

HB

153



HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

COMMITTEE MEMBERS

Rep. Jay Ramras
Chairman
Room, 118
(907) 465-3004

Rep. Nancy Dahlstrom
Vice-Chairman
Room 409
(907) 465-3783

Rep. John Coghill
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Rep. Bob Lynn
Room 104
(907) 465-4931

Rep. Carl Gatto
Room 108
(907) 465-3743

Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: April 1, 2009

To: Representative John Coghill
Chairman House Rules Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: Referral File for HB153

Please accept this memo as the referral file for HB153. Attached are the following documents:

- Open Meetings: Sponsor Statement
- CSHB153(JUD) 26-LS0653\S
- CSHB153(CRA) 26-LS0653\E
- HB153 26-LS0653\R
- EED Zero Fiscal Note
- Support
- Relevant Statutes and Ordinances
- HJUD Committee Report

**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.

26-LS0653\S

Kane

3/25/09

CS FOR HOUSE BILL NO. 153(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

--- TWENTY-SIXTH LEGISLATURE - FIRST SESSION ---

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

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 **and amending the definition of 'meeting' as it relates to public governmental meetings."**

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

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

6 (d) This section does not apply to

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

10 (2) juries;

11 (3) parole or pardon boards;

12 (4) meetings of a hospital medical staff;

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

1 privileges, or discipline;

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

-6 (7) meetings held for the purpose of participating in or attending a
7 gathering of a national, state, or regional organization of which the public entity,
8 governmental body, or member of the governmental body is a member, but only if no
9 action is taken and no business of the governmental body is conducted at the
10 meetings; or

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

14 * Sec. 2. AS 44.62.310(h)(2) is amended to read:

15 (2) "meeting" means a gathering of members of a governmental body
16 when

17 (A) more than three members or a majority of the members,
18 whichever is less, are present, a matter upon which the governmental body is
19 empowered to act is considered by the members collectively, and the
20 governmental body has the authority to establish policies or make decisions for
21 a public entity; or

22 (B) more than three members or a majority of the
23 members, whichever is less, are present, the gathering is prearranged for the
24 purpose of considering a matter upon which the governmental body is
25 empowered to act, and the governmental body has only authority to advise or
26 make recommendations for a public entity but has no authority to establish
27 policies or make decisions for the public entity;

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
 Title: Open Meeting Exemptions & Definition
 Dept. Affected: DCCED
 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	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

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	0.0	0.0

Estimate of any current year (FY2009) cost: _____

POSITIONS

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
 Division: DCCED - Community & Regional Affairs
 Approved by: Emil Notti, Commissioner
Department of Commerce, Community and Economic Development

Phone 465-2503
 Date/Time 03/02/09 9:00am
 Date 3/2/2009



Fairbanks North Star Borough

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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

1 By: Assembly Road Service
2 Area Committee
3 Introduced: July 21, 2008
4 Approved: July 21, 2008
5
6

7 Fairbanks North Star Borough
8 Assembly Road Service Area Committee
9

10 RESOLUTION NO. 2008-C

11
12 A RESOLUTION OF THE ASSEMBLY ROAD SERVICE AREA COMMITTEE ASKING
13 THE ASSEMBLY TO REQUEST A STATE LAW CHANGE TO THE OPEN MEETINGS
14 ACT
15

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

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

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

30 WHEREAS, in order for these requirements to have full effect, meetings
31 must occur as provided in the notice; and, with few exceptions, the public must be
32 allowed to involve itself in the meeting; the public must also have access to materials
33 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;

54

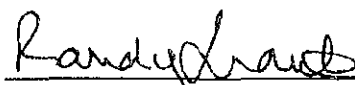
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NOW, THEREFORE, BE IT RESOLVED by the Fairbanks North Star Borough Assembly Road Service Area Committee requests that a recommendation be made to the Alaska State Legislature by the Fairbanks North Star Borough Assembly to amend state law to change 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 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.

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Daily News - Miner

Open meeting rules hamper Fairbanks area road officials

By [Rena D elbridge](#)

Published Tuesday, March 31, 2009

JUNEAU — Road service area commissioners and municipal officials in Fairbanks urged legislators to approve a bill allowing commissioners to bypass open meeting law requirements when making routine decisions.

“Road service commissioners cannot have any discussion amongst themselves. ... without having a public meeting,” said Ronald Illingworth, chairman of the 23-Mile Slough Road Service Area near Fairbanks.

Instead, the volunteers are forced to either comply with, ignore or figure ways to circumvent public meetings laws, he said.

“This should not be an acceptable practice,” he testified before a legislative committee Monday. “This bill addresses those concerns.”

