articulated for limiting the authority of municipal governments in general, there is no rational basis for this distinction based on classification and population, particularly given the indefensible treatment of home rule boroughs vis-à-vis general law boroughs. Although the Legislature's legal staff believes the bill may withstand legal challenge, that opinion presumes the Legislature has a rational justification for the distinctions made, which has yet to be demonstrated or even articulated.

NO OBJECTION TO "DIFFERENTIAL TAX ZONES" (Sec. 4 of the bill). HB 13 expressly authorizes differential tax zones within a single service area. There is no objection to this concept. However, it is not necessary to enact legislation to accomplish that objective. Boroughs may currently provide for joint administration of different service areas in which different mill rates are imposed. For example, the Kenai Peninsula Borough operates two service areas with differing tax rates and different boundaries under the supervision of a joint board (Central Peninsula Emergency Service Area for EMS services and the Central Emergency Service Area for fire protection).

02/05/01

BOROUGHS THAT WOULD BE SUBJECT TO HOUSE BILL 13

Name	Class	Population	Approximate Total Number of Service Areas
Municipality of Anchorage	home rule	261,446	61
Fairbanks North Star Borough	2nd class	83,814	117
Matanuska-Susitna Borough	2nd class	60,094	31
City and Borough of Juneau	home rule	31,262	8
North Slope Borough	home rule	9,355	1
City and Borough of Sitka	home rule	8,788	none
Northwest Arctic Borough	home rule	7,019	none
Haines Borough	3rd class	2,516	12
Denali Borough	home rule	1,974	none
Lake & Peninsula Borough	home rule	1,809	none
City and Borough of Yakutat	home rule	744	2

BOROUGHS THAT WOULD BE EXEMPT FROM HOUSE BILL 13

Name	Class	Population	Approximate Total Number of Service Areas
Kenai Peninsula Borough	2nd class	49,628	11
Kodiak Island Borough	2nd class	14,028	7
Ketchikan Gateway Borough	2nd class	14,003	12
Aleutians East Borough	2nd class	2,213	none
Bristol Bay Borough	2nd class	1,224	none

02/05/01

Municipality of Anchorage

P.O. Box 196650
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Fax: (907) 343-4499
http://www.ci.anchorage.ak.us

George P. Wuerch, Mayor

OFFICE OF THE MAYOR

February 5, 2001

FEB 05 2001 1240pm

The Honorable Norm Rokeberg
Alaska State Representative
House of Representatives
State Capitol, Room 24
Juneau, AK 99801-1182

Dear Representative Rokeberg:

We write to express our opposition to House Bill 13, which changes the way service areas are approved, altered, or abolished in the State of Alaska.

Of primary concern is the legislation's intrusion on the power that Alaska's Constitution grants to local governments. Home rule communities already have the authority to do what this legislation mandates—if it is what a majority of our community's voters want. Mandating autonomy to voters in select service areas, as House Bill 13 prescribes, violates the intent of the Alaska Constitution. Indeed, House Bill 13 violates the most basic principle of legislative authority.

The effect of this restriction will be as crippling to our local legislative bodies as would be any similar restriction to state or federal legislative bodies. In addition, the legislation places a very restrictive method on boroughs for creating or modifying service areas. As you may know, in the event of an annexation proposal, the legislation requires that a majority of voters in an existing service area, and a majority of voters in the proposed new area, must each vote to approve a change before it can be implemented. This contrasts with the current practice by which a majority of voters in the proposed new area must approve a change. The ultimate effect of the changes proposed by HB13 is that it shifts local governing authority to a very small minority of voters that will only serve to frustrate the majority. For these reasons, we join with the Alaska Municipal League in urging you to oppose this legislation.

