

Idahoans for Openness in Government (IDOG)

Idaho Code 74-201, **Formation of public policy at open meetings.** The people of the state of Idaho in creating the instruments of government that serve them do not yield their sovereignty to the agencies so created. Therefore, the legislature finds and declares that it is the policy of the state that the formation of public policy is public business and shall not be conducted in secret.

Idaho Open Meeting Law

State of Idaho



**Office of Attorney General
Lawrence Wasden**

Office of the
Attorney General

Idaho Open Meeting Law Manual

Idaho Code §§ 74-201 through 74-208



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It is policy of this state that formation of public policy is public business and shall not be conducted in secret.

(Idaho Code § 74-201)

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Outline

- I. Definitions**
- II. Notice and Agenda**
- III. Conduct of the Meeting**
- IV. Executive Sessions**
- V. Enforcement**

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Rule of statutory construction

Words are given the meaning set forth in the definition portion of the code section or chapter.

- The definition contained in code controls over the common definition of the word.
- Different chapters or code sections may define the same word slightly differently.
- If no statutory definition exists, the common meaning controls.



Definitions

Decision

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. (Idaho Code § 74-202; Open Meeting Law Manual (OML) p. 23)

Deliberation

The receipt or exchange of information or opinion relating to a decision, but shall not include informal or impromptu discussions of a general nature. (OML p. 23)

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Definitions

Public Agency

Any state board, commission, department, authority, educational institution or other state agency created by or pursuant to statute or executive order of the governor. Any regional board, commission, department or authority created by or pursuant to statute. Any county, city, school district, special district, or other municipal corporation or political subdivision of the state of Idaho any subagency of a public agency which is created by or pursuant to statute or executive order of the governor, ordinance, or other legislative act. (OML p. 23-24)

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Definitions

Governing Body

Members of any public agency which consists of two (2) or more members with the authority to make decisions for or recommendations to a public agency regarding any matter. (OML p. 24)

Meeting

Convening of a governing body of a public agency to make a decision or to deliberate toward a decision on any matter. (OML p. 24)

- regular meeting
- special meeting

Notice and Agenda

- Regular Meetings

No less than a five (5) calendar day meeting notice and a forty-eight (48) hour agenda notice shall be given, unless otherwise provided by statute. (Idaho Code § 74-204(1); OML p. 25)

- Special Meetings

Shall not be held without at least a twenty-four (24) hour meeting and agenda notice, unless an emergency exists. (Idaho Code § 74-204(2); OML p. 25)

Notice and Agenda

- Executive Sessions

A twenty-four (24) hour meeting and agenda notice shall be given if only an executive session will be held. Notice must state reason and specific provision of law authorizing the executive session. (Idaho Code § 74-204(3); OML p. 26)

- Notice for meetings and agendas shall also be posted electronically if the entity maintains an online presence through a website or social media platform. (Idaho Code § 74-204(1); OML p. 25)

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Notice and Agenda

- An agenda is required for each meeting.
 - posted same as meeting notice
 - only “good faith” amendments
 - motion and vote required for amendments made within 48 hours of, or during, the meeting

(Idaho Code § 74-204(4); OML p. 26)

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Action Items on Agenda

- An agenda item that requires a vote shall be identified on the agenda as an “action item” to provide notice that action may be taken on that item. Identifying an item as an action item does not require a vote to be taken on that item. (Idaho Code § 74-204(4))
- Final action may not be taken on an agenda item added after the start of a meeting unless an emergency is declared necessitating action at that meeting. The declaration and justification shall be reflected in the minutes. (Idaho Code § 74-204(4)(c))

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Conduct of Meeting

- All meetings of a governing body of a public agency shall be open to the public. (Idaho Code § 74-203; OML p. 24)
- A governing body shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age or national origin is practiced. (Idaho Code § 74-203(4); OML p. 25)



Conduct of Meeting

- All meetings may be conducted using telecommunications devices. (Idaho Code § 74-203(5): OML p. 25)
- Members of a public board may **not** use computers or texting to conduct private conversations among themselves about board business.



