

HB

153

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB153
 () Publish Date: _____

Identifier (file name): HB153-CED-CRA-03-02-09 Dept. Affected: DCCED
 Title Open Meeting Exemptions & Definition RDU Community & Regional Affairs
 Component Community & Regional Affairs
 Sponsor Community & Regional Affairs
 Requester Community & Regional Affairs Component Number 2879

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES								
CHANGE IN REVENUES ()								

FUND SOURCE (Thousands of Dollars)

	FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
1036 Com Fish							
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2009) cost: _____

POSITIONS

	FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This bill proposes to grant advisory boards and commissions the legal authority to respond to managerial and administrative functions, which otherwise may be delayed because of the Open Meeting Act.

The Department of Commerce, Community & Economic Development foresees zero fiscal impact with this legislation.

Prepared by: Tyson Fick, Legislative Liason DCCED Phone 465-2503
 Division DCCED - Community & Regional Affairs Date/Time 03/02/09 9:00am
 Approved by: Emil Notti, Commissioner Date 3/2/2009
Department of Commerce, Community and Economic Development

Fairbanks Daily News-Miner

The voice of Interior Alaska since 1903

Open and effective

Published September 3, 2008

A request by some local road service area commissioners for greater leeway under the state open meetings law seems worthy of consideration. Newspapers usually opine in favor of greater openness in government and tighter rules to make it happen. Strict application of the current law, though, causes nearly impossible problems for the small, volunteer commissions that keep many of our borough roads passable.

Wet summers, such as the one just concluding, can make a mess of the roads, especially those with gravel surfaces. Potholes are unavoidable. Washouts and soft spots are common.

Some of these problems must be fixed rapidly to avoid accidents and damage to vehicles.

Legally, commissioners must discuss and make decisions at quarterly meetings that are open to the public and announced in advance. That's reasonable and advisable.

However, Mother Nature doesn't play by the same rules. Rain clouds don't advertise in the newspaper.

Those clouds can cause damage that requires immediate work. That work may be too expensive to fit within the agreed-upon plan. Commissioners cannot legally talk with each other to reach a consensus about what to do in such situations, though, without holding a public meeting.

The Fairbanks North Star Borough's guidelines for service area commissioners explain the rules: If you need to speak to each other, you have enough business for a public meeting. To discuss work and make decisions about what will be done in the service area outside of a public meeting is a violation of the Open Meetings Act.

Perhaps the problem could be solved by giving the commissions authority to delegate some actions. If not, the law may need some tweaking, because the current situation obviously doesn't provide the kind of flexibility that road service commissions need to do their jobs.

The revisions should be limited in scope, though. Not all road service areas are informal little neighborhood operations. Some spend large amounts of money. For those reasons, their actions should be not only effective but open to public scrutiny.

**PROPOSED CHANGES TO THE OPEN MEETINGS ACT TO MAKE IT WORKABLE FOR ADVISORY BOARDS
AND COMMISSIONS WHILE PRESERVING THE INTENT AND PURPOSE OF THE ACT**

The proposed legislation attempts to solve two typical problems encountered by volunteer advisory boards and commissions when attempting to comply with the Open Meetings Act. The proposed changes make the law more workable while maintaining the intent and purposes of the Act.

1. The first issue arises because some municipal volunteer boards and commissions perform managerial and administrative functions. Examples include both fire and road service area commissioners who are responsible, once the assembly approves the service area budget, to supervise and manage the affairs of the service area. These include decisions concerning when to plow the streets, whether a pothole needs to be fixed, etc. In implementing these duties commissioners are really fulfilling the role of municipal employees.

Current state law exempts most administrative and managerial activities by exempting staff meetings and gatherings. This exemption recognizes that it would be impossible to apply the Act to the everyday transactions of governmental employees confronting day-to-day issues and problems. This exemption, however, does not currently extend to members of governmental bodies that also have administrative and managerial responsibilities. Thus, volunteer boards and commissions that try to supervise and manage the affairs of a governmental entity, like a service area, often find that they must choose between complying with the Act or providing delayed and unresponsive services.

