

Alaska Open Meetings Act
A.S. 44.62.310 – 44.62.312



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A.S. 44.62.312. State policy regarding meetings

(a) It is the policy of the state that

(1) ... governmental units ... 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;

...

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



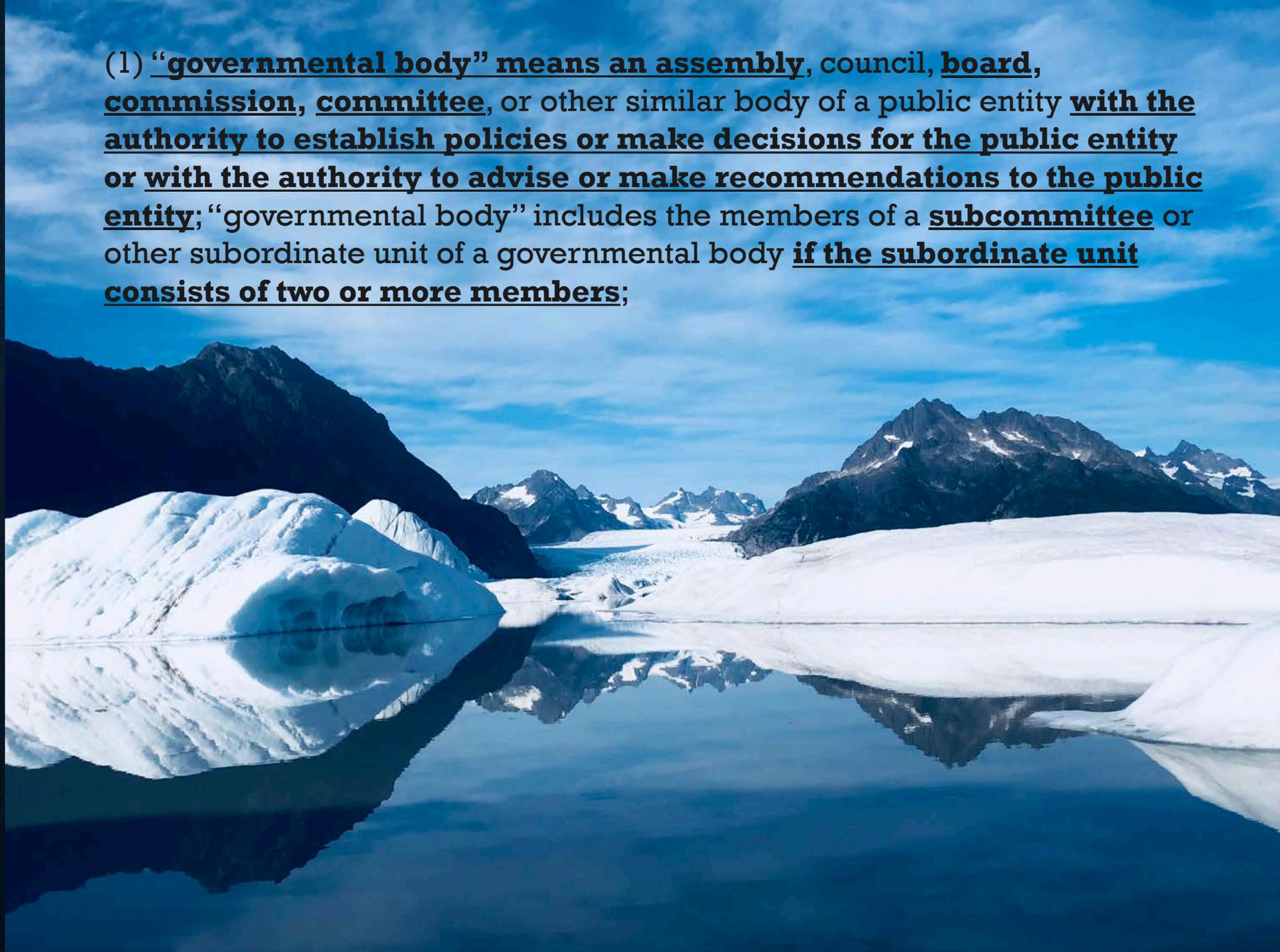
A.S. 44.62.310. Government meetings public

(a) All *meetings* of a *governmental body* of a *public entity* of the state are open to the public except as otherwise provided by this section or another provision of law...