Conduct of Meeting

- The governing body of a public agency shall provide for the taking of written minutes of all its meetings, and all minutes shall be available to the public. (Idaho Code § 74-205(1); OML p. 27)
- Minutes shall include:
 - All members of the governing body present
 - All motions, resolutions, orders, or ordinances proposed and their disposition
 - The results of all votes



Executive Sessions

An executive session at which members of the public are excluded may be held, but only for the purposes and only in the manner set forth in this section. The motion to go into executive session shall identify the specific subsections of this section that authorize the executive session. There shall be a roll call vote on the motion and the vote shall be recorded in the minutes. An executive session shall be authorized by a two-thirds (2/3) vote of the governing body. (Idaho Code § 74-206(1); OML p. 27)

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Executive Sessions

- a) When, in hiring a public officer, employee, staff member, or individual agent, the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need.
- b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student.



Executive Sessions

- c) To acquire an interest in real property which is not owned by a public agency.
- d) To consider records that are exempt from disclosure.
- e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations

Executive Sessions

- f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement.



Executive Sessions

- g) To engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed. The mere presence of a representative of the public agency's risk manager or insurance provider at an executive session does not satisfy this requirement.
- h) To consider labor contract matters authorized under Section 74-206 (1)(a) and (b).



Executive Sessions

- The exceptions to the general policy in favor of open meetings stated in this section shall be narrowly construed. It shall be a violation of this act to change the subject within the executive session to one not identified within the motion to enter the executive session or to any topic for which an executive session is not provided. (Idaho Code § 74-206(2); OML p. 28)



Executive Sessions

- No executive session may be held for the purpose of taking any final action or making any final decision. (Idaho Code § 74-206(3); OML p. 28)
- Minutes pertaining to an executive session shall include a reference to the specific statutory subsection authorizing the executive session and shall also provide sufficient detail to identify the purpose and topic of the executive session but shall not contain information sufficient to compromise the purpose of going into executive session. (Idaho Code § 74-205(2); OML p. 27)



Negotiations in Open Session

- All negotiations between a governing board and a labor organization shall be in open session.
- A governing board may hold an executive session for the specific purpose of:
 - Considering a labor contract offer or to formulate a counteroffer; or
 - Receiving private information about a specific employee
- All documentation exchanged between the parties during negotiations shall be subject to public writings disclosure laws.
- Public testimony, if any, shall be posted as an agenda item.
- Any other provision notwithstanding, the governing body shall post notice of all negotiation sessions at the earliest possible time practicable.

Enforcement

- Failure to comply with the provisions of Idaho Code §§ 74-201 – 74-207 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

Enforcement

- Attorney General shall have the duty to enforce this act in relation to public agencies of state government.
- Prosecuting Attorneys' duty to enforce this act in relation to local public agencies within their respective jurisdictions.
- Any person affected by a violation of the provisions of this act may commence a civil action.



Enforcement

- A violation may be cured by a public agency upon:
 - The agency's self-recognition of a violation; or
 - Receipt by the secretary or clerk of the public agency of written notice of an alleged violation. A complaint filed and served upon the public agency may be substituted for other forms of written notice.
- Upon notice, the governing body has fourteen (14) days to respond publicly and either acknowledge the violation and state an intent to cure or state that it has determined that no violation has occurred and that no cure is necessary. Failure to respond shall be treated as a denial of any violation for purposes of proceeding with any enforcement action.



Enforcement

- Following the public agency's acknowledgment of a violation pursuant to paragraph (a)(i) or (a)(ii) of this subsection, the public agency shall have fourteen (14) days to cure the violation by declaring that all actions taken at or resulting from the meeting in violation of this act void.

