

ALASKA STATE LEGISLATURE
SENATE TRANSPORTATION STANDING COMMITTEE

March 10, 2009

1:03 p.m.

MEMBERS PRESENT

Senator Albert Kookesh, Chair
Senator Linda Menard, Vice Chair
Senator Bettye Davis
Senator Kevin Meyer
Senator Joe Paskvan

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. 53

"An Act making special appropriations for bridge repairs and construction and road construction; and providing for an effective date."

MOVED SB 53 OUT OF COMMITTEE

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
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

BILL: SB 53

SHORT TITLE: APPROP.: BRIDGES, SERVICE ROADS, TRAILS

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)	TRA, FIN
03/10/09	(S)	TRA AT 1:00 PM BUTROVICH 205

WITNESS REGISTER

ERNEST PRAX, Staff
to Senator Therriault
Alaska Capitol Building
Juneau AK

POSITION STATEMENT: Introduced SB 48 on behalf of the sponsor.

RENEE BROKER, Attorney
Fairbanks North Star Borough
Fairbanks AK

POSITION STATEMENT: Stated support for SB 48.

SHAWN KITTLE, Commissioner
Chena Spur Road Service Area
Fairbanks AK

POSITION STATEMENT: Stated support for SB 48.

LUKE HOPKINS, Member
Fairbanks North Star Borough Assembly
Fairbanks AK

POSITION STATEMENT: Stated support for SB 48.

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

POSITION STATEMENT: Stated support for SB 48.

RONALD ELLINGWORTH, Chair
Twenty-Three Mile Slough Road Service Area
Fairbanks AK

POSITION STATEMENT: Stated support for SB 48.

SENATOR GENE THERRIAULT
Alaska State Legislature
Juneau AK

POSITION STATEMENT: Sponsor of SB 48 and SB 53.

ROGER HEALY, Chief Engineer
Division of Design & Engineering Services
Department of Transportation and Public Facilities
Juneau AK

POSITION STATEMENT: Provided supporting information related to SB 53.

BRAD SCHWARTZ, Transportation Planning Manager
Matanuska-Susitna Borough
Palmer AK

POSITION STATEMENT: Testified in support of SB 53.

ACTION NARRATIVE

[1:03:36 PM](#)

CHAIR ALBERT KOOKESH called the Senate Transportation Standing Committee meeting to order at 1:03 p.m. Present at the call to order were Senators Menard , Paskvan, Davis, Meyer and Kookesh.

SB 48-MEETINGS OF ROAD SERVICE AREA BOARDS

[1:04:10 PM](#)

CHAIR KOOKESH announced the consideration of SB 48.

ERNEST PRAX, Staff to Senator Therriault, said the original version of SB 48 spoke to helping road service commissions quickly respond to issues related to harsh weather conditions and still comply with the Open Meetings Act. Under that Act a public hearing notice has to be posted before taking action to respond to issues such as a heavy snow fall or a washed out road. Following discussions with the Fairbanks North Star Borough, a committee substitute (CS) was developed to expand the open meetings exemption to all municipal boards, committees, commissions, and other similar bodies meeting that conduct administrative or managerial business.

[1:06:38 PM](#)

The CS also streamlines the definition of "meeting" under AS 44.62.310(h)(2). Under current statute the meeting requirements for advisory bodies are more stringent than those for policy making bodies. The bill establishes that the open meetings requirements for advisory bodies are the same as the requirements for government agencies that are authorized to establish public policy. This provides consistency in what constitutes a meeting, he said.

1:08:44 PM

SENATOR PASKVAN asked if a road service area member would be required to report back to the other board members if he or she made an administrative or managerial decision.

MR. PRAX said he doesn't believe any follow-up is required, but he would defer to Renee Broker.

SENATOR PASKVAN added that he's trying to figure out how the reporting requirement will work because the individual service district member may define "solely administrative" or "solely managerial" differently than the board.

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RENEE BROKER, Attorney, Fairbanks North Star Borough, informed the committee that service area boards typically have only three service area board members. So as it stands right now, those commissioners can not talk to one another about road service area issues because doing so would constitute a meeting. This exemption is designed to allow the commissioners to talk before making a decision. One commissioner would be able to pick up the phone and call the other commissioners and discuss which pot-hole needs attention first, for example. The whole purpose of this is to increase communication so everyone is more informed of a decision. Now some service areas get around the open meeting requirement in order to act quickly to fix a plugged culvert or some other situation by delegating all decision-making authority to just one commissioner. When that is done there is no communication or input until the next regularly scheduled meeting. It is only then that the other commissioners find out what was done and the attached cost.

