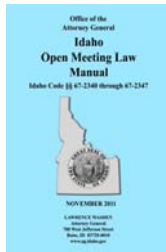


Idaho Open Meeting Law

State of Idaho



Office of Attorney General
Lawrence Wasden



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

(Idaho Code § 67-2340)



Outline

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



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 § 67-2341; Open Meeting Law Manual (OML) p. 25)

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. 25)



Definitions

Public Agency

Any state board, commission, department, authority, educational institution or other state agency which is created by or pursuant to statute. 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, ordinance, or other legislative act. (OML p. 25-26)



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. 26)

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. 26)

- 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 § 67-2343(1); OML p. 27)

- Special Meetings

Shall not be held without at least a twenty-four (24) hour meeting and agenda notice, unless an emergency exists. (Idaho Code § 67-2343(2); OML p. 27-28)



Notice and Agenda

- Executive Sessions

A twenty-four (24) hour meeting and agenda notice shall be given if an executive session only will be held. Notice must state reason and specific provision of law authorizing the executive session. (Idaho Code § 67-2343(3); OML p. 28)



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 § 67-2343(4); OML p. 28)



Conduct of Meeting

- All meetings of a governing body of a public agency shall be open to the public. (Idaho Code §67-2342 & OML p. 26)
- 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 §67-2342(4) & OML p. 27)



Conduct of Meeting

- All meetings may be conducted using telecommunications devices. (Idaho Code §67-2342(5) & OML p. 27)
- Members of a public board may **not** use computers or texting to conduct private conversations among themselves about board business.



Conduct of Meeting

- Meetings not required to be open to the public:
 - Idaho Public Utilities Commission (PUC)
 - Idaho Industrial Commission
 - Idaho Board of Tax Appeals' deliberations
 - Idaho Life and Health Insurance Guaranty Association
 - Idaho Insurance Guaranty Association
 - Surplus Line Association

(Idaho Code § 67-2342)



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 § 67-2344(1); OML p. 28)
- 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

(Idaho Code § 67-2344(1); OML p. 28-29)



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 § 67-2345(1); OML p. 29)



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.

(Idaho Code § 67-2345(1); OML p. 29)



Executive Sessions

- c) To conduct deliberations concerning labor negotiations or to acquire an interest in real property which is not owned by a public agency.
- d) To consider records that are exempt from disclosure.

(Idaho Code § 67-2345(1); OML p. 29)



Executive Sessions

- 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.
- 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.

(Idaho Code § 67-2345(1); OML p. 30)



Executive Sessions

- g) Used by the commission of pardons and parole, as provided by law.
- h) Used by the custody review board of the department of juvenile corrections, as provided by law.

(Idaho Code § 67-2345(1); OML p. 30)



Executive Sessions

- i) 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.

(Idaho Code § 67-2345(1); OML p. 30)



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 § 67-2345(3); OML p. 30)



Executive Sessions

- No executive session may be held for the purpose of taking any final action or making any final decision. (Idaho Code § 67-2345(4); OML p. 30)
- 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. (OML p. 29)



Enforcement

- Failure to comply with the provisions of Idaho Code §§ 67-2340 - 67-2346 renders the action null.
- Any member who participates in a meeting that violates these provisions will be subject to a civil penalty.
 - up to \$50
 - up to \$500 for "knowingly" participating
 - up to \$500 if subsequent to previous violation within last 12 months

(Idaho Code § 67-2347; OML p. 31)



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.

(Idaho Code § 67-2347; OML p. 31)



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.

(Idaho Code § 67-2347(7)(a); OML p. 32)



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.

(Idaho Code § 67-2347(7)(b); OML p. 32)



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.

