

SB

48

11/10/09

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 1/21/09

FURTHER: Transportation
Judiciary

Date of 5-Day Notice: 2/5/09
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 2/10/09

Community and Regional Affairs Committee considered SENATE BILL NO. 48

SB 48 MEETINGS OF ROAD SERVICE AREA BOARDS

"An Act exempting municipal service area boards from the requirements of conducting meetings open to the public when meeting about road conditions affected by harsh weather."

and recommends:

- be replaced with SCS or CS SB 48 (CRA)
- adopt previous SCS or C forth coming ()
- attached amendment(s)
- adopt _____
- further referral to _____

SENATE BILL:	
<input type="checkbox"/> Same Title	
<input checked="" type="checkbox"/> New Title	
HOUSE BILL:	
<input type="checkbox"/> Same Title	
<input type="checkbox"/> Technical Title Change	
<input type="checkbox"/> New Title w/ SCR # _____	

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet	Zero	FN#
DCCED	2/1/09			✓	

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	French			X	
<i>[Signature]</i>	Thomas	✓			
<i>[Signature]</i>	KODKUM	✓			
<i>[Signature]</i>	MENARD	✓			
CHAIR: <i>[Signature]</i>	OLSON	✓			

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SENATE DISTRICT F

Committee Substitute for Senate Bill 48 Sectional Analysis

AS 44.62.310(d):

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

Explanation: This committee substitute expands SB 48's original road conditions exemption to now include administrative and managerial duties which fall within a municipality's purview.

AS 44.62.310(h)(2):

- (B) ...more than three members or a majority of the members, whichever is less, are present,...

Explanation: AS 44.62.310(2) defines the constitution of an "open public meeting" between members of a governmental body. AS 44.62.310(2)(A) mandates that "...more than three members or a majority of the members, whichever is less..." constitutes a meeting for governmental bodies responsible for formulating and establishing public policy. However, AS 44.62.310(2)(B) does not require this same prerequisite for advisory-only bodies; the meeting needs only to be pre-arranged. Consequentially, meeting requirements for advisory bodies (e.g.: local service district) are more stringent than those for policy making bodies (e.g.: borough assembly). The above proposed language established uniform meeting requirements for both advisory and policy making governmental bodies.

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Sponsor Statement

Senate Bill 48

"An Act exempting municipal service area boards from the requirements of conducting meetings open to the public when meeting about road conditions affected by harsh weather."

Alaska Statute AS 44.62.310(d) exempts certain governmental bodies from conducting meetings in accordance to the rules and guidelines governing public meetings. Senate Bill SB 48 extends this exemption to road service area board members so they may discuss and take action on adverse road conditions caused by unforeseen weather events without violating Alaska's open meetings act.

Established under Article X Section 5 of the Alaska State Constitution and AS 29.35.450-490, service area districts provide essential road maintenance, fire protection, and park and recreation services to residents living within an established city or borough. In keeping with America's federalist foundations, service areas promote local governance by encouraging residents to join together and take responsibility for providing basic community services.

AS 44.62.310-312 currently limits a service area's ability to efficiently respond to adverse weather related road conditions. Unless a public meeting is first scheduled and held, board members cannot discuss and act upon time sensitive issues. Successful passage of SB 48 will grant service area districts the necessary legal authority to expeditiously initiate crucial road maintenance or repairs.



25th ALASKA STATE LEGISLATURE
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SENATOR CON BUNDE
SENATOR FRED DYSON
SENATOR TOM WAGONER

Fact Sheet for : Senate Bill 48
Sponsor: Senator Gene Therriault

Contact: Ernest Prax, 465-4797

Short Title: Open Meetings Act: Road Service Exemption

Summary:

- Exempts road service areas from the state's open public meetings requirement (AS 44.62.310-312) so that members may hold meetings to discuss and take action on matters pertaining to road conditions affected by adverse and unforeseen weather events.

Benefits:

- Allows service districts to quickly respond to and counter weather-related road conditions without violating the statutory language of Alaska's open meetings act.

Background:

- Established under Article X Section 5 of the Alaska State Constitution and AS 29.35.450-490, service area districts provide essential road maintenance, fire protection, and park and recreation services. In keeping with America's federalist foundations, service districts promote local governance through residents joining together and taking responsibility for providing basic community services.

AS 44.62.310-312 limits a road service area's ability to efficiently respond to road conditions caused by adverse weather. Unless a public meeting is first scheduled and held, board members cannot discuss time sensitive issues. SB 48 grants road service districts the legal authority to take any necessary action to respond quickly to unforeseen road conditions that may cause damage to the road system or inconvenience or danger to the driving public.

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SB 48 Committee Hearing Testimony List

Rene Broker: Fairbanks North Star Borough Attorney

Luke Hopkins: Fairbanks North Star Borough Assemblyman

Fairbanks North Star Borough

Request for Legislation

AMEND THE OPEN MEETINGS ACT FOR MUNICIPAL 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 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.

Article 06. OPEN MEETINGS OF GOVERNMENTAL BODIES

AS 44.62.310. Government meetings public

(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.

(8) meetings by boards, committees, commissions or other similar bodies when meeting solely to act upon matters that are administrative or managerial in nature.

(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 either (i) prearranged by more than two members, or (ii) more than three members or a majority of the members, whichever is less, are present 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.

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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By: Randy Frank
Introduced: 08/21/08
Adopted: 08/21/08

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6 FAIRBANKS NORTH STAR BOROUGH

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8 RESOLUTION NO. 2008-34
9

10 A RESOLUTION URGING THE ALASKA STATE LEGISLATURE TO REQUEST A
11 STATE LAW CHANGE TO THE OPEN MEETINGS ACT WITH REGARDS TO ROAD
12 SERVICE AREA COMMISSIONS
13

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

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

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

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

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

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

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

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

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

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

56
57 BE IT FURTHER RESOLVED that the FNSB Assembly Road Service
58 Area Committee supports a change to the Open Meetings Act.

59
60 BE IT FURTHER RESOLVED that a copy of this resolution shall be
61 forwarded to the Alaska Interior Delegation.

62
63 PASSED AND APPROVED THIS 21st DAY OF AUGUST 2008.
64
65


Nadine Winters
Presiding Officer

ATTEST:


Mona Lisa Drexler, MMC
Municipal Borough Clerk

66
67 Ayes: Brown, Beck, Frank, Musick, Sattley, Stringer, Hopkins, Foote, Winters
68 Noes: None