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SENATOR PASKVAN said his question is whether there would be any reporting to the full board about an administrative decision to confront the emergency; a policy-setting decision is to fix one road over another while an emergency-management decision is to order a load of gravel for a road washout.

MS. BROKER reminded the committee that a service area does not address a borough-wide function. These small service areas do not have employees but they are functioning as the equivalent of a public works department. Public works decisions about which street to plow first and which pot-hole to fix are typically made by municipal employees and not in the context of an open meeting. This transfers that same concept to the borough and

allows small service areas that don't have public works departments or employees to make day-to-day decisions and provide prompt efficient service to their constituents. SB 48 allows road service area commissioners to consult with one another about a decision just like employees in a department would consult.

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SENATOR PASKVAN questioned whether this might result in service area boards not holding meetings.

MS. BROKER explained that service areas are required to meet quarterly. In addition to their managerial role, service area commissioners have eight other duties all of which require meetings. These are policy making obligations like recommending a budget to the assembly, recommending a mill rate levy, and putting together a list of projects for funding.

SENATOR PASKVAN asked what other entities would fall within the parameters of "boards, committees, commissions, or other similar bodies."

MS. BROKER said in the Fairbanks North Star Borough the fire service areas are the only other boards or commissions that would be affected. This is limited to service area responsibilities where boards and commissions are fulfilling the role that would otherwise be performed by employees.

SENATOR PASKVAN asked if she is aware of any other areas of the state that would need such a broad exemption for anything other than road service districts.

MS. BROKER said no; she doesn't recall other borough attorneys throughout the state mentioning a problem occurring other than with respect to service areas.

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SENATOR PASKVAN recapped his two areas of concern, which relate to reporting back to the full board on whatever managerial action was taken and whether this might apply to entities other than road service districts.

SENATOR KOOKESH clarified that the committee is discussing the CRA committee substitute, also known as version E.

SENATOR MENARD noted that she doesn't have a sponsor statement in the bill packet.

SENATOR PASKVAN observed that the analysis section of the fiscal note indicates that this is limited to service area boards so they can respond quickly to hazardous road conditions. He doesn't have a problem allowing that but he isn't sure that it doesn't apply to a lot more than that. Page 2, line 12, mentions "boards, committees, commissions, or other similar bodies" so it's unclear whether it's an overly broad application. "Again, I don't mind them having the ability to fix the road, but I don't know that we need to go beyond that," he said.

CHAIR KOOKESH asked Ms. Broker if she would like to testify on the bill.

[1:22:48 PM](#)

MS BROKER, Attorney, stated support for SB 48 on behalf of the Fairbanks North Star Borough (FNSB). The bill fixes two unintended consequences of the Open Meetings Act without affecting the important public policy goals and intent of the Act. The public continues to have the ability to participate in the legislative process and FNSB believes that this will result in a stronger more defensible Act. It's already recognized that public employees who perform administrative and managerial functions can not effectively perform those duties and still comply with the Act so they are exempted. SB 48 simply extends that principle to volunteer boards and commissions in the rare instances where they are performing the same duties that would otherwise be performed by paid employees.

The second fix addresses and clarifies that the same numerical standard that policy making bodies live under will also apply to advisory bodies. That standard should not be more stringent for advisory bodies that are simply making recommendations. Under current law three of the nine borough assembly members can sit down and discuss an issue, but three members of a nine member advisory body can't do that. "We don't think that was intended and we don't think that makes any sense so we strongly support this bill," she said.

[1:25:06 PM](#)

SHAWN KITTLE, Commissioner, Chena Spur Road Service Area, Fairbanks, reported that this issue was brought forward at the February 23 meeting and a motion was made to unanimously support SB 48.

[1:25:57 PM](#)

LUKE HOPKINS, Member, Fairbanks North Star Borough Assembly, stated support for the current version of SB 48. He has been asked why two road service commissioners or two fire service commissioners can not meet to discuss an administrative action on a contract that has been previously issued by the borough without a public notice of a meeting. This is a problem with respect to getting contract work done to open a culvert, plow snow, or cut brush along a road. He is a member of the board of the Alaska Municipal League, and this issue will be taken up at the April meeting. He has spoken with other municipalities and all agree that it is reasonable to make minor changes to this law without undoing the Open Meetings Act.

