

ALASKA STATE LEGISLATURE
SENATE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

March 9, 2021

3:32 p.m.

MEMBERS PRESENT

Senator Shelley Hughes, Chair
Senator Robert Myers, Vice Chair
Senator David Wilson
Senator Elvi Gray-Jackson

MEMBERS ABSENT

Senator Lyman Hoffman

COMMITTEE CALENDAR

SENATE BILL NO. 15

"An Act relating to the Open Meetings Act; and establishing a civil penalty for violations of the open meeting requirements by members of governmental bodies."

- MOVED CSSB 15(CRA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 15

SHORT TITLE: OPEN MEETINGS ACT; PENALTY

SPONSOR(S): SENATOR(S) COSTELLO

01/22/21	(S)	PREFILE RELEASED 1/8/21
01/22/21	(S)	READ THE FIRST TIME - REFERRALS
01/22/21	(S)	CRA, JUD
02/25/21	(S)	CRA AT 3:30 PM BELTZ 105 (TSBldg)
02/25/21	(S)	Heard & Held
02/25/21	(S)	MINUTE(CRA)
03/04/21	(S)	CRA AT 3:30 PM BELTZ 105 (TSBldg)
03/04/21	(S)	Heard & Held
03/04/21	(S)	MINUTE(CRA)
03/09/21	(S)	CRA AT 3:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

DARREL W. HESS, Municipal Ombudsman

Municipal Ombudsman's Office
Municipality of Anchorage
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 15.

MARIO BIRD, Attorney
Alaskans for Open Meetings
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 15.

PETE PETERSON, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 15.

KATE VOGEL, Anchorage Municipal Attorney
Municipality of Anchorage
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 15.

NILS ANDREASSEN, Executive Director
Alaska Municipal League
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to SB 15.

VALERIE MCKAY, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 15.

NORM WOOTEN, Director of Advocacy
Association of Alaska School Boards
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to SB 15.

FRANK MCCLEARY, President
Alaskans for Open Meetings
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 15.

EDWARD MARTIN, representing self
Cooper Landing, Alaska

POSITION STATEMENT: Testified in support of SB 15.

CECILIA DONELSON, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 15.

DENISE ALLEN, representing self

Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 15.

HEATHER HEBDON, Executive Director

Alaska Public Offices Commission

Department of Administration

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 15.

ACTION NARRATIVE

[3:32:24 PM](#)

CHAIR SHELLEY HUGHES called the Senate Community and Regional Affairs Standing Committee meeting to order at 3:32 p.m. Present at the call to order were Senators Gray-Jackson, Myers, Wilson, and Chair Hughes.

SB 15-OPEN MEETINGS ACT; PENALTY

[3:33:00 PM](#)

CHAIR HUGHES announced the consideration of SENATE BILL NO. 15 "An Act relating to the Open Meetings Act; and establishing a civil penalty for violations of the open meeting requirements by members of governmental bodies."

[3:34:29 PM](#)

CHAIR HUGHES opened public testimony on SB 15.

[3:35:00 PM](#)

DARREL W. HESS, Municipal Ombudsman, Municipal Ombudsman's Office, Municipality of Anchorage, Anchorage, Alaska, testified in opposition to SB 15. He asked committee members who will own the statute because the Alaska Open Meetings Act (OMA) currently is civil enforcement. A person who is aggrieved has to file in superior court, it is a self-serve civil remedy much like the Alaska Landlord and Tenant Act.

He questioned which department will own, enforce, and assume the associated cost for the law. He noted the fines are not to exceed \$1000, but he wondered who will determine the amount of the fine, and what factors or analysis will be used to make the determination. Governmental bodies currently have the opportunity to fix their oversight by way of a do-over, but he questioned whether members of governmental bodies will be given the chance to correct the oversight before fines are imposed.

The OMA currently makes distinctions between advisory bodies and those that have the authority to make policy or decisions for a governmental entity. However, he questioned whether the distinctions would factor into consideration of any fines.

MR. HESS said based on the meaning of "public official" in AS 39.50.200(a)(9), the provision applies to all uncompensated volunteer members of local government boards and commissions, service area boards, and road service area boards. He noted he is concerned the change from the bill would discourage citizens from coming forward and volunteering to do their civic duty. He pointed out most alleged OMA violations that he has investigated over the past nine years were related to lack of proper public notice.