Sincerely,

Mayor George Wuerch
Municipality of Anchorage

for Mayor Rhonda Boyles
Fairbanks North Star Borough

ALASKA MUNICIPAL LEAGUE
Alaska Conference of Mayors
217 Second Street, Suite 200 ▪ Juneau, Alaska 99801 ▪ Tel (907)586-1325, Fax (907)-463-5480

February 5, 2001

FEB 05 2001

Representative Norm Rokeberg, Chair
House Judiciary Committee
State Capitol
Juneau, AK 99811

Dear Representative Rokeberg:

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. <u>State Mandated Vote on Service Area Consolidation and Alteration:</u> 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

Subject: LRSA Bill
Date: Wed, 24 Jan 2001 21:27:56 -0900
From: William Ennis <bennis@ak.net>
To: Patti_Swenson@legis.state.ak.us

Rep. Bunde,

I appreciate your January 15 letter to me concerning the future of the Limited Road Service Area. As a twenty-year resident and home owner from the upper Hillside area of Anchorage, I am keenly aware of the necessity for the continuance of the LRSA. Although my small area has seen enormous growth in recent years, the residents of my LRSA are still on the outskirts of Anchorage and few in number.

When the wind blows and the snow drifts, however, our need for immediate road maintenance is crucial. With a single road serving the entire Bear Valley community of our hundred or so families, a winter storm can completely eliminate our necessary trips to work and school. In addition ot reducing our routine transportation, of course, is the reduction of emergency services which poor road conditions create.

We would be fools to think that the Anchorage municipality would provide winter plowing within hours of snow fall. Our contracted service providers do exactly that. Our roads are cleared for trips to school and work sooner than most subdivisions in the Anchorage bowl are cleared. We simply must be allowed to provide our own contractual road maintenance.

We also have concerns about the financial affect on the service providers should the LRSA system be abolished. These are local business people and the loss of their livelihood would be felt in our city.

I urge you to do all that you can to promote the LRSA model. It has served us well for many years and we wish to see it protected for the future.

Please contact me at your convenience if I can be of further assistance.

Regards,

Bill Ennis
Chairman, Bear Valley Limited Road Service Area

Alaska State Legislature

FEB 2 1 2001

Please enter into the record my testimony to the House Judiciary
committee name

committee on Service Areas, dated 2/14/01.
bill/subject

HB 13 is good for the littleguys in service areas who have at least a little control over their areas. That is good. The legislation reflects (to a large extent) how things already work in the Mat-Su Borough. 7 people on an assembly should not be able take away or create ~~ass~~ self determination in a service area without a vote of the people affected.

Signed: Larry DeVilbiss
Testifier

Representing (Optional)

HC04-9302
Address

745-6591
Phone No.

Subject: HB13
Date: Wed, 24 Jan 2001 19:43:08 -0900
From: William Larkin <brolar@gci.net>
To: Patti@jnu-unix.legis.state.ak.us, Patti_Swenson@legis.state.ak.us

Dear Patti Swenson;

I want to add my name to the list of people in favor of the bill to require that the Voters get to vote on any change that would be made in services arears as it take away the local control that was the reason for forming a service area in the first place. A good reason is that the Assembley's often chane things to favor the area that they represent and mke other areas pay for some areas that do not want to pay their ownbills. A case in point is the people living in the Bogard area are paying for a Fire Station in the Point Mckensie area.

Yours Truly
William B. Larkin

P.S. If you need any other reasons I belive I can come up with a few more.

Subject: Service areas
Date: Thu, 25 Jan 2001 12:25:32 +0100
From: Jane Elam <nelam@northstar.k12.ak.us>
To: Patti_Swenson@legis.state.ak.us

To Representative Con Bunde:

I support your stand on service areas. The road service areas near us have not taxed themselves as long as we have and as a result have worse roads than ours. It would not be equitable for us to be forced to join them and use our money to fix their roads. It would be difficult to reach a commissioner who understood your situation if the areas become too large. Thank you for introducing legislation concerning this issue.

