



# Research Memorandum

## SURVEY OF PUBLIC MEETINGS LAWS IN WYOMING AND NEIGHBORING STATES

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**QUESTION:** Compare and contrast public and open meetings laws in Wyoming and neighboring states.

**INTRODUCTION:** This memorandum surveys public and open meetings laws in Wyoming and neighboring states (Colorado, Idaho, Montana, Nebraska, South Dakota, and Utah). The memorandum compares the following elements of public meetings laws:

- Introductory information including act names and enactment dates;
- Definitions;
- Notice requirements;
- Minutes and recordings;
- Public participation;
- Exceptions;
- Executive or closed sessions; and
- Violations.

The memorandum consists of two major sections. The first section presents a brief comparative analysis of the elements across the states. The second section offers a detailed, state-by-state examination of each component.

### I. INTERSTATE COMPARISON AND ANALYSIS

Of the seven states surveyed, including Wyoming, some form of public or open meetings laws were enacted in all of them between 1955 and 1975. All seven states include a declaration at the beginning of the statutory text proclaiming that public business should be open to the public. Declarations by Colorado, Idaho, and Nebraska are identical in that “the formation of public policy is public business and shall not be conducted in secret.”

### ***Definition of Meeting and the Entities Subject to Public Meetings Laws***

Wyoming defines a meeting as an assembly of at least a quorum of the governing body of an agency which has been called by the proper authority of the agency for the expressed purpose of discussion, deliberation, presentation of information, or taking action regarding public business. In the other surveyed states, the definition of a meeting ranges from specific in terms of meeting logistics and *how* a meeting may be held like in South Dakota, or specific in terms of the authority to call a meeting like in Utah, to sufficiently broad like in Nebraska or Colorado where a meeting is considered any kind of gathering convened to discuss public business or formation of policy. All surveyed states also include within their public or open meetings laws which entities are subject to it, including the term “governing body” akin to Wyoming, or “public body.” Nebraska, Utah, and Wyoming also explicitly exempt certain entities within these definitions.

### ***Notice Requirements***

An important aspect of public or open meetings is the public notice that is provided in advance of the meeting. Notice requirements differ across the surveyed states. Though Montana’s law does not speak to notice requirements within their open meetings law, other states have codified specific time frames, ranging from “reasonable” notice in Nebraska, to 24 hours before the commencement of the meeting in Colorado, South Dakota, and Utah, to five days in Idaho. Surveyed states except South Dakota and Wyoming require that an agenda be included with the notice or closely following the notice. Nebraska and Utah have online central public notice repositories that subjected entities are required to use in addition to posting the notice in other locations.

### ***Minutes and Recordings***

Minutes are generally required to be taken under surveyed states’ public or open meetings laws, but Colorado and Wyoming only require that the minutes be published when action is taken by the entity. Idaho and Montana specify what should be included in the minutes, including but not limited to the date, time, and place of the meeting or which entity members voted on which topics. Idaho, Nebraska, and Utah explicitly specify that minutes taken of public meetings are considered public records and are subject to the respective states’ public records acts. When entities which are subject to public or open meetings laws go into executive or closed sessions in Montana, Utah, and Wyoming, minutes taken of the closed portion of public meetings may be exempt from public inspection, except by court order.

### ***Public Participation***

While all public meetings are open to the public, by definition, there are varying degrees of codified rights of public participation. Nebraska and Wyoming do not require public attendees to provide their names as a condition of attendance and Montana, South Dakota, and Utah allow public attendees to personally record meetings in some form. Nebraska’s, South Dakota’s, and Utah’s laws include the right for the public to provide public comment, subject to an entity’s properly promulgated meeting rules.

***Exceptions***

Exceptions included in the surveyed states' public or open meetings laws are especially variable, including but not limited to carving out certain entities. Wyoming's law states that the legislature is not subject to public meeting requirements; Idaho and Wyoming exempt courts of the judiciary; Utah specifies that certain legislative committees and judicial organizations are exempt; and Idaho, Nebraska, and South Dakota list specific entities that are not subject to public meeting requirements outside of the definitions of a public body or governing body. Colorado's law specifically mentions social or chance gatherings as being exempt.

***Executive or Closed Sessions***

In most surveyed states, holding executive or closed sessions requires an affirmative vote at an open meeting and only for specific reasons, which vary, but some common themes include consulting with legal counsel about current or imminent litigation in Colorado, Idaho, Montana, South Dakota, and Wyoming; matters that must be kept confidential by law in Colorado, Idaho, and Wyoming; or considerations relating to security matters in Colorado, Nebraska, South Dakota, Utah, and Wyoming. Montana's list of reasons for holding an executive or closed session is the shortest at three, while Utah details 23 reasons that a meeting may be closed or is required to be closed.

***Violations***

In Nebraska, South Dakota, and Utah, there are criminal penalties for entity members who violate aspects of the respective public or open meetings laws at the misdemeanor level. Colorado, Montana, Nebraska, and Utah grant authority to courts to award attorney fees and costs to individuals who commence suits for violations within specified time frames. Idaho and Wyoming's laws allow for civil penalties — \$750 in Wyoming and \$250 to \$2,500 in Idaho. In Colorado, Idaho, Montana, Nebraska, Utah, and Wyoming, action taken in violation of public or open meetings laws is either automatically void or voidable by a court of competent jurisdiction.

