

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 30, 2009

1:33 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Lesil McGuire
Senator Gene Therriault

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 47

"An Act relating to the statute of limitations for certain sexual offenses and permitting causes of action for certain sexual offenses that would otherwise be barred by the statute of limitations to be brought during a certain one-year period."

MOVED SB 47 OUT OF COMMITTEE

SENATE BILL NO. 148

"An Act relating to limitation of state liability on certain federal highway programs; and providing for an effective date."

HEARD AND HELD

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."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 47

SHORT TITLE: STATUTE OF LIMITATION FOR SEXUAL OFFENSES

SPONSOR(S): FRENCH

01/21/09	(S)	PREFILE RELEASED 1/9/09
01/21/09	(S)	READ THE FIRST TIME - REFERRALS
01/21/09	(S)	HSS, JUD
02/27/09	(S)	HSS AT 1:30 PM BUTROVICH 205
02/27/09	(S)	Moved SB 47 Out of Committee

02/27/09 (S) MINUTE(HSS)
03/02/09 (S) HSS RPT 3DP 1AM
03/02/09 (S) DP: DAVIS, THOMAS, DYSON
03/02/09 (S) AM: PASKVAN
03/02/09 (S) HSS AT 1:30 PM BUTROVICH 205
03/02/09 (S) Moved Out of Committee 2/27/09
03/02/09 (S) MINUTE(HSS)
03/27/09 (S) JUD AT 1:30 PM BELTZ 211
03/27/09 (S) Heard & Held
03/27/09 (S) MINUTE(JUD)
03/30/09 (S) JUD AT 1:30 PM BELTZ 211

BILL: SB 148

SHORT TITLE: LIABILITY FOR TRIBAL ROAD CONSTRUCTION
SPONSOR(s): TRANSPORTATION BY REQUEST

03/13/09 (S) READ THE FIRST TIME - REFERRALS
03/13/09 (S) TRA, JUD
03/24/09 (S) TRA AT 1:00 PM BUTROVICH 205
03/24/09 (S) Moved SB 148 Out of Committee
03/24/09 (S) MINUTE(TRA)
03/25/09 (S) TRA RPT 4DP 1NR
03/25/09 (S) DP: KOOKESH, MENARD, DAVIS, MEYER
03/25/09 (S) NR: PASKVAN
03/30/09 (S) JUD AT 1:30 PM BELTZ 211

BILL: SB 48

SHORT TITLE: MEETINGS OF ROAD SERVICE AREA BOARDS
SPONSOR(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
02/10/09 (S) Moved CSSB 48(CRA) Out of Committee
02/10/09 (S) MINUTE(CRA)
02/11/09 (S) CRA RPT CS 4DP 1NR NEW TITLE
02/11/09 (S) DP: OLSON, THOMAS, KOOKESH, MENARD
02/11/09 (S) NR: FRENCH
03/10/09 (S) TRA AT 1:00 PM BUTROVICH 205
03/10/09 (S) Moved CSSB 48(CRA) Out of Committee
03/10/09 (S) MINUTE(TRA)
03/11/09 (S) TRA RPT CS(CRA) 5DP
03/11/09 (S) DP: KOOKESH, MENARD, DAVIS, MEYER,
PASKVAN
03/30/09 (S) JUD AT 1:30 PM BELTZ 211

WITNESS REGISTER

DOROTHY SHOCKLEY, Staff
to Senator Albert Kookesh
Alaska Capitol Building
Juneau, AK

POSITION STATEMENT: Introduced SB 148 on behalf of the sponsor.

GORDON JACKSON, Director
Roads and Transportation
Central Council Tlingit Haida Indian Tribes of Alaska
Juneau, AK

POSITION STATEMENT: Testified in support of SB 148.

PETER PUTZIER, Senior Assistant Attorney General
Civil Division
Opinions, Appeals, & Ethics
Department of Law (DOL)
Anchorage, AK

POSITION STATEMENT: Provided information related to SB 148.

MARY SIROKY
Legislative Liaison
Department of Transportation and Public Facilities (DOTPF)
Juneau, AK

POSITION STATEMENT: Provided information related to SB 148.

KAY GOUWENS, Attorney
Sonosky Chambers Sachse Miller & Munson
Anchorage, AK

POSITION STATEMENT: Testified in support of SB 148 on behalf of the Chickaloon Native Village.

