

SENATE CS FOR CS FOR HOUSE BILL NO. 254(RLS) am S
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE

Amended: 4/20/94

Offered: 4/20/94

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to open meetings of governmental bodies; and providing for an
2 effective date."

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

4 * Section 1. AS 44.62.310(a) is amended to read:

5 (a) All meetings of a governmental [LEGISLATIVE] body of a public entity
6 [, OF A BOARD OF REGENTS, OR OF AN ADMINISTRATIVE BODY, BOARD,
7 COMMISSION, COMMITTEE, SUBCOMMITTEE, AUTHORITY, COUNCIL,
8 AGENCY, OR OTHER ORGANIZATION, INCLUDING SUBORDINATE UNITS
9 OF THE ABOVE GROUPS, OF THE STATE OR ANY OF ITS POLITICAL
10 SUBDIVISIONS, INCLUDING BUT NOT LIMITED TO MUNICIPALITIES,
11 BOROUGH, SCHOOL BOARDS, AND ALL OTHER BOARDS, AGENCIES,
12 ASSEMBLIES, COUNCILS, DEPARTMENTS, DIVISIONS, BUREAUS,
13 COMMISSIONS, OR ORGANIZATIONS, ADVISORY OR OTHERWISE,] of the
14 state [OR LOCAL GOVERNMENT SUPPORTED IN WHOLE OR IN PART BY

1 PUBLIC MONEY OR AUTHORIZED TO SPEND PUBLIC MONEY,] are open to
2 the public except as otherwise provided by this section or another provision of law.
3 Attendance [EXCEPT FOR MEETINGS OF A HOUSE OF THE LEGISLATURE,
4 ATTENDANCE] and participation at meetings by members of the public or by
5 members of a governmental body may be by teleconferencing. Agency materials that
6 are to be considered at the meeting shall be made available at teleconference locations
7 if practicable. Except when voice votes are authorized, the vote shall be conducted
8 in such a manner that the public may know the vote of each person entitled to vote.
9 The vote at a meeting held by teleconference shall be taken by roll call. This section
10 does not apply to any votes required to be taken to organize a governmental
11 [PUBLIC] body described in this subsection.

12 * Sec. 2. AS 44.62.310(b) is amended to read:

13 (b) If permitted [EXCEPTED] subjects are to be discussed at a meeting in
14 executive session, the meeting must first be convened as a public meeting and the
15 question of holding an executive session to discuss matters that are listed [COME
16 WITHIN THE EXCEPTIONS CONTAINED] in (c) of this section shall be determined
17 by a majority vote of the governmental body. The motion to convene in executive
18 session must clearly and with specificity describe the subject of the proposed
19 executive session without defeating the purpose of addressing the subject in
20 private. Subjects may not be considered at the executive session except those
21 mentioned in the motion calling for the executive session unless auxiliary to the main
22 question. Action may not be taken at an [THE] executive session, except to give
23 direction to an attorney or labor negotiator regarding the handling of a specific
24 legal matter or pending labor negotiations.

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

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

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

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

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

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

5 * Sec. 4. 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 [BODIES] when holding a meeting solely to make a decision in an
9 adjudicatory proceeding;

10 (2) juries;

11 (3) parole or pardon boards;

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

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

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

20 (7) meetings held for the purpose of participating in or attending
21 a gathering of a national, state, or regional organization of which the public
22 entity, governmental body, or member of the governmental body is a member, but
23 only if no action is taken and no business of the governmental body is conducted
24 at the meetings.

25 * Sec. 5. AS 44.62.310(e) is amended to read:

26 (e) Reasonable public notice shall be given for all meetings required to be
27 open under this section. The notice must include the date, time, and place of the
28 meeting and, if the meeting is by teleconference, the location of any teleconferencing
29 facilities that will be used. Subject [IN ADDITION] to the publication required by
30 AS 44.62.175(a) in the Alaska Administrative Journal, the notice may be given by
31 using [A COMBINATION OF] print or [AND] broadcast media. The notice shall be

1 posted at the principal office of the public entity or, if the public entity has no
2 principal office, at a place designated by the governmental body. The
3 governmental body shall provide notice in a consistent fashion for all its meetings.

4 * Sec. 6. AS 44.62.310(f) is repealed and reenacted to read:

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

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

22 (2) the disruption that may be caused to the affairs of the public entity,
23 other governmental bodies, and individuals if the action is voided;

24 (3) the degree to which the public entity, other governmental bodies,
25 and individuals may be exposed to additional litigation if the action is voided;

26 (4) the extent to which the governing body, in meetings held in
27 compliance with this section, has previously considered the subject;

28 (5) the amount of time that has passed since the action was taken;

29 (6) the degree to which the public entity, other governmental bodies,
30 or individuals have come to rely on the action;

31 (7) whether and to what extent the governmental body has, before or

1 after the lawsuit was filed to void the action, engaged in or attempted to engage in the
2 public reconsideration of matters originally considered in violation of this section;

3 (8) the degree to which violations of this section were wilful, flagrant,
4 or obvious;

5 (9) the degree to which the governing body failed to adhere to the
6 policy under AS 44.62.312(a).

7 * Sec. 7. AS 44.62.310 is amended by adding new subsections to read:

8 (g) Subsection (f) of this section does not apply to a governmental body that
9 has only authority to advise or make recommendations to a public entity and has no
10 authority to establish policies or make decisions for the public entity.

11 (h) In this section,

12 (1) "governmental body" means an assembly, council, board,
13 commission, committee, or other similar body of a public entity with the authority to
14 establish policies or make decisions for the public entity or with the authority to advise
15 or make recommendations to the public entity; "governmental body" includes the
16 members of a subcommittee or other subordinate unit of a governmental body if the
17 subordinate unit consists of two or more members;

18 (2) "meeting" means a gathering of members of a governmental body
19 when

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

25 (B) the gathering is prearranged for the purpose of considering
26 a matter upon which the governmental body is empowered to act and the
27 governmental body has only authority to advise or make recommendations for
28 a public entity but has no authority to establish policies or make decisions for
29 the public entity;

30 (3) "public entity" means an entity of the state or of a political
31 subdivision of the state including an agency, a board or commission, the University of

1 Alaska, a public authority or corporation, a municipality, a school district, and other
2 governmental units of the state or a political subdivision of the state; it does not
3 include the court system or the legislative branch of state government.

4 * Sec. 8. AS 44.62.312(b) is amended to read:

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

8 * Sec. 9. OPEN MEETINGS COMMITTEE. (a) There is established an open meetings
9 committee consisting of two senators appointed by the president of the senate, two
10 representatives appointed by the speaker of the house of representatives, and two public
11 members appointed from the Select Committee on Legislative Ethics by its chair. The
12 committee shall consider application of open meetings principles to the legislature and submit
13 a report of its recommendations to the legislature by January 5, 1995. The report may include
14 suggested draft legislation to carry out the recommendations of the committee.

15 (b) The committee may meet during the interim. The committee is terminated on
16 January 5, 1995.

17 * Sec. 10. AS 24.60.037 is repealed.

18 * Sec. 11. This Act takes effective immediately under AS 01.10.070(c).