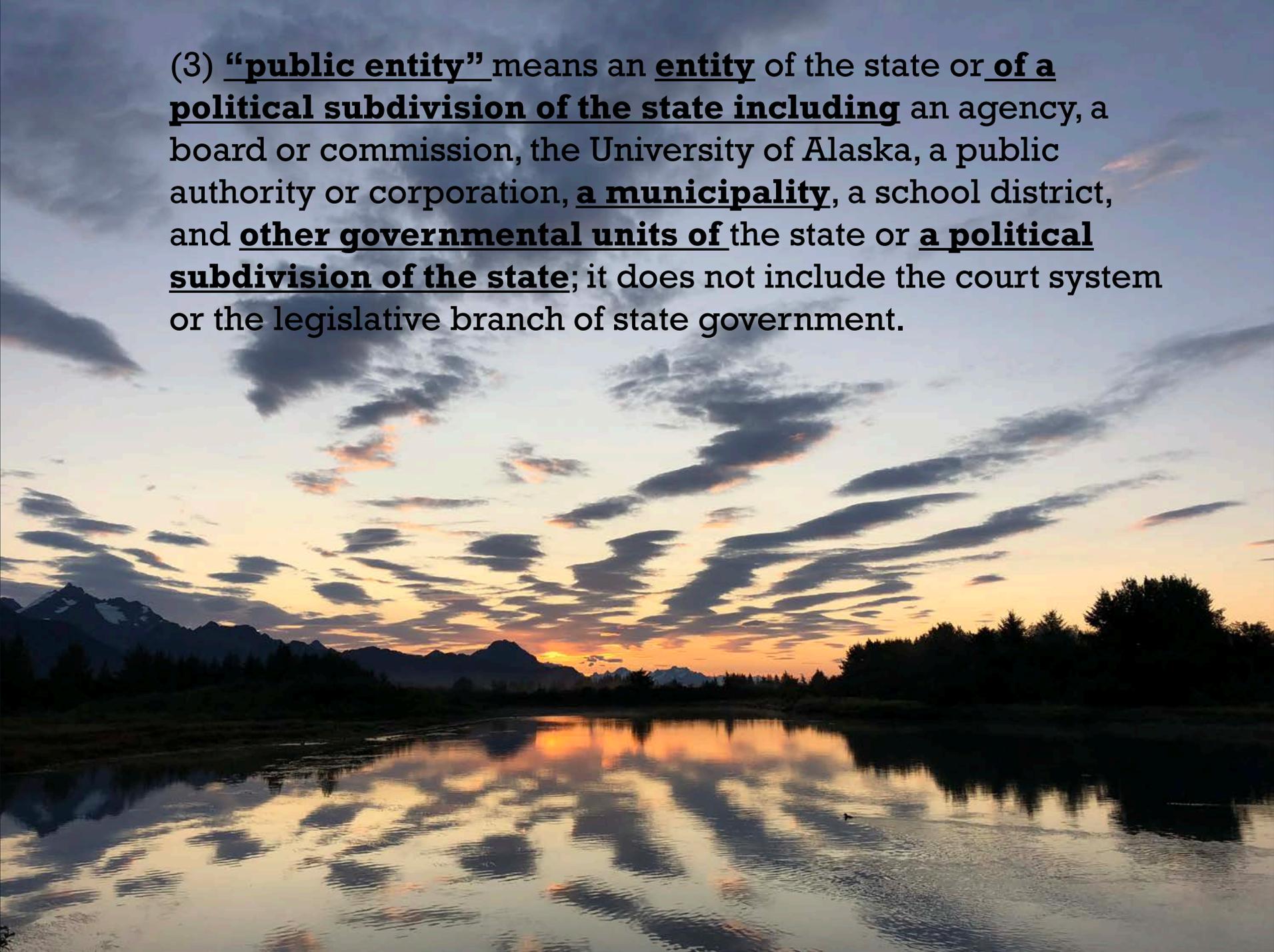
Voting: “Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote... This section does not apply to any votes required to be taken to organize a governmental body described in this subsection.”