HOWARD MERMELSTEIN, Director
Tetlin Native Village
Department of Transportation
Tetlin, AK

POSITION STATEMENT: Stated support for SB 148.

JOHNNY AMBROSE, Transportation Technician
Ruby Tribal Council
Ruby, AK

POSITION STATEMENT: Stated support for SB 148.

KATHY WASSERMAN, Executive Director
Alaska Municipal League (AML)
Juneau, AK

POSITION STATEMENT: Stated support for SB 48.

RENE BROKER, Attorney
Fairbanks North Star Borough
Fairbanks, AK

POSITION STATEMENT: Testified in support of SB 48 on behalf of the Fairbanks North Star Borough.

RONALD HILLINGWORTH, Chair
23 Mile Slough Road Service Area
Fairbanks, AK

POSITION STATEMENT: Stated support for SB 148.

LUKE HOPKINS, Assembly Member
Fairbanks North Star Borough and
Board Member, Alaska Municipal League
Fairbanks, AK

POSITION STATEMENT: Spoke in support of version P of SB 48.

ACTION NARRATIVE

[1:33:46 PM](#)

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Therriault, Wielechowski, McGuire and French.

SB 47-STATUTE OF LIMITATION FOR SEXUAL OFFENSES

[1:34:11 PM](#)

CHAIR FRENCH announced the consideration of SB 47. He reminded the members that last Friday he held the bill over in order for Senator Therriault to review the fiscal notes.

SENATOR THERRIAULT thanked Senator French for holding the bill over and said he didn't object to moving the bill.

[1:34:39 PM](#)

SENATOR MCGUIRE moved to report SB 47 from committee with individual recommendations and attached fiscal note(s). There being no objection, SB 47 was reported from the Senate Judiciary Standing Committee.

At ease at 1:34 pm.

SB 148-LIABILITY FOR TRIBAL ROAD CONSTRUCTION

[1:36:16 PM](#)

CHAIR FRENCH announced the consideration of SB 148.

DOROTHY SHOCKLEY, Staff to Senator Albert Kookesh, introduced SB 148 with the following statement:

SB 148 will resolve the issue of liability to the state or employees of the state when partnering with federally recognized tribes under the Indian Reservation Roads (IRR) Program. With the decline in state and federal highway funds, it is imperative that we collaborate and work together. This bill will assist the partnering process and ultimately benefit all Alaskans by leading to long-term improvements in the state's overall transportation infrastructure.

She directed attention to the list of tribes in Alaska that in 2008 received more than \$45 million in IRR funds. The stimulus is expected to supplement these funds by roughly \$40 million. As the Department of Transportation & Public Facilities prepares the next Statewide Transportation Improvement Program (STIP), tribes for the first time can bring both matching and maintenance funds, she said. "This will move the working relationship along and allow both state and federal funds to be used on highways."

[1:38:33 PM](#)

CHAIR FRENCH asked Mr. Putzier to explain where this would apply, to whom it would apply, and what would happen in the event that a road was built incorrectly and someone wanted to file suit.

PETER PUTZIER, Senior Assistant Attorney General, Civil Division, Opinions, Appeals, & Ethics, Department of Law (DOL), Anchorage, explained that the bill would apply where a tribe is performing work on state roads pursuant to the IRR Program. This program has been around for some time, but with changes in the law tribes now are better funded. Most notably in 2005 SAFETEA-LU (Safe Accountable Flexible Efficient Transportation Equity Act) made about \$100 million available to the roughly 230 federally recognized tribes in Alaska. One sort of partnering relationship that has been discussed is that the tribe would use 100 percent federal funds and their own personnel to perform the work.

CHAIR FRENCH questioned where this work would take place.

MR. PUTZIER explained that by definition Indian Reservation Roads are either on a reservation or leading to or from an Alaska Native village. That opened the door for a number of state roads to be denominated as Indian Reservation Roads and the tribes have expressed an interest in taking over the maintenance activities for some of those roads.

CHAIR FRENCH asked if the state highway near Mentasta could potentially fall under the bill.

MR. PUTZIER replied there is that potential.

CHAIR FRENCH asked what would determine whether that highway did fall under the bill.

MR. PUTZIER explained that the tribes go through a process with the Bureau of Indian Affairs (BIA) where sections of road that are on a particular tribe's inventory are formally denominated as an Indian Reservation Road.

