

# Open Meetings Act

## Overview for Alaska Mental Health Trust Authority

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# Overview: Format for Today, Format of the Act

- Format for Today's presentation:
  - topic slides
- What is the Open Meetings Act?
  - AS 44.62, Administrative Procedures Act, Article 6: Open Meetings of Governmental Bodies
  - AS 44.62.310. Government meetings Public
  - AS 44.62.312. State Policy Regarding Meetings
  - AS 44.62.319. Short Title
- Enacted 1959; Amended 1990, 1991, 1994, 2000, 2009.
- Short title, AS 44.62.319, states that AS 44.62.310 – 319 may be cited as the "Open Meeting Act"
- OMA for short
- Exceptions/Exclusions
- Executive Sessions
- Violations + Penalties

# Overview: Purpose of the Act

## **AS 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) and (d) 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.

# Overview: Government Meetings Public

- **AS 44.62.310(a)**

(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. Attendance and participation at meetings by members of the public or by members of a governmental body may be by teleconferencing. Agency materials that are to be considered at the meeting shall be made available at teleconference locations if practicable. 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. The vote at a meeting held by teleconference shall be taken by roll call. This section does not apply to any votes required to be taken to organize a governmental body described in this subsection.

# Presumption

- Meetings of a governmental body of a public entity are open to the public
- Closed sessions are permitted only if an exception applies, or another law so provides
- Materials considered by the governmental body in a meeting should be available to the public, even at teleconference locations

# What constitutes a “meeting”?

AS 44.62.310(h) In this section,

- (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;

# What's a governmental body?

AS 44.62.310(h) provides:

- (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;

# What's a public entity?

AS 44.62.310(h) provides:

- (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.

# What is a Meeting? Essentials

- More than three members or a majority, whichever is less
- Applies to committees
- Applies if policies or decisions are considered, even if not prearranged
- Applies to prearranged consideration of recommendations or advice, even if the body lacks independent authority to act

# Required Notice

AS 44.62.310(e) - Reasonable public notice shall be given for all meetings required to be open under this section. The notice must include the date, time, and place of the meeting and if, the meeting is by teleconference, the location of any teleconferencing facilities that will be used. Subject to posting notice of a meeting on the Alaska Online Public Notice System as required by AS 44.62.175(a), the notice may be given using print or broadcast media. The notice shall be posted at the principal office of the public entity or, if the public entity has no principal office, at a place designated by the governmental body. The governmental body shall provide notice in a consistent fashion for all its meetings.

# Notice

- Issues:
  - Form of notice?
  - Days in advance?
- Notice must be published on Alaska Online Public Notice System (AS 44.62.175(a)).
- Radio PSAs + biannually published schedule of meeting dates = okay  
1992 Op. Att’y Gen. (Dec. 30) (Jerry Covey)
  - Note: post-1994 amendments expressly allow for print *or* broadcast notice.
- How much notice?
  - No bright line in statute
  - 1992 AG Opinion: *minimum* 3 days’ notice for previously unscheduled, unannounced meetings. *Id.*
- Make meeting agenda available to the public  
1986 Op. Att’y Gen. (July 17) (Marvin Weatherly)

# Timing of Notice

- Agency should be consistent in the timing and manner of public meetings
- General rule is at least a week, but in appropriate circumstances a shorter period may be acceptable
  - Response to legislative inquiries
  - Litigation matters
  - Time-sensitive personnel or financial matters

# What is “Reasonable Public Notice”?

- Contains date, time and place of meeting, including teleconferencing information
- Posted on AOPNS, at the agency’s offices, and optionally publicized in print and broadcast media
- Email and physical mailing lists are common
- Objective is to reach as many interested persons as possible

# Government Meetings Public- Exceptions in Statute

- AS 44.62.310(d) :

(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) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff;

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

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

(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; 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.

# Executive Session and Privileges

# Executive Session

AS 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.

# What Can you Discuss in Executive Session

- AS 44.62.310(c) :
- (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.

# Privileges and Confidential Materials

- Attorney client- falls under AS 44.62.310(c)
- Deliberative Process
- Confidential Materials

# Executive Sessions

- As a matter of policy, should be used infrequently
- Matter to be discussed must be specifically described in public, without compromising the need for confidentiality
- Board must affirmatively vote to go into executive session
- No action may be taken in executive session, except to provide direction to an attorney in a specific legal matter

# Subjects for Executive Session

- Matters the immediate knowledge of which would have an adverse effect on the finances of the agency
- Matters that tend to prejudice the reputation and character of any person, except that the person may request a public discussion
- Matters that are by law confidential
- Matters involving consideration of government records that by law are not subject to public disclosure

# Actions Taken and Violations

# What is an action under the Act?

- Action is not expressly defined, but we get some ideas of what it means from the statute.
- AS 44.62.310(d)(7) (in the context of out of scope activities): 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.
- AS 44.62.310(b) (in the context of executive sessions): 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.

# What is action (2)?

- 310(h)(1) (definition of governmental body): ...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...

# Advice or recommendations is action

- Bodies providing advice or recommendations are within scope of the Act:
  - 1986 AG Opinion found the Placer Mining Advisory Group in scope, which is group of public members (miners, environmentalists) advising state government
  - 1985 AG Opinion found an advisory committee (public and state employees) tasked with evaluating construction bids for aesthetics and making recommendations
  - But, advisory group to the Board of Regents, University of Alaska is out of scope.
- However, note there are no remedies for advice or recommendations made in breach of the Act.

# Action taken contrary to Act is Voidable

- 310(f):
  - Requirement for court filing within 180 days of action
  - No naming of member of body in personal capacity
  - Body may cure by holding another meeting, however must conduct a substantial and public reconsideration of the matters considered. (there is case law on this point)
  - Court is given 9 factor balancing test – must weigh (a) public interest in compliance with Act against (b) harm that would be caused to the public interest and to the public entity by voiding action.
  - Curing a violation can take place before or after action is voided

# Conclusion

- As a governmental body, AMHTA is expected to operate in public whenever possible
- When in doubt, ask for legal advice before acting
- Questions?

# Statutes, Regulations, and Charters

The Alaska Mental health Trust Authority operates in accordance with the statutes as approved by the Alaska Legislature and the regulations and bylaws as approved by the Trust.

## Statutes

- AS 37.14.001 – 13.14.099 Special Funds, mental health trust
- AS 47.30.011 – 47.30.061 Alaska Mental Health Trust Authority
- AS 38.05.801 Management of mental health trust land
- **AS 44.62.310 – 44.62.319 Open Meetings Act**

## Regulations

- [20 AAC 40](#): Updated 2016

## Bylaws

- [Bylaws](#): Adopted October 2017

## Policies

- [Asset Management Policy Statement Aug 2019](#)