(Idaho Code § 67-2347(7)(c) and (d); OML p. 32)



State of Idaho Office of the Attorney General Open Meeting Law Checklist Regular Meetings

Meeting Date and Time: _____
Meeting Location: _____
<small>(Idaho Code § 67-2342(a) and (c))</small>
Before Meeting
<input type="checkbox"/> Meeting Notice printed 8 or more calendar days prior to the meeting date. (Idaho Code § 67-2343(1))
<input type="checkbox"/> Agenda Notice posted at least 48 hours prior to the meeting. (Idaho Code § 67-2343(7))
<input type="checkbox"/> Posting of Amended Agenda (Idaho Code § 67-2343(6))
During Meeting
<input type="checkbox"/> Final: Any agenda amendments? (Idaho Code § 67-2343(8) and (9))
<input type="checkbox"/> Secretary or other person appointed to take minutes. (Idaho Code § 67-2344(1))
After Meeting
<input type="checkbox"/> Minutes available to the public within a reasonable time after the meeting. (Idaho Code § 67-2344(2))



State of Idaho Office of the Attorney General Open Meeting Law Checklist Special Meetings

Meeting Date and Time: _____
Meeting Location: _____
<small>(Idaho Code § 67-2342(a) and (c))</small>
Before Meeting
<input type="checkbox"/> Meeting and Agenda Notice printed at least 24 hours prior to the meeting (Idaho Code § 67-2343(2))
<input type="checkbox"/> Notification provided to the news media. (Idaho Code § 67-2343(2))
<input type="checkbox"/> Posting of Amended Agenda (Idaho Code § 67-2343(6))
During Meeting
<input type="checkbox"/> Final: Any agenda amendments? (Idaho Code § 67-2343(8) and (9))
<input type="checkbox"/> Secretary or other person appointed to take minutes. (Idaho Code § 67-2344(1))
After Meeting
<input type="checkbox"/> Minutes available to the public within a reasonable time after the meeting. (Idaho Code § 67-2344(2))



State of Idaho
Office of the Attorney General
Open Meeting Law Checklist

Executive Sessions

Session Date and Time: _____
Session Location: _____
(Idaho Code § 67-2342(4) and (5))

Executive Session Only - Before Session

Meeting and agenda notice posted at least 24 hours prior to the session. (Idaho Code § 67-2342(2))

Posting of Amended Agenda (Idaho Code § 67-2342(6))

Executive Session During Regular or Special Meeting

Motion to enter Executive Session to discuss one of exemptions listed in Idaho Code § 67-2342 and to vote to enter Executive Session reflected in regular/special meeting minutes. (Idaho Code § 67-2342(3))

During Session

First: Are agenda amendments? (Idaho Code § 67-2342(4)(b) and (c))

Secretary or other person appointed to take minutes. (Idaho Code § 67-2344(1))

After Session

Minutes must reference statutory subsection authorizing executive session and identify purpose and topics of session. (Idaho Code § 67-2342(2))

Minutes available to the public within a reasonable time after the meeting. (Idaho Code § 67-2342(1))

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>> SAMPLE FORM <<

Public Agency _____ (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 67-2342, CONVENE AN EXECUTIVE SESSION TO:** (Identify one or more of the following.)

_____ Consider personnel matters (Idaho Code § 67-2342(1)(a) & (b))

_____ Deliberate regarding labor negotiations or acquisition of an interest in real property (Idaho Code § 67-2342(1)(c))

_____ Consider records that are exempt from public disclosure (Idaho Code § 67-2342(1)(d))

_____ Consider public safety regulations involving matters of public importance in which the governing body is in competition with another governing body (Idaho Code § 67-2342(1)(e))

_____ Communicate with legal counsel regarding pending/litigation/other disputes (Idaho Code § 67-2342(1)(f))

_____ Conduct labor negotiations (Idaho Code § 67-2342(2))

Purpose/Topic summary required:
AND THE VOTE TO DO SO BY ROLL CALL:
CONVENE AT _____ ADJOURN AT _____

	YES	NO	ABSTAIN
<small>(Print name)</small> _____	Chair	_____	_____
<small>(Print name)</small> _____	Member	_____	_____
<small>(Print name)</small> _____	Member	_____	_____

Clerk/Deputy Clerk _____ (Signature)

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>> SAMPLE FORM <<

Public Agency _____ (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

(Print name) _____ (Print title) _____ **MOVES THAT THIS GOVERNING BODY, PURSUANT TO IDAHO CODE 67-2342, AMEND THE AGENDA FOR THIS MEETING AS FOLLOWS:**

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

	YES	NO	ABSTAIN
<small>(Print name)</small> _____	Chair	_____	_____
<small>(Print name)</small> _____	Member	_____	_____
<small>(Print name)</small> _____	Member	_____	_____

Clerk/Deputy Clerk _____ (Signature)

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