CHAIR FRENCH asked if the state has any input in the decision.

MR. PUTZIER said no. Early on the state was asked to certify certain state roads as IRR and there was considerable discussion about what that certification should say. Ultimately, the state provided a listing of the public roads in Alaska without providing any sort of certification. Tribes used that public listing of roads to identify the various roads they consider to be IRRs.

CHAIR FRENCH summarized that the state opted not to make the hard choices and simply turned over a list of all state roads.

[1:42:54 PM](#)

MR. PUTZIER clarified that it's not up to the state to decide whether or not certain segments of road are IRR or not. "We were asked to provide a certification that the roads were Indian Reservation Roads and we weren't sure of the ramifications of providing such a certification," he added.

CHAIR FRENCH asked how many miles of state road were on the list that was given to BIA.

MR. PUTZIER replied he doesn't know the number of miles but he believes the list includes all state roads within Alaska.

CHAIR FRENCH said, "So you basically turned the universe of state roads over to BIA and now it's up to them to make the final decision as to which segments of those roads this bill would apply to."

MR. PUTZIER clarified that the state didn't turn anything over to the BIA; they simply provided a publicly available listing of the roads in the state.

CHAIR FRENCH asked what position the administration is taking on the bill.

MR. PUTZIER replied he believes the administration supports it.

CHAIR FRENCH asked if he's being cautious because he hasn't asked.

MR. PUTZIER replied this didn't come through as a governor's bill, but DOTPF certainly supports it.

SENATOR THERRIAULT observed that the bill says "By the Senate Transportation Committee by request" and asked if that doesn't mean it is at the request of the administration.

[1:44:43 PM](#)

MARY SIROKY, Legislative Liaison, Department of Transportation and Public Facilities (DOTPF), confirmed that the bill was at the request of the administration.

SENATOR WIELECHOWSKI asked about the ability of an individual to sue a tribe.

MR. PUTZIER explained that the tribe would be considered an employee of the federal government and in the event that it is sued, the federal Department of Justice would take over the defense. A person would be able to maintain an action against the tribe pursuant to the Federal Tort Claims Act. That is a waiver of the federal government's liability to certain causes of action similar to what the state has, so a lawsuit could be maintained against the tribe.

SENATOR WIELECHOWSKI asked if the Act limits the amounts a person can recover.

MR. PUTZIER replied it's similar to the state recovery in that a person can get compensatory but not punitive damages. He said he

doesn't believe the compensatory damages are capped, but he isn't certain.

SENATOR WIELECHOWSKI asked if, for these types of actions, the limits under the Federal Tort Claims Act are different than under the State Tort Claims Act.

[1:46:38 PM](#)

MR. PUTZIER replied he doesn't know the answer.

SENATOR WIELECHOWSKI asked if someone online might know the answer.

CHAIR FRENCH noted that that there wasn't anyone who could answer and asked Mr. Putzier to find out soon.

MR. PUTZIER agreed to do so.

SENATOR WIELECHOWSKI asked how common it is to have lawsuits with claims arising out of design, operations, maintenance, or construction activities pertaining to roads.

MR. PUTZIER replied, according to the tort section, it's quite common to have litigation arising on highways.

SENATOR WIELECHOWSKI noted that he received a letter from an angry constituent complaining about the ruts on the Glenn Highway that allegedly caused an accident. He understands there's a balance, but he doesn't want to pass this bill if it takes away Alaskan's constitutional right to file a lawsuit if they've been wronged.

[1:48:25 PM](#)

MR. PUTZIER acknowledged it's a good point, but the bill doesn't relieve the State of Alaska of its own negligence. The idea of the bill is that if a project is managed by a tribe, any actions arising from that work could not be brought against the state. The individual could sue the tribe. However, the state would remain liable for certain causes of action.

SENATOR WIELECHOWSKI asked if lawsuits against tribes in these types of actions would need to be brought in federal district court.

MR. PUTZIER said his understanding is that under the Federal Tort Claims Act an individual first has to file an administrative claim against the agency for which the tribe is

working. Typically that would be the Federal Highway Administration (FHWA) and that agency would have about six months to process the claim. If it's unresolved at that level an individual would have the right to sue in federal district court.

SENATOR WIELECHOWSKI asked if this means an individual would not be able to sue in state court.

MR. PUTZIER said his understanding is that there would not be the ability under the Federal Tort Claims Act.

