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**Open Meetings Act**

The State of Alaska's Open Meetings Act (AS 44.62.310-.312) requires that all meetings of a public entity's governing body be open to the public and that the body provide reasonable notice of its meetings. The Open Meetings Act (OMA) is intended to ensure that decisions made and actions taken are public knowledge and represent the will of the public that the governing body serves. In essence, the OMA protects the public's right to know.

To be able to protect the public's right to know, the OMA requires that:

- all deliberations and action taken by a public entity must be done in public view, with limited exceptions;
- the public must be provided prior knowledge of all steps occurring in the decision-making process, with limited exceptions; and that
- individual actions of an official are made known.

In order for these requirements to have full effect, meetings must occur as provided in the notice; and, with few exceptions, the public must be allowed to involve itself in the meeting. The public must also have access to materials being considered during the meeting.

In addition to laying out specific steps required for meetings and allowable exceptions, the statutes addressing open meetings speak about the state's policy regarding what authority the public has delegated to governing bodies. Following is a synopsis.

According to the 'State Policy Regarding Meetings' (AS 44.62.312):

- The government exists to aid in conducting the people's business.
- Government units should act and deliberate openly.
- The people do not yield sovereignty to government agencies that serve them.
- Public servants have not been given the right to decide what is good or not good for the people to know.
- People should remain informed so they may retain control over the government they created.
- The use of teleconferences is for the convenience of the parties, public, and government.
- The Open Meetings Act should be narrowly construed to effectuate these policies and avoid unnecessary exemptions.

**What is the Open Meetings Act?**

The State of Alaska's Open Meetings Act (AS 44.62.310-.312), is a law that addresses the meetings of public entities; it protects the public's right to know and their opportunity to be heard. Among other things, the Act:

- defines public meetings and public entities;
- lays out specific requirements for public notice;
- requires that all meetings of a governmental body of a public entity are open to the public;
- lays out provisions for attendance at meetings and voting methods;
- lays out provisions for distribution of meeting materials; and
- lists the few exceptions to the Act, as well as matters that may be discussed in executive session.

In order to assure that the public information/participation provisions of the Act are met, the Act requires that the public entity must provide "reasonable" notice that meets the requirements of the Act. To meet these notice requirements, the notice must:

- be provided within a reasonable amount of time prior to the meeting;
- include the date, time, and place of the meeting;
- be posted at the principal office of the public entity, in addition to any other methods and locations stated in local ordinance; and
- be done in the same way each time (consistent).

## What is the definition of a meeting that would fall under the provisions of the Open Meetings Act?

AS 44.62.310(h) provides detailed definitions of "governmental body," "meeting," and "public entity" that, when combined, define what constitutes a public meeting. The Act makes a distinction between what constitutes a meeting of a policy/decision-making body and what constitutes a meeting of an advisory-only body.

A meeting of a decision- or policy-making body occurs when more than three members, or a majority of the members, whichever is less, engage collectively in discussion of a *subject that the body is authorized to act and set policy on* and is therefore subject to the Open Meetings Act. Under this definition, it doesn't matter where the meeting occurs, if it was prearranged, or who arranged it and could include unplanned casual or social contact.

A meeting of an advisory-only body is a prearranged gathering to consider a matter on which the entity is *authorized to advise and assist the decision-making body* and is subject to the provisions of the Act. The Act doesn't specify a number, so two or more members, if the gathering is prearranged for the purpose of conducting any business of the entity, could constitute a meeting.

## What types of meetings might be conducted that would require notice under the Open Meetings Act?

Following are the most common types of meetings that would be subject to the Open Meetings Act:

**Regular Meetings:** State law requires that the governing body conduct its business at regularly scheduled meetings that are open to the public. Regular meetings must be held at least once a month and may be held more often, as required or established in local ordinance. The local code of ordinances should provide the date, time, and place of regular meetings so that everyone knows when regular meetings will take place. The public shouldn't have to wonder about the meeting time, date, and place always changing. If at times it is necessary to reschedule the regular meeting, notice must be posted informing the public that the regular meeting has been rescheduled and when it will be held.

**Special Meetings:** Special meetings have the same requirements as regular meetings, except that they are called for a different time than that fixed for regular meetings. For example, local ordinance may require that the governing body hold its regular meeting on the third Tuesday of each month at 7:00 PM at the municipal offices. If the governing body must meet earlier, it can call a special meeting for a different date. The special meeting does not take place instead of the regular meeting, it is in addition to the regular meeting. Special meetings should be held rarely and only to address time sensitive issues. A special meeting may be held with less than 24-hour's notice if all members are present or if absent members have waived in writing the required notice. Waiver of notice can be made before or after the special meeting is held.

