

**ALASKA STATE LEGISLATURE**  
**SENATE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE**

February 17, 2015

3:29 p.m.

**MEMBERS PRESENT**

Senator Click Bishop, Chair  
Senator Bert Stedman, Vice Chair  
Senator Anna MacKinnon  
Senator Dennis Egan

**MEMBERS ABSENT**

Senator Lyman Hoffman

**COMMITTEE CALENDAR**

**SENATE BILL NO. 45**

"An Act relating to parks and recreation service area boundary changes."

- HEARD & HELD

**SENATE BILL NO. 43**

"An Act relating to immunity for a fire department and employees or members of a fire department."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 45

SHORT TITLE: PARKS & REC SERVICE AREA BOUNDARIES

SPONSOR(s): SENATOR(s) GIESSEL

02/09/15           (S)           READ THE FIRST TIME - REFERRALS

02/09/15           (S)           CRA, RES

02/17/15   (S)   CRA AT 3:30 PM BELTZ 105 (TSBldg)

BILL: SB 43

SHORT TITLE: IMMUNITY FOR FIRE DEPT. & MEMBERS

SPONSOR(s): SENATOR(s) COGHILL

02/06/15           (S)           READ THE FIRST TIME - REFERRALS

02/06/15           (S)           CRA, JUD

02/17/15           (S)           CRA AT 3:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

SENATOR CATHY GIESSEL  
Alaska State Legislature  
Juneau, Alaska  
**POSITION STATEMENT:** Sponsor for SB 45.

JANE CONWAY, Staff  
Senator Giessel  
Alaska State Legislature  
Juneau, Alaska  
**POSITION STATEMENT:** Provided an overview of SB 45.

JOHN RODDA, Director  
Parks and Recreation  
Municipality of Anchorage  
Anchorage, Alaska  
**POSITION STATEMENT:** Supports SB 45.

DENNIS WHEELER, Municipal Attorney  
Municipality of Anchorage  
Anchorage, Alaska  
**POSITION STATEMENT:** Supports SB 45.

JORDAN SHILLING, Staff  
Senator John Coghill  
Alaska State Legislature  
Juneau, Alaska  
**POSITION STATEMENT:** Provided an overview of SB 43.

JILL DOLAN, Assistant Borough Attorney  
Fairbanks North Star Borough  
Fairbanks, Alaska  
**POSITION STATEMENT:** Supports SB 43.

MITCH FLYNN, Fire Chief  
Steese Area Volunteer Fire Department  
Fairbanks North Star Borough  
Fairbanks, Alaska  
**POSITION STATEMENT:** Supports SB 43.

SUSIE SHUTTS, Attorney  
Legislative Legal Services  
Alaska State Legislature  
Juneau, Alaska  
**POSITION STATEMENT:** Addressed statutes that pertain to SB 43.

ROBERT GROVE, Chairman of the Board  
Ester Volunteer Fire Service Area  
Fairbanks North Star Borough  
Fairbanks, Alaska  
**POSITION STATEMENT:** Supports SB 43.

**ACTION NARRATIVE**

[3:29:02 PM](#)

**CHAIR CLICK BISHOP** called the Senate Community and Regional Affairs Standing Committee meeting to order at 3:29 p.m. Present at the call to order were Senators MacKinnon, Stedman, and Chair Bishop.

**SB 45-PARKS & REC SERVICE AREA BOUNDARIES**

[3:30:00 PM](#)

**CHAIR BISHOP** announced the consideration of SB 45.

[3:30:31 PM](#)

**SENATOR CATHY GIESSEL**, Alaska State Legislature, Juneau, explained that SB 45 deals with an issue that is happening in the Municipality of Anchorage. She explained that there are sections in Anchorage that, over time, have been excluded from taxation for the parks in the Anchorage area. She said the areas in question have significant parks within them and residents are essentially not contributing to the upkeep of those parks. She specified that SB 45 is a request from the Anchorage municipality to correct the tax exclusion oversight in the tax structure.

[3:31:54 PM](#)

**JANE CONWAY**, Staff, Senator Giessel, Alaska State Legislature, Juneau, Alaska, provided a sectional analysis on SB 45. Section 1 amends the statute to allow a borough or unified municipality to change boundaries of a Parks and Recreation Service Area (PRSA) to include a subdivision or parcel that is wholly or partially within the exterior boundaries of the service area without voter approval. She revealed that currently there needs to be voter approval in order to incorporate a service area that is not currently included for taxation.