The original law missed the mark since two assembly members can sit down and talk about policy actions, but two members of a non-policy making service area commission can't. It seems reasonable to have both under the same standard, he said.

[1:29:31 PM](#)

SENATOR PASKVAN asked if he believes the bill appropriately addresses the distinction between managerial functions and policy making functions.

MR. HOPKINS said yes; "I think that these administrative duties are on contracts already established, it's not to go out and talk about creating a new contract or issuing a contract." Furthermore, very few boards and commissions administer contracts so the effect is narrow.

[1:30:36 PM](#)

TIM BECK, Fairbanks North Star Borough Assembly, said he is also the chair of the Fairbanks Assembly Road Service Area Committee - the entity that brought this legislation forward. He thanked the sponsor. He related that the issue came up when two commissioners stopped to look at an active construction project and talk with the contractor. That action violated the Open Meetings Act. This bill appears to be what is necessary to allow commissioners to do their job as expected without breaking the law, he said.

[1:31:54 PM](#)

RONALD ELLINGWORTH, Chair, Twenty-Three Mile Slough Road Service Area, and member of the Borough District Service Commission, said current law places commissioners in the position of choosing to comply with the law, to ignore the law, or to find ways to circumvent the law. This should not be acceptable and SB 48 addresses these concerns. Because AS 44.62.310 does not

exempt road service areas from the public meeting requirement, these volunteer commissioners are unable to conduct routine administrative or managerial duties without proper notification and a subsequent public meeting. Currently the service area is responsible for implementing a contract that was established by the borough public works. This entails calling the contractor out to do work that has been agreed to at an agreed rate. However, two road service commissioners can not stop along the road and discuss that contracted work. They can't send an email to talk about plowing the road after a snow storm and they can't discuss whether to call out the contractor to cut brush without noticing a public meeting. Road service areas are a fact of life in the Fairbanks region, but the current public meeting law makes it difficult to impossible to conduct routine business without breaking the law. Providing an exemption would solve this problem.

MR. ELLINGWORTH said it's interesting that he can talk to the borough public works department without violating the public meeting law, but he can't have a similar discussion with his fellow commissioners without giving public notice of a meeting, waiting the appropriate length of time, and then having the discussion at the public meeting. In response to an earlier question by Senator Paskvan, he explained that decisions of the road service area are fairly obvious to its members because the snow has been plowed or the pot-hole is fixed. During the quarterly meetings the individual commissioners give reports to recap the actions they have taken and the costs they incurred. If this exemption is granted all the road service area commissioners could participate in the decision making process before any action is taken, he said.

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SENATOR GENE THERRIAULT, Sponsor, SB 48, said he expects the committee has heard from individuals who have examples of how problematic this can be. Some of the scenarios are ridiculous and that's what is being addressed. "Hopefully you'd agree that we've addressed that without throwing things too wide open," he said.

CHAIR KOOKESH asked if he's aware of any opposition to the bill.

SENATOR THERRIAULT said no, but there have been concerns expressed about opening things too wide. However, once it's understood that this is for the purpose of implementing policy and not discussing or making policy, people are willing to allow more latitude.

SENATOR MENARD asked if this will also help fire service areas.

SENATOR THERRIAULT said yes; it will also help other advisory boards because they would no longer have more restrictive meeting standards than policy making city councils or borough assemblies.

SENATOR KOOKESH questioned why there had been no testimony from Anchorage.

SENATOR THERRIAULT said he believes that the Municipality of Anchorage (MOA) has road powers and community councils, but he isn't sure about the structure.

SENATOR KOOKESH closed public testimony.

SENATOR MEYER related that Anchorage has limited road service areas (Lrsa) and it's never been brought to his attention that this change would be an issue.

CHAIR KOOKESH asked for a motion.

[1:38:46 PM](#)

SENATOR DAVIS moved to report CS for SB 48 from committee with individual recommendations and attached fiscal note(s). There being no objection, CSSB 48(CRA) moved from the Senate Transportation Standing Committee.

At ease at 1:39 pm.

SB 53-APPROP.: BRIDGES, SERVICE ROADS, TRAILS

[1:40:21 PM](#)

SENATOR KOOKESH announced the consideration of SB 53.

SENATOR GENE THERRIAULT, Sponsor of SB 53, said he initially brought this legislation forward last year to bring attention to bridge maintenance and repair needs statewide. Often legislators center on the needs of their districts, which over the years has resulted in a loss of focus on the fact that the state needs a statewide transportation system. Bridge structures are one component of the statewide highway system.

