

SB

48

26-LS0293\P

Kane

3/30/09

CS FOR SENATE BILL NO. 48()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): SENATORS THERRIAULT, Thomas

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;

Amendment
CSSB 48(CRA) – Open Meetings: Exception & Definition

Version 26-LS0293\E

I. Page 2, Lines 12 – 14: Amend as follows

(8) meetings ~~by of municipal service area boards, committees, commissions, or other similar bodies~~ **established under AS 29.35.450 – 29.35.490** when meeting solely to act on matters that are administrative or managerial in nature.

Purpose: This change addresses the issue of the language being too broad and removes the uncertainty as to what groups would qualify for this exemption.

II. Page 2, Line 15 – Page 3, Line 9: Delete the following

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

(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) **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;

(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.~~

Purpose: The legislature’s legal department has determined that the struck language above is not needed in the bill. Deleting these two definitions is a technical change that would make this bill identical to the House version, HB153.

Alaska State Legislature

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Sponsor Statement

Committee Substitute for Senate Bill 48 (CRA)

"An Act exempting municipal boards, committees, commissions, or other similar bodies for 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."

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 established cities and boroughs. In keeping with America's federalist foundations, service area boards and commissions promote local governance by encouraging residents to join together and take responsibility for providing basic community services.

AS 44.62.310(d) prevents a service area from efficiently responding to time sensitive issues such as adverse weather related road conditions without first complying with the Open Meetings Act's requirement of a noticed and held public hearing.

Senate Bill 48 was originally introduced to exempt road service districts from the open meetings requirement so they could quickly respond to unforeseen weather events without having to hold public hearings. Following multiple communications with the Fairbanks North Star Borough, Committee Substitute for Senate Bill 48 {CSSB 48 (CRA)} was introduced to expand the open meetings exemption to all municipal boards, committees, commissions, and other similar bodies meeting solely to conduct administrative or managerial business.

CSSB 48 (CRA) also streamlines the definition of "meeting" as defined in AS 44.62.310(h)(2). Under current statutory language, meeting requirements for advisory bodies are more stringent than those for policy setting bodies. By requiring the same open meetings requirements for advisory bodies as are required for government agencies authorized to establish public policy, members will be able to conduct public meetings in a more clear and uniform manner.



26th ALASKA STATE LEGISLATURE
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SENATOR CON BUNDE
SENATOR FRED DYSON
SENATOR TOM WAGONER

Fact Sheet for : CSSB 48 (CRA)
Sponsor: Senator Gene Therriault

Contact: Ernest Prax, 465-4797

Short Title: Meetings of Road Service Area Boards

Summary:

- CSSB 48 (CRA) expands SB 48's original exemption of road service areas from the Alaska's open meetings act (AS 44.62.310-312) to now include all municipal boards, committees, commissions, and other similar bodies meeting solely for the purpose to conduct administrative or managerial business.
- Establishes a uniform definition of "meeting" under AS 44.62.310(h)(2) for both policy setting and advisory government bodies.

Benefits:

- Grants municipal bodies the legal authority to efficiently carry out in a timely manner such administrative duties as responding quickly to unforeseen road conditions that may cause damage to a road system and subsequent danger.
- Preserves the spirit of an informed and involved citizenry when formulating local public policy. Municipal bodies will still be required to schedule and hold public meetings when discussing policy issues such as contract negotiations and local tax rates.

Background:

- Established under Article X Section 5 of the Alaska State Constitution and AS 29.35.450-490, municipal service areas 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 and act upon time sensitive issues.
- Under AS 44.62.310(h)(2), meeting requirements for advisory bodies are more stringent than those for policy setting bodies. CSSB 48 (CRA) places the same open meetings requirements on advisory bodies as are on government agencies authorized to establish public policy.

Committee Substitute for Senate Bill 48 (CRA) Sectional Analysis

Page 2, lines 12-14

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: CSSB 48 (CRA) expands SB 48's original road conditions exemption to now include administrative and managerial duties which fall within a municipality's purview.

Page 2, lines 30-31

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). CSSB 48 (CRA) establishes a uniform public meetings requirement by placing the same open meetings requirements on advisory bodies as are on government agencies authorized to establish public policy.

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

FAIRBANKS NORTH STAR BOROUGH

RESOLUTION NO. 2008-34

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

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

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

- a gathering
- of any number of members of the body
- prearranged
- for the purpose of considering any matter upon which the body is empowered to 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

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.

who this applies to...

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.

Context and Problem

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.

Proposed solution

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.

2nd problem

proposed solution

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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Alaska State Legislature

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Memorandum

To: The Honorable Senator Hollis French
Chair Senate Judiciary Committee

From: Senator Gene Therriault 

Date: March 10, 2009

Re: CSSB 48 (CRA) Hearing Request

CSSB 48 (CRA) amends AS 44.62.310(d) by adding a new section to exempt municipal boards, commissions, and other similar bodies from Alaska's Open Meetings Act when meeting solely to conduct administrative and managerial business. The legislation also clarifies an abnormality in state statute regarding the definition of a "meeting." Meeting requirements for advisory bodies are currently more stringent than those for policy setting bodies. CSSB 48 (CRA) places the same open meetings requirements on advisory bodies as are on government agencies authorized to establish public policy.

AS 44.62.310-312 prevents municipal government bodies from conducting administrative duties such as responding to unforeseen road conditions without first triggering the open meetings act. Unless a public meeting is first scheduled and held, board members may not discuss and act upon time sensitive issues. CSSB 48 (CRA) will grant service area boards and commissions the necessary legal authority to more efficiently implement their duties and responsibilities and respond quickly to unforeseen local events like heavy snowfall or flooding.

CSSB 48 (CRA) also resolves an unintended consequence caused by the definition of "meeting." Under the current language, meeting requirements for advisory bodies are more stringent than those for policy setting bodies. The committee substitute places the same open meetings requirements on advisory bodies as are on government agencies authorized to establish public policy.

I respectfully request you schedule CSSB 48 (CRA) for a Senate Judiciary Committee hearing.