

**HB**

**254**

8-LS0859M  
Cook  
3/8/94

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:  
Referred:

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 44.62.310(a) is amended to read:

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

1 the public except as otherwise provided by this section or another provision of law.  
2 Except for meetings of a house of the legislature, attendance and participation at  
3 meetings by members of the public or by members of a governmental body may be  
4 by teleconferencing. Agency materials that are to be considered at the meeting shall  
5 be made available at teleconference locations if practicable. Except when voice votes  
6 are authorized, the vote shall be conducted in such a manner that the public may know  
7 the vote of each person entitled to vote. The vote at a meeting held by teleconference  
8 shall be taken by roll call. This section does not apply to any votes required to be  
9 taken to organize a governmental [PUBLIC] body described in this subsection.

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

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

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

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

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

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

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

1                   (4) matters involving consideration of government records that are  
2                   not subject to public disclosure.

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

4                   (d) This section does not apply to

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

8                   (2) juries;

9                   (3) parole or pardon boards;

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

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

14                  (6) staff meetings or other gatherings of the executive,  
15                  administrative, or other employees of a public entity held for any reason,  
16                  including meetings of an employee group established by policy of the governing  
17                  body or held while acting in an advisory capacity to the governmental body;

18                  (7) meetings held for the purpose of participating in or attending  
19                  a gathering of a national, state, or regional organization of which the public  
20                  entity, governmental body, or member of the governmental body is a member; or

21                  (8) meetings held for the purpose of meeting with an elected official  
22                  or representative of an elected official. if the elected official is not a member of  
23                  the governmental body or an official of the public entity the governmental body  
24                  represents.

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 in any  
31                  reasonable manner [BY USING A COMBINATION OF PRINT AND BROADCAST

1 MEDIA].

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

3 (f) Action taken contrary to this section is voidable. A lawsuit to void an  
4 action taken in violation of this section must be filed in superior court within 180 days  
5 after the date of the action. A member of a governmental body may not be named in  
6 an action to enforce this section in either the member's official capacity or personal  
7 capacity. If the court finds that an action is void, the governmental body may discuss  
8 and act on the matter at another meeting held in compliance with this section. A court  
9 may hold that an action taken at a meeting held in violation of this section is void only  
10 if the court finds that, considering all of the circumstances, the public interest in  
11 compliance with this section outweighs the harm that would be caused to the public  
12 interest and to the public entity by voiding the action. In making this determination,  
13 the court shall consider at least the following:

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

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

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

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

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

23 (6) the degree to which the public entity, other governmental bodies,  
24 or individuals have come to rely on the action.

25 \* **Sec. 7.** AS 44.62.310 is amended by adding a new subsection to read:

26 (g) In this section,

27 (1) "governmental body" means a legislature, assembly, council, board,  
28 commission, committee, or other similar body with the authority to (A) establish  
29 policies or make decisions for a public entity; or (B) make recommendations directly  
30 to another governmental body authorized to take action on the matter that is the subject  
31 of the recommendations; "governmental body" includes the members of a

1           subcommittee or other subordinate unit of a governmental body if the subordinate unit  
2           consists of two or more members;

3                       (2) "meeting" means a prearranged gathering of a governmental body  
4           held for the purpose of considering a matter upon which the governmental body is  
5           empowered to act when more than three members or a majority of the members,  
6           whichever is less, are present;

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

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Juneau, Alaska 99801-2105

### MEMORANDUM

March 10, 1994

**SUBJECT:** Open meetings of governmental bodies (SCS CSHB 254(2d JUD))

**TO:** Senator Robin Taylor, Chair  
Senate Judiciary Committee

**FROM:** Tamara Brandt Cook *TBC*  
Director

Here is the sectional summary you requested. This summary only discusses aspects of this draft that constitute significant changes to the existing statute that deals with open meetings.

Sec. 1. Meetings of a governmental body of a public entity are required to be open to the public except as provided in other law. Agency material to be considered are to be made available at teleconference locations if practicable.

Sec. 2. A motion to convene in executive session must describe the purpose of the proposed executive session. Action may not be taken, except to give direction to an attorney or labor negotiator regarding the handling of a specific legal matter or pending labor negotiations.

Sec. 3. Added to the list of subjects that may be considered in executive session is a matter involving consideration of governmental records that are not subject to public disclosure.

Sec. 4. The exemption from the open meeting requirement that currently applies to judicial or quasi-judicial bodies is expanded to apply to a governmental body performing a judicial or quasi-judicial function. The following are added to the list of exemptions: staff meetings, meetings held for the purpose of participating in gatherings of certain organizations, meetings held for the purpose of meeting with an elected official or the official's representatives.

Sec. 5. Public notice of a meeting may be given in any reasonable manner.

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Sec. 6. Action taken contrary to requirements of the open meeting statute is voidable. A lawsuit to challenge the action on this basis must be filed within 180 days after the date of the action. A member of the body may not be named in an action to enforce the open meeting statute. A court may hold an action void only if the court finds that the public interest in compliance with the open meeting requirements outweighs the harm that would be caused to the public interest and to the public entity by voiding the action.

Sec. 7. Definitions of "governmental body," "meeting," and "public entity" are provided.

TBC:gc  
94-201.glc



## ALASKA MUNICIPAL LEAGUE

### Proposed Senate CS for CS for House Bill No. 254 (2nd RLS)

### Significant Changes to Statute and from Prior Senate Rules CS

#### Sec 1. AS 44.62.310(a)

- Discussion of covered groups moved to definition section (Section 7 of the bill) for clarity
- Regarding teleconferences, AML proposes to revert back to language in the original statute except to add "if practicable."