Sen. Gene Therriault, R-North Pole, pre-filed Senate Bill 48 before the session started. Sen. Joe Thomas, D-Fairbanks, is a co-sponsor.

Most of the state’s service areas are within the Fairbanks North Star Borough. Anchorage has several.

Therriault said the bill would offer some relief to service area commissioners when they need to consult one another on basic decisions — things like whether to call out a contractor to remove hard-packed snow or to replace a washed-out culvert.

That business is most effectively done with a phone call, an e-mail or a window-to-window chat stopped on the road, he suggested.

But under the Alaska Open Meetings Act, commissioners can’t talk to each other, he said. Two or more elected officials talking official business constitutes a meeting.

His bill would offer leeway in carrying out basic tasks, but it would require the boards to conduct regular business, such as making policy and crafting budgets, in public meetings.

“Road service areas are a fact of life in our region,” Illingworth said. “the current public meeting law makes it almost impossible to conduct routine business without breaking the law.”

A committee of first referral expanded Therriault’s plan to exempt a greater range of boards.

“There was some thought that was just too broad,” he said.

The Alaska Municipal League supports the bill, director Kathy Wasserman said.

While the league respects the Open Meetings Act, Therriault’s measure would “enable business to get done without having to call a meeting to plow a road,” she testified.

Renee Broker, an attorney for the Fairbanks North Star Borough, said the measure would fix two “unintended consequences” of the meetings act without diluting public policy goals.

Commissioners, who are generally volunteers, can’t keep within the act’s bounds while performing day-to-day administrative work, she said.

“If it only takes two to have a gathering, then you’ve got a meeting,” Broker said.

Sen. Bill Wielechowski, D-Anchorage, was hesitant to move fast on the bill.

“This is going to impact much more than just municipal service area boards,” he cautioned.

Judiciary chairman Sen. Hollis French, D-Anchorage, said the bill is “something we probably want to ponder, at least overnight,” and held the bill for more deliberation. Therriault sits on Judiciary.

Versions passed through the Community and Regional Affairs and the Transportation committees.

(7) whether and to what extent the governmental body has, before or after the lawsuit was filed to void the action, engaged in or attempted to engage in the public reconsideration of matters originally considered in violation of this section;

(8) the degree to which violations of this section were wilful, flagrant, or obvious;

(9) the degree to which the governing body failed to adhere to the policy under AS 44.62.312(a).

(g) Subsection (f) of this section does not apply to a governmental body that has only authority to advise or make recommendations to a public entity and has no authority to establish policies or make decisions for the public entity.

(h) In this section,

(1) "governmental body" means an assembly, council, board, commission, committee, or other similar body of a public entity with the authority to establish policies or make decisions for the public entity or with the authority to advise or make recommendations to the public entity; "governmental body" includes the members of a subcommittee or other subordinate unit of a governmental body if the subordinate unit consists of two or more members;

(2) "meeting" means a gathering of members of a governmental body when

(A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity; or

(B) the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity;

(3) "public entity" means an entity of the state or of a political subdivision of the state including an agency, a board or commission, the University of Alaska, a public authority or corporation, a municipality, a school district, and other governmental units of the state or a political subdivision of the state; it does not include the court system or the legislative branch of state government. (§ 1 art VI (ch 1) ch 143 SLA 1959; am § 1 ch 48 SLA 1966; am § 1 ch 78 SLA 1968; am § 1 ch 7 SLA 1969; am §§ 1, 2 ch 98 SLA 1972; am § 2 ch 100 SLA 1972; am § 1 ch 189 SLA 1976; am §§ 2, 3 ch 54 SLA 1985; am § 2 ch 201 SLA 1990; am § 7 ch 74 SLA 1991; am §§ 2 — 8 ch 69 SLA 1994; am § 7 ch 54 SLA 2000)

Cross references. — For provisions related to meetings of legislative bodies, see AS 24.60.037.

Effect of amendments. — The 2000 amendment, effective May 12, 2000, substituted "posting notice of a meeting on the Alaska Online Public Notice System as required by AS 44.62.175(a)" for "the publication required by AS 44.62.175(a) in the Alaska Administrative Journal" in the third sentence in subsection (e).

Opinions of attorney general. — The mental health lands working group is not a public body covered by the Open Meetings Act, and its meetings are not covered by the Open Meetings Act. That working group was not a formally established entity with a specific charge to take specific action or give specific advice, and the activities of the group were not financed by public money. It consisted of individuals, including state department heads, meeting merely to begin settlement discussions to resolve the legal issues in a lawsuit. January 1, 1992. Op. Att'y Gen.