He said the legislation would be difficult to enforce and costly. The meaning of "knowingly" in the statute is very hard to prove. He said given his experience investigating alleged OMA violations, SB 15 appears to be a solution in search of a problem. The cost associated with implementation and enforcement of the new statute would far outweigh any tangible benefit to the public.

3:38:09 PM

MARIO BIRD, Attorney, Alaskans for Open Meetings, Anchorage, Alaska, testified in support of SB 15. He said he will mention some of the wonderful things about the OMA policies that the legislature has put into place. AS 44.62.312 states that it is the intent of the law that the actions of those governmental units be taken openly, that their deliberations be conducted openly; SB 15 is going to encourage local government officials to do this. Subsection 4 in the statute does not give public servants the right to decide what is good or not good for the people to know. The statute is a great policy.

He noted when the statute was enacted, many people in the state bureaucracy testified against it. The legislatures included the statute and when the 1985 teleconferencing amendments came in the policy remained intact. At that time, Robin Taylor, who was a state representative, an administrative law judge, and attorney reminded members of the body of the need to approach boards, commissioners, and legislators in person, and that in person testimony is vital to the OMA; that is much of what the Alaskans for Open Meetings stand for.

MR. BIRD explained in addition to Senator Stevens in 1966 trying to put in a civil penalty for local legislators (not state

legislators) who break the OMA, Dave Donley said the same thing in the Judiciary Committee in 1993. He referenced the minutes from Mr. Donley's testimony as follows:

One of the big flaws in the law right now is that there is no individual responsibility for public officials, there is not recourse against them for violating the law.

He said the lineage of SB 15 follows what Senator Donley put forward and what Representative Stevens said in 1966. He summarized, "We need to incentivize local governments to follow the law."

3:40:25 PM

PETE PETERSON, representing self, Anchorage, Alaska, testified in opposition to SB 15. He noted he currently serves on the Anchorage Assembly. He explained his intent is to provide a prospective on open meetings requirements, since he has been working under those rules on the assembly for the last seven years. He added he previously served in the Alaska State Legislature. There is a learning curve when going from the legislature to the assembly. Legislators could make as many appointments as they wanted and speak with their legislative colleagues about bills. However, assembly members can only speak with two different assembly members on an item.

He said he experienced a situation six years ago where he and an assembly colleague went to lunch after a work session and two of his other assembly colleagues entered the restaurant. He noted he made his presence known to avoid an OMA violation and his two other colleagues went somewhere else. However, if he and his assembly colleague did not notice their other assembly colleagues, they would not have known their presence and there could have been an OMA violation. If SB 15 would have been on the books, they might have been subject to a \$1000 fine.

He noted the Municipal Clerk's Office in Anchorage does a great job of noticing meetings, but it is impossible for them to be aware of all gatherings where three assembly members might be present. Assembly members are all aware of the open meetings requirements because it is covered in the initial training assembly members receive shortly after being elected to the position. Assembly members take the responsibility themselves to make sure there are no more than three members at any location at the same time.

MR. PETERSON stated he believes that changing the OMA by adding a \$1000 fine would not only affect the assembly, but also other elected officials, service area boards, and commissions around the state. Many people who are on boards or are elected officials in Alaska are not paid or they receive a small stipend. The change to the OMA to add a fine for a violation can serve to make it more difficult—if not impossible—to find people to volunteer for board and commission positions. Locating people who are interested in serving on boards is already challenging and adding a fine will end up doing more harm than good.

[3:43:31 PM](#)

KATE VOGEL, Anchorage Municipal Attorney, Municipality of Anchorage, Anchorage, Alaska, testified in opposition to SB 15. She said the legislation is premised on the false narrative that the Anchorage Assembly violated the OMA in August 2020, and that such conduct needs stiffer penalties. The Anchorage Assembly's COVID-19 precautions were lawful and are nearly identical to the precautions currently on display at the Alaska State Capitol.