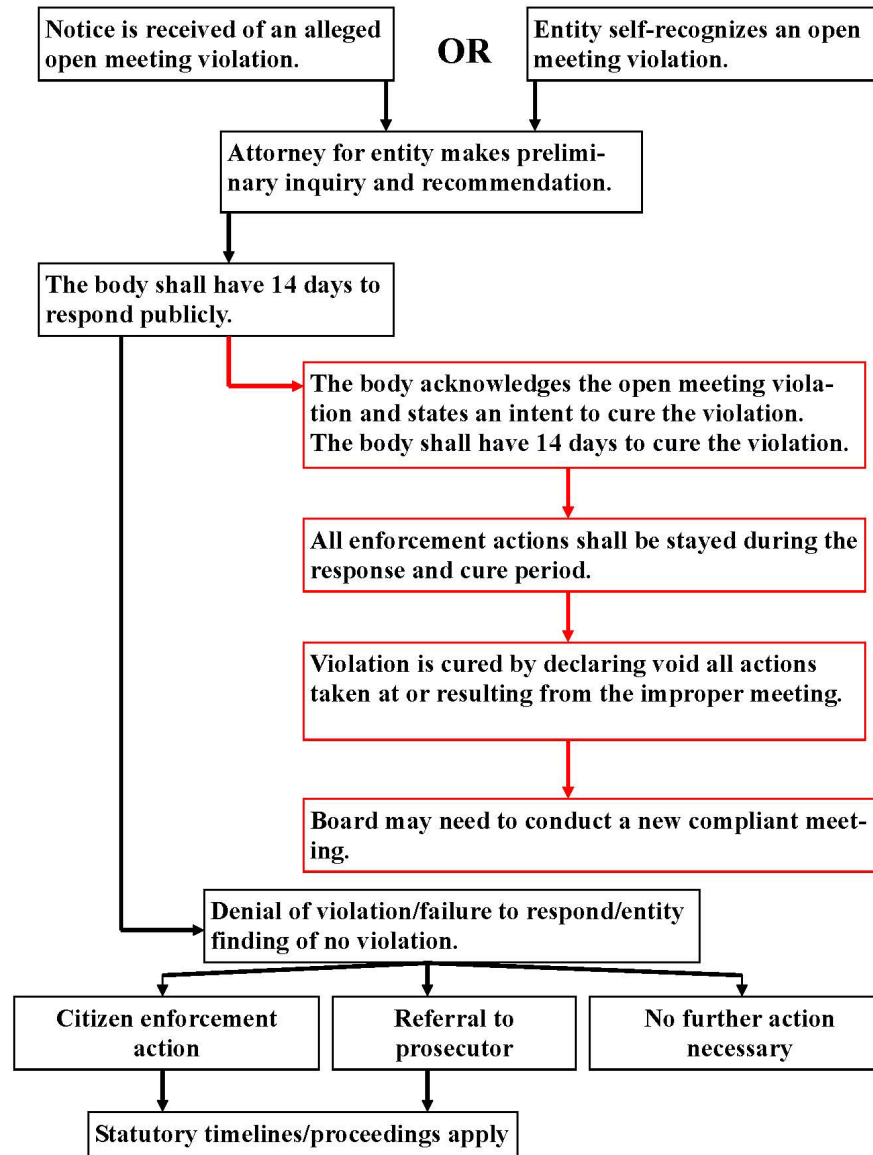


Enforcement

- All enforcement actions shall be stayed during the response and cure period but may recommence at the discretion of the complainant after the cure period has expired.
- A cure as provided in this section shall act as a bar to the imposition of the civil penalty provided in subsection (2) of this section. A cure of a violation as provided in subsection (7)(a)(i) of this section shall act as a bar to the imposition of any civil penalty provided in subsection (4) of this section.



Curing Process – Idaho Code § 74-208(7)



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OPEN MEETING LAW CHECKLIST

Regular Meetings

Meeting Date and Time: _____

Meeting Location: _____

[Idaho Code § 74-203(4) and (5)]

Before Meeting

- ☐ Meeting Notice posted 5 or more calendar days prior to the meeting date.
[Idaho Code § 74-204(1)]
- ☐ Agenda Notice posted at least 48 hours prior to the meeting.
[Idaho Code § 74-204(1)]
- ☐ Posting of Amended Agenda [Idaho Code § 74-204(4)]

During Meeting

- ☐ First: Any agenda amendments? [Idaho Code § 74-204(4)(b) and (c)]
- ☐ Secretary or other person appointed to take minutes.
[Idaho Code § 74-205(1)]

After Meeting

- ☐ Minutes available to the public within a reasonable time after the meeting.
[Idaho Code § 74-205(1)]

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OPEN MEETING LAW CHECKLIST
Special Meetings

Meeting Date and Time: _____

Meeting Location: _____

[Idaho Code § 74-203(4) and (5)]