**SENATOR MACKINNON** asked if SB 45 requires an effective date or if just the day the bill is signed is sufficient.

SENATOR GIESSEL replied that she will check on the need for an effective date.

SENATOR STEDMAN stated that recognizing the dense population of Anchorage relative to everywhere else, does the structure of SB 45 effect Fairbanks or any other populated areas.

SENATOR GIESSEL answered that Anchorage is the only municipality that is effected by SB 45.

[3:33:50 PM](#)

SENATOR EGAN joined the committee meeting.

SENATOR STEDMAN asked how Anchorage's parks and recreation boundary relates to the municipality's lines. He inquired if the municipality can change its boundaries.

SENATOR GIESSEL replied that the municipality itself actually extends to Girdwood and Portage, moving eastward to include Eagle River and Chugiak as well.

SENATOR MACKINNON added that there is more than one PRSA in the Municipality of Anchorage. She specified that Eagle River and Anchorage have separate PRSAs. She said Anchorage may choose to bond for an improvement and the folks that live in the geographic area benefit predominantly from those, folks in Eagle River have a PRSA and they tend to save their money and then invest in purchasing a park. She pointed out that Anchorage has at least two different PRSAs.

[3:35:49 PM](#)

CHAIR BISHOP asked to confirm that the map provided to the committee shows where the current PRSA boundary is in addition to the areas outside of the boundary.

SENATOR GIESSEL specified that the affected areas noted on the map of Anchorage indicate where parcels will be included in the PRSA should SB 45 be approved. She noted that the subdivision parcels include Stuckagain Heights and an area near Chugach State Park.

[3:37:24 PM](#)

JOHN RODDA, Director, Parks and Recreation, Municipality of Anchorage, Anchorage, Alaska, specified that the map identifies the existing boundaries for the municipality of Anchorage. He confirmed that Chugach/Eagle River has its own PRSA. He specified that the PRSA boundary noted on the Anchorage map is

the border from the unification of the city and the borough that occurred 40 years ago. He explained that the border has never been modified or adjusted. He surmised that nobody really thought at the time that Anchorage would grow beyond the border. He summarized that development has occurred over the years beyond the PRSA boundary and SB 45 moves the line to bring the exempt parcels into a more equitable relationship with the rest of Anchorage's taxpayers.

[3:39:32 PM](#)

SENATOR STEDMAN confirmed that Anchorage's current PRSA map shows a dated municipal boundary that has become irrelevant due to expansion. He summarized that SB 45 essentially is borough-cleanup.

SENATOR GIESSEL answered correct. She specified that the way the law is currently written, over 60 percent of the residents that live in the area have to vote to become part of the PRSA taxation structure. She revealed that areas that are not included in the PRSA have parks located in their area that nearby residents are not paying taxes for. She explained that approximately \$168 million worth of tax-valued property is not contributing to the PRSA tax base.

SENATOR MACKINNON asked if SB 45 impacts any other service areas in Alaska and noted that Fairbanks has fire service areas. She inquired what specifically SB 45 allows in regards to changing the existing boundary.

[3:42:20 PM](#)

DENNIS WHEELER, Municipal Attorney, Municipality of Anchorage, Anchorage, Alaska, replied that the focus for SB 45 is solely on PRSA and the bill is not meant to address other kinds of services areas like fire or police services. He said he does not know whether other jurisdictions in the state have a PRSA, but other areas could take advantage of SB 45 if they had a PRSA.

He noted that addressing what occurs with existing boundaries, SB 45 allows the local governing body to make an adjustment by ordinance through public hearing. He explained that the process entails the following:

- Ordinance proposed to Anchorage Assembly.
- Ordinance noticed.
- Ordinance proceeds to the affected community councils.
- Residents and councils weigh in on the proposal.

- Assembly can make adjusts that it feels is in the best interest of the citizens.

MR. WHEELER added that SB 45 also gets rid of the dual-vote requirement. He asserted that the dual-vote is inequitable and explained that even if all of the residents in Anchorage voted to include the properties to spread the tax burden, the specified property owners have special veto powers to override the measure. He summarized that the dual-vote is a governance concept that goes counter to what is normally thought of as the one person/one vote concept.