Acknowledging that he is under no delusion that a separate appropriation bill is likely to pass the body, he said he is making this appropriation request to highlight the need statewide. Hopefully this will foster discussion and catch the ear of finance committee members and perhaps they will steer

some state resources toward the bridge infrastructure needs across the state.

SENATOR THERRIAULT explained that Section 1 asks for a \$25 million general fund appropriation to the Department of Transportation and Public Facilities for design, planning, and construction or repairs on existing bridges on the state highway system. Section 2 asks for a \$10 million general fund appropriation to the statutorily existing, local service roads and trails (LSRT) program, which has not been funded in a number of years. This section of law talks about DOTPF nominating small road projects to a list and addressing them as LSRT funds are available.

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SENATOR THERRIAULT related that local governments benefited from this program because small projects that didn't qualify for funding through the federal highway stream could be accomplished. He has been involved in a number of such projects and he would suggest that if money for big projects is tight, perhaps some small projects could be accomplished if the LSRT program were to be funded. He noted that last year DOTPF testified that restarting the LSRT program would take time. Since it was well supported in the 1980s he thought that while he was asking for money, he would bring attention to the fact that the law is still on the books.

SENATOR THERRIAULT said DOTPF has provided information on bridge work that has been done and projects that might be targeted. The packet includes pictures of bridge structures and some clearly demonstrate deplorable states of disrepair. He initially brought the legislation forward following the disastrous bridge collapse in Minnesota. The travelling public takes it for granted that the highways and bridges they travel on are adequately maintained. That's not always the case and, unfortunately, some structures in this state could be close to catastrophic failure. Highlighting that fact and steering funds to chip away at that problem is the right thing to do, he said.

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SENATOR MEYER said he doesn't have copies of the pictures.

SENATOR THERRIAULT apologized and offered to make copies available.

SENATOR MEYER questioned the necessity of the bill since a lot of the stimulus money is for this purpose.

SENATOR THERRIAULT suggested that Mr. Healy could speak to that.

ROGER HEALY, Chief Engineer, Division of Design & Engineering Services, Department of Transportation and Public Facilities (DOTPF), said this bill is not irrelevant. The department's report explains that bridge projects take time and the timelines of the stimulus do not fit well with the requirements and time to build or replace a bridge. Coast Guard clearances, state historical preservation clearances, and hydraulic analysis all take time and those processes don't fit well with the stimulus.

[1:49:41 PM](#)

SENATOR MEYER questioned whether the appropriation is sufficient to address all the bridge and road needs. He recalled DOTPF stating it has a \$10 million backlog.

MR. HEALY said this amount of money won't fix all the problems, but it gives the department flexibility to immediately direct resources where they are imminently needed. While most federal money will be tied up in major projects, this money goes to repair essential infrastructure. These projects aren't high profile.

SENATOR MEYER questioned why the request isn't simply added to the governor's capital budget.

SENATOR THERRIAULT again stated that he is under no delusion that a separate appropriation bill will make it through the committee process. Although the transportation committee doesn't generally debate the need for bridges, he said he'd like that debate to start here. Hopefully this will spark thought so that when it comes time for the finance committee to amend the governor's capital budget there will be a realization that bridges need some focus. \$25 million is an arbitrary number and he realizes the statewide need is much larger. He explained that he directed DOTPF to list the bridges that have the highest need and he would note that a number of them fall on major transportation routes.

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SENATOR DAVIS observed that when DOTPF gave this committee a department overview several weeks ago they reported that they were on track with respect to bridge inspections and repairs. Because she understood that DOTPF wouldn't ask for additional money, she questions the need for this appropriation.

MR. HEALY apologized that he wasn't at that meeting. He said he believes that this kind of appropriation is needed because bridge maintenance and repair needs are ever increasing. For example, the Seward Highway bridges are limited to one lane of traffic and a recent inspection of the Tyee Bridge in Skagway showed that it too is in need of repair. It's a federal requirement to inspect these structures every two years, but accidents happen and things deteriorate in the meantime. This would be a state funded program, which would allow a great deal of flexibility that isn't available in a federal program. Given the length of the list and the other needs mentioned, the total repairs will be sizeable. "In any case, I would speak in favor of this," he said.