The notice requirements of the Open Meetings Act require that the Museum Collections Advisory Committee publish a schedule of its fixed monthly meetings twice yearly, stating the date, time, and place of

the meetings. For unscheduled meetings, the public may be notified by public service announcements on the radio, as long as there is confidence that the announcements will in fact be made; but regardless of the media used, at least three days notice should be given. December 30, 1992. Op. Att'y Gen.

The present practice of allowing boards and commissions to conduct routing business by mail does not violate the Open Meetings Act. It neither constitutes a meeting, nor is it motivated by an intent to circumvent the Open Meetings Act. Rather, mail voting is expressly authorized by statute. It also furthers sound policy by reducing both administrative costs and administrative burdens. July 5, 1994. Op. Att'y Gen.

AS 44.62.310(a) unambiguously provides for teleconference meetings. AS 44.62.310(e) also requires that all teleconferencing facilities be open to the public and that they be noticed. If undue hardship makes it impossible or impractical for a member to participate from a noticed public teleconferencing site, then the governmental body may allow that member to participate in deliberations and votes of that governmental body by telephone without giving public notice of him or her location. Aug. 21, 1995. Op. Att'y Gen.

"Meeting". — A private meeting of the Anchorage Municipal developer to discuss in detail the action for rezoning violated this section purposes of the Open Meetings Act, a step of the deliberative and decision-making process when a governmental unit meets to conduct its business. The rezoning ordinance was adopted in a public assembly that allowed a modified process was therefore held void. *Homeowners Ass'n v. Municipality of Anchorage*, 666 P.2d 1317 (Alaska 1983).

Findings. — There is nothing in the Administrative Procedure Act requiring a finding of fact when exercising its jurisdiction, and therefore there is nothing in the manner in which findings are made that is disapproved. *State v. Hobert*, 743 P.2d 1000 (Alaska App. 1987), aff'd, 803 P.2d 863 (Alaska 1990).

The scope of subsection (a). — The scope of subsection (a) is not limited to decision-making bodies. *State v. Geistauts*, 666 P.2d 1317 (Alaska 1983) (decided prior to 1994 amendment) exclusion under paragraph (d)(6)).

Neither the Department of Corrections nor the Department of Administration violate the Administrative Procedure Act, because the act is not intended to informal groups of state employees to take collective action by vote. It is impossible to apply the act to the employees when they meet with their supervisors outside of state government business. *KILA v. State of Alaska*, 876 P.2d 1102 (Alaska 1994).

No express exception to public records act. — The Open Meetings Act, which provides for public access to sessions when subjects potentially discussed, does not constitute an exception to the public records act. The public records act requires disclosure of documents produced at such sessions. *Anchorage v. Anchorage Municipality*, 666 P.2d 584 (Alaska 1993).

Meetings with attorney. — The attorney-client privilege operates concurrently with the Open Meetings Act, although it is not an express exception to the act. The board's executive session, called to discuss this case with its attorney, did not violate the act. The privilege should not be applied to the public body litigation. Rather, the rationale for the act is to ensure candid discussion of the facts and the law. The privilege thus should be applied only when the revelation of the communication will cause an undue hardship or there is some other compelling reason for the communication to be confidential. *Anchorage v. Fairbanks N. Star Borough*, 666 P.2d 124 (Alaska 1993).

Section applies to local university. — The local tenure committee of the University of Alaska comes within the act. *University of Alaska v. State of Alaska*, 666 P.2d 124 (Alaska 1993) (decided prior to 1994 amendment) which added the exclusion under paragraph (d)(6)).

HB153

Article 6. Construction of Powers.

Section	Section
400. General construction	420. Enumeration of powers
410. Extent of powers	

Sec. 29.35.400. General construction. A liberal construction shall be given to all powers and functions of a municipality conferred in this title. (§ 10 ch 74 SLA 1985)

NOTES TO DECISIONS

Quoted in McCormick v. City of Dillingham, 16 P.3d 735 (Alaska 2001); Stanek v. Kenai Peninsula Borough, 81 P.3d 268 (Alaska 2003).

Sec. 29.35.410. Extent of powers. Unless otherwise limited by law, a municipality has and may exercise all powers and functions necessarily or fairly implied in or incident to the purpose of all powers and functions conferred in this title. (§ 10 ch 74 SLA 1985)

NOTES TO DECISIONS

The city may exercise implied authority in police control where the exigencies of municipal life seem to require more rigid regulation than is required in the state at large. Guidoni v. Wheeler, 230 F. 93 (9th Cir. 1916), decided under former, similar law. Quoted in Stanek v. Kenai Peninsula Borough, 81 P.3d 268 (Alaska 2003).