CHAIR BISHOP commented that he would like to check with the Fairbanks North Star Borough.

SENATOR EGAN added that he would like to check with the City of Juneau.

[3:44:43 PM](#)

CHAIR BISHOP stated that seeing no additional testifiers, public testimony is closed. He announced that SB 45 will be held in committee.

#### **SB 43-IMMUNITY FOR FIRE DEPT. & MEMBERS**

CHAIR BISHOP announced the consideration of SB 43.

[3:45:56 PM](#)

JORDAN SHILLING, Staff, Senator John Coghill, Alaska State Legislature, Juneau, Alaska, explained that SB 43 addresses a priority issue that came to Senator Coghill's attention during the interim from the Fairbanks North Star Borough. He specified that SB 43 addresses an inequity in the statutes regarding immunity. He said currently there is some immunity given to fire departments and their members in statute; in particular, that immunity applies to employees of municipal fire departments and municipal departments themselves. He specified that providing government immunity is fairly common and added that most, if not all states, give immunity to the staff of fire departments as well as the fire departments themselves because there are major risks in running a fire department.

[3:47:57 PM](#)

MR. SHILLING said the bill addresses AS 09.65.070(c), the section applies to staff immunity of municipally operated fire departments. He specified that the concern pertains to the way the statute was written where immunity does not apply to the

staff of the types of departments that Fairbanks has which are contract departments. He explained that the statute came into effect in 1975 as SB 257. He revealed that SB 257 was introduced by the Juneau Volunteer Fire Department and patterned after a Delaware statute. He stated that the problem with the statute is attributed to the language that seems to leave out departments that contract out with local governments. He noted that the committee's intent in 1975 was hard to delineate. He communicated that the bill's sponsor and the Fairbanks North Star Borough feel strongly that the liability protections should not be exclusive to employees of fire departments operated by municipalities, but should also be extended to include the staff of all fire departments that have a contractual relationship with local government. He added that the bill also provides immunity to contracted fire departments, the entity itself, not just the staff, and it adds to the existing immunity that municipal fire departments already have in subsection (d) of this section of law.

SENATOR STEDMAN asked if there has been any litigation since the statute came into effect in 1977.

MR. SHILLING answered that he is aware of one case that occurred in Fairbanks.

3:51:06 PM

JILL DOLAN, Assistant Borough Attorney, Fairbanks North Star Borough, Fairbanks, Alaska, confirmed that there was one case that went to the Alaska Supreme Court that brought the issue to the forefront. She specified that the case was different because at the time, the fire chiefs of the involved fire department were municipal employees and were extended immunity. She revealed that due to the current situation where fire chiefs are actually employees of the nonprofits that the North Star Borough contracts with, the borough has a concern that the contracted fire departments will lose their immunity under the current law if they are no longer considered municipal employees. She noted that the other issue in the Regner Case, [Regner v. North Star Volunteer Fire Department], was whether or not the borough could get things dismissed as a matter of law under immunity or whether or not they became fact issues for the court. She revealed that the Regner Case is actually still continuing and has been in litigation that has spanned the course of several years. She opined that immunity litigation is taxing to the resources of the fire departments where costs gets passed along to the tax payers and impacts insurance rates. She summarized

that the intent is to contain exposure and try to protect contracted fire departments from liability.

SENATOR MACKINNON asked if the bill impacts a worker's compensation claim if a firefighter is hurt.

MS. DOLAN answered that firefighters are covered under the workers' compensation laws and the bill does not impact workers' compensation claims. She specified that the bill pertains to actions such as a fire department responding to a fire and a homeowner complained that only one engine was sent rather than two.

SENATOR MACKINNON addressed gross negligence and asked if there is a higher standard that a homeowner could still lay a claim.

MS. DOLAN answered that as directed, the bill's version in front of the committee would exclude gross negligence. She summarized that no, a homeowner could not bring a claim under the circumstance noted by Senator MacKinnon.

MR. SHILLING detailed that the bill establishes total immunity for fire departments. He noted that Ms. Dolan and the borough attorneys suggested that if the committee and the Legislature is uncomfortable with complete immunity, there is language in the 911 Immunity Statutes where an exception can be made for intentional misconduct and gross negligence, an extreme form of negligence.