Exempting these boards and commissions only when they meet only to fulfill their administrative and managerial functions allows them to effectively conduct business without harming any of the purposes or intent of the Open Meetings Act. These advisory bodies are still required to comply with the Act whenever they meet to make or discuss legislative or policy decisions, including recommending their annual budget and tax levy, adopting strategic plans, or discussing any other legislative policies.

2. The second issue arises due to an anomaly in state law. Although state law prescribes a minimum number of members necessary to constitute a meeting for policy-making bodies, this exception does not exist for advisory-only bodies. All that is required for a meeting of an advisory body is that the meeting be prearranged. Accordingly, a meeting exists under the Act if only two of a 12 member advisory body decide to meet to discuss to consider the business of the body. In this circumstance the rule for advisory bodies is **more** stringent than the rule governing actual policy-making bodies. The proposed change removes this anomaly by allowing two members of an advisory board to have a prearranged meeting as long as it does not result in a violation of the "three or a majority" rule applicable to policy-making bodies.

HB 153, OPEN MEETINGS: EXCEPTION AND DEFINITION

House Community & Regional Affairs, By Request

The Fairbanks North Star Borough has brought forward proposed changes to the *Open Meetings Act* to make it workable for advisory boards and commissions, while preserving the intent of the *Act*. Generally, the *Open Meetings Act* requires that all meetings of public bodies are open to the public and that the public body must provide reasonable advance notice of its meetings. The basic intent of the *Act* is to protect the public's right to know.

Currently, there are several exemptions that exclude from the open meetings law meetings of juries, parole boards, staff meetings of public employees, etc. There is no exemption, however, for members of government bodies that also have administrative and managerial responsibilities. This is causing hardship to volunteer advisory board members – such as road service area commissioners – who often find that they must choose between complying with the *Act* or providing delayed or unresponsive services.

First, HB 153 would allow a further exemption to the open meetings law for “meetings by municipal boards, committees, commissions, or other similar bodies when meeting solely to act on matters that are administrative or managerial in nature.” This will allow members of volunteer boards and commissions to perform managerial and administrative functions such as calling out snow plows or fixing potholes as the need arises. These advisory bodies would still be required to comply with the *Open Meetings Act* whenever they meet to discuss policy or budgetary decisions.

Second, HB 153 addresses an anomaly in state law by amending the definition of “meeting” for advisory boards. Currently, the law governing advisory bodies is *more* stringent than the law governing actual policy-making bodies such as a Borough. HB 153 will allow members of an advisory board to have a prearranged meeting as long as it does not result in a violation of the “three or a majority” rule applicable to policy-making bodies.

A Fairbanks North Star Borough representative is on-line to address the bill and answer any questions.

HB 153 OPEN MEETINGS: EXCEPTION AND DEFINITION

(H)C&RA Committee heard and held HB153 version R on 03-03-09

(H)C&RA Committee adopted CSHB153 Version E and moved the bill out of committee with individual recommendations on 03-12-09

CS FOR HOUSE BILL NO. 153(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered: 3/13/09

Referred: Judiciary

Sponsor(s): HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 **"An Act exempting municipal service area boards from the requirements of conducting**
2 **meetings open to the public when a meeting is administrative or managerial in nature."**

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

4 *** Section 1.** AS 44.62.310(d) is amended to read:

5 (d) This section does not apply to

6 (1) a governmental body performing a judicial or quasi-judicial
7 function when holding a meeting solely to make a decision in an adjudicatory
8 proceeding;

9 (2) juries;

10 (3) parole or pardon boards;

11 (4) meetings of a hospital medical staff;

12 (5) meetings of the governmental body or any committee of a hospital
13 when holding a meeting solely to act upon matters of professional qualifications,
14 privileges, or discipline;

AMENDMENT

HB 153 – Open Meetings: Exception and Definition

Page 2, Line 12:

(8) meetings by municipal service area boards, ~~committees~~, commissions, or other similar non-policy making bodies when meeting solely to act on matters that are administrative or managerial in nature.