Before Meeting

- ☐ Meeting and Agenda Notice posted **at least 24 hours** prior to the meeting.
[Idaho Code § 74-204(2)]
- ☐ Notification provided to the news media. [Idaho Code § 74-204(2)]
- ☐ Posting of Amended Agenda [Idaho Code § 74-204(4)]

During Meeting

- ☐ First: Any agenda amendments? [Idaho Code § 74-204(4)(b) and (c)]
- ☐ Secretary or other person appointed to take minutes.
[Idaho Code § 74-205(1)]

After Meeting

- ☐ Minutes available to the public within a reasonable time after the meeting.
[Idaho Code § 74-205(1)]

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OPEN MEETING LAW CHECKLIST
Executive Sessions

Session Date and Time: _____

Session Location: _____

[Idaho Code § 74-203(4) and (5)]

Executive Session Only

- ☐ Meeting and Agenda Notice posted **at least 24 hours** prior to the session.
[Idaho Code § 74-204(3)]
- ☐ Posting of Amended Agenda [Idaho Code § 74-204(4)]

Executive Session During Regular or Special Meeting

- ☐ Motion to enter Executive Session to discuss one of the exemptions listed in Idaho Code § 74-206.
- ☐ $\frac{2}{3}$ vote to enter Executive Session reflected in regular/special meeting minutes. [Idaho Code § 74-206(1)]

During Session

- ☐ First: Any agenda amendments? [Idaho Code § 74-204(4)(b) and (c)]
- ☐ Secretary or other person appointed to take minutes.
[Idaho Code § 74-205(1)]

After Session

- ☐ Minutes must reference statutory subsection authorizing executive session and identify purpose and topic of session. [Idaho Code § 74-205(2)]
- ☐ Minutes available to the public within a reasonable time after the meeting.
[Idaho Code § 74-205(1)]

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>> SAMPLE FORM <<

Public Agency: _____, Idaho
(name of county, city, district, etc.)

Governing Body: _____
(i.e., "Board of County Commissioners", "City Council", etc.)

Meeting Date, Time and Location: _____

EXECUTIVE SESSION MOTION AND ORDER

_____, (print name), _____ (print title),
MOVES THAT THE BOARD, PURSUANT TO IDAHO CODE § 74-206, CONVENE
IN EXECUTIVE SESSION TO: (identify one or more of the following)

- ☐ Consider personnel matters [Idaho Code § 74-206(1)(a) & (b)]
- ☐ Deliberate regarding an acquisition of an interest in real property [Idaho Code § 74-206(1)(c)]
- ☐ Consider records that are exempt from public disclosure [Idaho Code § 74-206(1)(d)]
- ☐ Consider preliminary negotiations involving matters of trade or commerce in which this governing body is in competition with another governing body [Idaho Code § 74-206(1)(e)]
- ☐ Communicate with legal counsel regarding pending/imminently-likely litigation [Idaho Code § 74-206(1)(f)]
- ☐ Communicate with risk manager/insurer regarding pending/imminently-likely claims [Idaho Code § 74-206(1)(i)]

Purpose/Topic summary (required): _____
AND THE VOTE TO DO SO BY ROLL CALL.

CONVENE AT: _____ ADJOURN AT: _____

	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>
_____, Chair (print name)	_____	_____	_____
_____, Member (print name)	_____	_____	_____
_____, Member (print name)	_____	_____	_____

Clerk/Deputy Clerk: _____
(Signature)

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>> **SAMPLE FORM** <<

Public Agency: _____, Idaho
(name of county, city, district, etc.)

Governing Body: _____
(i.e., "Board of County Commissioners", "City Council", etc.)

Meeting Date, Time and Location: _____

MOTION AND ORDER TO AMEND AGENDA

(less than 48 hours before regular meeting or 24 hours before special meeting)

_____, (print name), _____ (print title),
MOVES THAT THIS GOVERNING BODY, PURSUANT TO IDAHO CODE § 74-
204, AMEND THE AGENDA FOR THIS MEETING AS FOLLOWS:

Good faith reason item not included in posted agenda (required):

	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>
_____, Chair (print name)	_____	_____	_____
_____, Member (print name)	_____	_____	_____
_____, Member (print name)	_____	_____	_____

Clerk/Deputy Clerk: _____
(Signature)

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Questions?

State of Idaho



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