Naomi Jane Elam
3177 Judy Lane
North Pole, AK 99705

Diane Subdivision Service Area

****

Helen Clark helen@northstar.k12.ak.us
Lathrop High School Library (907) 456-7794 x117

"Not all those who wander are lost."
-J.R.R. Tolkien

****

Subject: Service Areas/HB 13
Date: Wed, 24 Jan 2001 09:35:20 -0900
From: "William W. Lanning" <billkate@gci.net>
To: <Patti_Swenson@legis.state.ak.us>

Dear Mr. Con Bunde:

Thank you for sponsoring HB 13. I support you strongly on this issue. It is more important this year, and in the future because of events taking place:

1. The State of Alaska is cutting way back on funds to Service Areas.

2. In Fairbanks, the Borough has begun charging Service Areas a management fee. In the past two years they have only billed the Service Districts 1/2 of the dollar amount. To our District that was $5,000.00

3. Because of the combined effect of 1 and 2 above many of our smaller Service Districts are trying to combine with larger Districts, whether or not they are wanted by the larger District.

4. In our District (Wildview) we have seen substantial new growth, by current state law developers can do a very poor job on road construction and basically our District has to come in and rebuild the road. Our funds are already spoken for in maintaining existing roads to safe standards. Money is in short supply.

Again I appreciate your work in this area, If I can be of any assistance please call.

William W. Lanning
469 Prospector Trail
Fairbanks, Ak 99712

907-457-7384
e-mail: billkate@gci.net

Subject: HB 13 Support
Date: Tue, 23 Jan 2001 21:58:51 -0900
From: "John & Diane Ferree" <jbferree@ptialaska.net>
To: <Patti_Swenson@legis.state.ak.us>

Representative Bunde,

I am in complete support of HB 13, "An Act relating to municipal service areas and providing for voter approval of the formation, alteration, or abolishment of certain service areas". I am chairman of Smallwood Trail Service Area in the Fairbanks North Star Borough. My fellow commissioners are in full support of this bill. Their names are Floyd Bullen and Mary Liston. Thank you for you efforts in support of local service areas. John Ferree, Chairman, Smallwood Trail road service area.

Subject: HB13 "An Act relating to municipal service areas.....
Date: Mon, 22 Jan 2001 19:46:48 -0900
From: "Diane Hutchison" <dlh119@hotmail.com>
To: Patti_Swenson@legis.state.ak.us

Dear Rep. Bunde

Thank you for sponsoring HB 13, "An Act relating to municipal service areas and providing for voter approval of the formation, alteration, or abolishment of certain service areas." I am a service area commissioner in the McGrath Estates Service Area, north of Fairbanks. I believe that service areas are an integral part of providing services in our borough and I have come to realize that different service areas need differing amounts of service, much based on topography of the area.
My own area is very hilly, therefore requiring more road service in the winter for snowplowing and sanding, than would be required or understood by residents in a lower, flatter area. It would be ashame for our costs to be unilaterally imposed on them to pay for our maintenance levels, as it would be unfair to us to have them making the decision about whether our costs were necessary when their own area may not require sanding of the level roads.

You have my full support in this matter. Please relay this to the other representatives who have co-sponsored this bill: Reps. Kohring, Dyson, Halcro, Fate, and Coghill.

Sincerely,
Diane L. Hutchison
Road Commissioner- McGrath Estates Service Area
1-907-456-1531
email: dlh119@hotmail.com

Subject: HB13
Date: Mon, 22 Jan 2001 17:11:35 -0900
From: "Bob Johnston" <bobj@mosquitonet.com>
To: <Patti_Swenson@legis.state.ak.us>

Hello Ms. Swenson,

I am writing in support of Rep. Con Bunde's sponsorship of House Bill 13. I appreciate the opportunity to lend my name to your efforts in getting this bill passed and signed by Governor Knowles.

I would really like to participate in the teleconference, however, being an administrator in a high school my schedule is such that I cannot plan on future time to testify. Please be assured that I would be happy to send Governor Knowles or any other legislator e-mail to help "sway" their support should the need arise.

Again, thank Rep. Bunde's efforts on this important issue.

Respectfully,

Bob Johnston
bobj@mosquitoent.com
bobj@northstar.k12.ak.us

Subject: HB 13
Date: Mon, 29 Jan 2001 22:18:25 -0900
From: ngdial@juno.com
To: Patti_Swenson@legis.state.ak.us

The Chugiak, Birchwood Eagle River Rural Road Board of Supervisors voted unanimously to support House Bill 13 at the January 22, 2001 meeting.