## II. STATE ANALYSIS

### WYOMING

Wyoming's Public Meetings Act was enacted in 1973<sup>1</sup> and incorporates a statement of purpose at W.S. 16-4-401, which states that because Wyoming agencies exist to carry out public business, certain deliberations and actions shall be public. The three types of meetings described in the Act are regular, special, and emergency, with an option to recess regular and special meetings when necessary if a notice of recess includes a time and place where the meeting will be reconvened.<sup>2</sup> The Act also includes a provision stating that in the event of conflict with other laws, the Public Meetings Act will control.<sup>3</sup>

**Definitions:** Wyoming statutes define a meeting under the Act as an assembly of at least a quorum of the governing body of an agency which has been called by the proper authority of the agency for the expressed purpose of discussion, deliberation, presentation of information, or taking action regarding public business.<sup>4</sup> The term "governing body of an agency" speaks to who is subject to the Act and agency is defined to mean any authority, bureau, board, commission, committee, or subagency of the state, a county, municipality, or other political subdivision which is created by or pursuant to the Wyoming Constitution, statute, or ordinance.<sup>5</sup> The definition of agency does not include the state legislature, the judiciary, the consensus revenue estimating group, or the investment funds committee.<sup>6</sup>

**Notice Requirements:** For regular meetings, which occur at regular intervals over a period of a year, governing bodies are required to implement policy outlining how and when regular meetings will be held and how the governing body will provide notice to the public and any person who requests notice.<sup>7</sup> For special meetings, or meetings that are called by the governing body's presiding officer when deemed necessary, public notice and notice to news media organizations that request it are required at least eight hours before the commencement of the meeting and must specify the time, place, and a description of business to be conducted.<sup>8</sup> In the event an emergency meeting is held to discuss matters of serious immediate concern and to take temporary action, notice is not required, but reasonable effort to notify the public must be made.<sup>9</sup> Notice is not required for day-to-day administrative activities.<sup>10</sup>

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<sup>1</sup> Wyoming Session Law, 1973, Ch. 159 § 1.

<sup>2</sup> W.S. § 16-4-404(c).

<sup>3</sup> W.S. § 16-4-407.

<sup>4</sup> W.S. § 16-4-402(a)(iii).

<sup>5</sup> W.S. § 16-4-402(a)(ii).

<sup>6</sup> *Id.*

<sup>7</sup> W.S. § 16-4-404(a).

<sup>8</sup> W.S. § 16-4-404(b).

<sup>9</sup> W.S. § 16-4-404(d).

<sup>10</sup> W.S. § 16-4-404(e).

**Minutes and Recordings:** Wyoming statutes provide that minutes are required to be taken for meetings conducted under the Act, however, if no action is taken at a meeting, the minutes are not required to be published.<sup>11</sup> In executive sessions, minutes are also required to be taken but shall remain confidential except by court order or relevant parts of the minutes when a member of the governing body objects to the session and calls it a violation of the Act.<sup>12</sup> Minutes are not required to be taken or published for day-to-day administrative activities.<sup>13</sup>

**Public Participation:** Members of the public who attend public meetings are not required to register their name or affiliation, unless seeking recognition from the governing body of an agency.<sup>14</sup> Meetings conducted through electronic means are acceptable if members of the public who attend the meeting are permitted to hear, read, or discern meeting discussions in real time.<sup>15</sup>

**Exceptions:** The Wyoming Public Meetings Act does not apply to the state legislature, the judiciary, the consensus revenue estimating group, the investment funds committee,<sup>16</sup> or agencies headed by a single director rather than a governing body of two or more individuals.<sup>17</sup> In an emergency meeting, temporary action is permitted but for that action to become permanent, a public meeting must be held within 48 hours of the emergency meeting to reconsider the action.<sup>18</sup> If the emergency is ongoing, the governing body has 30 days to hold a meeting to reconsider the temporary action.<sup>19</sup>

**Executive or Closed Sessions:** Executive sessions, or meetings that are not open to the public but are conducted by a body subject to the Wyoming Public Meetings Act, require a motion and a second at a public meeting followed by a majority vote carrying the motion in permitted circumstances.<sup>20</sup>

A governing body of an agency is permitted to hold an executive session:

- With the attorney general, county attorney, district attorney, sheriff, chief of police, designated deputies, or other officers of the law on matters regarding security or safety of public or private property, or a threat to the public's right to access;
- To consider certain personnel matters;
- On matters relating to litigation;

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<sup>11</sup> W.S. § 16-4-403(c)(i).

<sup>12</sup> W.S. § 16-4-405(b).

<sup>13</sup> W.S. § 16-4-403(c)(ii).

<sup>14</sup> W.S. § 16-4-403(b).

<sup>15</sup> W.S. § 16-4-403(d).

<sup>16</sup> W.S. § 16-4-402(a)(ii).

