

SENATE CS FOR CS FOR HOUSE BILL NO. 254(2d JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/7/94

Referred: Rules

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to open meetings of governmental bodies."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 24.60.037 is amended to read:

4 Sec. 24.60.037. OPEN MEETINGS [LAW]. Legislators shall conduct
5 meetings that are open to the public [ABIDE BY AS 44.62.310 - 44.62.312 (OPEN
6 MEETINGS LAW)]. The committee shall develop guidelines for the conduct of open
7 meetings adapted to the special needs of [APPLICATION OF THIS SECTION TO]
8 the legislature. The guidelines must permit closed caucuses and private, informal
9 meetings or conversations between legislators in which political strategy is discussed.
10 In a proceeding under AS 24.60.170 in which a violation of this section is alleged, if
11 the committee finds that a person acted within the adopted guidelines, the committee
12 shall dismiss the complaint as to that violation.

13 * Sec. 2. AS 44.62.310(a) is amended to read:

14 (a) All meetings of a governmental [LEGISLATIVE] body of a public entity

1 [, OF A BOARD OF REGENTS, OR OF AN ADMINISTRATIVE BODY, BOARD,
2 COMMISSION, COMMITTEE, SUBCOMMITTEE, AUTHORITY, COUNCIL,
3 AGENCY, OR OTHER ORGANIZATION, INCLUDING SUBORDINATE UNITS
4 OF THE ABOVE GROUPS, OF THE STATE OR ANY OF ITS POLITICAL
5 SUBDIVISIONS, INCLUDING BUT NOT LIMITED TO MUNICIPALITIES,
6 BOROUGHES, SCHOOL BOARDS, AND ALL OTHER BOARDS, AGENCIES,
7 ASSEMBLIES, COUNCILS, DEPARTMENTS, DIVISIONS, BUREAUS,
8 COMMISSIONS, OR ORGANIZATIONS, ADVISORY OR OTHERWISE,] of the
9 state [OR LOCAL GOVERNMENT SUPPORTED IN WHOLE OR IN PART BY
10 PUBLIC MONEY OR AUTHORIZED TO SPEND PUBLIC MONEY,] are open to
11 the public except as otherwise provided by this section or another provision of law.
12 Attendance [EXCEPT FOR MEETINGS OF A HOUSE OF THE LEGISLATURE,
13 ATTENDANCE] and participation at meetings by members of the public or by
14 members of a governmental body may be by teleconferencing. Agency materials that
15 are to be considered at the meeting shall be made available at teleconference locations
16 if practicable. Except when voice votes are authorized, the vote shall be conducted
17 in such a manner that the public may know the vote of each person entitled to vote.
18 The vote at a meeting held by teleconference shall be taken by roll call. This section
19 does not apply to any votes required to be taken to organize a governmental
20 [PUBLIC] body described in this subsection.

21 * Sec. 3. AS 44.62.310(b) is amended to read:

22 (b) If permitted [EXCEPTED] subjects are to be discussed at a meeting in
23 executive session, the meeting must first be convened as a public meeting and the
24 question of holding an executive session to discuss matters that are listed [COME
25 WITHIN THE EXCEPTIONS CONTAINED] in (c) of this section shall be determined
26 by a majority vote of the governmental body. The motion to convene in executive
27 session must clearly and with specificity describe the subject of the proposed
28 executive session without defeating the purpose of addressing the subject in
29 private. Subjects may not be considered at the executive session except those
30 mentioned in the motion calling for the executive session unless auxiliary to the main
31 question. Action may not be taken at an [THE] executive session, except to give

1 direction to an attorney or labor negotiator regarding the handling of a specific
2 legal matter or pending labor negotiations.

3 * Sec. 4. AS 44.62.310(c) is amended to read:

4 (c) The following [EXCEPTED] subjects may be considered [DISCUSSED]
5 in an executive session:

6 (1) matters, the immediate knowledge of which would clearly have an
7 adverse effect upon the finances of the public entity [GOVERNMENT UNIT];

8 (2) subjects that tend to prejudice the reputation and character of any
9 person, provided the person may request a public discussion;

10 (3) matters which by law, municipal charter, or ordinance are required
11 to be confidential;

12 (4) matters involving consideration of government records that by
13 law are not subject to public disclosure.