Service areas should provide a grass roots approach to government services with communities receiving the type of service that they want at the price they are willing to pay. Without the protection that House Bill 13 provides, local control cannot survive. We are constantly reminded that we exist only if the municipal assembly allows us to exist. Service districts can be absorbed into a larger district without the wishes of the people residing in the area, taxes raised and little to no service provided.

Our road board maintains and improves nearly 200 miles of road. The community is diverse with many difficult to maintain mountain roads. In addition, the rapid residential development with little regard to providing adequate street width to accommodate snow storage has created multiple problems for our maintenance crews. In spite of this, we can do a complete plow out in 24 to 48 hours during the heaviest of snowfalls. We can provide better and faster service at less cost by using private contractors. Because we are geographically separated from Anchorage by two military bases, a river and a mountain range, we would receive little to no service in our communities and pay much higher taxes.

We are dependent on our service districts for roads, parks, fire and emergency medical service. It is imperative that this bill pass and not be vetoed again if we are to survive.

Gail Dial
Birchwood Supervisor
CBERRRSA Board of Supervisors

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 Singsaas

.oad 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 legastion to assist in the passage of this bill.

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

IB 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

George L. Majors
P.O. Box 70865
Fairbanks, Alaska 99707

January 23, 2001

Representative Con Bunde
State Capitol, RM. 501
Juneau, AK 99801

Dear Representative Bunde,

As a resident in the Fairhill Service Area living in our home at 182 City Lights Blvd. I wish to express my favor for HB 13 as being sponsored by you giving local property owners control over the formation, alteration, or abolishment of certain service areas.

I feel that the service to our area concerning road maintainance, etc., can best be done locally as it has been now for many year.

Sincerely,

George L. Majors

P.O. Box 81109
Fairbanks, AK 99708-1109
(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

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: SSHB 13
Date: Mon, 22 Jan 2001 22:17:31 -0900
From: "jerry" <lookout@ptialaska.net>
To: <Patti_Swenson@legis.state.ak.us>

Representative Con Bunde
Vice Chair
House Finance Committee

Sir:

I fully support your efforts (SSHB 13) to protect the interests of neighborhoods that have formed service areas to address local needs. The local government's plan to force responsible, financially sound service areas to assume the long neglected problems of less responsible or non existent entities is unethical. How the local government (Borough) can transfer their failure(s) to a blameless second party can only be explained by the arrogance of the bureacracy that dreams up this nonsense. I have had discussions with the FNSB Rural Services Department on this issue, and the only justification they can give for this policy is their own failure - and some vague statement about helping others (who don't elect to help themselves).

Our service area faces real hardship if this policy is left to stand. We are located between two very poor "roads" that have received little or no maintenance in the last 15 years (that I am aware of). At the end of one of these roads is a collection of shacks that rent for $200 month - survival type housing. The landlord of this "neighborhood" has collected a lot of rent over that period, but spent nothing on upgrading the road. The other road is about a mile long, in poor condition, and has about 3 or 4 low value houses. The borough would like to make us a "gift" of these 2 areas, increasing the length of roads in our service area by 50% and adding little to our tax base. As an added insult, there is no offer to bring these roads up to minimal standards prior to making us responsible for them. Of course the Borough answer is "you can always raise your tax rate to compensate".

I apologize for rambling on, but when faced with the mindset of the bureaucrats that come up with this stuff - I know why our forefathers decided to bid the King of England farewell. Mr. Bunde, I thank you for your efforts to pass SSHB 13 and will support this legislation in any way I can.

Gerald Holland
Commissioner
Goldstream Alaska S. A.