SENATOR WIELECHOWSKI asked if the statute of limitations is different under the Federal Tort Claims Act than the State Tort Claims Act.

MR. PUTZIER said he believes they differ in some respects, but he would check on that.

SENATOR WIELECHOWSKI expressed interest in getting the information and asked if he said he would also provide a list of the roads that would be impacted by the bill.

MR. PUTZIER asked if he wanted a list of state roads or Indian Reservation Roads.

SENATOR WIELECHOWSKI replied he'd like to know the breadth and depth of the roads that this will impact. In particular he's interested in the major roads along the Railbelt and any roads in Anchorage.

MR. PUTZIER said he knows that sections of the Glenn Highway have an IRR designation.

SENATOR WIELECHOWSKI expressed concern that this creates a maze for Alaskans to navigate to figure out who they need to sue and what procedures they need to go through in order to file a lawsuit.

[1:52:16 PM](#)

CHAIR FRENCH asked if this is the sort of provision you'd see done on behalf of contractors that the state employs to build roads.

MR. PUTZIER explained that DOTPF asks to be named as an additional insured when it contracts with a contractor.

CHAIR FRENCH observed that if there's an accident on a road that the state contracted, the lawsuit alleging a poorly designed road ultimately will follow an insurance policy to its end.

MR. PUTZIER agreed; typically the state and the contractor are sued and the state will tender the defense to the contractor.

CHAIR FRENCH asked if in this case the state will say an individual should go to federal court to seek damages.

MR. PUTZIER emphasized that this is slightly different than a normal construction job because it literally turns over the construction to the tribe. The tribe would be using federal funds and its own resources; the state would have no active participation or oversight. It's a government-to-government relationship between the tribe and the federal government.

1:54:10 PM

CHAIR FRENCH said he can see the attraction because there would be more federal funds and more work for the tribes. "There's not even a 90:10 match, it's pure federal dollars."

MR. PUTZIER responded there is the opportunity for a match, but he believes the goal is for the tribe to build its own transportation expertise so there is a desire to do the work itself.

CHAIR FRENCH asked if this is mandated by SAFETEA-LU or if other state legislatures are pushing this type of legislation.

MR. PUTZIER replied this is not required and because the program is new, states with Indian reservations are trying to figure out how the state/tribal relationship will occur. Alaska is different in that it doesn't have reservations and has the issue that IRRs can be roads leading to and from villages. That complicates the jurisdictional puzzle and the application of the program so looking at other states won't provide a clear analogy to the kinds of issues that Alaska is facing.

1:55:43 PM

GORDON JACKSON, Director of Roads and Transportation, Central Council Tlingit Haida Indian Tribes of Alaska (THITA), said THITA is one of the largest federally recognized tribes in Alaska with 27,000 members, \$25 million in budgets, and about 250 employees. SB 148 is important and, if enacted, it will resolve the state's lingering concern about potential liability from IRR projects. If the bill does not pass the state may

continue to require model maintenance agreements, which require tribes to carry significant general liability coverage to protect the state. This insurance can be costly and difficult to obtain.

[1:57:59 PM](#)

MR. JACKSON said THITA takes inventory of roads within the City and Borough of Juneau (CBJ) and has also entered into memorandums of agreement (MOA) with various municipalities. The MOA basically says the tribe will coordinate and cooperate on roads and where possible provide matching funds. THITA also sent a MOA to the state. Roughly \$320 million is available nationally for the IRR Program and THITA wants to ensure that it is being proactive.

[2:00:03 PM](#)

CHAIR FRENCH asked if he has projects in mind.

MR. JACKSON replied there are a number of trails that CBJ has mentioned, there is some need for marine highway terminals, and there is need for terminal buildings at various airports. The idea is to work cooperatively if money is coming to the state, he said.

KAY GOUWENS, Attorney, Sonosky Chambers Sachse Miller & Munson, Anchorage, said she is testifying on behalf of the Chickaloon Native Village in support of SB 148. She related that her firm has been negotiating with the state for more than a year on a proposed model maintenance agreement under which tribal entities could maintain state-owned roads. There has been agreement on a number of issues but liability of the state remains a major sticking point. Passage of SB 148 would resolve the state's concerns so that these projects can go forward. Under the IRR Program, tribal contractors performing work are treated as if they are agents of the federal government and their employees are treated as if they are federal employees. The Federal Tort Claims Act gives protection to the traveling public and makes it unnecessary for the tribes to carry insurance to protect themselves from liability. Passage of this bill will make it possible to move beyond the state's liability concerns and bring IRR funds into the state and put them to work.