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



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



(2) “**meeting**” means a gathering of members of a **governmental body** when

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

(B) more than three members or a majority of the members, whichever is less, are present, **the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act, and the governmental body has only authority to advise or make recommendations** for a public entity **but has no authority to establish policies or make decisions** for the public entity;

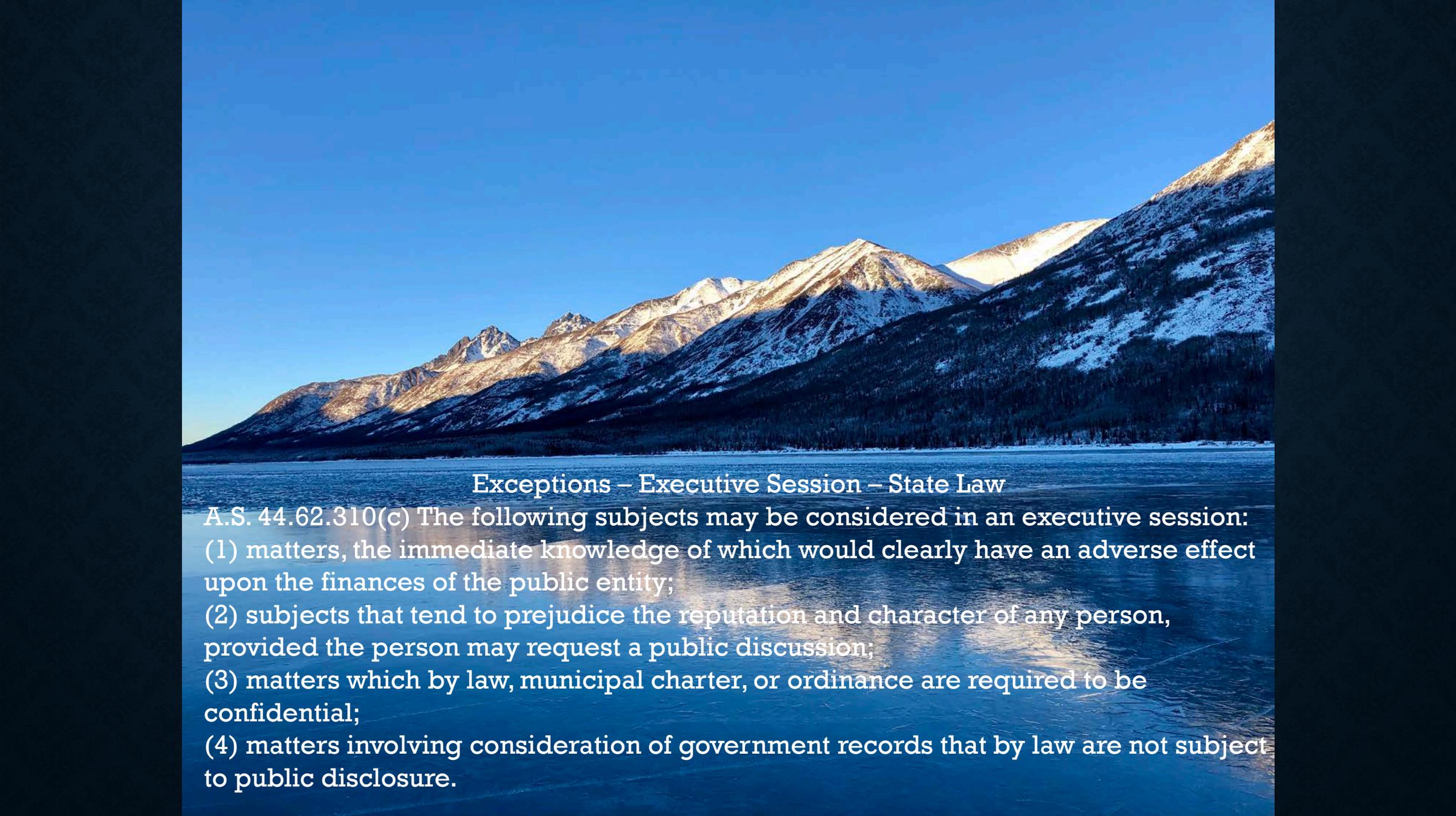


Public Notice of Meetings Required by State and Municipal Law

A.S. 44.62.310(e): **Reasonable public notice** shall be given for all meetings required to be open under this section.

MOA Charter Section 17.05 – Public Meetings