Subject: [Fwd: Legislative Update - Start of Session]
Date: Mon, 15 Jan 2001 08:17:01 -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:
ConniLivsey@cs.com

ConniLivsey@cs.com wrote:

> *Dear Representative Bunde:*
>
> *Thank you for your ongoing efforts to preserve our LRSAs. My husband Bill*
> *Ennis and I live at the far back end of Bear Valley, and he has served on our*
> *LRSA Board for many years. We are acutely aware how much better our road*
> *service is under our LRSA system than if we were part of the Muni service*
> *area. Good grief - we'd never get plowed out, and with the wind and snow we*
> *can get back here, we'd be stranded for days every winter using the MOA's*
> *current prioritization scheme!*
> *-Conni Livsey*

Subject: HB 13
Date: Fri, 26 Jan 2001 12:51:41 -0900
From: "Watermark Printers" <watrmark@alaska.net>
To: <Patti_Swenson@legis.state.ak.us>

Dear Con,

I am contacting you on behalf of the homeowners in the Talus West Limited Road Service Area. We were gratified to learn that you are re-introducing a bill that will protect those in limited service areas from being annexed to a larger service area against their wishes. We are a successful, and "solvent", road service area that has maintained a high level of road service, with a quicker response time on snow removal than those areas serviced by the Municipality of Anchorage. We have done all of this at 1/2 the cost for the same services if they were provided by the Municipality. In addition, our homeowners have a "direct pipeline" to their elected officials when problems occur. All they have to do it call one of their board members, who is also one of their neighbors. This "hands-on" approach results in their concerns being address quickly, directly and with sensitivity based on local area knowledge. They can also expect a response from board members "outside normal business hours," as we are just a phone call away, even in the evenings and on weekends. We have found that working together to solve our problems and meet our own needs has engendered a spirit of cooperation, as well as a genuine pride in our neighborhoods as small communities within the larger community.

As residents of Anchorage, we often hear about apathy towards community service, and the failure of it citizens to become involved in solving the problems within this city. Lately, we have also been hearing a lot about running local government in a more cost effective manner, without degradation or loss of services. Being part of a limited service area addresses both these issues "head on". The success of our service area is not due to the board members, but rather to the participation of the homeowners themselves in making decisions that directly affect them. It was, therefore, particularly ironic and disgusting that local government was the very entity that requested the Governor veto the last attempt to protect the status of limited service areas. To "net it out", local government wants its citizens to "participate" and to help them "save money", but then they ask that a bill be vetoed that protects our ability to do just that! WHAT'S WRONG WITH THIS PICTURE????!!!!

I has become obvious that we will get no help on a local level, and that the only way that limited service areas will gain any measure of protection is through action by our legislators. We ask that you please impress upon your colleagues the importance of quickly passing this legislation, and that they stand firmly on our side and over-ride a veto by the Governor should that become an issue once again.

It doesn't get any more "grass roots" than this!

Thank you, Con, for your ongoing support, and for your sensitivity to meeting your constituents needs and addressing their concerns. Through all your years of public service, you have consistently been the kind of legislator that restores the common man's faith in a political system that seems only to favor the "big guy".

Sincerely,

Karen Hendrickson
Talus West LRSA Board of Supervisors

4731 Talus Drive
Anchorage, AK 99516
907-345-5634

February 2, 2001

Dear Chairman Rokeberg:

I wish to offer my support for HB 13, legislation that would help ensure the continuation of local service areas. As a member of the Greater Anchorage Area Borough Assembly (1966-1974), and a participant in the unification battles, I am familiar with the reason local service areas are provided for in the Anchorage Charter.

After the voters rejected two attempts at unification, service areas were provided for in the Charter that was eventually approved by the voters of Anchorage. The guarantee of local service areas was a necessary concession to residents outside the old city limits. Anyone who was involved in the process at the time could undoubtedly affirm that the charter would have been rejected a third time absent the provision for local service areas. Without the guarantee of local service areas, my community, South Anchorage, Spenard and other areas outside of the city would have voted to defeat the proposed charter in 1975. I believe that in one of the first votes in the early 1970's, fewer than a hundred votes were cast from the precincts in Chugiak-Eagle River in favor of unification. Opposition was simply that strong!

I have a local government background, and am generally against intrusions in local authority. I believe, however, that this legislation is different in that it seeks to protect local control, specifically volunteer-run local service areas. And in the case of Anchorage, you would be reinforcing a compact that was made when the charter was approved in 1975.