<sup>17</sup> Wyoming Attorney General, *The Public Meetings Act: A Summary* (Jan. 2015), <https://attorneygeneral.wyo.gov/>

<sup>18</sup> W.S. § 16-4-404(d).

<sup>19</sup> *Id.*

<sup>20</sup> W.S. § 16-4-405(c).

- On matters of national security;
- On matters relating to examination, when the agency is a licensing agency;
- On matters relating to correctional or penal institutions and the release, parole, or term of an individual;
- On matters relating to real estate when publicity may increase the likelihood of a price increase;
- To consider gifts or donations from a party wishing to remain confidential;
- To consider any information when classified as confidential by law;
- To consider terms of employment during negotiations including the State Loan and Investment Board's receipt of education regarding investment managers and how to conduct their interviews;
- To consider student disciplinary action;
- To consider safety and security planning when publicity may threaten life or property; or
- To consider a student's eligibility for an interscholastic activity.<sup>21</sup>

**Violations:** Any action taken at a meeting not in conformity with the Act is null and void.<sup>22</sup> Communications outside a meeting cannot circumvent the purpose of a public meeting.<sup>23</sup> Anyone willfully disrupting a public meeting to the point where the meeting cannot continue as intended may be ordered to be removed by the governing body to continue the meeting or recess and reconvene.<sup>24</sup> If members of the governing body of an agency knowingly or intentionally violate the Act, they may be liable for a civil penalty of up to \$750.<sup>25</sup> Further, if it becomes clear at the meeting that the meeting is being held in violation of the Act, any agency member could be held liable unless they share their objections in the minutes of the meeting being taken or share their objections at the next meeting.<sup>26</sup>

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<sup>21</sup> W.S. § 16-4-405(a).

<sup>22</sup> W.S. § 16-4-403(a).

<sup>23</sup> W.S. § 16-4-403(d).

<sup>24</sup> W.S. § 16-4-406.

<sup>25</sup> W.S. § 16-4-408(a).

<sup>26</sup> *Id.*

## COLORADO

Colorado's Open Meetings Law was enacted in 1973 through an initiative approved by Colorado voters in 1972.<sup>27</sup> The declaration of policy at Colo. Rev. Stat. § 24-6-401 states that formation of public policy is public business and may not be conducted in secret. The Colorado Open Meetings Law includes a severability provision to close out the statutory text stating that provisions in the statute are unimpaired if any portion is deemed invalid.<sup>28</sup>

**Definitions:** Colorado defines a meeting as any kind of gathering convened to discuss public business in person, by telephone or electronically, or by other means of communication<sup>29</sup> and clarifies that all meetings of two or more members of any state public body or meetings of a quorum of three or more members of a local public body where public business is being conducted shall be considered a public meeting and open to the public at all times.<sup>30</sup>

Colorado's law is essentially divided into requirements of state public bodies and local public bodies. A state public body is defined as any board, committee, commission, or other advisory, policymaking, rulemaking, decision-making, or formally constituted body of any state agency, state authority, governing board of a state institution of higher education, or the general assembly,<sup>31</sup> and any public or private entity to which the state has delegated a governmental decision-making function, but does not include administrative staff of the state public body.<sup>32</sup> A local public body is defined similarly to a state public body but is a body of any political subdivision as opposed to state authorities and also includes boards of education, school administration personnel, governing boards of authorized charter schools, and the board of trustees of the public employees' retirement association.<sup>33</sup> Local public bodies may also include municipalities, counties, school districts, and special districts for the purpose of adhering to notice requirements.<sup>34</sup>

**Notice Requirements:** Public meetings may only be held after full and timely notice. State and local public bodies are required to post notice to the public website of the body with specific agenda information, if available, no less than 24 hours prior to the commencement of the meeting to include date, time, agenda contents, and other information deemed appropriate.<sup>35</sup> Additionally,

<sup>27</sup> Colorado Session Laws, 1973, Initiated 72. L. 73:P. 1666, § 1.

<sup>28</sup> Colo. Rev. Stat. § 24-6-402(10).

<sup>29</sup> Colo. Rev. Stat. § 24-6-402(1)(b).

<sup>30</sup> Colo. Rev. Stat. § 24-6-402(2)(a) and (b).

<sup>31</sup> In accordance with Colo. Rev. Stat. § 24-6-402(2.5)(c), public business conducted by the Colorado General Assembly is subject to the Colorado Open Meetings Law but does not include administrative, planning, training, or general operations.

<sup>32</sup> Colo. Rev. Stat. § 24-6-402(1)(d).

<sup>33</sup> Colo. Rev. Stat. § 24-6-402(1)(a).

<sup>34</sup> Colo. Rev. Stat. § 24-6-402(2)(c)(IV).