**Emergency Meetings:** Emergency meetings are held to address situations that are so urgent that the governing body must meet right away. An emergency meeting may be held if a majority of the members are given at least 24 hours oral or written notice and reasonable efforts are made to notify all members.

**Committee Meetings:** Permanent ("standing") committees and temporary ("ad hoc") committees of the governing body may be formed to study particular issues in more detail. Standing committees may include the finance committee, public works committee, and/or a facilities committee. Ad hoc committees are formed to address a specific situation and are disbanded once the situation has been dealt with. Committees may be composed of all members of the governing body (referred to as a committee of the whole), or of fewer members, usually three. A committee cannot take action on behalf of the full governing body but instead makes a recommendation to the governing body for the governing body's action. Usually the committee of the whole meets to discuss items that are not ready for action but need further discussion in an informal setting. For example, the annual budget usually requires a work session before it is formally adopted.

**Board of Equalization:** The governing body, or its appointees, sits as the Board of Equalization in municipalities that levy a property tax. AS 29.45.200(a) states, "the governing body sits as a board of equalization for the purpose of hearing an appeal from a determination of the assessor." A property owner who believes the assessor has made a mistake in the yearly valuation of their property may appeal the assessor's decision to the board of adjustment, which meets once a year.

### **How much notice is required to meet the "reasonable" public notice provision of the Open Meetings Act?**

How much notice is required depends on the complexity of the issue and the potential effect it will have. Proper public notice must be provided in advance of the proposed action and local ordinances should state the minimum number of days that notice is required. This number should be adjusted up if the situation warrants additional notice. Special and emergency meetings require only 24-hour notice or less. If less notice is given, absent members must waive the notice requirement. Notice requirements for work sessions and committee meetings should follow the same guidelines as those established in local ordinance for regular meetings.

There are minimum mandatory notice requirements for certain actions, such as notice of a public hearing on a proposed ordinance, or election notice. There is, however, no specific number of days spelled out in statute that defines "reasonable." The general tone of case law on the subject has essentially found that reasonable notice provides enough notice that a concerned party will have notice of a proposed action within enough time to be involved in the deliberations. This could vary anywhere from three months to three days. The notice also has to provide enough information to let the public know what subjects will be covered in the meeting. If a complete agenda isn't available at the time of posting, a summary will work until the complete agenda is available.

Local ordinances should contain all of the requirements for public notice of meetings including what to include in the notice, where the notices are posted, and how soon before the meeting the notices are posted.

### **Where and how does notice have to occur?**

State law, AS 44.62.310(e), requires that reasonable notice include the date, time, and place of the meeting; and, if by teleconference, the location of any teleconferencing facilities. It also provides that notice may be given in print or broadcast media; that it be posted at the principal office of the public entity or, if no principle office, at a location designated by the governing body; and that it be done in the same way each time "consistent."

In addition to the locations required in statute, notice should be posted at well-used locations in the community like the post office, the store, government offices, and the community bulletin board. It may also be published in a newspaper of general circulation in the community or broadcast over a local radio station in addition to any other means and locations stated in local ordinance.

### **Are there exceptions to the Open Meetings Act and what subjects may be discussed in executive session?**

Exceptions to the OMA are discussed in the [Executive Session](#) section of LOGON.

### **Is secret ballot voting allowed under the act?**

Almost always, no. In addition to requiring that deliberations of a governing body be open to the public, the act also requires that the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote, including meetings conducted by teleconference. The one exception is organizational meetings of a governing body to elect members to various offices, which are exempted from the requirement that the vote of each member be made public (AS 44.62. 310(a)).

### **Is telephone polling considered a violation of the Open Meetings Act?**

Whether a phone poll by a member or agent of the governing body would be considered a violation of the act, depends on the subject matter. If the matter involves an administrative or procedural issue that would not warrant public discussion, a phone poll may be conducted. If, however, the phone poll touches on an issue that should be discussed in an open meeting or can have the effect of swaying opinion on a public issue, it could be considered a violation of the act.

### **Who enforces the Open Meetings Act?**

It is the responsibility of the administration and governing body to assure that the provisions of the Open Meetings Act are enforced. Any individual may contest an action administratively through local channels that they think was done in violation of the Open Meetings Act and ultimately may, within 180 days, file a court action if the issue isn't remedied locally AS 44.62.310(f).

