

**Administrative Procedures Act, Article 6**  
**Open Meetings of Governmental Bodies**  
**Executive Session Information for Boards and Commissions**

**Sec. 44.62.310. Government meetings public**

A decision by a governing body to conduct any step in the deliberation process outside of the public forum must weigh the public interest in the right to know against any potential harm that could result from open deliberation. The state's Open Meetings Act (AS 44.62.310) and The State's Policy Regarding Meetings (AS 44.62.312) both favor limiting meetings that may be conducted away from public view as well as limiting the subject matter that may be discussed in closed meetings. Executive session is not a secret meeting - it is a part of the public meeting from which the public may be excluded. The governing body may, at its discretion, invite others into the executive session.

The Open Meetings Act lists the subjects that may be discussed in closed-door meetings (executive session) and spells out the process that must be followed to legally hold an executive session. Only certain topics can be considered in executive session and state policy found in AS 44.62.312 backs up the provision that the Open Meetings Act is to be narrowly interpreted to avoid unnecessary executive sessions.

**What is an executive session?**

An executive session is a portion of a public meeting that is conducted in private with only members of the governing body and any person(s) invited in by the governing body present. The Open Meetings Act AS 44.62.310(b) authorizes a public body to meet in executive session to discuss only those items that fall into one of the categories listed in the law. This is not an exception to the Open Meetings Act, but rather an authorization to conduct a step in the decision making process in a certain way.

**What subjects may be addressed in executive session?**

An executive session may only be called if the subject under consideration falls into one of the categories listed in state law, (AS 44.62.310(c)). The allowable subjects are:

- (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.

There must be a real and legitimate need for the executive session and the reason must be spelled out in the motion to go into executive session. The motion must state specifically what will be discussed and must be approved by a majority vote. The motion must contain enough detail that the public (and if necessary a court) will be informed of exactly why the executive session is appropriate, without defeating the purpose of going into executive session. Only the item(s) identified in the motion may be discussed in the executive session.

Following is a brief list of a few examples of situations that would be appropriate to discuss in executive session:

- Contract negotiations,
- Legal strategy for a pending lawsuit,
- Discussion of a matter that could affect an individual's reputation,
- Matters involving a juvenile,
- Certain crime victim information,
- Issues involving violation of a reasonable expectation of privacy.

### **What is the process for conducting business in executive session?**

All executive sessions must first be convened as a legal public meeting and a motion must pass that clearly describes the subject to be discussed before the governing body may go into executive session. No action may be taken in the meeting, except the action authorized in the Open Meetings Act (give direction to an attorney or labor negotiator). Any member may make a motion to meet in executive session. The motion must be seconded and must pass by a majority vote. Once the motion has passed, the governing body may move the meeting to another location away from the public or may ask members of the public to leave the area until the executive session ends.

If the executive session is being called to discuss a matter that may prejudice the reputation and character of a person, the individual that is the subject of the discussion must be provided notice of the meeting and provided the opportunity to request that the discussion take place during the public meeting, rather than in executive session. After the executive session ends, the public meeting is reconvened. No action may be taken in executive session, except to give direction to an attorney on a specific legal matter or a labor negotiator on a pending labor negotiation. Action on matters discussed in executive session can be presented and acted on once the public meeting has reconvened.

### **What action may be taken in executive session?**

Only the items identified in the motion calling for the executive session may be discussed. The motion should contain enough detail that any interested party knows

the details and justification for the session, without defeating the purpose for going into executive session. The motion and items that are auxiliary to the motion may be discussed. No action may be taken in the meeting, except the actions authorized in the Open Meetings Act. These are to give direction to an attorney or labor negotiator regarding the handling of a specific legal matter or pending litigation or labor negotiation. Any other action by the governing body must be taken after the public meeting is reconvened. (AS 44.62.310(b)).

All of the legal requirements for conducting a public meeting must occur before, during, and after the executive session. There must be proper notice, there must be a public record of that part of the meeting that is open to the public (some organizations create a record of the executive session also), and there must be reasonable opportunity for the public to be heard.

### **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 that they think was done in violation of the Open Meetings Act administratively through local channels 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.

### **Can a governing body enter into executive session to discuss potential problem issues or receive general legal advice from their attorney?**

No. Executive session procedures require that the reason for calling the executive session be **clearly stated** - it is not enough to state "personnel issues" or "legal advice" as the reason for going into executive session. The decision to go into executive session must also weigh the potential harm of open discussion against the public interest and benefit of open public discussion and the public's right to know. Decisions based on generalities do not identify the harm that could result.

Attorney-client privilege in general cannot be used as a reason for calling an executive session. Attorney-client privilege is limited to matters where public interest may be injured. This would include how to avoid legal liability, litigation strategies and candid discussion of facts, settlement conference, and a conference on a decision to appeal.

**What is the cure for conducting an executive session that violates the Open Meetings Act?**

The governing body can attempt an informal cure by holding another meeting in compliance with the Open Meetings Act. This meeting must have substantial and public reconsideration of the matter. If a lawsuit is filed, the court may void any action taken by the governing body.

The intent of public meetings is to hear all opinions on all the issues and ensure public control over the government that the public created. Public meetings are the means by which a person or group can be informed, express opinions, exercise choice, and affect outcomes. In order for this to occur, the governing body must provide reasonable notice of its meetings, the governing body must hold the meetings as provided in the notice, and the public must be given an opportunity to provide input.