<sup>35</sup> Colo. Rev. Stat. § 24-6-402(2)(c); Colo. Rev. Stat. § 24-6-402(2.5)(a).

posting to social media or through other means is permitted.<sup>36</sup> State and local public bodies are required to maintain a list of people who have requested notification of discussion of certain topics or all meetings in the previous two years so the body can provide reasonable notice of such meetings.<sup>37</sup>

**Minutes and Recordings:** State public bodies are required to take minutes and make them available for public inspection, except that for minutes taken during an executive session, they only need to reflect the topic of discussion.<sup>38</sup> Local public bodies are required to take minutes and make them available for public inspection when any action is taken, and minutes taken during an executive session must only reflect the topic of discussion.<sup>39</sup>

**Public Participation:** The Colorado law appears to be silent on meeting participation activities by members of the public, except that public meetings shall be open to the public and minutes or other records created by the applicable public body shall be open for public inspection, with some exceptions.<sup>40</sup> Additionally, members of the public may request to be notified of a state or local public body meeting when certain topics will be discussed.<sup>41</sup>

**Exceptions:** Social gatherings and chance meetings are exempt from the Colorado Open Meetings Law, but only if the discussion of public business is not the central purpose.<sup>42</sup> Other exceptions revolve around executive sessions and which bodies are authorized to conduct executive sessions for specific purposes.

**Executive or Closed Sessions:** Executive sessions, or meetings that are not open to the public but are conducted by a body subject to the Colorado Open Meetings Law, may only be called during a regular or special meeting based on an affirmative vote of two-thirds of the entire state public body or an affirmative vote of two-thirds of a quorum of a local public body<sup>43</sup> and action may not be taken.<sup>44</sup> Discussions in an executive session must be electronically recorded and retained for 90 days, and while some discussions may be privileged, the recording should state that fact.<sup>45</sup> The recording of an executive session will not be open for public inspection without the consent of the body.<sup>46</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> Colo. Rev. Stat. § 24-6-402(7).

<sup>38</sup> Colo. Rev. Stat. § 24-6-402(2)(d)(I).

<sup>39</sup> Colo. Rev. Stat. § 24-6-402(2)(d)(II).

<sup>40</sup> Colo. Rev. Stat. § 24-6-402(2).

<sup>41</sup> Colo. Rev. Stat. § 24-6-402(7).

<sup>42</sup> Colo. Rev. Stat. § 24-6-402(2)(e).

<sup>43</sup> Colo. Rev. Stat. § 24-6-402(4).

<sup>44</sup> Colo. Rev. Stat. § 24-6-402(3)(a).

<sup>45</sup> Colo. Rev. Stat. § 24-6-402(2)(d.5).

<sup>46</sup> *Id.*



A state public body is permitted to hold an executive session to discuss:

- Purchase or sale of property where publicity may give an unfair advantage;
- Conferences with an attorney under privilege;
- Matters required to be kept confidential;
- Details relating to security or investigations;
- Matters relating to employee or organization negotiation strategies;
- Matters concerning patient care by the Board of Regents of the University of Colorado, if premature disclosure would give unfair advantage;
- Matters concerning trade secrets, privileged information, or other confidential commercial, financial, geological, or geophysical information, if a nonprofit corporation;
- Consideration of award or naming a building for a person, if a state institution of higher education;<sup>47</sup>
- Personnel actions, unless the member of personnel requests an open meeting, excluding public officials or elected officials;
- Investigative actions regarding students, when publicity would be harmful;
- Parole proceedings, excluding final parole decisions, of the State Board of Parole.<sup>48</sup>

A local public body is permitted to hold an executive session to discuss:

- Purchase or sale of property where publicity may give an unfair advantage;
- Conferences with an attorney under privilege;
- Matters required to be kept confidential;
- Details relating to security or investigations;
- Negotiation strategies, except if a board of education of a school district;
- Personnel actions, unless the member or members of personnel request an open meeting;
- Consideration of any documents protected by mandatory nondisclosure under the Colorado Open Records Act;
- Individual students, when publicity would be harmful;
- If a board of education of a school district or the governing body of a charter school, negotiations concerning an employment contract with one or more finalists for the position of chief executive officer.<sup>49</sup>

**Violations:** No legal action taken by a state public body or local public body is valid unless made at a lawful open meeting.<sup>50</sup> Anyone who is denied any public rights regarding open meetings constitutes suffering an injury of fact and they may challenge the violation.<sup>51</sup> Injunctions may be

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<sup>47</sup> Colo. Rev. Stat. § 24-6-402(3)(a).

<sup>48</sup> Colo. Rev. Stat. § 24-6-402(3)(b).

<sup>49</sup> Colo. Rev. Stat. § 24-6-402(4).

<sup>50</sup> Colo. Rev. Stat. § 24-6-402(8).

<sup>51</sup> Colo. Rev. Stat. § 24-6-402(9)(a).

issued by a court of competent jurisdiction to enforce the Colorado Open Meetings Law and if the court finds that a violation has occurred, the court shall award the prevailing individual costs and reasonable attorney fees.<sup>52</sup> If a court does not find that a violation occurred but the action was frivolous, vexatious, or groundless, the court shall award costs and reasonable attorney fees to the prevailing party.<sup>53</sup>

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<sup>52</sup> Colo. Rev. Stat. § 24-6-402(9)(b).