[2:04:28 PM](#)

CHAIR FRENCH asked if a citizen would sue the federal government or the tribe under the Federal Tort Claims Act if an accident were to happen on a road that had been designed, operated, or maintained by a tribe.

MS. GOUWENS replied it would technically be the federal government but she expects that the claim would be presented to the tribe. The tribe would have an obligation to forward the claim to the Federal Highway Administration (FHWA), the FHWA would enter it into the Federal Tort Claims Act process, and the Department of Justice would handle any lawsuit that is filed.

CHAIR FRENCH asked what assurance the citizen would have that they would be paid if they were to sue the tribe.

MS. GOUWENS replied by operation of law those are claims against the federal government so the federal government is on the hook for any payment that has to be made on those claims.

[2:06:49 PM](#)

SENATOR WIELECHOWSKI observed that the tribes don't have to have insurance.

MS. GOUWENS said that's correct. The Indian Self Determination Act (ISDA) is the applicable law. It provides the Federal Tort Claims Act coverage for the IRR Program, and others, pursuant to or in accordance with the ISDA. Indian tribes are taking over federal Indian programs that federal agencies used to provide directly. Those federal agencies were covered by the Federal Tort Claims Act so they didn't have to purchase insurance. The idea is that the same protection should apply when the tribes are carrying out the programs. The FTCA provision makes a lot of sense because it prevents the tribes from having to spend their limited resources on buying insurance and still it protects the traveling public.

SENATOR WIELECHOWSKI asked if a claim would be dragged into federal district court if somebody wanted to sue another driver because there had been an accident caused by negligent construction of the road.

MS. GOUWENS said her understanding is that if somebody filed an action in state court to sue another driver the tribe would inform the federal government and the federal government would have that action removed to federal district court. "I believe the whole case would go, but under the Federal Tort Claims Act, state substantive law on liability applies," she said.

SENATOR WIELECHOWSKI asked if the FTCA limits would apply only to the tribe and not to the other driver who caused the accident.

MS. GOUWENS replied she believes that's correct. The FTCA doesn't allow punitive damage claims against the federal government but she doesn't know about any dollar amount limit. It's a two-year statute of limitation for filing the claim, which is the same as for the state tort law.

SENATOR WIELECHOWSKI asked if there is a time limit for notifying the administrative agency.

MS. GOUWENS said she believes the time limit is two years to file the claim with the administrative agency and then the agency has six months to act on that claim.

SENATOR WIELECHOWSKI asked if the agency typically acts within six months.

MS. GOUWENS said yes.

HOWARD MERMELSTEIN, Director, Tetlin Native Village Department of Transportation, stated support for SB 148. Responding to previous questions about what is on the inventory, he explained that the C.F.R. 25.179 regulations governing the IRR Program states that any road that provides primary access or access to goods and services for Alaska Natives is eligible to be included in the inventory. Working from the public listing of state roads the tribe selects and submits an inventory document to BIA which uses parameters to decide what roads do or do not go into the system. Roads that are owned by the state go into the system as state-owned roads and the tribes generate five percent of the cost to construct on the road. Part of the Alaska Highway traverses the former Tetlin reservation and that section of road is in the system.

The traveling public will always have a place to turn with respect to liability. For the most part the tribes are interested in ongoing maintenance, but any must follow the federal highway regulations and meet or exceed state or federal standards for road construction. If there is litigation the case would go over to the federal government through the Federal Tort Claims Act. It's important that the bill pass so that projects can move forward because the IRR Program does bring in \$50 million a year to the state, he stated.

SENATOR THERRIault asked how broadly the term "road" is interpreted and if rural community boardwalks would qualify.

MR. MERMELSTEIN replied boardwalks that are more than 12 foot wide have been reclassified as board roads and many of those are in the system. This allows tribes the ability to maintain those board roads, many of which were built by the BIA. The work must meet or exceed accepted standards and if the tribe and their contractors carried out the design, then it would fall under protection of the tribes and the Federal Tort Claims Act.

