

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 10, 2010

SUBJECT: Advisory council established in HB 329 and Open Meetings Act
(Work Order No. 26-LS1307\W)

TO: Representative Peggy Wilson
Chair of the House Transportation Committee
Attn: Becky Rooney

FROM: Brian J. Kane *BJK*
Legislative Counsel

You have asked the following two questions: (1) Would the Transportation Infrastructure Advisory Council fall under the provisions of the Open Meetings Act (AS 44.62.310)? (2) Does the current Project Evaluation Board for the Department of Transportation and Public Facilities fall under the Open Meetings Act?

(1) It appears that the Transportation Infrastructure Advisory Council ("council") would fall under the provisions of the Open Meetings Act found at AS 44.62.310. AS 44.62.310(a) provides that all meetings of a governmental body of a public entity of the state are open to the public unless listed as an exception. Since the projects being considered by the council will likely be a part of the department's submissions to the governor under the Executive Budget Act, the council would be covered under AS 44.62.310 and required to hold open meetings. To squarely bring the council under the veil of the Act, one suggestion would be to require the council to submit a report to the governor, as well as the legislature, detailing a list of recommended projects.

Without a provision tying the council to the governor, there is an argument that can be made that the bill requires the council to only report its recommendations to the legislature. The legislature is explicitly not included in the definition of "public entity."¹ So, if the council is not considered a governmental body of a public entity, then it would not fall under the provisions of the Act. If the governor is not included as a recipient of

¹ AS 44.62.310(h)(3) states: "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.

Representative Peggy Wilson

February 10, 2010

Page 2

the report and you would like it to be absolutely clear that the council does fall under the provisions of the Open Meetings Act, the council could be expressly added to AS 44.62.310 as a covered entity.

(2) The project evaluation board for the department -- located in regulation at 17 AAC 05.175(h) -- that is used to evaluate and score projects for the department would certainly fall under the provisions of the Open Meetings Act. This board would easily qualify as a governmental body of a public entity, as is required by AS 44.62.310(a).

If I may be of further assistance, please advise.

BJK:plm

10-067.plm