I appreciate the opportunity to express my views on an issue that is very important to my community. I wish you well in your deliberations.

Sincerely,

Ed Willis

Submitted by: Assemblymembers ABNEY, Tesche
Prepared by: Assembly Office
For reading: JANUARY 30, 2001

ANCHORAGE, ALASKA
AR NO. 2001- 26

A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY SUPPORTING HOUSE BILL 13, "AN ACT RELATING TO MUNICIPAL SERVICE AREAS AND PROVIDING FOR VOTER APPROVAL OF THE FORMATION, ALTERATION, OR ABOLISHMENT OF CERTAIN SERVICE AREAS".

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

WHEREAS, Alaska has over 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; and

WHEREAS, House Bill 13, sponsored by State Representative Bunde, amends AS 29.35.450 by:

- Clearly identifying who should vote under the following scenarios:

  Abolishment of a service area - subject to approval by the majority of the voters residing in the service area.

  Abolishment and replacement of a service area - must be approved separately by a majority of voters residing in an existing service area and by a majority of the voters residing in the proposed service area, but outside the existing service area.

  Alteration of a 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 reside in each of the service areas or in the proposed service area affected by the proposal.

  This legislation will settle a long-time debate about who is entitled to vote during the creation, alteration or abolishment of a service area.

- Allowing for differential tax zones within a service area, thus allowing smaller areas to combine with larger service areas and to assess themselves at different levels within the combined area - achieving economies of scale and getting the level of service they need.

  This legislation will result in fewer service areas and it will decrease the burden on municipal and borough governments.

NOW, THEREFORE, the Anchorage Municipal Assembly resolves:

Section 1: That the Assembly supports House Bill 13.

Section 2: That, upon passage and approval, a copy of this resolution be forwarded to the State Legislature.

PASSED AND APPROVED by the Anchorage Municipal Assembly this _____day of _____, 2001.

_____
Chair

ATTEST:

_____
Municipal Clerk

Municipality of Anchorage

George P. Wuerch, Mayor

Department of Public Works

Chugiak-Birchwood-Eagle River Rural Road Service Area Board of Supervisors

11901 Business Boulevard, Suite 107
Eagle River, Alaska 99577

January 30, 2001

Representative Con Bunde
State Capitol, Rm. 501
Juneau, AK 99801

Re: Support for House Bill 13

Dear Representative Bunde:

At the January 22, 2001 of the Chugiak-Birchwood-Eagle River Rural Road Service Area Board of Supervisors, the Board unanimously passed a motion in support of House Bill 13. It is the opinion of the Board that this Bill will help strengthen service areas such as ours and ensure that the voting public has adequate say in the future of their service areas.

Sincerely,

Chris Ingmanson, Chair
Chugiak-Birchwood-Eagle River Rural Road
Service Area Board of Supervisors

Cc: Area Legislators
Assembly Member Anna Fairclough
Assembly Member Dan Kendall

To House Judiciary Committee: 2-5-01

Sallie Dodd Butler from the Fritz Creek area outside of Homer.

Thank you for dropping the 50,000 population limit from the initial bill, and especially Con Bundy on the importance of local control by the voters rather than control of the voters on issues of self determination that directly affect their lives.

If this bill "flies in the face of" state law or the Alaskan Constitution," then its time to correct state law or the Alaskan Constitution; because as an 11th generation American and a 28 year resident of this area, I think the entire issue of annexation or taxation without Representation needs to be changed.

Thank you for being concerned about this issue, and for maintaining fair and open minds.

Sallie Dodd Butler
PO 1223
Homer Ak 99603
Feb 5-01

KACHEMAK AREA COALITION INC. DBA

Citizens Concerned About Annexation

2-5-01 PO BOX 1715 HOMER, AK 99603

House Judiciary Committee

to: Community and Regional Affairs Committee

FEB 05 2001

re: HB 13, Service Areas: Voter Approval/ Tax zones

We support this bill.