There are several court cases that have ruled in favor of the Open Meetings Act. When deciding these cases, the court doesn't just consider whether a violation has occurred, but also considers whether the action has interfered with the public process that the act was intended to protect.

### **What is the cure for a violation of the Open Meetings Act?**

Actions taken at meetings that are found to be in violation of the Open Meetings Act may be voided. Failing to provide proper notice can cost a great deal of money to defend in addition to the wasted time and effort involved. The governing body can attempt an informal cure by holding another meeting in compliance with the Open Meetings Act and conducting a substantial and public reconsideration of the matters.

If a lawsuit is filed, the court may void any action taken by the governing body if the court finds that, considering all of the circumstances, the public interest in compliance with the law outweighs the harm that would be caused by voiding the action AS 44.62.310(f).

In deciding whether to void an action, the court must consider:

- (1) the expense that may be incurred if the action is voided;
- (2) the disruption that may be caused if the action is voided;
- (3) the possibility of additional litigation if the action is voided;
- (4) the extent to which the subject has previously been considered in compliance with the act;
- (5) the amount of time that has passed since the action was taken;
- (6) the degree to which the action has come to be relied on;
- (7) whether and to what extent the governmental body has, before or after the lawsuit was filed, engaged in or attempted to engage in public reconsideration of the matter;
- (8) the degree to which the violations 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).

This does not apply to an advisory only body that that has no authority to establish policies and make decisions for the public entity (AS 44.62.310(g)).

### **What effect does attorney client privilege have in dealings between a public entity and its attorney?**

Executive session procedure requires that the reason for calling the executive session is clearly stated. The attorney-client privilege exemption to the Open Meetings Act is limited to matters where public interest may be injured. This might include how to avoid legal liability, litigation strategies and candid discussion of facts, a proposed settlement conference, and a conference on a decision to appeal.

### **In addition to the rights protected under the Open Meetings Act, what rights can the public expect under state law?**

In addition to the rights protected under the Open Meetings Act, Title 29 reiterates the requirement that all meetings be open to the public and provides that the public will have the right to be heard at regular and special meetings AS 29.20.020.

AS 29.20.160 lays out the procedures that a governing body must follow in conducting its meetings. These procedures include:

- Provision for identification of the presiding and deputy-presiding officers;
- The requirement that the governing body hold at least one regular monthly meeting, unless otherwise provided by ordinance;
- The requirement that the governing body shall provide at least 24-hour notice for special meetings or absent members must waive the notice requirement;
- Clarification on how actions of the governing body are adopted and what constitutes a quorum;
- The requirement that all members present shall vote on every question, unless required to abstain; and

The requirement that a governing body maintain a journal of its proceedings that is available to the public.

- AS 29.20.380 assigns certain meeting duties and responsibilities to the municipal clerk. These include:
  - Attendance at public meetings;
  - Keeping the journal;
  - Assuring that notice and other requirements for public meetings are complied with;
  - Assuring that public records are available for public inspection;
  - Managing and maintaining public records; and

- Preparing agendas and agenda packets.

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### **Who enforces the local rules under which a municipality conducts its meetings?**

Governing bodies must have procedures in place and follow them for their meetings. Some of these procedures are in Title 29 and other statutes. Others are in the local ordinances, which are usually more specific and detailed than Title 29, or in rules of procedure adopted by the governing body.

Essentially, the presiding officer enforces the rules by following them when conducting a meeting and, when there is a question of procedure, the clerk, acting as parliamentary advisor, researches the question and proposes an answer, which the presiding officer then rules on. Members of the public also enforce the rules by questioning whenever something occurs that doesn't seem to follow the rules. The last resort for enforcement is a lawsuit.

### **Additional Resources**

[Alaska's Open Meetings Law](#) by Gordon J Tans

[Open Meetings Act](#) AS 44.62.310-.312

**Sec. 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. 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.

(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.

(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.

(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.

(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.

(f) Action taken contrary to this section is voidable. A lawsuit to void an action taken in violation of this section must be filed in superior court within 180 days after the date of the action. A member of a governmental body may not be named in an action to enforce this section in the member's personal capacity. A governmental body that violates or is alleged to have violated this section may cure the violation or alleged violation by holding another meeting in compliance with notice and other requirements of this section and conducting a substantial and public reconsideration of the matters considered at the original meeting. If the court finds that an action is void, the governmental body may discuss and act on the matter at another meeting held in compliance with this section. 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 wilful, flagrant, or obvious;

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

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

(h) In this section,

(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;

(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;

(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.

**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) 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.