1:57:27 PM

SENATOR PASKVAN expressed discomfort asking this one committee to prioritize how DOTPF ought to spend \$25 million. He asked if this will result in different factions within the department using this committee to get ahead of the game.

MR. HEALY said no; a road network is a vital part of the state's economy and bridges are an essential link. Right now DOTPF is struggling with the Seward Highway and commerce is affected. When bridges are weight-limited truckers can't carry legal loads and tour buses are impacted.

SENATOR PASKVAN said he understands the concept of needs, but it's always as compared to what. This discussion is about the needs of bridges and he's uncomfortable saying that this need is more important than a need that he doesn't know about. DOTPF should be presenting an assessment of their overall needs and priorities, not just the bridge component. It's not that the need isn't there; I know about bridge needs, he added.

2:01:08 PM

SENATOR THERRIAULT said Mr. Healy is here to express an opinion on behalf of the commissioner and department; they see a need and support the legislation. Passing the bill on to the finance committee would be an expression of support that bridge maintenance and repair is a statewide problem. That committee will determine what, if any, level of funding to build into the capital budget. Clearly, this bill will not make it to the Senate floor, but this is an avenue for the transportation committee to express support for bridge projects, he said. Keep in mind that traffic can continue to flow if there is a frost heave or a pot-hole in the road, but if a bridge collapses or is

downgraded it becomes a potential chokepoint on the highway system.

SENATOR MEYER expressed the view that there is nothing wrong with letting the finance committee know that bridges and roads are important. That should be expected from the transportation committee. However, if there are specific bridge projects that are "must haves" for DOTPF, that should be in the governor's capital budget. They should be out in the open and not through the backdoor as a separate appropriation bill, he stated.

[2:04:34 PM](#)

SENATOR THERRIAULT clarified that DOTPF is here at his request. "I'm the one who came up with the idea of how do we focus some attention on the bridge network and they're just here supporting my request," he said.

BRAD SCHWARTZ, Transportation Planning Manager, Mat-Su Borough, stated support for SB 53. He said that DOTPF and local governments often have difficulty finding adequate funding to provide needed transportation infrastructure to keep pace with growth. Oftentimes bridges are on the short end of the funding spectrum until a serious problem arises. While this bill will provide for a portion of these immediate needs, there is also need for a long-term mechanism to provide stable funding for both construction and maintenance. Residents and nonresidents alike need to know that they are driving on a safe bridge and highway system. This bill will bring that goal closer.

SENATOR KOOKESH closed public testimony. He stated support for bridges, roads, and trails and asked the committee's indulgence to allow this dialog to continue in the finance committee.

SENATOR MEYER expressed the view that bridges ought to be given serious consideration as the capital budget is prepared, and emphasized that if a particular bridge needs immediate repair that specific project should be in the governor's capital budget.

SENATOR MENARD described the bill as a call for attention and said she is comfortable moving it along so the finance committee can take a look.

SENATOR PASKVAN questioned whether the committee should keep the arbitrary \$25 million figure in the bill or send the message with no dollar amount attached.

SENATOR KOOKESH commented that any number this committee picks will be arbitrary so he would be comfortable sending the number the sponsor selected.

2:10:16 PM

SENATOR THERRIAULT informed members that the bill he introduced last year was forwarded to finance from the transportation committee and perhaps it sparked attention because \$20 million was included in the capital bond package. That money is already being put to good use on bridges that have become problematic. Although some may think this bill is a waste of time, it does advance the discussion, he stated.

SENATOR KOOKESH recalled the discussion last year centered on the difference between using general fund money versus federal funds for emergency repairs.

SENATOR MENARD cautioned against backdoor approaches.

SENATOR THERRIAULT highlighted the difference between operational and capital expenditures and what elicits discussion in the building. In general, discussions about capital expenditures are left to the finance committee; there's never been much input from the transportation committee, for example, about problems associated with the transportation system.

SENATOR MENARD characterized DOTPF as an entity that gets a lot of controls but that doesn't go through as many processes as other departments.

SENATOR THERRIAULT suggested that DOTPF takes care of a larger group of capital assets than any other state agency.

CHAIR KOOKESH asked the will of the committee.

2:14:33 PM

SENATOR MEYER moved to report [SB 53] from committee with individual recommendations and attached fiscal note(s). There being no objection, SB 53 moved from the Senate Transportation Standing Committee.

2:15:12 PM

There being no further business to come before the committee, Chair Kookesh adjourned the meeting at 2:15 PM.