Sec. 29.35.420. Enumeration of powers. A specific example in an enumerated power or function conferred upon a municipality in this title is illustrative of the object and not a limitation on or exclusion from the exercise of the power or function. (§ 10 ch 74 SLA 1985)

Revisor's notes. — In 2008, "A specific example" was substituted for "Specific examples" to correct a manifest grammatical error.

Article 7. Service Areas.

Section	Section
450. Service areas	480. Service areas in first class boroughs
460. Service area boards	490. Service areas in second and third class boroughs
470. Financing	

Sec. 29.35.450. Service areas. (a) A service area to provide special services in a borough or unified municipality may be established, operated, altered, or abolished by ordinance, subject to (c) of this section. Special services include services not provided by the unified municipality or a higher or different level of services. Special services include services not provided by a borough on an areawide or nonareawide basis in the borough or a higher or different level of services than that provided on an areawide or nonareawide basis. A borough may include a city in a service area if

- (1) the city agrees by ordinance; or
 - (2) approval is granted by a majority of voters residing in the city, and by a majority of voters residing inside the boundaries of the proposed service area but outside of the city.
- (b) A new service area may not be established if, consistent with the purposes of Alaska Const., art. X, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.
- (c) If voters reside within a service area that provides road, fire protection, or parks and recreation services, abolishment of the service area is subject to approval by the

majority of the voters residing in the service area who vote on the question. A service area that provides road, fire protection, or parks and recreation services in which voters reside may not be abolished and replaced by a larger service area unless that proposal is approved, separately, by a majority of the voters who vote on the question residing in the existing service area and by a majority of the voters who vote on the question residing in the area proposed to be included within the new service area but outside of the existing service area. A service area that provides road, fire protection, or parks and recreation services in which voters reside may not be altered or combined with another service area unless that proposal is approved, separately, by a majority of the voters who vote on the question and who reside in each of the service areas or in the area outside of service areas that is affected by the proposal. This subsection does not apply

(1) to a proposed change to a service area that provides fire protection services that would result in increasing the number of parcels of land in the service area or successor service area if the increase is not more than six percent and would add not more than 1,000 residents;

(2) in a second class borough to abolishment of a road service area or consolidation of two or more road service areas if

(A) taxes have not been levied in the service area for road maintenance or construction during the last 12 months and there is no balance in any account available to pay for these road services for the service area;

(B) during the last 12 months, the service area board has not met with a quorum present and in accordance with law; or

(C) there are no road maintenance contracts in effect for the service area or the existing road maintenance contracts fail to provide for minimum road standards required by law that are necessary to protect the borough from civil liability;

(3) to require approval by the voters residing in a subdivision or parcel proposed to be added to a road service area if roads maintained by the service area provide the only access to the subdivision or parcel or provide access to the subdivision or parcel that is required by the subdivision plat or by other regulation or ordinance;

(4) to a change in the boundaries of a road service area to exclude a subdivision or parcel that does not rely on the use of roads maintained by the service area for the subdivision's or parcel's only access or for access that is required by the subdivision plat or by other regulation or ordinance.

(d) This section applies to a home rule or general law municipality. (§ 10 ch 74 SLA 1985; am §§ 2, 3 ch 31 SLA 2001; am § 1 ch 29 SLA 2005; am § 1 ch 21 SLA 2007)

Effect of amendments. — The 2005 amendment, effective May 27, 2005, in subsection (c) added the last sentence in the introductory language, added paragraphs (1) — (3), and made stylistic changes.

The 2007 amendment, effective September 4, 2007, inserted the paragraph (c)(1) and (c)(2) designations, making related changes, and added paragraphs (c)(3) and (c)(4).

Opinions of attorney general. — While local emergency planning districts may have the same geographical boundaries as service areas, the districts and the LEPCs cannot take the form of service areas. May 29, 1992 Op. Att'y Gen.

NOTES TO DECISIONS

AS 29.05.021(b) is not in conflict with either subsection (b) or Alaska Const., art X, § 5; rather subsection (b), which follows the language of the Alaska Constitution is a limitation on the creation of new service areas and in contrast, AS 29.05.021(b) is a limitation on the incorporation of cities. Keane v. Local Boundary Comm'n, 893 P.2d 1239 (Alaska 1995).

Expansion of service area. — A municipality had the authority under its charter and ordinances to expand a police service area to include an area with-

out a separate vote of that area's residents. Area G Home & Landowners Org., Inc. v. Anchorage, 927 P.2d 728 (Alaska 1996), cert. denied, 520 U.S. 1211, 117 S. Ct. 1694, 137 L. Ed. 2d 821 (1997).