<sup>53</sup> *Id.*

## IDAHO

The Idaho Open Meetings Law was enacted in 1974<sup>54</sup> and like Colorado, 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.<sup>55</sup>

**Definitions:** Idaho statutes define a meeting as the convening of a governing body of a public agency to decide or deliberate on any matter and specifies that regular meetings are meetings with a date fixed by law or rule to conduct the business of an agency and special meetings are meetings pursuant to a special call for the conduct of business as specified in the call.<sup>56</sup> A governing body means the members of any public agency that consists of two or more members with the authority to make decisions for or recommendations to a public agency regarding any matter. A public agency is defined as **(1)** any state board, commission, department, authority, educational institution, or other state agency created by or pursuant to statute, other than courts and their entities; **(2)** any regional board, commission, department, or authority created by or pursuant to statute; **(3)** any county, city, school district, special district, or other municipal corporation or political subdivision of the state of Idaho; and **(4)** any subagency of a public agency created by or pursuant to statute, ordinance, or other legislative act.<sup>57</sup>

**Notice Requirements:** Public notice requirements differ based on the type of meeting being called. Regular meetings require no less than five calendar days' notice with the agenda being posted no later than 48 hours prior to the commencement of the meeting.<sup>58</sup> Annual notice of meetings with regular intervals, such as the second Tuesday of each month at 3:00 PM, are acceptable and notice must be posted at the governing body's offices or at the location where the meeting is held, and electronically on their website or social media.<sup>59</sup> Notice for special meetings is required no less than 24 hours before and must include the agenda at that time, unless for an emergency,<sup>60</sup> and notice shall include meeting date, time, place, and the name of the public agency.<sup>61</sup> A list of news media requesting notification of a special meeting must be maintained and a good faith effort to notify them before the meeting is required.<sup>62</sup> Notice for executive sessions

<sup>54</sup> 1974 Ch. 187 Idaho Sess. Laws 1492-95.

<sup>55</sup> Idaho Code § 74-201.

<sup>56</sup> Idaho Code § 74-202(6).

<sup>57</sup> Idaho Code § 74-202(4).

<sup>58</sup> Idaho Code § 74-204(1).

<sup>59</sup> *Id.*

<sup>60</sup> "Emergency" under Idaho Code § 74-204(2) is defined as a situation involving injury or damage to persons or property, or immediate financial loss, or the likelihood of such injury, damage, loss, when the notice requirements would be impracticable or increase the likelihood or severity of such injury, damage, or loss, and the reason for the emergency is stated at the outset of the meeting.

<sup>61</sup> Idaho Code § 74-204(2).

<sup>62</sup> *Id.*

is required 24 hours before the meeting in line with special meeting notice requirements, but must also state the reason and specific provision of law authorizing the executive session.<sup>63</sup>

**Minutes and Recordings:** Under Idaho law, when a governing body of a public agency holds a public meeting, minutes are required to be taken and made available to the public within a reasonable time after the meeting, also subject to Idaho's public records law.<sup>64</sup> Minutes are required to include a list of members present at the meeting, what decisions were made or discussed, and the results of any votes taken.<sup>65</sup> For executive sessions, minutes taken must include a reference to the specific statutory authority of the executive session and include sufficient detail on the purpose of the topic, but not so much detail that the minutes would compromise the purpose of the executive session.<sup>66</sup>

**Public Participation:** Public meetings may not be held in establishments where discrimination occurs based on race, creed, color, sex, age, or national origin,<sup>67</sup> such as private membership clubs not open to women. Meetings may be conducted using electronic means if the communications can be heard by members of the public, but at least one member of the governing body must be physically present at the meeting's location stated in the notice.<sup>68</sup> Negotiations between a governing body and a labor organization shall be in open session for the public to attend and all documentation would be subject to public records laws.<sup>69</sup> All standing, special, or select committee meetings of the Legislature must be open to the public, except in exceptional circumstances outlined in rules of the legislature and the level of public participation is subject to the approval of the legislative committee.<sup>70</sup>

**Exceptions:** Idaho's Open Meetings Law exempts courts and their agencies from the definition of public agency and are therefore not required to comply with the open meetings law.<sup>71</sup> Other entities explicitly exempted from public meetings laws include the Idaho Life and Health Insurance Guaranty Association, the Idaho Insurance Guaranty Association, the Surplus Line Association, and the Idaho Depredating Wildlife Appeals Board.<sup>72</sup> When the Board of Tax Appeals, the Public Utilities Commission, and the Industrial Commission are engaged in contested case proceedings, their deliberations are also exempt from the Idaho Open Meetings Law.<sup>73</sup>

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<sup>63</sup> Idaho Code § 74-204(3).

<sup>64</sup> Idaho Code § 74-205(1).

<sup>65</sup> *Id.*

<sup>66</sup> Idaho Code § 74-205(2).

<sup>67</sup> Idaho Code § 74-203(4).

<sup>68</sup> Idaho Code § 74-203(5).

<sup>69</sup> Idaho Code § 74-206A.

<sup>70</sup> Idaho Code § 74-207.

<sup>71</sup> Idaho Code § 74-202(4).