(a) **All meetings of the assembly, the school board and other boards and commissions shall be public. The assembly by ordinance shall adopt procedures for maximum reasonable public notice of all meetings.** At each such meeting the public shall have reasonable opportunity to be heard. An **executive session** may be held to discuss **pending litigation** or **any matter the immediate public knowledge of which would tend to affect adversely the finances of the municipality or to defame or prejudice the character or reputation of any person**...No official action may be taken in executive session.



Exceptions – Executive Session – State Law

A.S. 44.62.310(c) The following subjects may be considered in an executive session:

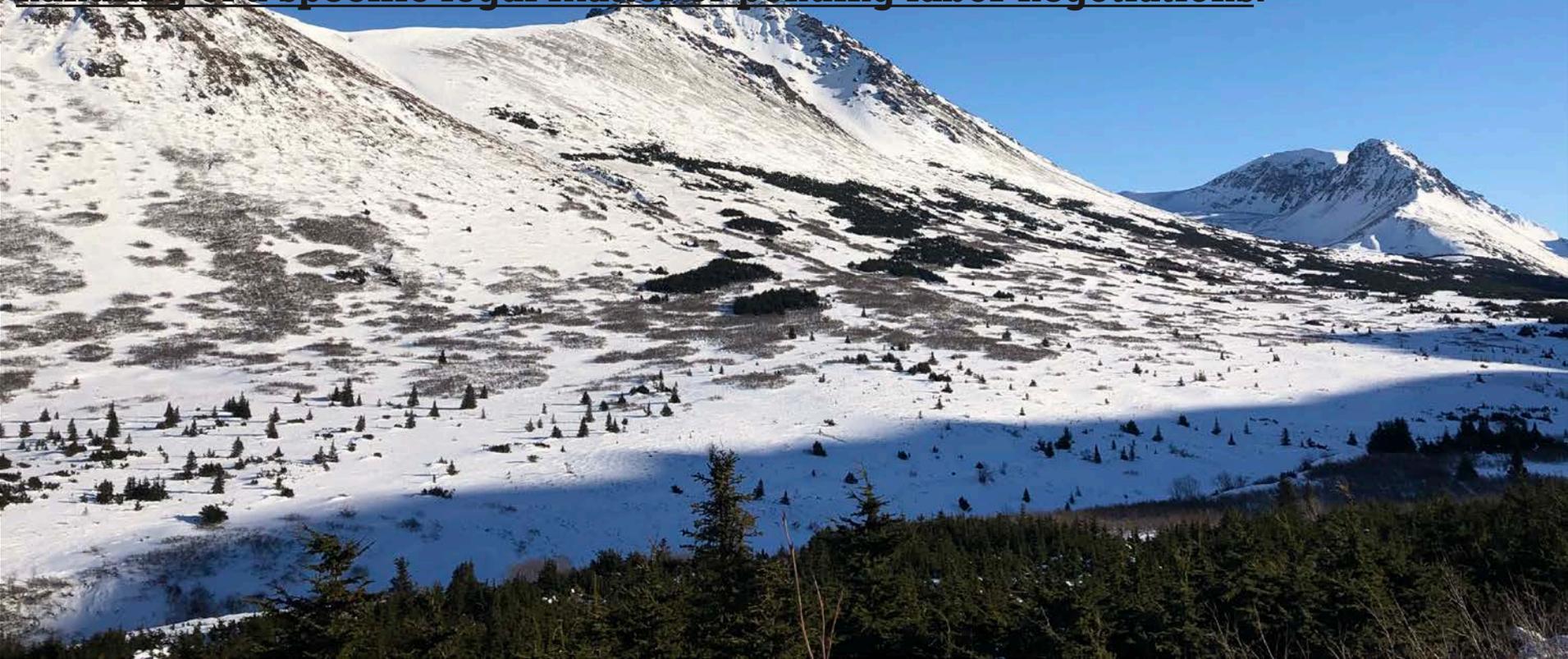
- (1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the public entity;**
- (2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;**
- (3) matters which by law, municipal charter, or ordinance are required to be confidential;**
- (4) matters involving consideration of government records that by law are not subject to public disclosure.**