Preference for incorporation of cities. — It is reasonable to interpret subsection (b) and Alaska Const., art. X, § 5 as preferring incorporation of a city over the creation of new service areas. Keane v. Local Boundary Comm'n, 893 P.2d 1239 (Alaska 1995).

An ordinance was valid without voter approval where it was merely an "alteration" of existing

service areas. The governing body elected to appointed, which was administration of the service area consolidated four service areas

Sec. 29.35.460. Service elected board to supervise SLA 1985)

Sec. 29.35.470. Finan taxes, charges, or assessm assembly authorizes the l and the issuance of bonds (b) The assembly may t within a service area to p than that provided gener zone that exceed the amou the services provided in tl

Sec. 29.35.480. Servic assembly may exercise in assembly may exercise in : a first class borough. (§ 1

Sec. 29.35.490. Servic class borough may exercis or a nonareawide power t (1) the exercise of the service area; or

(2) all owners of real pr the power if no voters res (b) If the exercise of th service area, a third class prohibited by law.

(c) A second or third c vacant, unappropriated, ; class borough may establ natural resources, that owned by the state and c third class borough may subsection necessary to c platting, and land use re;

When voter approval not r mayor and assembly are exerci within the same geographical a the same constraints with res

Article 8. Haz

Section
500. Reporting
510. Inspections: penalties
520. Fees

the question. A service area
 services in which voters reside
 area unless that proposal is
 the question residing in the
 on the question residing in
 a but outside of the existing
 on, or parks and recreation
 and with another service area
 of the voters who vote on the
 area outside of service areas
 ply
 fire protection services that
 the service area or successor
 would add not more than
 ice area or consolidation of
 aintenance or construction
 count available to pay for
 s not met with a quorum

r the service area or the
 m road standards required
 ability;
 n or parcel proposed to be
 ice area provide the only
 bdivision or parcel that is
 nance;
 exclude a subdivision or
 the service area for the
 ed by the subdivision plat
 cipality. (§ 10 ch 74 SLA
 § 1 ch 21 SLA 2007)

ney general. — While local
 districts may have the same
 es as service areas, the districts
 take the form of service areas.
 y Gen.

that area's residents. Area G
 Org., Inc. v. Anchorage, 927
 cert. denied, 520 U.S. 1211,
 Ed. 2d 821 (1997).
 rporation of cities. — It is
 t subsection (b) and Alaska
 effering incorporation of a city
 service areas. Keane v. Local
 P.2d 1239 (Alaska 1995).
 valid without voter ap-
 rely an "alteration" of existing

service areas. The governing board changed from
 elected to appointed, which was an alteration in the
 administration of the service area, and the ordinance
 consolidated four service areas into one, which al-

lowed the same powers to be exercised within the
 same areas. North Kenai Peninsula Rd. Maintenance
 Serv. Area v. Kenai Peninsula Borough, 850 P.2d 636
 (Alaska 1993).

Sec. 29.35.460. Service area boards. The assembly may provide for an appointed or
 elected board to supervise the furnishing of special services in a service area. (§ 10 ch 74
 SLA 1985)

Sec. 29.35.470. Financing. (a) The assembly may levy or authorize the levying of
 taxes, charges, or assessments in a service area to finance the special services. If the
 assembly authorizes the levying of taxes, charges, or assessments, the rate of taxation
 and the issuance of bonds are subject to assembly approval.

(b) The assembly may by ordinance establish, alter, and abolish differential tax zones
 within a service area to provide and levy property taxes for a different level of services
 than that provided generally in the service area. Taxes levied within a differential tax
 zone that exceed the amount that would have otherwise been levied may only be used for
 the services provided in that zone. (§ 10 ch 74 SLA 1985; am § 4 ch 31 SLA 2001)

Sec. 29.35.480. Service areas in first class boroughs. In a first class borough, the
 assembly may exercise in a service area any power granted a first class city by law. The
 assembly may exercise in a service area any nonareawide power that may be exercised by
 a first class borough. (§ 10 ch 74 SLA 1985)

Sec. 29.35.490. Service areas in second and third class boroughs. (a) A second
 class borough may exercise in a service area any power granted a first class city by law
 or a nonareawide power that may be exercised by a first class borough if

(1) the exercise of the power is approved by a majority of the voters residing in the
 service area; or

(2) all owners of real property in the service area consent in writing to the exercise of
 the power if no voters reside in the service area.

(b) If the exercise of the power is approved by a majority of the voters residing in the
 service area, a third class borough may exercise in a service area any power not otherwise
 prohibited by law.