<sup>72</sup> Idaho Code § 74-203(3).

<sup>73</sup> Idaho Code § 74-203(2).

**Executive or Closed sessions:** Executive sessions exclude members of the public, but only for the purposes outlined under the Idaho Open Meetings Law. A motion to go into an executive session must identify the statutory authority for doing so and must receive a two-thirds roll call vote<sup>74</sup> of the governing body at an open meeting.<sup>75</sup> No executive session may be called to take action or make a final decision.<sup>76</sup>

Executive sessions may be held:

- To consider hiring a public officer, employee, or staff member where qualities are inspected, but does not extend to filling a vacancy in an elective office or staffing in general;
- For personnel or public student deliberations to include evaluation, dismissal, discipline of, or to hear complaints brought;
- To acquire interest in real property not owned by a public agency;
- To consider records that are exempt from disclosure under the public records act;
- To consider preliminary trade or commerce negotiations where the governing body is in competition with governing bodies in other states or nations;
- To communicate with legal counsel concerning litigation, but does not extend to the mere presence of counsel;
- By the Commission of Pardons and Parole;
- By the Custody Review Board of the Department of Juvenile Corrections;
- To engage in communications with the agency's risk manager or insurance provider regarding a pending claim or prevention of a claim but does not extend to the mere presence of either individual;
- To consider labor contract matters.<sup>77</sup>

**Violations:** Any executive session held that is not for the purpose of discussing topics authorized by statute is in violation of the open meetings law.<sup>78</sup> Any action taken at a meeting that fails to meet the requirements of the open meetings law is null and void.<sup>79</sup> Any member of the governing body who participates in a meeting violating the open meetings law is subject to a civil penalty not to exceed \$250.<sup>80</sup> Any member of the governing body who knowingly violates the open meetings law is subject to a civil penalty not to exceed \$1,500 and if a member has previously violated the law within a 12-month period, they are subject to a civil penalty not to exceed \$2,500.<sup>81</sup> The

<sup>74</sup> Under Idaho Code § 74-206(4), if the public agency is a public school district, charter district, or public charter school with vacancies resulting in less than two-thirds of board members seated, the body may enter an executive session with a simple majority vote.

<sup>75</sup> Idaho Code § 74-206(1).

<sup>76</sup> Idaho Code § 74-206(3).

<sup>77</sup> Idaho Code § 74-206(1).

<sup>78</sup> Idaho Code § 74-206(2).

<sup>79</sup> Idaho Code § 74-208(1).

<sup>80</sup> Idaho Code § 74-208(2).

<sup>81</sup> Idaho Code § 74-208(3) and (4).

attorney general has the duty to enforce the public meetings law for state government and prosecuting attorneys of counties shall enforce the law for local public agencies, unless a conflict occurs, then a special prosecutor will be appointed.<sup>82</sup> Any person affected by a violation may commence civil action for the purpose of declaring an action null or void within 30 days of the action or any other suit must be brought within 180 days of the alleged violation.<sup>83</sup>

A violation may be cured when the governing body self-identifies the violation, or, upon notice of an alleged violation, the governing body has 14 days to respond to acknowledge and announce the intent to cure or that no violation has occurred.<sup>84</sup> If a violation is acknowledged, the governing body will then have 14 days to cure the violation by declaring that all action taken in that instance is null and void.<sup>85</sup> Any enforcement actions shall occur after the curing period, if applicable, and a cure shall bar imposition of civil penalties.<sup>86</sup>

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<sup>82</sup> Idaho Code § 74-208(5).

<sup>83</sup> Idaho Code § 74-208(6).

<sup>84</sup> Idaho Code § 74-208(7).

<sup>85</sup> *Id.*

<sup>86</sup> Idaho Code § 74-208(7)(c) and (d).

## MONTANA

Enacted in 1963,<sup>87</sup> the Montana Open Meetings Act's stated intent is that all actions and deliberations of public agencies shall be conducted openly and that the Act will be liberally construed.<sup>88</sup>

**Definitions:** Montana defines a meeting in this context as the convening of a quorum of the constituent membership of a public agency or association,<sup>89</sup> whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.<sup>90</sup> Those entities that are subject to the Montana Open Meetings Act include governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, and associations.<sup>91</sup>

**Notice Requirements:** While the Act itself does not speak to notice requirements, Montana's public participation laws include a provision that states public notice should be based on agency policy and when there is a significant interest to the public.<sup>92</sup> When that standard is met, notice should be published in the form of an agenda by a newspaper of general circulation or on the agency's website and the agenda must include an item allowing public comment when there is an issue the agency wishes to take action on.<sup>93</sup>

**Minutes and Recordings:** Minutes resulting from an open meeting must be available for inspection by the public and must include the date, time, and place of the meeting; a list of individual members of the body; the substance of the matters proposed, discussed, or decided; a record of votes by individual members if requested by any member;<sup>94</sup> and any public comment received.<sup>95</sup> If an official recording is taken, it shall constitute the official record for that meeting and must include a written record, but if the minutes are the official record, a log or time stamp for each main agenda item is required.<sup>96</sup> If a presiding officer closes the meeting to the public, they shall ensure the minutes are kept for the closed portion, though in this case that portion of the minutes will not be available for public inspection except through court order.<sup>97</sup>

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<sup>87</sup> 1963 Laws of Montana Sec. 1, Ch. 159, L. 1963.