She said in the midst of the pandemic, the Anchorage Assembly held open meetings in August 2020 that were accessible to the public on television and live streamed over the internet. The public was able to testify in writing and by phone. Some assembly and administration members attended by phone, others were in assembly chambers in front of the cameras and the press. The limits on in-person attendance in favor of remote participation were challenged by those who disagreed with the outcome of the assembly votes. A court has already preliminarily rejected arguments that the Anchorage Assembly violated the OMA.

MS. VOGEL stated SB 15 is being proposed as a tool to punish elected officials and the committee should reject the attempt to turn the OMA into a partisan tool. The OMA currently appropriately prioritizes openness in government. The central focus of the act is on ensuring that government actions comply with the openness requirements.

She explained under current law there is a preferable remedy for any violation which is to give the governmental body the opportunity to fix the problem by revisiting and reenacting any infirm legislation in an open to the public session. A focus on process rather than penalty appropriately reduces the incentives for individuals on the losing side of a robust, political debate to use the OMA to score political points.

MS. VOGEL said when the legislature enacted the OMA, the body deliberately rejected the option to impose a fine for a violation and that remains the right decision. The OMA already has [inaudible], including the ability to file litigation, ethics complaints, and seek recall against officials.

She stated changing the OMA structure from one that promotes remediation and openness in meetings to one that encourages penalties will actually disincentivize the ability of a governmental body to remediate the problem by having an individual liability for the officials that make it difficult to simply have a second meeting that solves the problem, and it will incentivize politicizing what is otherwise a very important and open law within Alaska.

[3:46:48 PM](#)

NILS ANDREASSEN, Executive Director, Alaska Municipal League, Juneau, Alaska, testified in opposition to SB 15. He said the Alaska Municipal League (AML) has 164 members who operate under the statutory requirements already of the OMA. AML has noted that the bill has brought applicability and in fact would impact thousands of local elected officials, committee or commission volunteers, and municipal employees.

He stated AML wants to be clear that Alaska's local governments and public officials adhere to the laws. AML has not seen any evidence that violations occur or regularly occur, nor any indication that in fact this is a widespread problem at all. He questioned how one justifies a penalty and law for violations that are extremely uncommon, and justification is even harder when the body legislating a penalty is itself exempted from that same law. The effect from the bill will chill participation in local processes, not because these processes violate the law, but because of the potential risks to individuals whose sole intent is to serve the public's interest.

MR. ANDREASSEN said SB 15 does not reflect the reality of the lawful operations of Alaska's 165 cities and boroughs, their planning, port and harbor, public safety commissions, and the thousands of Alaskans who have stepped up to serve in some small way for the betterment of their communities. The OMA balances the legislature's interest in a transparent and accountable process for the state's political subdivisions, while encouraging public participation in those institutions.

MR. ANDREASSEN stated the fact that violations of the OMA law come with undoing of the action taken make it unreasonable to

act outside of the law already. The addition of a fine brings into this democratic process enough uncertainty and risk as to dissuade participation. AML is always happy to volunteer its time to serve as invited testimony on bills that affect local governments, to be available for questions as the committee wrestles with municipal issues, and to be a resource for the Senate Community and Regional Affairs Committee.

3:49:08 PM

VALERIE MCKAY, representing self, Anchorage, Alaska, testified in support of SB 15. She said the \$1000 fine is exactly what needs to happen because an individual will not violate the OMA again. She noted there were internet connection, video, and sound issues during the noted Anchorage Assembly meeting in August 2020.

3:51:11 PM

NORM WOOTEN, Director of Advocacy, Association of Alaska School Boards, Juneau, Alaska, testified in opposition to SB 15. He said the [Association of Alaska School Boards] (AASB) is in full support of the OMA. AASB routinely gets 25-30 requests per month from school boards and school districts for questions on a variety of topics, typically about half of those queries are about OMA.

He stated school boards are cognizant of OMA, are wary of violating the act, and that is the reason they ask for AASB assistance. Additionally, at the onset of COVID-19, AASB consulted with its attorney and developed processes that permitted digital meetings while still complying with OMA. AASB held webinars to make certain AASB boards would remain compliant and amended its model board policy so the board could make changes and ensure their policies were also in compliance with OMA. School boards clearly understand their responsibility for compliance with OMA and take appropriate steps to ensure compliance.

