

ALASKA STATE LEGISLATURE
SENATE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

February 10, 2009

3:32 p.m.

MEMBERS PRESENT

Senator Donald Olson, Chair
Senator Joe Thomas, Vice Chair
Senator Hollis French
Senator Albert Kookesh
Senator Linda Menard

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 48

"An Act exempting municipal service area boards from the requirements of conducting meetings open to the public when meeting about road conditions affected by harsh weather."

MOVED CSSB 48(CRA) OUT OF COMMITTEE

SENATE BILL NO. 93

"An Act relating to a municipal property tax credit for an improvement that aids in improving air quality."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 48

SHORT TITLE: MEETINGS OF ROAD SERVICE AREA BOARDS

SPONSOR(S): SENATOR(S) THERRIAULT

01/21/09	(S)	PREFILE RELEASED 1/9/09
01/21/09	(S)	READ THE FIRST TIME - REFERRALS
01/21/09	(S)	CRA, TRA, JUD
02/10/09	(S)	CRA AT 3:30 PM BELTZ 211

BILL: SB 93

SHORT TITLE: MUNICIPAL AIR QUALITY PROPERTY TAX CREDIT

SPONSOR(S): SENATOR(S) PASKVAN

02/04/09	(S)	READ THE FIRST TIME - REFERRALS
02/04/09	(S)	CRA, FIN

02/10/09

(S)

CRA AT 3:30 PM BELTZ 211

WITNESS REGISTER

GENE THERRIAULT, Senator
Alaska State Legislature
Juneau AK

POSITION STATEMENT: Presented SB 48 as sponsor.

RENE BROKER, Attorney
Fairbanks North Star Borough
Fairbanks AK

POSITION STATEMENT: Spoke in support of SB 48.

LUKE HOPKINS, Member
Fairbanks North Star Borough Assembly
Fairbanks AK

POSITION STATEMENT: Spoke in support of SB 48.

TIM BECK, Chair
Road Service Area Committee
Fairbanks North Star Borough Assembly
Fairbanks AK

POSITION STATEMENT: Spoke in support of SB 48.

SHAWN KITTLE, Alternate Commissioner
Chena Spur Road Service Area
Fairbanks AK

POSITION STATEMENT: Spoke in support of SB 48.

JOE PASKVAN, Senator
Alaska State Legislature
Juneau AK

POSITION STATEMENT: Presented SB 93 as sponsor.

JIM CONNOR, Air Quality Specialist
Fairbanks North Star Borough
Fairbanks AK

POSITION STATEMENT: Spoke in support of SB 93.

GLEN MILLER, Transportation Director
Fairbanks North Star Borough
Fairbanks AK

POSITION STATEMENT: Spoke in support of SB 93.

NADINE WINTERS, Presiding Officer
Fairbanks North Star Borough Assembly

Fairbanks AK

POSITION STATEMENT: Spoke in support of SB 93.

ALICE EDWARDS, Acting Director
Division of Air Quality
Department of Environmental Conservation
Juneau AK

POSITION STATEMENT: Discussed programs related to SB 93.

ACTION NARRATIVE

[3:32:42 PM](#)

CHAIR DONALD OLSON called the Senate Community and Regional Affairs Standing Committee meeting to order at 3:32 p.m. Present at the call to order were Senators Menard, Kookesh, Thomas, and Olson. Senator French joined the meeting in progress.

SB 48-MEETINGS OF ROAD SERVICE AREA BOARDS

CHAIR OLSON announced consideration of SB 48.

[3:33:48 PM](#)

GENE THERRIAULT, Senator, Alaska State Legislature, said he became interested in the language in SB 48 after reading a News Miner editorial on September 3, 2008, regarding service areas in the Fairbanks North Star Borough. They were have difficulty meeting requirements of the Open Meetings Act [in state statutes] regarding simple decisions, like if the snow was deep enough to call out the plows. Service areas have citizens within their boundaries who volunteer their time to make decisions on road maintenance.

SENATOR THERRIAULT originally told the bill drafters he'd like to allow service areas to respond quickly to heavy snowfall and such. After introducing his original bill, he talked to borough attorneys to better understand the problem. Based on that, he drafted a CS [committee substitute], version R. It basically does the same thing but in a little different technical way.

SENATOR THOMAS moved to adopt the CS to SB 48, labeled 26-LS0293\R, as a working document. There being no objection, Version R was before the committee.