[3:55:35 PM](#)

MITCH FLYNN, Fire Chief, Steese Area Volunteer Fire Department, Fairbanks North Star Borough, Fairbanks, Alaska, added that he is also the CEO of a 501(c)(3) nonprofit organization that provides fire and emergency medical services (EMS) to the north and west of Fairbanks; approximately 2,200 square miles for EMS and 40 square miles for fire service areas. He said the Steese Fire Department is concerned about liability and the issue predates the Regner Case. He asserted that recruitment and retention is always a concern due to questions pertaining to liability. He said operating under possible exposure to liability becomes quite detrimental to managing a department where one worries about a lawsuit when responding to an emergency each day. He opined that if an incident happened and a lawsuit occurred in the course of the department doing its job, outside of gross negligence and willful acts of misconduct, 70,000 residents could be adversely effected by higher insurance premiums. He noted that the department's insurance broker has

indicated that SB 45's passage will reduce risk and lower insurance premiums. He summarized that SB 45 will allow more tax dollars to go towards firefighting activities and less towards high insurance policy payouts.

3:58:33 PM

CHAIR BISHOP asked if a volunteer department trains to the same standards as a municipal fire department.

CHIEF FLYNN answered yes. He stated that training probably takes on more of an emphasis because the department trains every day, every shift trains.

He noted that the staffing procedures at the Steese Area Volunteer Fire Department has improved the fire insurance premiums for homeowners, representing a 40 percent savings. He said total savings on an insurance premium for an average home ends up being about 2 to 1, so for every dollar paid in fire taxes, the department puts \$2 back into homeowner's pockets.

4:00:35 PM

SENATOR MACKINNON revealed that her two sons are volunteer firefighters and declared a potential conflict.

She noted that the Legislature's legal department has actually rewritten and reenacted AS 09.65.070. She inquired how the legal department went about the rewrite and the possible effects on the definition section. She noted that the definitions remain the same in later portions of section (d) and addressed her concern for consistency throughout the statute.

MR. SHILLING answered that he believes that all of the substantive elements of AS 09.65.070(c), as written now, are contained in the bill. He asserted that the only change brings the contract departments under the statute. He concurred with Senator MacKinnon that the statute was repealed and rewritten. He surmised that the action was done to fit current drafting conventions. He asked that Suzy Shutts, the drafter, to address the changes.

SENATOR MACKINNON asked for comment from Ms. Shutts to address whether the rewrite was a drafting conformity or whether there is any possible ramifications that might be unknown from adding the contract departments. She asked if something is going to happen to the existing municipalities or village fire departments that are currently included under different language currently in section (c).

[4:03:12 PM](#)

SUSIE SHUTTS, Attorney, Legislative Legal Services, Alaska State Legislature, Juneau, Alaska, explained that the appeal and reenactment was done to fit current drafting conformity. She specified that the two definitions in subsection (e), "municipality" and "village" are defined; that language is still used in (c) and the meaning would not be changed as far as the definitions are applied.

[4:04:17 PM](#)

ROBERT GROVE, Chairman of the Board, Ester Volunteer Fire Service Area Commission, Fairbanks North Star Borough, Fairbanks, Alaska, noted that the liability issues for fire departments goes back for over 25 years. He stated that SB 43 is very appropriate and timely by addressing an issue of knowing whether or not a department is covered for liability. He recommends that the committee pass SB 43.

[4:07:27 PM](#)

CHAIR BISHOP noted that Senator MacKinnon stated a potential conflict due to her two sons being volunteer firefighters. He declared that Senator MacKinnon has no conflict.

SENATOR EGAN announced that he still is a trustee and a former volunteer for the Juneau Fire Department.

CHAIR BISHOP called attention to Chief Flynn's comment that the realized savings from passing SB 43 could mean more assets going towards fighting fires and training, perhaps less requests coming to the Legislature as well.

SENATOR EGAN asked what did Juneau do in 1975 and inquired if the legislation addressed Juneau's service districts prior to unification.

MR. SHILLING answered that he did not know.

CHAIR BISHOP closed public comment.

CHAIR BISHOP declared that SB 43 will be held in committee.

[4:10:25 PM](#)

There being no further business to come before the committee, Chair Bishop adjourned the Senate Community and Regional Affairs Standing Committee hearing at 4:10 p.m.