(c) A second or third class borough may establish a service area that includes only
 vacant, unappropriated, and unreserved land owned by the borough. A second or third
 class borough may establish a service area, with the concurrence of the commissioner of
 natural resources, that includes only vacant, unappropriated, and unreserved land
 owned by the state and classified for disposal to individuals. By ordinance a second or
 third class borough may provide the services in a service area established under this
 subsection necessary to develop state or municipal land as required by the planning,
 platting, and land use regulations of the borough. (§ 10 ch 74 SLA 1985)

NOTES TO DECISIONS

When voter approval not required. — Where a
 mayor and assembly are exercising the same powers
 within the same geographical area and are subject to
 the same constraints with respect to approval and

appropriation that existed before the alteration, voter
 approval of an ordinance is not required. North Kenai
 Peninsula Rd. Maintenance Serv. Area v. Kenai Pen-
 insula Borough, 850 P.2d 636 (Alaska 1993).

Article 8. Hazardous Chemicals, Materials, and Wastes.

Section
 500. Reporting
 510. Inspections; penalties
 520. Fees

Section
 530. Duties of municipalities; powers of other agen-
 cies
 540. Public access to information

Chapter 14.02
SERVICE AREA DISTRICT COUNCILS

Sections:

- 14.02.010 Establishment of service area district councils.
- 14.02.020 Service area district council membership and representation.
- 14.02.030 Assembly road service area committee membership.
- 14.02.040 Powers and duties.
- 14.02.050 Procedures and miscellaneous matters.

14.02.010 Establishment of service area district councils.

There is hereby established six service area district councils with the geographic boundaries as shown on the map entitled "Service Area District Council Geographical Boundaries" in the clerk's office and further described as follows:

A. District 1 – Salcha. Commencing at the confluence of the Chena River flood control levee and the north bank of the Tanana River; thence northeasterly along the flood control levee to the Chena River; thence generally easterly along the center of the Chena River to the confluence with the east fork of the Chena River (also known as the middle fork); thence easterly along the center of the east fork of the Chena River to where its headwaters meet with the Fairbanks North Star Borough boundary; thence easterly along the FNSB boundary for approximately 25 miles until the boundary turns to the south; thence continuing to follow the FNSB boundary generally south for approximately 32 miles until the boundary turns to the west, which forms the southern FNSB boundary; thence continuing to follow the southern FNSB boundary generally west for approximately 70 miles to its intersection with the Tanana River; thence generally north-northwesterly along the north bank of the Tanana River for approximately 45 miles to the intersection with the Chena flood control levee and the point of beginning for this description.

B. District 2 – Badger. Commencing at the confluence of the Chena River flood control levee and the north bank of the Tanana River; thence northeasterly along the flood control levee to the Chena River; thence generally northwesterly along the center of the Chena River to its intersection with the section line between Sections 10 and 11, T1S, R2E; thence north along the eastern section line of Sections 10 and 3, T1S, R2E to the northeast corner of Section 3, T1S, R2E and the Fairbanks base line; thence west along the Fairbanks base line 6.5 miles to the intersection with the eastern boundary of the city of Fairbanks; thence generally southerly along the city of Fairbanks boundary to the intersection with the north bank of the Tanana River; thence generally east-southeast along the north bank of the Tanana River to the confluence of the Chena River flood control levee and the north bank of the Tanana River and the point of beginning for this description.

C. District 3 – Chena Hot Springs Road. Commencing at intersection of the Steese Highway and the Fairbanks base line, which coincides, with the northern boundary of the city limits of the city of Fairbanks; thence generally east along the northern Fairbanks city limits, through Section 36, T1N, R1W, and Sections 31, 32, and 33, T1N, R1E to Section 34, T1N, R1E; thence east along the north section line of Section 34 approximately 0.5 mile; thence south along the east boundary of the city of Fairbanks to the intersection with the Fairbanks base line; thence east along the Fairbanks base line 6.5 miles to the northeast corner of Section 3, T1S, R2E; thence south along the eastern section line of Sections 3 and 10, T1S, R2E to the

intersection with the Chena River; thence generally easterly along the center of the Chena River to the confluence with the east fork of the Chena River (also known as the middle fork); thence easterly along the center of the east fork of the Chena River to where its headwaters meet with the Fairbanks North Star Borough boundary; thence generally west-northwest along the FNSB boundary for approximately 68 miles to an intersection with a ridgeline that separates the Chena River drainage from the Chatanika River drainage, located in the northwest quarter of Section 9, T5N, R8E; thence generally west along a ridgeline that separates the Chena River drainage from the Chatanika River drainage for a distance of approximately 35 miles to the intersection of the ridgeline with the corner of Sections 9, 10, 15, and 16, T3N, R3E; thence south along the eastern section line of Sections 16, 21, 28, and 33, T3N, R3E and Section 4, T2N, R3E to the southeast corner of Section 4; thence west along the southern section line of Sections 4 and 5, T2N, R3E to the southwest corner of Section 5; thence south along the eastern section lines of Sections 7, 18, 19 and 30, T2N, R3E to the southeast corner of Section 30; thence west along the southern section lines of Section 30, T2N, R3E and continuing along the southern section lines of Sections 25, 26, 27, 28, 29, and 30, T2N, R2E, and continuing along southern section lines of Sections 25, 26, 27, 28, and 29, T2N, R1E to the intersection with the Steese Highway; thence generally south along the centerline of the Steese Highway to the intersection of the Steese Highway and the Fairbanks base line and the point of beginning of this description.