By: Assembly Road Service
Area Committee

Introduced: July 21, 2008

Approved: July 21, 2008

Fairbanks North Star Borough
Assembly Road Service Area Committee

RESOLUTION NO. 2008-C

A RESOLUTION OF THE ASSEMBLY ROAD SERVICE AREA COMMITTEE ASKING
THE ASSEMBLY TO REQUEST A STATE LAW CHANGE TO THE OPEN MEETINGS
ACT

WHEREAS, there are a variety of rules, regulations, and procedures in Alaska State Law governing the conduct of public meetings, which are intended to ensure that decisions made and actions taken are public knowledge and represent the will of the public that the governing body serves. One of these is the state's Open Meetings Act; and

WHEREAS, the Open Meetings Act requires that all meetings of public bodies are open to the public and that the public body must provide reasonable notice of its meetings. In essence, the Open Meetings Act protects the public's right to know. To accomplish this, the act requires that:

- All deliberations and action taken by a public entity must be done in public view, with limited exceptions;
- The public must be provided prior knowledge of all steps occurring in the decision making process, with limited exceptions; and
- Individual actions of an official are made known.

WHEREAS, in order for these requirements to have full effect, meetings must occur as provided in the notice; and, with few exceptions, the public must be allowed to involve itself in the meeting; the public must also have access to materials being considered during the meeting; and

34 WHEREAS, with regard to advisory only bodies such as the Fairbanks
35 North Star Borough Road Service Area Commissions, current law dictates that a
36 meeting is:

- 37 • a gathering
- 38 • of any number of members of the body
- 39 • prearranged
- 40 • for the purpose of considering any matter upon which the body is empowered to
41 act; and

42 WHEREAS, Service Area Commissions have management and
43 maintenance duties to perform, requiring some discussion between commissioners thus
44 making compliance with current state law difficult to comply with; and

45 WHEREAS, exemption from and/or amendments to the following areas of
46 the Act are requested:

- 47 • Specify the number of members of an advisory body required for action to
48 constitute a meeting as defined in AS 44.62.310(h)(2)(B);
- 49 • Include an exemption in AS 44.62.310(d) when governmental bodies such as
50 Service Area Commissions meet to act on behalf of the borough to supervise
51 and manage the affairs of the service area, to implement policies and programs
52 to protect the safety of the public and preserve the service area's capital assets
53 in a fiscally prudent manner, and other duties considered managerial in nature;

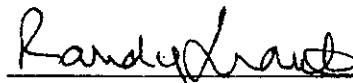
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NOW, THEREFORE, BE IT RESOLVED by the Fairbanks North Star Borough Assembly Road Service Area Committee requests that a recommendation be made to the Alaska State Legislature by the Fairbanks North Star Borough Assembly to amend state law to change the Open Meetings Act to allow Road Service Area Commissions to effectively conduct business within their areas.

BE IT FURTHER RESOLVED that a copy of this resolution shall be forwarded to the Fairbanks North Star Borough Assembly.

PASSED AND APPROVED THIS 21st DAY OF JULY, 2008.



Randy Frank
Chair



Fairbanks North Star Borough

819 Pioneer Road

P.O. Box 1207

Fairbanks, Alaska 99701-1207

Office of the Mayor

Phone: 479-1207

Fax: 479-1208

http://www.fnsb.org

March 3, 2009

Representative Cathy Munoz, Co-Chair
Representative Bob Herron, Co-Chair
House Community & Regional Affairs Committee
State Capitol
Juneau, Alaska 99801

Re: Support for HB 153

Dear Representatives Munoz & Herron:

The Fairbanks North Star Borough (FNSB) appreciates the House Community & Regional Affairs Committee for introducing House Bill 153, which will help make the Open Meetings Act more workable for volunteer advisory boards and commissions while preserving the intent and purpose of the Act.