AMC 2.30.035 Meetings - B. Executive sessions. (MOA Ordinance)

1. The assembly may recess to meet in executive session to discuss the following subjects if the express nature of the subject is stated in the motion calling for the session:
 - a. A specific legal matter, including pending litigation;
 - b. Labor negotiations with municipal employees;
 - c. Matters the immediate knowledge of which would clearly have an adverse effect upon the finances of the municipality;
 - d. Subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;
 - e. Matters which by law, municipal charter, or ordinance are required to be confidential; or
 - f. Matters involving consideration of government records that by law are not subject to public disclosure.



A.S. 44.62.310 (b) If permitted subjects are to be discussed at a meeting in executive session, the meeting must **first be convened as a public meeting** and the question of holding an executive session to discuss matters that are listed in (c) of this section shall be determined by a majority vote of the governmental body. **The motion to convene in executive session must clearly and with specificity describe the subject of the proposed executive session without defeating the purpose of addressing the subject in private.** Subjects may not be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. **Action may not be taken at an executive session, except to give direction to an attorney or labor negotiator regarding the handling of a specific legal matter or pending labor negotiations.**



(d) **This section does not apply to**

(1) a governmental body performing a judicial or quasi-judicial function when holding a meeting solely to make a **decision** in an adjudicatory proceeding;

(2) – (6) [inapplicable to municipalities];

(7) meetings held for the purpose of participating in or **attending a gathering of a national, state, or regional organization of** which the public entity, governmental body, or member of the governmental body is a member, **but only if no action is taken and no business of the governmental body is conducted at the meetings** [AML for example]; or

(8) meetings of **municipal service area boards** established under AS 29.35.450--29.35.490 when meeting solely to act on matters that are administrative or managerial in nature.