D. District 4 – Farmer’s Loop. Commencing at intersection of the Steese Highway and the Fairbanks base line, which coincides with the northern boundary of the city limits of the city of Fairbanks; thence generally north along the centerline of the Steese Highway to the intersection with Goldstream Road; thence west along the centerline of Goldstream Road to the crossing of Goldstream Creek; thence generally west along the center of Goldstream Creek to the intersection with the western section line of Section 24, T1N, R2W; thence south along the western section lines of Sections 24, 25, and 36, T1N, R2W to the intersection with Sheep Creek Road; thence generally east along the centerline of Sheep Creek Road to the intersection with Tanana Farm Road; thence continuing generally east along the centerline of Tanana Farm Road to the intersection with Tanana Loop Road; thence east along the centerline of Tanana Loop Road as it continues generally east, then turns north, continuing to the intersection with North Tanana Drive; thence east along North Tanana Drive to the intersection with the north section line of Section 6, T1S, R1W; thence east along the north section line of Sections 6 and 5, T1S, R1W to the intersection with College Road; thence east along the centerline of College Road until it coincides with the northern boundary of the city of Fairbanks; thence generally east along the north boundary of the city of Fairbanks to the intersection with the Steese Highway and the point of beginning of this description.

E. District 5 – North Borough. Commencing at the intersection of the Steese Highway and Goldstream Road; thence west along the centerline of Goldstream Road to the crossing of Goldstream Creek; thence generally west along the center of Goldstream Creek to the intersection with the western section line of Section 24, T1N, R2W; thence south along the western section lines of Sections 24, 25, and 36, T1N, R2W to the intersection with Sheep Creek Road; thence generally southeast along the centerline of Sheep Creek Road to the intersection with the Fairbanks base line; thence west along the Fairbanks base line approximately 23 miles to the western FNSB boundary; thence north along the western FNSB boundary to the northwest corner of the FNSB; thence generally east along northern FNSB boundary to the intersection with the Steese Highway; thence generally south along the

eastern FNSB boundary approximately 11.5 miles to an intersection with a ridgeline that separates the Chena River drainage from the Chatanika River drainage, located in the northwest quarter of Section 9, T5N, R8E; thence generally west along a ridgeline that separates the Chena River drainage from the Chatanika River drainage for a distance of approximately 35 miles to the intersection of the ridgeline with the corner of Sections 9, 10, 15, and 16, T3N, R3E; thence south along the eastern section line of Sections 16, 21, 28, and 33, T3N, R3E and Section 4, T2N, R3E to the southeast corner of Section 4; thence west along the southern section line of Sections 4 and 5, T2N, R 3E to the southwest corner of Section 5; thence south along the eastern section lines of Sections 7, 18, 19 and 30, T2N, R3E to the southeast corner of Section 30; thence west along the southern section lines of Section 30, T2N, R3E and continuing along the southern section lines of Sections 25, 26, 27, 28, 29, and 30, T2N, R2E, and continuing along southern section lines of Sections 25, 26, 27, 28, and 29, T2N, R1E to the intersection with the Steese Highway; thence generally south along the centerline of the Steese Highway to the intersection of the Steese Highway and Goldstream Road and the point of beginning of this description.

F. District 6 – West Borough. Commencing at the intersection of Sheep Creek Road and the Fairbanks base line; thence generally east along the centerline of Sheep Creek Road to the intersection with Tanana Farm Road; thence continuing generally east along the centerline of Tanana Farm Road to the intersection with Tanana Loop Road; thence east along the centerline of Tanana Loop Road as it continues generally east, then turns north, continuing to the intersection with North Tanana Drive; thence east along North Tanana Drive to the intersection with the north section line of Section 6, T1S, R1W; thence east along the north section line of Sections 6 and 5, T1S, R1W to the intersection with College Road; thence east along the centerline of College Road until it coincides with the northern boundary of the city of Fairbanks; thence generally south along the city of Fairbanks boundary until it intersects with the Tanana River within the west one-fourth of Section 25, T1S, R1W; thence generally west along the north bank of the Tanana River to the intersection with the western FNSB boundary; thence north along the western FNSB boundary to the intersection with the Fairbanks base line; thence east along the Fairbanks base line to the intersection with Sheep Creek Road and the point of beginning of this description. (Ord. 2004-69 § 2, 2004)