<sup>88</sup> Mont. Code Ann. § 2-3-201.

<sup>89</sup> As "association" is defined as being composed of public or governmental bodies that regulate rights, duties, or privileges of any individual by Mont. Code Ann. § 2-3-203(2).

<sup>90</sup> Mont. Code Ann. § 2-3-202.

<sup>91</sup> Mont. Code Ann. § 2-3-203.

<sup>92</sup> Mont. Code Ann. § 2-3-103.

<sup>93</sup> *Id.*

<sup>94</sup> Mont. Code Ann. § 2-3-212.

<sup>95</sup> Mont. Code Ann. § 2-3-103.

<sup>96</sup> Mont. Code Ann. § 2-3-212.

<sup>97</sup> *Id.*

For certain boards, including the Board of Investments, Public Employees' Retirement Board, Teachers' Retirement Board, Board of Public Education, Board of Regents of Higher Education, the governing board of a county, the governing board of a first or second class city,<sup>98</sup> first and second class school district boards of trustees, or a local board of health, the meeting shall be recorded in an audio and video format and be available to the public within one business day after the meeting.<sup>99</sup>

**Public Participation:** A person may not be excluded from any open meeting and may not be prohibited from photographing, televising, transmitting images or audio, or recording if they are not interfering with the conduct of the meeting.<sup>100</sup>

**Exceptions:** There do not appear to be explicit exceptions within the Montana Open Meetings Act.

**Executive or Closed Sessions:** A presiding officer may close a meeting during the time the discussion relates to a matter of individual privacy and then only if the demands of personal privacy clearly exceed the merits of public disclosure, unless waived by the individual about whom the discussion pertains.<sup>101</sup> Meetings may also be closed to discuss a strategy regarding litigation when an open meeting would be detrimental to the litigating position of the agency, except when the only parties are public bodies or associations.<sup>102</sup> The supreme court may close a meeting that involves judicial deliberations in an adversarial proceeding.<sup>103</sup>

**Violations:** Any decision made in violation of the Act may be declared void by a district court of competent jurisdiction upon a suit commenced within 30 days of the date the plaintiff or petitioner learns of the decision.<sup>104</sup> A person alleging a deprivation of rights who prevails in an action brought to a district court to enforce the constitutional right to know<sup>105</sup> or the constitutional right of participation<sup>106</sup> may be awarded costs and reasonable attorney fees.<sup>107</sup>

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<sup>98</sup> Under Mont. Code Ann. § 2-3-214, if the governing board of a county has a population less than 4,500, or if the city is classified as third-class, the recording may be audio only. Montana classifies cities based on population, where first class cities have a population of more than 10,000; second class cities have a population between 5,000 and 9,999; and third-class cities between 1,000 and 4,999. Mont. Code Ann. § 7-1-4111.

<sup>99</sup> Mont. Code Ann. § 2-3-214.

<sup>100</sup> Mont. Code Ann. § 2-3-211.

<sup>101</sup> Mont. Code Ann. § 2-3-203.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> Mont. Code Ann. § 2-3-213.

<sup>105</sup> Mont. Const. art. II § 8.

<sup>106</sup> Mont. Const. art. II § 9.

<sup>107</sup> Mont. Code Ann. § 2-3-221.



## NEBRASKA

The Nebraska Open Meetings Act was enacted in 1975<sup>108</sup> and codified the same declaration as Colorado and Idaho, that it is the policy of the state that the formation of public policy is public business and shall not be conducted in secret, and that every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies.<sup>109</sup>

**Definitions:** A meeting is defined as all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body, to include virtual conferencing.<sup>110</sup> A public body means **(1)** governing bodies of all political subdivisions of the state of Nebraska; **(2)** governing bodies of all agencies created by the Constitution of Nebraska, or otherwise pursuant to law, of the executive department of the state of Nebraska; **(3)** all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by law; **(4)** all study or advisory committees of the executive department of the state of Nebraska whether having continuing existence or appointed as a special committee with limited existence; and **(5)** advisory committees and any political subdivision or agency and instrumentalities exercising essentially public functions; but do not include **(1)** subcommittees, unless a quorum of the public body is present or the subcommittee is holding a hearing, making policy, or taking formal action on behalf of their parent body; **(2)** entities conducting judicial proceedings, unless a court or other judicial body is exercising rulemaking, deliberating, or deciding upon the issuance of administrative orders; or **(3)** the Judicial Resources Commission or subcommittees or subgroups of the Commission.<sup>111</sup>

**Notice Requirements:** Each public body is required to give reasonable advance notice of the time and place of each meeting, transmitted to the members of the public body and to the public.<sup>112</sup> In most cases, notice shall be given by publication in a newspaper of general circulation, the public body's website, or any other appropriate method, and it shall contain an agenda of sufficiently descriptive subjects known at the time of the publication.<sup>113</sup> The agenda may not be altered later than 24 hours before commencement of the meeting, unless the body needs to include items of an emergency nature.<sup>114</sup> Public bodies are required to maintain a list of news media organizations

<sup>108</sup> Nebraska Laws 1975, LB 325, § 1.