[3:36:55 PM](#)

SENATOR THERRIAULT directed attention to page 2, line 15, which refers to the type of meeting that a road service area commissioner can engage in without following the Open Meetings

Act. He said requirements for noticing a meeting for the borough assembly were less restrictive than for the service areas. The assembly sets the budget for road maintenance, but there is a director who decides to call for plows or fix a pothole, and he or she wouldn't have to notice a meeting but just do it within the constraints of the budget. Senator Therriault is trying to give the service areas that same authority. They will have to publicly notice a yearly meeting to set policies, millage rates, and budgets, but when the time comes to administer that policy, a meeting won't be necessary.

SENATOR THERRIAULT said the end of page 2 of the CS deals with the number of members at the meetings. He found that the requirements for service areas are more restrictive - even though they were just performing an administrative function - than a body that was actually setting policy. The original language required that if two service area workers were going to talk about a billing or the replacement of a culvert, for example, that was deemed to be a "prearranged" meeting. "It seems like they should have no more restrictive language than the policy-setting body, like the borough assembly. And so what we did is just repeat the same language that the policy-making body has and place the same restrictions on the administrative. Before, it was more restrictive for the administrative function; now, it's the same level of restriction."

3:40:50 PM

CHAIR OLSON asked about the title change in the CS and if it broadens it to the point where edits can be made that might not be favorable to the service areas.

SENATOR THERRIAULT said the original bill title spoke to just harsh weather conditions, like heavy snowfall. The CS intends to give [service areas] a little more latitude for administrative functions. They have a budget that gets set in a publicly noticed meeting, and they then "just go about spending the money that was budgeted for snow removal, for road repairs."

CHAIR OLSON asked how one person would be aware of the budget to be able to call out heavy equipment in the middle of the night. He asked about budget overruns.

SENATOR THERRIAULT answered that if there were cost overruns or funds shifted to different needs, it would probably require a noticed meeting, because that would represent a policy change.

3:43:05 PM

SENATOR THOMAS asked what problems arose that caused this bill. He assumes the road commissioner already has the authority to make those decisions without calling a special meeting.

SENATOR THERRIAULT said these are all volunteers, and there are fewer commissioners than originally intended. Many times the chair of a commission doesn't want all of the responsibility of the decisions, so decisions and responsibilities are shared. They touch base with each other before they make the decisions. A municipality may have a director of road maintenance that has all of that authority, but service area members share that responsibility and talk amongst themselves.

SENATOR THOMAS asked what is lacking in current language that doesn't already allow it.

SENATOR THERRIAULT said that the Open Meetings Act requires any "arranged" meeting to be noticed by 5 days and be public, even if it was a series of phone calls. Consequently, they can't respond quickly to a situation.

3:45:57 PM

SENATOR THOMAS asked if the language in (B), "to add more than three members of a majority ..." is to accommodate that phone conversation.

SENATOR THERRIAULT said, "To make it no more restrictive than the language that applies to policy-making bodies."

SENATOR MENARD said she was speaking to an assembly person from Talkeetna, and he was grateful that this was being addressed because it is a big concern to his area by Trapper Creek. They have to get work done and they can't talk to each other because of the open meeting laws.

3:47:09 PM

SENATOR THERRIAULT said the new language on Page 2, lines 30-31, is copied from lines 25-26. The drafter suggested that.

CHAIR OLSON asked if there is opposition.

SENATOR THERRIAULT said he is not aware of any.

SENATOR THOMAS asked why municipal boards and committees are added. Do they have the same concerns?

SENATOR THERRIAULT said yes, the bill adds the municipal boards, commissions, and other similar bodies that are performing an administrative or managerial function. On lines 25-26 and 28, the bill speaks to the three members of a government body that have the authority to establish policies, "so that's the language that the borough assembly falls under," and (B) refers to those entities that have no authority to establish policy. "We're placing the same level of restriction on them - on the administrative board - that the policy-making board had." It didn't make sense that the administrative board was more restrictive when all they are doing is performing an administrative function. They are not establishing policy.

SENATOR THOMAS said the words "administrative" and "managerial" are general, and no telling where it may end up. His concern is if those entities will expend money properly and at the right time, "so I guess we'll just have to live with whatever decisions are made there."

[3:50:15 PM](#)

CHAIR OLSON asked for testimony.