He said his belief is that there needs to be a clear purpose for any new law and there is no need for amending OMA to financially and personally threatened volunteer elected officials with a civil penalty of up to \$1000, individuals who are doing good work as elected officials, they are law abiding, and he finds questioning their adherence to the law as disingenuous.

3:53:03 PM

FRANK MCCLEARY, President, Alaskans for Open Meetings, Anchorage, Alaska, testified in support of SB 15. He stated he

thinks there is a certain amount of disingenuousness because everybody is equating the bill with the issues of the Municipality of Anchorage (MOA), but the two are totally separate issues.

He said the courts will settle the lawsuit by Alaskans for Open Meetings with MOA to determine whether there was any infraction. However, what became apparent is the lack of consequence and a lack of accountability in the public process that leads to a certain degree of contempt for the public. If there is a law on the books and people violate that law, there should be some consequences.

MR. MCCLEARY noted Ted Stevens recognized the lack of consequence in the 1960s when he tried to make an amendment with some financial penalties. Fifty States have open meeting laws that have varying degrees of penalty, including fines, misdemeanor charges, felony charges, amounts of money varying from \$50 to \$50,000. The legislature decides what is best for Alaska and not what is best for the municipality, government employees, or making their jobs easier. The public is part of the process, and their voices need to be heard.

MR. MCCLEARY stated since MOA insists on putting the lawsuit in the middle of the matter, the penalties for [Alaskans for Open Meetings] in filing a lawsuit are tremendous, the burden is huge to raise money. The case will obviously go to the Alaska Supreme Court and the law fees for [Alaskans for Open Meetings] will probably approach \$250,000. [Alaskans for Open Meetings] has skin in the game, but the bureaucrats have no skin in the game because they are not paying for the lawsuits. Also, [Alaskans for Open Meetings] individual members have been subject to lawsuit threats. He concluded, "accountability is everything."

[3:55:36 PM](#)

EDWARD MARTIN, representing self, Cooper Landing, Alaska, testified in support of SB 15. He said the fine should be more than \$1000,; it should be \$5000. He noted there are also federal laws to affect the actions by people trying to do something outside of the transparency and accountability that takes place when individuals are participating in [open meetings]. People serving on boards and commissions are public servants. The legislation sends a strong message to anyone who would rather have a closed meeting. All public meetings should be in the open eye of the public.

MR. MARTIN referenced a U.S. code regarding deprivation of rights. He questioned if any violation in the OMA would cause a violation under the federal code, particularly if a law were passed. He added an opening meeting is generally determined by a group of individuals. An OMA violation will not happen again if the committee passes the legislation.

[3:58:09 PM](#)

CECILIA DONELSON, representing self, Anchorage, Alaska, testified in support of SB 15. She said the penalty for a violation should be bigger than \$1000. Government should be open, and individuals should look their people in the eye, people who are able to voice their opinions.

[3:59:03 PM](#)

DENISE ALLEN, representing self, Anchorage, Alaska, testified in support of SB 15. She stated the MOA Assembly was in the wrong when they closed their August 2020 meetings and allowed expert testimony. She said a \$1000 fine is not enough because [public officials] will just vote themselves a raise to cover their fine. SB 15 lets government officials know that the people demand open government.

[3:59:48 PM](#)

CHAIR HUGHES closed public testimony on SB 15.

SENATOR GRAY-JACKSON thanked everyone for their testimony. She clarified MOA salaries for public officials are determined by the Salaries and Emoluments Commission. Individuals do not determine their own salary.

She suggested committee members review comments in the fiscal note in terms of not just the cost, and the comments from Ms. Hebdon, Executive Director for the Alaska Public Offices Commission (APOC). They are substantial.

CHAIR HUGHES asked her if she would like to ask Ms. Hebdon about the fiscal note for SB 15.

SENATOR GRAY-JACKSON asked Ms. Hebdon to publicly make some of the comments she made regarding the fiscal note because her comments are "pretty substantial."

[4:01:45 PM](#)

HEATHER HEBDON, Executive Director, Alaska Public Offices Commission, Department of Administration, Anchorage, Alaska, testified in opposition to SB 15. She said APOC cannot support

SB 15 because the legislation will politicize the OMA more than it needs to be. The bill will have a far-reaching impact on assembly members, elected officials, and many volunteer board and commission members who simply want to try to serve their community.