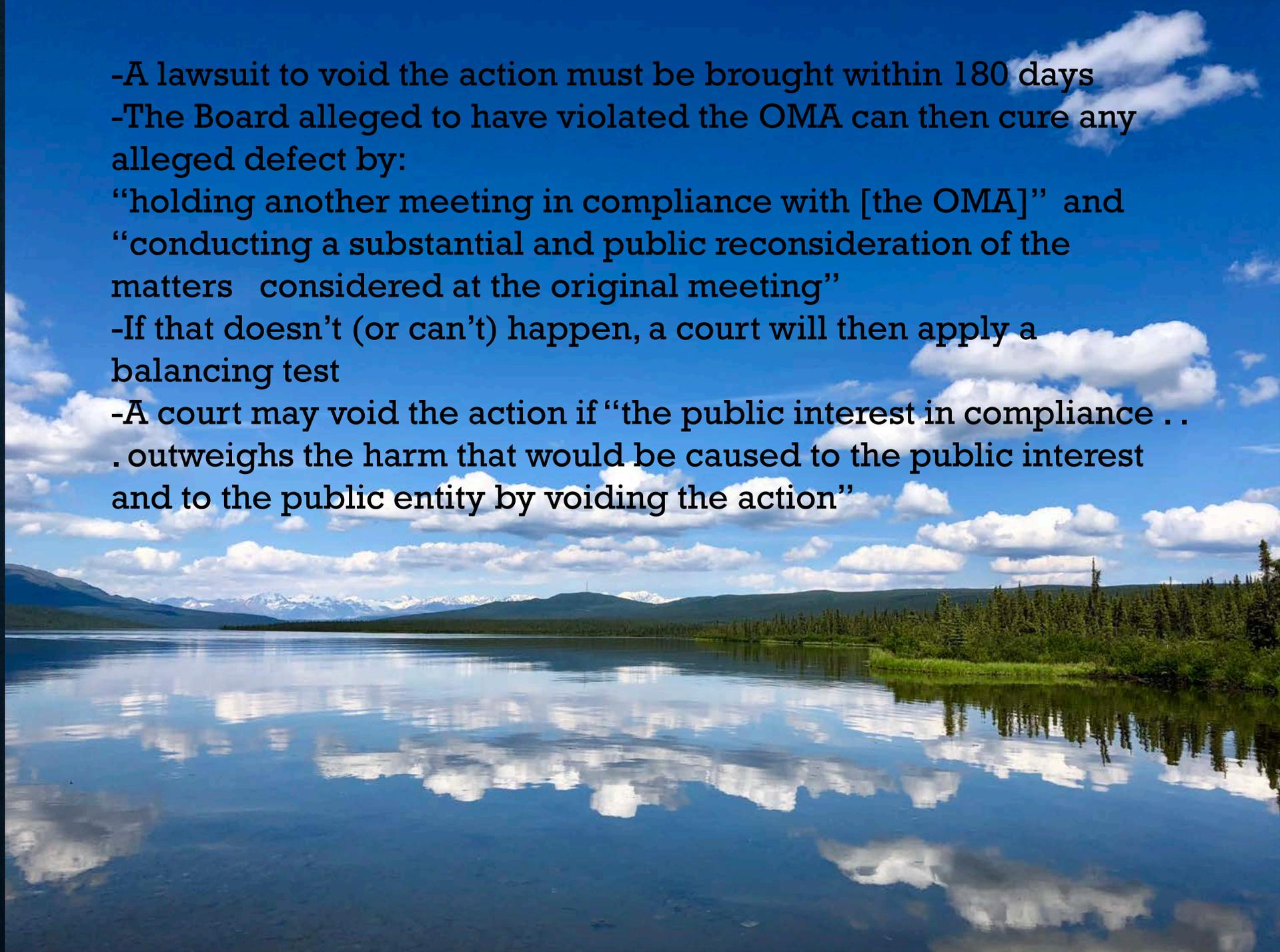


Possible Consequences for Open Meetings Act Violations

- Members cannot be named in lawsuit, but...
- Recall
- Actions are potentially voidable in court



- A lawsuit to void the action must be brought within 180 days
- The Board alleged to have violated the OMA can then cure any alleged defect by:
 - “holding another meeting in compliance with [the OMA]” and
 - “conducting a substantial and public reconsideration of the matters considered at the original meeting”
- If that doesn't (or can't) happen, a court will then apply a balancing test
- A court may void the action if “the public interest in compliance . . . outweighs the harm that would be caused to the public interest and to the public entity by voiding the action”



“A court may hold that an action taken at a meeting held in violation of this section is void only if the court finds that, considering all of the circumstances, the public interest in compliance with this section outweighs the harm that would be caused to the public interest and to the public entity by voiding the action. In making this determination, the court shall consider at least the following:

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

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

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

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

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

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

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

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

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

Serial Meetings Can Violate the Open Meetings Act

Serial meetings occur most often outside of a formal meeting where a series of members of the governmental body privately discuss a topic that is or will be considered, one after the other.

