

Open Meetings Act

- **Quick Guide for Alaska Mental Health Trust Authority**
- **February 5, 2025**
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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 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

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

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
- Employment Issues and Employee Reviews
- Any information identified confidential by law

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 or to a labor negotiator

Open Meetings Act Does Not Apply

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

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.

Meetings where any votes are taken to organize a governmental body described in AS 44.62.310(a).

Food for Thought

- Can a Board or staff member disclose confidential information that is learned through an executive session?
- Can violations of the OMA be considered Executive Branch Ethics Act violations?
 - Whether it is a disclosure of confidential information or some other violation?
- Can disclosure of confidential information from an executive session lead to criminal charges?

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 44.25.200 – 44.25.295 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, Revised effective January 1, 2025.

Policies

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