She stated APOC also thinks the bill will result in a big increase in workload for the agency. The bill is going to be a big cost to APOC and that is why the commission submitted such a significant fiscal note.

CHAIR HUGHES asked if APOC actually met and voted to oppose SB 15.

MS. HEBDON answered no; APOC has not taken a position on SB 15 and her remark was simply from a staff perspective.

CHAIR HUGHES pointed out she said that APOC could not support the bill. She asked her to confirm that the APOC staff could not support the bill.

MS. HEBDON answered yes. She apologized and clarified the APOC staff does not support the bill and APOC itself has not taken a position on the bill.

SENATOR MYERS commented he finds the comments interesting. He noted the committee has occasionally heard that the reason people do not run for office is because of the various pieces of regulation that APOC is required to enforce. He stated he wonders if the committee needs to strip away anything else.

4:04:16 PM

CHAIR HUGHES said she would like to respond to Anchorage Assembly member Pete Peterson's testimony regarding a story about a possible OMA violation in a restaurant. She said she witnessed a similar situation in Palmer where a couple of city council members attended one of her coffee chats and then one or two other city council members stopped at the same restaurant.

CHAIR HUGHES remarked that part of Mr. Peterson's testimony does seem to address a part of the OMA statutes that the committee needs to address regarding people sitting at different tables in a restaurant where the intention is not to violate the OMA.

CHAIR HUGHES noted the committee received the history of OMA, and Ted Stevens initially had a penalty in his bill. She said she does find it odd when everything else in Alaska statutes

have requirements and often there are consequences if the requirements are not met; however, there is not one offered here. She said she does find that odd, in fact, as the committee was talking about APOC. If legislators do not do things right there are penalties. For that reason, she does like the idea of closing the loop on this.

She stated the intent is not to make it more difficult or discourage people to serve. Based on Mr. Wooten's testimony, those that do step up and serve work hard to meet the law itself. However, at some point the committee might want to look at the OMA to see if there are some very onerous requirements the committee might be able to fix so someone would not have to worry about being in a restaurant and being in violation because someone walks in.

CHAIR HUGHES noted the bill sponsor said the following:

- Seventeen states have penalties for violation OMA laws
- Five states involve prison time
- Four states have possible office removal
- Four states have a misdemeanor for violating OMA laws
- Three states have fines or penalties
- Two states invalidate actions taken during any period of time

[4:07:42 PM](#)

SENATOR MYERS moved to report the CS for SB 15, work order 32-LS0176\G, from committee with individual recommendations and attached fiscal note(s).

[4:07:56 PM](#)

CHAIR HUGHES announced there being no objection, CSSB 15(CRA) moves from the Senate Community and Regional Affairs Standing Committee.

She noted her office is working on a presentation to get an overview of Alaska's broadband [internet access] status throughout the state. She noted in 2013 there was a task force and reports, and in 2017 there were updates. Because the [broadband] reports occurred four years ago, she would like the committee to get a good understanding, due in part from information brought forward by the Alaska Municipal League on unorganized boroughs and different ideas.

CHAIR HUGHES stated the Unorganized Boroughs need an economic base and broadband access could be a game-changer. Broadband is very key in education and there have been difficulties in some areas for students without a strong broadband. However, broadband is also important for healthcare delivery and commerce.

She noted the federal government is discussing a federal infrastructure bill. People typically think of infrastructure as ports, highways, and bridges. However, now the information highway likely will be part of the infrastructure package. The committee needs to get a clearer picture of the [broadband] landscape. There are new technologies, including low earth orbit satellites (LEOS), which may be part of the answer—three [broadband satellite companies] are looking at the Alaska market. She said her office is trying to see which companies are willing to share information and provide the committee with an update.

CHAIR HUGHES said broadband information is needed, but there is no legislation associated with it. She stated she is excited about the broadband information because it could really help—rural areas in particular—and provide huge opportunities.

[4:10:53 PM](#)

There being no further business to come before the committee, Chair Hughes adjourned the Senate Community and Regional Affairs Standing Committee meeting at 4:10 p.m.