[3:50:31 PM](#)

RENE BROKER, Attorney, Fairbanks North Star Borough, spoke in favor of the CS because it fixes two unintended consequences of the Open Meetings Act without affecting its important goals. "We don't want to diminish, really, what that act tries to do for the public." The Open Meetings Act already recognizes that day to day administrative functions can be conducted and still comply with the act. That is why it already exempts municipal employees. The bill just extends that very narrow exception for very narrow functions to volunteer boards and commissions, since they are performing the same function that would ordinarily be performed by a municipal employee. The second fix removes a bazaar anomaly by clarifying that the same numerical standard that applies to policy-making bodies also applies to advisory boards. These two fixes will strengthen the act by making it more practical and workable.

[3:52:34 PM](#)

SENATOR THOMAS asked for examples that brought attention to this issue. He is aware of one.

[3:53:04 PM](#)

MS. BROKER said it has been a long festering issue with road and fire service area commissioners. They are prevented from doing their job effectively by the five-day notice. It is not just

snow removal, there are potholes and brush issues. Fire service is dealing with similar issues in a different context. She has been hearing complaints for years. They can't comply with the law without meaningfully impacting the service they provide.

SENATOR THOMAS asked if there is any opposition.

[3:54:29 PM](#)

MS. BROKER said there is always discontent but not on this issue that she has heard of. It has been through several public processes because it started with a resolution, and the assembly heard public comment and acted on that. There has been plenty of opportunity to take issue with it, and she has heard none.

CHAIR OLSON asked why it wasn't changed before.

MS. BROKER said there is important policy in the public meetings act, and she didn't want to do any violence to that. It has just been an ongoing communication facilitated by the service area committee. They came up with a means to preserve public notice and input for important functions like policy decisions and provide flexibility to run the service area.

[3:56:36 PM](#)

LUKE HOPKINS, Member, Fairbanks North Star Borough Assembly, spoke in support of the CS. Some assembly members can meet to discuss administrative actions but two members of an advisory body can't. They have a standard. People just accepted the law, but finally they decided that something needs to be done, so the assembly decided to move it forward as a legislative priority. He is a member of the board of the Alaska Municipal League, and this issue has been discussed. He has spoken with other municipalities and all agree that it would be a good thing to clear this up without undoing the Open Meetings Act.

[3:58:46 PM](#)

TIM BECK, Chair, Road Service Area Committee, Fairbanks North Star Borough Assembly, thanked Senator Therriault and Chair Olson for bringing this forward. It came up because two commissioners had a contract with road construction personnel and they couldn't stop and meet with the contractor together because it violated the act.

[3:59:57 PM](#)

SHAWN KITTLE, Alternate Commissioner, Chena Spur Road Service Area, Fairbanks, said his service area has a chair, two commissioners, and an alternate. The chair can't even

communicate with commissioners regarding a convenient date and time for a meeting. So the meetings just get noticed and the commissioners try to make their schedule work. If there is a lot of snow, one person has the task of calling for road service, "but none of us know what the other person is doing or if its been done." He urges support of SB 48 because it would solve some of the headaches they face. Also, if a member goes out of town, he or she can't let others know what needs to be handled while that person is out of town. It really hampers the day-to-day operations. He urged the support of Senator Thomas.

[4:02:46 PM](#)

SENATOR THERRIault said he has worked with Ms. Broker on this language. Other areas of the state face the same burden. He reiterated the example of two commissioners not being able to talk to a contractor on the road. "That certainly doesn't make sense when you've got people volunteering their time." The snow is packed down on Interior roads, and as the weather warms up, "you want to have the plow out there at just the right time ... [when] it's soft enough to actually loosen from the road." A five-day notice for a meeting can't work. Service areas will still need to notice meetings for setting policy. Ms. Broker said it is not unlike a municipal employee who makes administrative decisions and has an exemption.

[4:05:40 PM](#)

The committee took an at-ease.

[4:05:57 PM](#)

SENATOR THOMAS moved the CS to SB 48, labeled 26-LS0293\R, from committee with individual recommendations and attached fiscal note(s). There being no objection, CSSB 48(CRA) moved out of committee.

[4:06:24 PM](#)

The committee took an at-ease.

[4:07:18 PM](#)

SENATOR FRENCH joined the meeting.

SB 93-MUNICIPAL AIR QUALITY PROPERTY TAX CREDIT

CHAIR OLSON announced consideration of SB 93.

[4:08:06 PM](#)

JOE PASKVAN, Senator, Alaska State Legislature, read from his sponsor statement:

Some communities in Alaska have been designated as non-attainment areas for PM 2.5 by the EPA. Based on the requirements of the Clean Air Act, the state and those impacted local governments have three years to develop attainment plans designed to bring air quality into compliance with federal air standards.