Oftentimes trails fall under the classification of motorized trails, which allows tribes to spend their funds to upgrade or maintain those trails. In order for a tribe to widened or make a state-owned trail into a roadway. Once a road or trail is in the IRR inventory, they are open to the general public and the tribe can no longer block access.

[2:20:25 PM](#)

SENATOR THERRIAULT asked if a boardwalk of less than 12 feet could be nominated as a project for improvement.

MR. MERMELSTEIN said yes and added that what a tribe receives through the funding formula is based on population, vehicle miles traveled and the length of section of roadway.

CHAIR FRENCH noted the table showing the list of tribes and the amount that would go to each under what looks like the 2008 allocation. He said it's worth pointing out that the amounts of money available to tribes on the major road system are fairly modest, which would suggest there won't be a wholesale substitution of tribes in place of the state with respect to construction, design and maintenance goes. For example, Chickaloon would receive \$580,000 and Eklutna is in line for \$42,000. While the total \$36 million allocation is large, each individual tribe would receive just a modest amount of money.

MR. MERMELSTEIN agreed and added that Chickaloon is in line for more funding than most tribes because it has been proactive for years in getting the roads traversing its land into the system. Four tribes on Prince of Wales Island also have been proactive for years and they are in line for roughly \$7 million. As the program increases in size, more funding will come into the state. For FY09 about \$54 million should come to the state through its tribal governments for roads.

[2:25:01 PM](#)

JOHNNY AMBROSE, Transportation Technician, Ruby Tribal Council stated support for SB 148 on behalf of the Council. He's been in

his current position for a little over a year and the learning curve is steep.

CHAIR FRENCH announced he would hold SB 148 over so that he could hear from a plaintiff's attorney to get their perspective on what this might mean to the traveling public.

SB 48-MEETINGS OF ROAD SERVICE AREA BOARDS

CHAIR FRENCH announced the consideration of SB 48 and asked for a motion to adopt the committee substitute (CS), version \P.

[2:28:56 PM](#)

SENATOR WIELECHOWSKI moved to adopt work draft CS for SB 48, labeled 26-LS0293\P. There being no objection, version P was before the committee.

[2:29:20 PM](#)

SENATOR THERRIAULT explained that this version narrows the scope of the bill. It now applies to only municipal service area boards that are established whereas an earlier version talked about other boards and commissions of a local government. This brings it back to the original concept, which is to provide relief [from the Open Meetings Act] to service area commissioners who are trying to make decisions about things like snow removal or protecting a culvert from washing out. Under the open meetings law these mostly volunteer commissioners currently are precluded from talking to one another.

[2:30:29 PM](#)

KATHY WASSERMAN, Executive Director, Alaska Municipal League (AML), said AML has passed a resolution supporting SB 48. While AML respects and supports the Open Meetings Act, in this circumstance it is hampering road and fire service areas in conducting business. If two people stop alongside the road to discuss matters related to that road service area, it can be a violation of the Open Meetings Act. This bill will enable business like plowing a road to get done without having to call a meeting.

CHAIR FRENCH asked how many municipal service area boards are in the state.

MS. WASSERMAN replied most of them are in the Fairbanks North Star Borough (FNSB).

CHAIR FRENCH asked if Anchorage uses a different model.

SENATOR THERRIAULT said Anchorage has road powers. Service areas are only formed by neighborhoods or small communities where the borough government doesn't have general road powers.

SENATOR MCGUIRE added that Hillside has a road service area.

[2:33:06 PM](#)

CHAIR FRENCH asked how many members a road service area board has.

MS. WASSERMAN replied as a rule there are three, which is why it's such a problem. Under the Open Meetings Act three or more members constitutes a quorum for an assembly or council meeting, but an advisory board meets quorum with just two people.

CHAIR FRENCH asked Senator Therriault if Section 2 addresses that issue.

SENATOR THERRIAULT said he believes so, but he would defer to the borough attorney. Years ago these boards had five commissioners, but it became increasingly difficult to find five volunteers who were willing to take on the responsibilities and receive the angry calls for no benefit.