The Open Meetings Act requires that all meetings of public bodies are open to the public and that the public body must provide reasonable notice of its meetings. The FNSB strongly supports maintaining the essence of the Act which is to protect the public's right to know.

Currently, there are provisions in the open meetings law that exempt meetings of juries, parole boards, staff meetings of public employees, etc. There is no exemption, however, for members of advisory bodies that also have administrative and managerial responsibilities. This is causing hardship to volunteer advisory board members - such as the FNSB's service area commissioners - who often find that they must choose between complying with the Act or providing delayed or unresponsive services. The FNSB supports the provision in HB 153 that would allow a further exemption for volunteer advisory bodies when meeting solely to act on matters that are administrative or managerial in nature, such as calling out snow plows, clearing brush or fixing potholes as needs arise.

With regard to the definition of "meeting" for advisory-only bodies such as the FNSB's service area commissions, the law is currently *more* stringent than the law governing policy-making bodies. Our service area commissions perform duties that are administrative and managerial in nature, requiring some discussion between commissioners, thus making compliance with current state law difficult to comply with. The FNSB supports the provision in HB 153 that will allow members of an advisory board to meet as long as it does not result in a violation of the "three or a majority" rule applicable to policy-making bodies.

The Fairbanks North Star Borough strongly supports HB 153 in its purpose to amend state law to allow volunteer advisory boards and commissions to effectively conduct business within their areas, while maintaining the basic intent of the Open Meetings Act.

Sincerely,

Jim Whitaker, Mayor

Nadine Winters, Presiding Officer

26-LS0653AE
Kane
3/5/09

CS FOR HOUSE BILL NO. 153(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE BY REQUEST

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14 privileges, or discipline;

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(6) staff meetings or other gatherings of the employees of a public entity, including meetings of an employee group established by policy of the Board of Regents of the University of Alaska or held while acting in an advisory capacity to the Board of Regents; [OR]

(7) meetings held for the purpose of participating in or attending a gathering of a national, state, or regional organization of which the public entity, governmental body, or member of the governmental body is a member, but only if no action is taken and no business of the governmental body is conducted at the meetings; or

(8) meetings of municipal service area boards established under AS 29.35.450 - 29.35.490 when meeting solely to act on matters that are administrative or managerial in nature.

Rob Earl

From: yuri@gci.net on behalf of yuri morgan [yuri@gci.net]
Sent: Thursday, March 05, 2009 4:26 PM
To: Rob Earl
Cc: 'Linda Anderson'
Subject: Re: Draft CSHB 153 (CRA)
Attachments: Draft CS for HB 153.pdf; HB0153A.pdf; FNSB Support for HB153.pdf

Thanks, Rob, for getting this CS drafted to help address the Committee's issues with HB 153. A couple of comments for your consideration:

Regarding Section 1 (AS 44.62.310(d)): The FNSB supports the committee in "tightening" the language to only include service area boards. Fyi, the intent in offering the original language was to help address issues with other municipalities in the state that may have similar advisory-only bodies acting in administrative/managerial capacities.

Regarding Section 2 (AS 44.62.310(h)(2)): It is not clear as to why this section has been removed in the draft CS. I recall no opposition from committee members at Tuesday's hearing on the definition of "meeting." In fact, there appeared to be broad support for correcting this statutory anomaly by holding volunteer advisory bodies to the same "three or a majority" rule that governs actual policy-making bodies. We would request that the Committee reinstate Section 2 in the CS.

Also, attached for your review is a letter of support from Mayor Whitaker, and the FNSB Assembly presiding officer, Nadine Winters.

Thanks again, and see you Monday afternoon with Rep. Herron!

yuri

Anderson Group, LLC
319 Seward St., Ste. 11
Juneau, AK 99801
907.388.8611
907.586.1061 fax
www.andersongroupllc.com

AMENDMENT

HB 153 – Open Meetings: Exception and Definition

Page 2, Line 12:

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