SB 93 is needed as a first step to allow local municipalities the latitude in developing tax credit programs to address the important public health and community compliance issues that result from poor air quality.

SB 93 is designed to provide optional tools to municipalities that can be used to create incentives for individuals to take actions that will improve local air quality and reduce fuel consumption.

SB 93 expands the discretion of municipalities in a manner that allows, by ordinance, the creation of programs that will offer property tax credits for actions that the local governing body determines will improve air quality. This bill requires that eligibility, conditions and other criteria for the tax credits be established by ordinance.

SENATOR PASKVAN said the SB 93 can be used by municipalities for exchanging old wood stoves for EPA certified stoves, which will significantly reduce fine particulate emissions. It can include incentives to improve fuel consumption and to convert from a carbon-based system to alternative energy. SB 93 is designed to provide a full range of options for local municipalities to address air quality. There is a zero fiscal note attached.

[4:10:44 PM](#)

CHAIR OLSON asked what incentives can produce a zero fiscal note.

SENATOR PASKVAN said it won't cost the state. The municipality will provide tax credits. People from Fairbanks will be testifying on what option they are considering. This is a first step to improve air quality and meet the EPA's timeline.

[4:11:43 PM](#)

CHAIR OLSON asked if this is a property tax credit.

SENATOR PASKVAN said yes.

4:11:55 PM

JIM CONNOR, Air Quality Specialist, Fairbanks North Star Borough, said Senator Paskvan did a good job of outlining the issues. In September, 2006, the EPA lowered the allowable levels of PM 2.5, otherwise known as fine particulates that are smaller than a blood cell. It went from 65 micrograms per cubic meter to 35. Fairbanks regularly hits 40 to 50 during the winter, so it fell out of attainment with the EPA. The majority of the pollution is coming from space heating and transportation. This bill allows the borough to address the heating component without finding money. "This really provides us with a wonderful incentive, and I would really like to see this passed."

4:13:43 PM

CHAIR OLSON asked if there is a problem with particulate matter.

MR. CONNOR said yes, there is a tremendous amount of fine particulates in the Fairbanks area. From the hillside, "it looks like the place is on fire just because of all the smoke that's sitting in the valley."

CHAIR OLSON asked if it is about health troubles or what.

MR. CONNOR said, "We get many calls from people who are beginning to have health problems. The most sensitive people call first."

CHAIR OLSON asked if he is talking about people with lung problems, like asthma and emphysema.

MR. CONNOR said, yes: respiratory and heart disease.

CHAIR OLSON asked about the burden to people who burn wood.

MR. CONNOR said there are very efficient devices for burning wood, so the inefficient units will be targeted. There is an estimated 5,000 wood stoves that are not EPA certified. "We figure we'll get at least a factor of 10 reduction from the emissions ... by replacing them with more efficient units."

4:15:12 PM

CHAIR OLSON said people who have the older stoves are least able to afford a new one. They will have to put the cash out first

before they get a tax credit. "How do you take the burden off of those that are most burdened already?"

MR. CONNOR said the borough will be pursuing wood stove change-out programs, like the one with the Alaska Department of Environmental Conservation (DEC). But some people will be burdened by spending money first and getting the credit later.

[4:16:30 PM](#)

SENATOR THOMAS suggested that people are not required to do anything by this law. They would do it on their own if they want to and can benefit by the tax credit.

MR. CONNOR said there is also the economic incentive of getting more heat for their fuel in their stoves. But it doesn't look very attractive to someone who is asked to pay up to \$2,000 to replace a working system. It is not required. There is no requirement for anybody to change stoves.

[4:17:27 PM](#)

GLEN MILLER, Transportation Director, Fairbanks North Star Borough, said he didn't intend to testify but after reviewing the bill he encourages its support. It will speed up the process that Fairbanks' needs to go through. There are only three years to come into attainment. He doesn't think control measures will be enacted for at least another year. It leaves very little time for Fairbanks. This bill will provide early incentives for individuals who choose such modifications. It could make attainment much easier. Future control measures may be relaxed due to this incentive program.

[4:19:24 PM](#)

SENATOR THOMAS asked how many times Fairbanks exceeds EPA attainment numbers.

MR. MILLER said it is typically 20-30 times per year.

CHAIR OLSON asked the consequences of that.

MR. MILLER said that after two violations, Fairbanks can be put in the status of nonattainment. It could ultimately have financial consequences, but this is a health-based standard, and the public is at risk. It could impact DOT [Department of Transportation] money for Fairbanks and the state.