[2:34:30 PM](#)

RENE BROKER, Attorney, Fairbanks North Star Borough, said she is speaking on behalf of the borough in support of SB 48. The bill fixes the unintended consequences of the Open Meetings Act (OMA) without diluting its important public policy goals. Paid employees are already exempt from the OMA requirements because it's recognized that they can't perform day-to-day administrative functions and provide service to the public and also comply with the OMA. Service areas for roads and fire are small and lack resources to hire employees so state law authorizes these boards to perform administrative functions. However, the commissioners aren't exempt from the requirements of the Open Meetings Act. SB 48 extends the exemption that's applicable to paid employees to the narrow circumstance when a service area board is performing the same administrative functions. The commissioners are acting on a volunteer basis and talking about whether it's a good idea to remove snow now versus later or whether this culvert should be fixed rather than another one.

The second change clarifies that when members of a governmental body gather in a meeting, the same numerical standard that

currently applies to policy making bodies also applies to advisory bodies. It makes no sense that an advisory body that is only making recommendations should live under a higher standard than an assembly. It's a trap for the unwary; people who are simply trying to volunteer can inadvertently violate the Open Meetings Act.

2:37:29 PM

CHAIR FRENCH asked if this is a proactive measure or if people are actually being attacked because of supposed violations of the open meetings laws.

MS. BROKER replied it's both. She's seen people come under attack when their mistake was very inadvertent. It's a painful public embarrassment for this to happen. A road service area committee asked for this change so it can do business and comply with the Act.

CHAIR FRENCH asked if she thinks that passing this bill will make it less likely that road service area boards will continue to meet on a regular basis.

MS. BROKER explained that the 107 service areas in the FNSB have eight duties under the borough code and seven of those duties require meetings. The only duty this bill exempts is supervising the actual conducting and providing of the services. Some people get around the meeting requirement by delegating all the decision making to just one person. The problem is that the service area loses out when just one person is making all the decisions for a particular project. The full board needs to discuss the issue and make a decision, she said.

2:40:08 PM

SENATOR WIELECHOWSKI referenced page 2, lines 22-23, and asked if she reads the current section to mean that two people getting together would be a violation of the Open Meetings Act.

MS. BROKER said absolutely. The language in subparagraph (A) is the numerical standard that is applicable to policy making bodies and SB 148 adds that same numerical standard to subparagraph (B). Right now there is no numerical standard in (B) so if there is a gathering of two it's a meeting.

SENATOR WIELECHOWSKI said he'd like to think through the potential ramifications because this will impact more than just municipal service area boards.

CHAIR FRENCH said he agrees and he'd like to give it some thought before moving the bill.

[2:41:39 PM](#)

RONALD HILLINGWORTH, Chair, 23 Mile Slough Road Service Area in the Fairbanks North Star Borough, stated support for SB 148. He said the current law does not exempt road service areas from the public meeting requirements, which makes it nearly impossible to conduct routine administrative and managerial business without posting notification a week or more in advance and holding a subsequent public meeting. Service area commissioners are responsible for implementing maintenance contracts on service area roads. That entails calling out the contractor to do work but the commissioners can not talk among themselves about that work without having a public meeting. They can't stop along side the road to talk and they can't send emails to talk about plowing a road after a snow storm. The current public meeting law makes it nearly impossible to conduct routine business without breaking the law.

[2:45:43 PM](#)

LUKE HOPKINS, Assembly Member, Fairbanks North Star Borough and Board Member, Alaska Municipal League, spoke in support of the current committee substitute for SB 48. The proposed exemption in Section 1 to allow commissioners to meet to perform administrative functions is a reasonable action. With respect to Section 2 and what constitutes a meeting, he said he is often asked why commission members that advise or make recommendations operate under more restrictive conditions than a body that has the authority to establish policy.

SENATOR MCGUIRE asked if there was a particular incident in the Fairbanks area that served as a catalyst.

MR. HOPKINS replied it's probably the sheer number of commissions and the number of actions that commissioners undertake that has made them acutely aware of the problem with the Open Meetings Act.

[2:49:22 PM](#)

SENATOR MCGUIRE said we need to know if there's an ongoing complaint in the Fairbanks area that the committee may not be privy to.

MR. HOPKINS said a resolution was passed to the borough assembly and this does seem like a reasonable exemption consideration. Section 2 goes back to the issue of commissioners not wanting to

inadvertently violate the Open Meetings Act and the requirement for public notice. "It just seems that it's somewhat of an oversight consideration between a commissioner and an elected official for the public meeting notice."

CHAIR FRENCH closed public testimony and announced he would hold SB 48 for further consideration.

2:52:09 PM

There being no further business to come before the committee, Chair French adjourned the meeting at 2:52 pm.