14 * Sec. 5. AS 44.62.310(d) is amended to read:

15 (d) This section does not apply to

16 (1) a governmental body performing a judicial or quasi-judicial
17 function [BODIES] when holding a meeting solely to make a decision in an
18 adjudicatory proceeding;

19 (2) juries;

20 (3) parole or pardon boards;

21 (4) meetings of a hospital medical staff; [OR]

22 (5) meetings of the governmental [GOVERNING] body or any
23 committee of a hospital when holding a meeting solely to act upon matters of
24 professional qualifications, privileges or discipline;

25 (6) staff meetings or other gatherings of the employees of a public
26 entity, including meetings of an employee group established by policy of the Board
27 of Regents of the University of Alaska or held while acting in an advisory capacity
28 to the Board of Regents; or

29 (7) meetings held for the purpose of participating in or attending
30 a gathering of a national, state, or regional organization of which the public
31 entity, governmental body, or member of the governmental body is a member, but

1 only if no action is taken and no business of the governmental body is conducted
2 at the meetings.

3 * Sec. 6. AS 44.62.310(e) is amended to read:

4 (e) Reasonable public notice shall be given for all meetings required to be
5 open under this section. The notice must include the date, time, and place of the
6 meeting and, if the meeting is by teleconference, the location of any teleconferencing
7 facilities that will be used. Subject [IN ADDITION] to the publication required by
8 AS 44.62.175(a) in the Alaska Administrative Journal, the notice may be given by
9 using [A COMBINATION OF] print or [AND] broadcast media. The notice shall be
10 posted at the principal office of the public entity or, if the public entity has no
11 principal office, at a place designated by the governmental body. The
12 governmental body shall provide notice in a consistent fashion for all its meetings.

13 * Sec. 7. AS 44.62.310(f) is repealed and reenacted to read:

14 (f) Action taken contrary to this section is voidable. A lawsuit to void an
15 action taken in violation of this section must be filed in superior court within 180 days
16 after the date of the action. A member of a governmental body may not be named in
17 an action to enforce this section in the member's personal capacity. A governmental
18 body that violates or is alleged to have violated this section may cure the violation or
19 alleged violation by holding another meeting in compliance with notice and other
20 requirements of this section and conducting a substantial and public reconsideration
21 of the matters considered at the original meeting. If the court finds that an action is
22 void, the governmental body may discuss and act on the matter at another meeting
23 held in compliance with this section. A court may hold that an action taken at a
24 meeting held in violation of this section is void only if the court finds that, considering
25 all of the circumstances, the public interest in compliance with this section outweighs
26 the harm that would be caused to the public interest and to the public entity by voiding
27 the action. In making this determination, the court shall consider at least the
28 following:

29 (1) the expense that may be incurred by the public entity, other
30 governmental bodies, and individuals if the action is voided;

31 (2) the disruption that may be caused to the affairs of the public entity,

- 1 other governmental bodies, and individuals if the action is voided;
- 2 (3) the degree to which the public entity, other governmental bodies,
- 3 and individuals may be exposed to additional litigation if the action is voided;
- 4 (4) the extent to which the governing body, in meetings held in
- 5 compliance with this section, has previously considered the subject;
- 6 (5) the amount of time that has passed since the action was taken;
- 7 (6) the degree to which the public entity, other governmental bodies,
- 8 or individuals have come to rely on the action;
- 9 (7) whether and to what extent the governmental body has, before or
- 10 after the lawsuit was filed to void the action, engaged in or attempted to engage in the
- 11 public reconsideration of matters originally considered in violation of this section;
- 12 (8) the degree to which violations of this section were wilful, flagrant,
- 13 or obvious;
- 14 (9) the degree to which the governing body failed to adhere to the
- 15 policy under AS 44.62.312(a).

16 * Sec. 8. AS 44.62.310 is amended by adding a new subsection to read:

- 17 (g) In this section,
- 18 (1) "governmental body" means an assembly, council, board,
- 19 commission, committee, or other similar body of a public entity with the authority to
- 20 establish policies or make decisions for the public entity; "governmental body"
- 21 includes the members of a subcommittee or other subordinate unit of a governmental
- 22 body if the subordinate unit consists of two or more members; "governmental body"
- 23 does not include a body with authority only to advise or make recommendations to a
- 24 public entity;
- 25 (2) "meeting" means a gathering of members of a governmental body
- 26 when more than three members or a majority of the members, whichever is less, are
- 27 present and a matter upon which the governmental body is empowered to act is
- 28 considered by the members collectively;
- 29 (3) "public entity" means an entity of the state or of a political
- 30 subdivision of the state including an agency, a board or commission, the University of
- 31 Alaska, a public authority or corporation, a municipality, a school district, and other

1 governmental units of the state or a political subdivision of the state; it does not
2 include the court system or the legislative branch of state government.

3 * Sec. 9. AS 44.62.312(b) is amended to read:

4 (b) AS 44.62.310(c) and (d) [AS 44.62.310(c)(1)] shall be construed narrowly
5 in order to effectuate the policy stated in (a) of this section and to avoid exemptions
6 from open meeting requirements and unnecessary executive sessions.