

CONFERENCE CS FOR HOUSE BILL NO. 254
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE CONFERENCE COMMITTEE

Offered: 5/10/94

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 24.60.037 is amended to read:

5 Sec. 24.60.037. OPEN MEETINGS LAW. Legislators shall abide by open
6 meetings principles [AS 44.62.310 - 44.62.312 (OPEN MEETINGS LAW)]. The
7 committee shall develop guidelines for the application of principles of open meetings
8 of governmental bodies [THIS SECTION] to the legislature. The guidelines must
9 permit closed caucuses and private, informal meetings or conversations between
10 legislators in which political strategy is discussed. In a proceeding under
11 AS 24.60.170 in which a violation of this section is alleged, if the committee finds that
12 a person acted within the adopted guidelines, the committee shall dismiss the
13 complaint as to that violation.

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

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

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

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

1 question. Action may not be taken at an [THE] executive session, except to give
2 direction to an attorney or labor negotiator regarding the handling of a specific
3 legal matter or pending labor negotiations.

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

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

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

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

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

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

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

16 (d) This section does not apply to

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

20 (2) juries;

21 (3) parole or pardon boards;

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

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

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

30 (7) meetings held for the purpose of participating in or attending
31 a gathering of a national, state, or regional organization of which the public

1 entity, governmental body, or member of the governmental body is a member, but
2 only if no action is taken and no business of the governmental body is conducted
3 at the meetings.

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

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

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

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

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

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

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

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

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

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

10 (7) whether and to what extent the governmental body has, before or
11 after the lawsuit was filed to void the action, engaged in or attempted to engage in the
12 public reconsideration of matters originally considered in violation of this section;

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

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

17 * Sec. 8. AS 44.62.310 is amended by adding new subsections to read:

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

21 (h) In this section,

22 (1) "governmental body" means an assembly, council, board,
23 commission, committee, or other similar body of a public entity with the authority to
24 establish policies or make decisions for the public entity or with the authority to advise
25 or make recommendations to the public entity; "governmental body" includes the
26 members of a subcommittee or other subordinate unit of a governmental body if the
27 subordinate unit consists of two or more members;

28 (2) "meeting" means a gathering of members of a governmental body
29 when

30 (A) more than three members or a majority of the members,
31 whichever is less, are present, a matter upon which the governmental body is

1 empowered to act is considered by the members collectively, and the
2 governmental body has the authority to establish policies or make decisions for
3 a public entity; or

4 (B) the gathering is prearranged for the purpose of considering
5 a matter upon which the governmental body is empowered to act and the
6 governmental body has only authority to advise or make recommendations for
7 a public entity but has no authority to establish policies or make decisions for
8 the public entity;

9 (3) "public entity" means an entity of the state or of a political
10 subdivision of the state including an agency, a board or commission, the University of
11 Alaska, a public authority or corporation, a municipality, a school district, and other
12 governmental units of the state or a political subdivision of the state; it does not
13 include the court system or the legislative branch of state government.

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

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

18 * Sec. 10. OPEN MEETINGS GUIDELINES. (a) Notwithstanding AS 24.60.037,
19 adoption of initial guidelines applying the open meetings principles to the legislature are
20 subject to approval by the legislature as provided under this subsection. By January 16, 1995,
21 the Select Committee on Legislative Ethics shall submit proposed initial guidelines to the
22 legislature. The Legislature shall vote on a concurrent resolution approving the guidelines by
23 the 45th day of the legislative session. If the guidelines are voted on but not approved, the
24 committee shall submit new proposed guidelines within 60 days after the resolution was voted
25 on by the legislature. If the new guidelines are voted on but not approved, the Select
26 Committee on Legislative Ethics shall continue to submit proposed guidelines in accordance
27 with the procedure set out in this subsection until the initial guidelines are approved.

28 (b) There is established an Open Meetings Advisory Committee consisting of two
29 senators appointed by the president of the senate, two representatives appointed by the speaker
30 of the house of representatives, and two public members appointed from the Select Committee
31 on Legislative Ethics by its chair. The advisory committee shall consider application of open

- 1 meetings principles to the legislature and submit a report of its recommended guidelines to
- 2 the Select Committee on Legislative Ethics by December 1, 1994. The advisory committee
- 3 is terminated upon adoption of the guidelines by the legislature.
- 4 * Sec. 11. This Act takes effective immediately under AS 01.10.070(c).