#### Sec. 2. AS 44.62.310(b) - Executive Sessions

- Add the line: "The motion to convene in executive session shall describe the purpose(s) of the proposed executive session with enough detail to define the subject of the executive session without defeating the purpose of addressing the matter in private."
- After "Action may not be taken at an executive session," add the words: "except to give direction to an attorney or labor negotiator regarding the handling of a specific legal matter or pending labor negotiations." Delete remainder of the paragraph in Rules CS.

#### Sec. 3. AS 44.62.310(c)

- Delete (5) and (6) from Rules CS. Subjects are addressed above.

#### Sec. 4. AS 44.62.310(d) - Exemptions from OMA

- Returns to language in original statute by exempting governing bodies of a hospital.
- Exempts staff meetings or other gatherings of the executive, administrative, or other employees of a public entity.
- Sections (7) & (8) are added to the statute to allow participation in national, state, or regional conferences and meetings with legislators. The change from the Rules version adds the word "solely" after the words "meetings held" to clarify.

#### Sec. 5. AS 44.62.31(e) - Emergency Meetings

- Requires that meeting notices be given in a reasonable manner. Removes the remainder of the paragraph in Rules CS.

Sec. 6. AS 44.62.310(f) - This section has been rewritten from the original statute to specify:

- that action taken in violation of the OMA is voidable and a lawsuit to void the action may be filed in superior court within 90 days of the date of the action
- that individuals cannot be sued, only the governmental body as a whole
- that actions may be voided only in certain circumstances

Sec. 7. AS 44.62.310 (g) - Definitions for "governmental body," "meeting," and "public entity" are added in new subsection.

Note: Sec. 8. of the prior Rules CS repealed AS 44.62.312(b). AML's proposal is to retain that original statutory language.

## AML Support of State Policy Regarding Meetings

NOTE: AS 44.62.312, reproduced below, is a statement of state policy on meetings and the right of the public to open government. AML supports this policy and does not propose to change it.

**Sec. 44.62.312. State policy regarding meetings.** (a) It is the policy of the state that

(1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;

(2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;

(3) the people of this state do not yield their sovereignty to the agencies that serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created;

(6) the use of teleconferencing under this chapter is for the convenience of the parties, the public, and the governmental units conducting the meetings.

(b) AS 44.62.310(c)(1) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and avoid unnecessary executive sessions. (§ 3 ch 98 SLA 1972; am § 4 ch 54 SLA 1985)

**Effect of amendments.** — The 1985 amendment added paragraph (6) of subsection (a).

### NOTES TO DECISIONS

**Public disclosure of applications.** — Strong public interest in the disclosure of the affairs of government generally, and in an open selection process for high public officials in particular requires public disclosure and inspection of applications for posts having substantial discretionary authority. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Quoted in *Hammond v. North Slope Borough*, 645 P.2d 750 (Alaska 1982); *Alaska Community Colleges' Fed'n of Teachers, Local 2404 v. University of Alaska*, 677 P.2d 886 (Alaska 1984); *Brookwood Area Homeowners Ass'n v. Municipality of Anchorage*, 702 P.2d 1317 (Alaska 1985).

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**MEMORANDUM**

January 31, 1994

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**TO:** Senator Robin Taylor

**FROM:** Tamara Brandt Cook  
Director

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Sec. 5. Public notice of a meeting may be given in any reasonable manner.

Sec. 6. Action taken contrary to requirements of the open meeting statute is voidable. A lawsuit to challenge the action on this basis must be filed within 180 days

Senator Robin Taylor  
January 31, 1994  
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TBC:pl  
94-083.plm

# Alaska State Legislature

Sen. Robin Taylor, *Chair*  
Sen. Rick Halford, *Vice Chair*  
Sen. George Jacko, *Member*  
Sen. Dave Donley, *Member*  
Sen. Suzanne Little, *Member*



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## Senate Judiciary Committee

### MEMORANDUM

DATE: March 8, 1994

TO: Members of the Senate Judiciary Committee

FROM: Kevin Sullivan, Committee Aide

SUBJECT: HB 254 Open Meeting Act

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This legislation has been scheduled for the purpose of adopting and circulating the enclosed committee substitute. A public hearing on this bill will be scheduled next week.



March 8, 1994

TO: Senator Robin Taylor, Chairman  
and Members  
Senate Judiciary Committee

FROM: Kent E. Swisher  
Executive Director

RE: Work Draft for Senate CS for CS for HB 254

The Alaska Municipal League supports the adoption by the Senate Judiciary Committee of the work draft dated 3/8/94 concerning the Open Meetings Act. The revisions contained in the work draft are the result of several meetings conducted over the interim by parties interested in this legislation. The working group consisted of representatives from the League of Women Voters, Alaska School Boards Association, University of Alaska, and members of the press. While not everyone is in total agreement with all of the changes, AML feels this proposal incorporates most of the concerns expressed by the group.

The Alaska Municipal League believes the intent of the Open Meetings Act is to see that decisions of governmental bodies are made publicly with an opportunity for the public to attend, observe, and participate. AML is seeking legislation that amends the Open Meetings Act to clarify the definition of a meeting, clarify who is subject to the Act, clarify provisions regarding executive sessions, and amend provisions governing remedies for violations of the Act. We believe this proposal addresses all of these concerns.

For your information, we are attaching a sectional breakdown of the modifications from last year's Senate Rules version. Please let us know if you have any concerns or questions about the proposal. We appreciate your consideration in adopting these changes and encourage the Committee to hold a public hearing as soon as possible.

Thank you for your interest.



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