You may wonder what this bill has to do with annexation, but the basic issue is the same -- who gets to decide. And we do have a service area that may be affected by annexation.

I understand the gist of this bill is that the people within a special service area should be the ones to approve any changes to the service area, rather than have the changes imposed by the ruling municipality. (I'm including boroughs in the term municipality.) Service areas, like municipalities, are about collecting taxes and providing services. Changes to a service area, or a municipality, aren't just lines on a map; they involve changing the taxes paid and services received by a group of people. In a free country, it is the people who make these choices, not some branch of government. To make these changes without a vote is socialism. This concept applies equally for boundary changes to cities and boroughs; the affected people have a right to vote on what they will have for local government.

As an example, last year we established a new fire and emergency services area, which was approved by the voters residing in the area. The City of Homer is trying to annex a portion of the new service area, which if approved would take a significant bite out of it. Under current law it is entirely up to the state to make this decision!! We get no vote whatsoever. We voted to set up this service area but it can be taken away against our will, without a vote, at the whim of the government. This is wrong, and needs to be changed. Not only should the service area itself have to approve the change, but the people who will have their service area replaced by city government have a right to vote on this change.

All people deserve the level of autonomy promised by this bill. Gov. Knowles was wrong to veto last years version. Taking power from government, at whatever level, and giving it to the people is a good thing. It all boils down to the same question -- who gets to decide local government issues -- the state or the people? It should be the people.

Thank you for removing the restriction on 2nd class boroughs

~~As a step in the right direction, we would like see HB 13 broadened to apply to all service areas in all boroughs and unified municipalities. Anything less is unfair and probably a violation of the Equal Protection Clause of the US Constitution.~~ of under 60,000 population. This does need to apply to all boroughs, and all service areas.

The right to vote needs to apply to all local government changes, even if it means changing the Constitution.

Abigail Fuller, Vice-President
235-3630

(My apologies for the last minute changes.)

Subject: [Fwd: SSHB-13]
Date: Mon, 22 Jan 2001 08:03:46 -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:
david sears <dsears@girdwood.net>

david sears wrote:

> *Representative Bunde:*
>
> *Thank you for sending me a copy of HB-13. This legislation holds special*
> *interest for me as I was living on the Anchorage hillside when city*
> *police protection was bestowed upon us.*
>
> *Dave Sears*
> *Girdwood*

Legislation protects service areas

Being debated in the Legislature is House Bill 13, an act designed to protect service areas from attacks by misguided politicians. It would require approval by people residing within the service area before that service area could be formed, altered or abolished. It is beneficial to Chugiak-Eagle River and deserves support.

Rep. Con Bunde is the primary sponsor of the measure. It passed last year but was vetoed by Gov. Tony Knowles. It should become law because it is needed.

REP. BUNDE HAS a particular interest in this legislation. He represents the Hillside district of Anchorage, the area where city police service was extended against the will of local voters. A bit of gerrymandering and political bamboozling from City Hall brought this about despite provisions in the city's home rule charter that are similar to those in the proposed state law.

Chugiak-Eagle River has separate service areas for parks and recreation and road maintenance. There is a volunteer fire department in Chugiak. These are coming under attack because city administrators believe services should be equal throughout the municipality. From the eighth floor of City Hall, it's hard to see where one level of service shouldn't be provided and one level of taxes be collected.

The truth is that some parts of the municipality are not yet ready for full services; expansion would be too costly. Recreation here is largely do-it-yourself, with programs run by nonprofit organizations that do a good job at less cost than is experienced downtown. This area's land mass is equal to the rest of the municipality's. Many roads are narrow and steep and are not amenable to maintenance by the type of equipment utilized in the city. Our road district utilizes contractors with suitable equipment. Under supervision by volunteer boards, these services are provided based on needs and desires of the community. To their credit, these services are satisfactorily provided at lower cost.

SERVICE AREAS ARE valuable tools for the delivery of services that are tailored to the way residents want them – at a cost residents are willing to pay. Rather than rid themselves of something enviable, City Hall should try to emulate their success.

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