

Open Meeting Law

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WHAT IS IT?

A statutory chapter geared toward transparency in government.

WHY IS IT IMPORTANT?

Open meetings offer the public a chance to observe how the government operates and to influence the government in positive and important ways.

WHEN DOES IT APPLY?

It applies to all “meetings” of a “governing body” of a State agency.

WHO DOES THIS COVER?

- DOPL Boards and Commissions
- Advisory Committees
- Board Subcommittees

WHAT IS A MEETING?

“[T]he convening of a governing body of a public agency to make a **decision** or to **deliberate** toward a decision on any matter.”

“Decision” means any **determination**, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a **quorum** is present, but shall not include those ministerial or administrative actions necessary to carry out a decision previously adopted in a meeting held in compliance with this chapter.

QUORUM AND DELIBERATION

What is a quorum?

- Generally a majority of members
- Some statutes set a specific quorum

“Deliberation” means the **receipt or exchange of information or opinion relating to a decision**, but shall not include informal or impromptu discussions of a general nature that do not specifically relate to a matter then pending before the public agency for decision.

NOTICE AND AGENDA REQUIREMENTS

- Regular meetings: meetings must be noticed at least 5 days in advance and agendas must be posted at least 48 hours in advance
- Special meetings: meetings must be noticed and agendas must be posted at least 24 hours in advance
- Notices and agendas must be posted online and in DOPL's offices.
 - They are also posted on Townhall.Idaho.gov

AGENDA CONTENT

- Must identify topics with sufficient detail
 - General topics such as “Chair Update” are not sufficient
- Must identify action items
 - This means the Board can take action, but a vote is not necessary if a decision has not been reached.
- Must identify when board will go into executive sessions

AGENDA AMENDMENT

- Amendments can be made to agendas.
- If the amendment is within 48 or 24 hour period:
 - There must be a good faith reason as to why the item was not identified on the original agenda.
 - The amended agenda must identify approval of the amended agenda as an action item.
 - At the start of the meeting, board must vote to approve the amended agenda & the vote must identify the good faith reason for the amendment.

CONDUCT AT MEETINGS

- Board Members should be mindful to only deliberate regarding items identified on the agenda.
- Board Members should not communicate via text message or other electronic means during the meeting.
 - All deliberations must occur orally
- To provide for meaningful deliberations, Board Members should share the rationale leading to their individual votes.
- Exchanges between staff, board members, and the public should remain respectful and professional at all times.

PUBLIC COMMENT

- Generally, Boards do not have to offer public comment periods
 - Some statutory exemptions exist
- It is a time for the public to make comments or bring issues to the Board's attention.
- Boards cannot deliberate based upon a new item raised during the public comment period.
 - Instead, items raised can be placed on a future agenda.

MEETING MINUTE REQUIREMENTS

- Minutes must be taken for all meetings.
- Minutes must:
 - Identify all board members in attendance
 - Identify all motions and voting results
 - Does not need to specify each board member's vote (except when a roll call vote is necessary)
 - Identify when the Board enters executive session and the legal support and basis for entering executive session
 - Contain a summary of the topics discussed
 - Does not need to be comprehensive

OPEN V. EXECUTIVE SESSION

Most agenda topics must be discussed in Open Session.

Limited statutory bases for Executive Session:

- To discuss records exempt from public disclosure (I.C. § 74-206(1)(d))
 - Applications
 - Investigations
 - Informal discipline
- To discuss litigation or potential litigation with legal counsel (I.C. § 74-206(1)(f))
- To discuss the adjustment of a pending insurance claim or prevention of a claim imminently likely to be filed with Risk Management or other insurance representative (I.C. § 74-206(1)(i))

EXECUTIVE SESSION

- Vote to enter executive session must identify statutory subsection and the purpose (i.e. to discuss applications, discipline, pending litigation)
- Board can discuss matters, but not take action in executive session.
- While in executive session, the Board can only discuss items allowed by statute and items identified in vote.
 - For example, can discuss a particular investigation in executive session, but not changes to the general discipline process.
- Vote to go into executive session can cover all topics so board need only enter executive session once during a meeting.

EXECUTIVE SESSION

- Matters discussed in executive session must be kept confidential.
- Applications, investigative, or other confidential documents must be kept confidential.
- If attending virtually during an executive session, ensure the session cannot be viewed or heard by anyone else.

OPEN SESSION VOTING

- Cannot occur in executive session
- Cannot be made by secret ballot
- Generally, a motion passes through a majority vote
 - Exception: to enter executive session, a 2/3 vote is required
- Votes re: executive session matters should utilize applicant numbers or investigation case numbers, not applicant or licensee names.
 - Exception – when a license is granted, names can be used.

CONSISTENCY RE: OPEN V. EXECUTIVE

Division is working on building consistency across its Boards. For the purposes of open v. executive session topics, moving forward:

- Applications: discussions will occur in open session using applicant id's, not applicant names
- Applicant Interviews: will occur in executive session, with voting using applicant id in open session
- Investigations/Informal Discipline: discussions will occur in executive session, with voting using case no. in open session

ENFORCEMENT

Failure to comply with the Open Meeting Law provisions renders the action null.

Any member who participates in a meeting that violates these provisions will be subject to a civil penalty.

- up to \$250
- up to \$1,500 for “knowingly” participating
- up to \$2,500 if subsequent to previous violation within last 12 months

Enforced by Attorney General’s office or through civil litigation filed by someone impacted by the violation.

ENFORCEMENT

The statute provides an opportunity to cure the violation. If the violation is not or cannot be cured, then the civil penalty is imposed.

WHO PAYS THE CIVIL PENALTY?

If a Board member violates the Open Meeting Law and the violation is not or cannot be cured, the Board member is personally responsible to pay the civil penalty.

OTHER POTENTIAL VIOLATIONS TO AVOID

- Emailing or Texting other Board members re: Board business/matters
- Utilizing “Reply All” when staff sends an email
- Please do not forward emails or texts about Board matters to other Board members
- Please do not bring up an item not on the agenda, unless requesting to have that item put on the next agenda.

OTHER RESOURCES

<https://www.ag.idaho.gov/newsroom/video-and-materials-available-from-january-5-open-government-seminar/>

- AG seminar addressing Open Meeting Law and Public Records Act
- [Attorney General's Open Meeting Law Manual](#)
- [Attorney General's Public Records Manual](#)
- [Attorney General's Ethics in Government Manual](#)