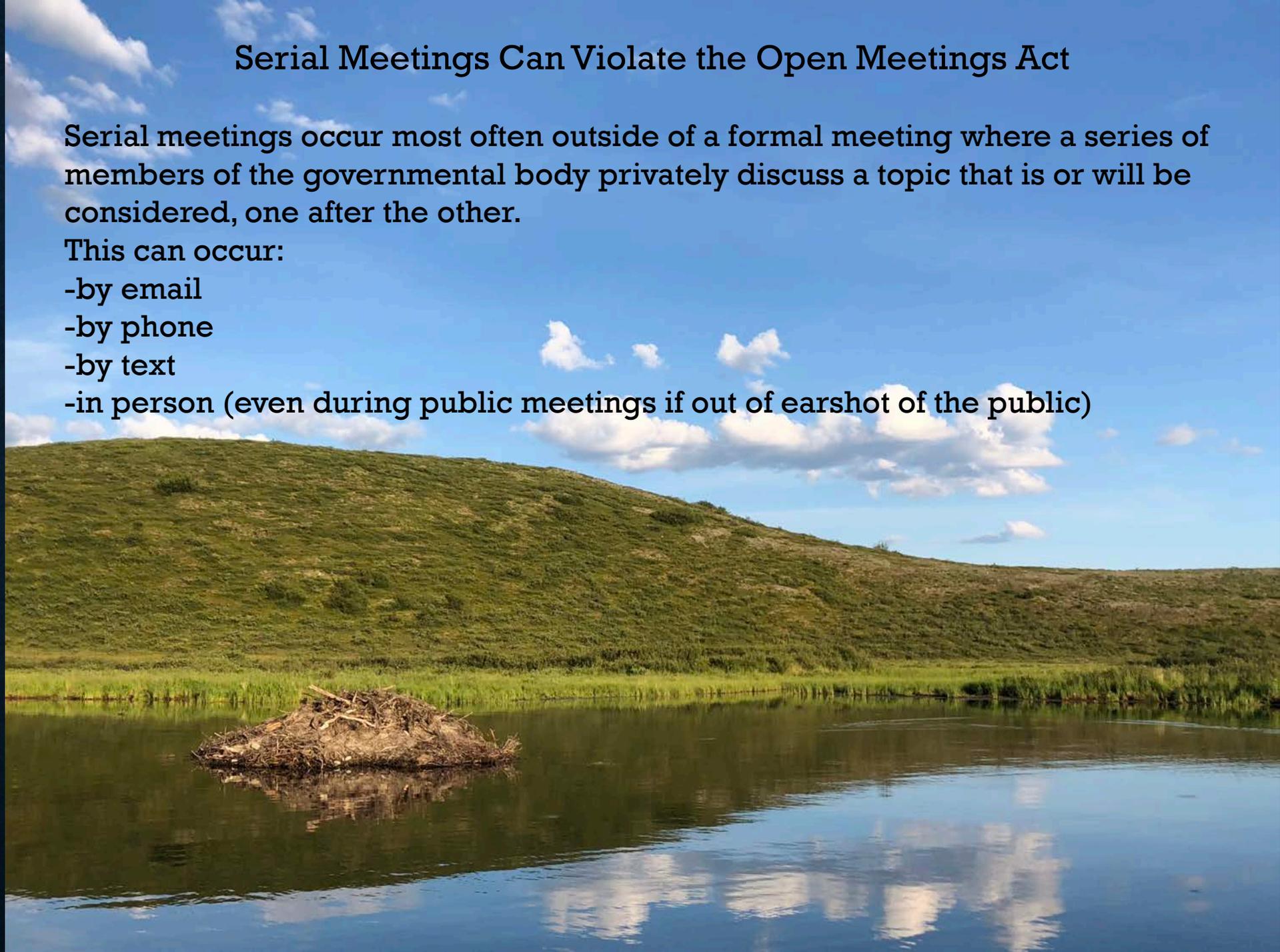
This can occur:

-by email

-by phone

-by text

-in person (even during public meetings if out of earshot of the public)



Caution - Open Meeting Act Material on the Internet

If doing research on open meetings law in Alaska, avoid out of date material; the law changed in 2009.

-Legal paper on DNR's website written in 2002 is no longer valid

-Touchngo.com is NOT up to date and is wrong

-FindLaw.com appears to be up to date

-Alaska State Legislature website appears to be up to date:

<http://www.akleg.gov/basis/statutes.asp#44.62.305>

QUESTION or COMMENTS?

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