

HOUSE BILL NO. 153

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE BY REQUEST

Introduced: 2/25/09

Referred:

A BILL

FOR AN ACT ENTITLED

1 **"An Act exempting municipal boards, committees, commissions, or other similar bodies**
2 **from the requirements of conducting meetings open to the public when a meeting is**
3 **administrative or managerial in nature; and amending the definition of 'meeting' as it**
4 **relates to public governmental meetings."**

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

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

7 (d) This section does not apply to

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

11 (2) juries;

12 (3) parole or pardon boards;

13 (4) meetings of a hospital medical staff;

14 (5) meetings of the governmental body or any committee of a hospital

1 when holding a meeting solely to act upon matters of professional qualifications,
2 privileges, or discipline;

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

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

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

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

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

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

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

**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.

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The voice of Interior Alaska since 1903

Open and effective

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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.