CHAIR OLSON asked what happens if attainment isn't attained after three years. Will there be heavier measures against wood stove burning and transportation activities?

[4:21:13 PM](#)

MR. MILLER said there are three years to produce a plan and five years to achieve attainment. After that, an extension can be requested. Ultimately the state is responsible, and if the state can't fix it, EPA will take action, which could mean federal sanctions or controls. Other states have prohibited burning wood entirely.

CHAIR OLSON said it is a concern if people can't heat their home because wood is the only option.

[4:21:52 PM](#)

NADINE WINTERS, Presiding Officer, Fairbanks North Star Borough Assembly, said Fairbanks is in a difficult position. Recent oil prices have caused more people to heat with wood. The borough is looking for ways to reach attainment and improve air quality without making it onerous on individuals and businesses. If a person has a non-EPA certified stove, SB 93 will allow Fairbanks to give a property tax credit for buying a new stove. It is a way to deal with EPA and health issues. Another concern is that being out of attainment is a potential hindrance to economic development, especially for any project that requires an environmental assessment or impact statement. She asked the committee to support the bill.

[4:24:41 PM](#)

SENATOR FRENCH said he is envious of Fairbanks's financial strength. He doesn't think Anchorage would extend a tax credit to anybody for anything. He asked how much money will be made available for this credit.

MS. WINTERS said she doesn't know how many people heat with wood. This approach is an "avoidance of taxes collected versus direct expenditure." It will be a difficult trade off even though Fairbanks doesn't have a shortfall. Taxpayers are feeling pressure everywhere. She said the costs will be looked at closely and the borough will assess "what we're going to do without ... as a result of this program." But the stakes are really high; it involves the community's physical health and future economic development.

SENATOR THOMAS said he understands there has been a rapid increase in coal burning stoves when the price of fuel oil went

up, which is not good. "The government's response to that as a health hazard is to withhold transportation funds. It usually seems to be the first thing that they approach." He asked if she has numbers on coal stoves sold in the Fairbanks area.

[4:27:13 PM](#)

MS. WINTERS said she doesn't know, but coal stoves are serious contributors to PM 2.5 and there has been an increase in them as a result of oil prices. The emissions tend to stay low to the ground, which is not good. She is not sure there is an EPA compliant coal stove. That will be another difficult legislative decision.

SENATOR THOMAS asked if the tax credit will be available for exchanging a coal stove for a cleaner burning stove.

MS. WINTERS said yes.

[4:29:02 PM](#)

ALICE EDWARDS, Acting Director, Division of Air Quality, Department of Environmental Conservation, Juneau, said the division received a grant of under \$100,000 to do a pilot wood stove change-out program. It is a drop in the bucket compared to what is needed. She expects to see about 80 stoves exchanged. The division is proceeding with it this spring. At this point the program doesn't necessarily target low income homes, although there are some other programs in the state offering weatherization and energy assistance to low income homes.

CHAIR OLSON said, according to the bill sponsor, there are 5,000 to 6,000 wood stoves with an estimated 20 to 30 percent that are not EPA compliant.

[4:30:44 PM](#)

SENATOR PASKVAN said communities such as Fairbanks have already been designated non-attainment areas, so [SB 93] allows them to use tax credits to encourage voluntary conduct by individuals. That will help them figure out if reducing fine particulates, increasing energy efficiency, or converting to alternative energy works best for each community. That is a "carrot" that will help avoid EPA's "stick".

[4:32:20 PM](#)

SENATOR KOOKESH asked how to control air quality with all the forest fires. "You always have fires around that area." Whenever he is in Fairbanks, he drives through smoke that is not from wood stoves.

SENATOR PASKVAN said he understands because he has lived through two of those summers. The bill is primarily designed to control the problem during winter when there are inversions that trap fine particulates at ground level. That is why Fairbanks differs from other communities.

CHAIR OLSON asked if he means that particulates aren't a problem during forest fires.

SENATOR PASKVAN said he didn't say that at all. That is something that no government can control. But for controllable issues, like wood stoves, burning too much oil in inefficient buildings, and not changing to non-carbon energy, that is where we are trying to give incentives for voluntary efforts. This will allow municipalities to come up with the best alternatives that meet the needs of people.

SB 93 was held over.

[4:34:39 PM](#)

There being no further business to come before the committee, the meeting was adjourned at 4:34 p.m.