14.02.020 Service area district council membership and representation.

The chairperson of each service area located within the district council geographic boundaries shall appoint one of the service area's commissioners to serve on the district council who will then serve at the pleasure of the appointing service area commission. The chair of a service area may appoint a representative from their road service area who is not a member of the commission to represent that service area on the district council. There shall be no quorum requirements. (Ord. 2008-11 § 3, 2008; Ord. 2004-69 § 2, 2004)

14.02.030 Assembly road service area committee membership.

A member of each service area district council shall be appointed to serve on the assembly road service area committee. Each district council shall select a member of their district council to serve on the assembly road service area committee at the first district council meeting. If necessary, the chair of the district council may appoint a representative who is not a member of the council, if no member of the council is willing to serve on the assembly road service area committee. The selected member

shall serve at the pleasure of the appointing district council. (Ord. 2004-69 § 2, 2004)

14.02.040 Powers and duties.

A. The assembly road service area committee shall have the following powers and duties:

1. The committee shall establish priorities and recommend allocation of service area matching grant funds to qualified road service areas. The allocations to road service areas shall be made in compliance with a matrix and scoring system process annually approved by the committee with notice to the assembly. Assembly consent shall be considered given if not vetoed within 60 days of the notice.

2. Funds allocated by the committee pursuant to the service area matching grant program shall require a 10 percent match from the service area. Funds borrowed from the road service revolving loan fund may be used for the required match.

3. To make recommendations to the assembly concerning road service area issues including ordinances and resolutions.

B. Each service area district council shall have the following powers and duties:

1. To examine and make recommendations to the mayor and assembly concerning necessary upgrade and maintenance needs within the district including a prioritization of those needs.

2. To examine and consider available cost-savings within the district through the combined use of contractors or other use of their collective purchasing power.

3. To make recommendations to the mayor and the assembly concerning needed changes or other solutions to problems experienced by service areas within the district.

4. To coordinate and facilitate communication within the service areas in the district and between the service areas and the mayor and assembly.

5. To communicate with other councils. (Ord. 2007-39 § 2, 2007; Ord. 2004-69 § 2, 2004)

14.02.050 Procedures and miscellaneous matters.

A. Chapter 2.21 FNSBC, Boards and Commissions, shall govern the service area district councils, except to the extent it may conflict with the requirements of this chapter. Each district council should hold meetings on at least a quarterly basis or, if meetings are held less regularly, agree upon a means through which their assembly road service committee member can provide the district council with written updates, a copy of which must be filed with the clerk's office.

B. The presiding officer, mayor and chair of the assembly road service area committee shall jointly schedule and hold an annual meeting each year with all service area commissioners to discuss service area concerns and provide necessary training. All assembly members and road service area committee members shall be invited to attend and participate in this informal meeting. (Ord. 2008-11 § 4, 2008; Ord. 2004-69 § 2, 2004)

This page of the Fairbanks North Star Borough Code is current through Ordinance 2009-06, passed February 26, 2009.

Disclaimer: The Borough Clerk's Office has the official version of the Fairbanks North Star Borough Code. Users should contact the Borough Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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Number of pages including cover: 3

From: Jane W. Pierson

Date: March 25, 2009

Re: CSHB153(JUD)

Please draft a House Judiciary CS for the above referenced bill to include the following changes from CSHB153(CRA) 26-LS0653\E.

Should you have any questions, please do not hesitate to call.

DRAFT CSHB153(JUD)

"An Act exempting municipal service area boards from the requirements of conducting meetings open to the public when a meeting is administrative or managerial in nature; and amending the definition of meeting as it relates to public governmental meetings."

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

(d) This section does not apply to

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

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff;

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

(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 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.

* Sec. 2. AS 44.62.310(h)(2) is amended to read:

(2). "meeting" means a gathering of members of a governmental body
when

(A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity; or

(B) more than three members or a majority of the members, whichever is less, are present, the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act~ and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity;

Jeanne Ostnes

From: Derek Miller
Sent: Wednesday, April 01, 2009 11:40 AM
To: Jeanne Ostnes
Subject: HB 201

Jeanne – Mick Manns and Jack McManus will be in the Fairbanks LIO to testify to the bill. He may bring another fellow as well.

-D

Derek Miller / Legislative Aide
Office of Representative Mike Kelly
Fairbanks, District 7
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