<sup>109</sup> Neb. Rev. Stat. § 84-1408.

<sup>110</sup> Neb. Rev. Stat. § 84-1409(2).

<sup>111</sup> Neb. Rev. Stat. § 84-1409(1).

<sup>112</sup> Neb. Rev. Stat. § 84-1411(a).

<sup>113</sup> Neb. Rev. Stat. § 84-1411.

<sup>114</sup> *Id.*

requesting meeting notifications and make a reasonable effort to provide advance notification to them of the time and place of each meeting and the subjects to be discussed.<sup>115</sup>

**Minutes and Recordings:** Nebraska requires public bodies to record the methods and dates of its public notice within the minutes for that meeting.<sup>116</sup> Each public body is also required to keep minutes of all meetings showing the time, place, members present and absent and how they voted for each subject, and the substance of all matters discussed, which are subject to the public records act and shall be made available for public inspection within 10 working days, or prior to the next meeting, whichever is earlier.<sup>117</sup> When it is necessary to hold an emergency meeting without reasonable advance notice, the nature of the emergency shall be stated in the minutes, which shall be available to the public no later than the end of the next business day.<sup>118</sup> Certain public bodies are entitled to hold a meeting using virtual conferencing if conditions are met in the form of **(1)** reasonable advance public notice with an access link for participating; **(2)** accommodations are made so that members of the public may participate at the physical location of the meeting and at least one of the members of the public body is physically present at that location; **(3)** at least one copy of all documents being considered at the meeting are available at the physical location and electronically, to include a current version of the Nebraska Open Meetings Act text; and **(4)** no more than one-half of the meetings held in a calendar year are virtual.<sup>119</sup>

**Public Participation:** Members of the public may appear before a public body by means of virtual conferencing.<sup>120</sup> The public has the right to attend and the right to speak at meetings of public bodies, except for closed sessions, and may record meetings in accordance with the public body's rules on conducting a meeting.<sup>121</sup> Members of the public are not required to identify themselves as a condition of admission, but if addressing the body the member of the public shall identify themselves and the organization they represent unless the requirement is waived to protect the security of the individual.<sup>122</sup> Meeting spaces must be adequate to accommodate members of the public and must be adequate for members of the public to hear discussion and testimony provided at the meeting, as well as the ability to review documentation referenced.<sup>123</sup>

**Exceptions:** Those entities that are not designated as public bodies under Neb. Rev. Stat. § 84-1409(1) are exempt from the Nebraska Open Meetings Act. The Act does not apply to chance meetings or attendance at conventions or workshops if there is no vote taken regarding any matter

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<sup>115</sup> *Id.*

<sup>116</sup> Neb. Rev. Stat. § 84-1411(1)(d).

<sup>117</sup> Neb. Rev. Stat. § 84-1413.

<sup>118</sup> Neb. Rev. Stat. § 84-1411(5).

<sup>119</sup> Neb. Rev. Stat. § 84-1411(2).

<sup>120</sup> Neb. Rev. Stat. § 84-1411(6).

<sup>121</sup> Neb. Rev. Stat. § 84-1412.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

over which the public body has supervision, control, jurisdiction, or advisory power.<sup>124</sup> When an emergency meeting is necessary, a virtual conference may be held but any formal action taken must pertain to the emergency only.<sup>125</sup> Virtual conferencing authority does not apply to the Nebraska Power Review Board or public power district, a public power and irrigation district, an electric membership association, an electric cooperative company, a municipality having a generation and distribution system, or a registered group of municipalities.<sup>126</sup> Any action taken between March 17, 2020 and April 30, 2021 shall not be invalidated, pursuant to a Governor's Executive Order which waived certain requirements of the Nebraska Open Meetings Act.<sup>127</sup>

**Executive or Closed Sessions:** Any public body may hold a closed session by affirmative vote of the majority of its voting members, if the motion to close includes the subject matter and reason, and if a closed session is clearly necessary for the protection of public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting.<sup>128</sup> The vote to hold a closed session must be during an open meeting and the motion's details must be included in the open meeting's minutes.<sup>129</sup> Any member of a public body may challenge the continuation of a closed session if the member determines that the session has exceeded the reason stated in the original motion, subject to overrule by a majority vote.<sup>130</sup>

A public body is permitted to hold a closed session for:

- Strategy sessions with respect to collective bargaining, real estate purchases, pending or imminent litigation;
- Discussion regarding deployment of security personnel or devices;
- Investigative procedures regarding allegations of criminal conduct;
- Evaluation of job performance when necessary to prevent needless injury to the reputation of the person, unless the person has requested a public meeting;
- Discussion regarding the amounts to be paid to individuals who have suffered from a tragedy of violence or natural disaster, if the public body is the Community Trust;
- Governing board peer review activities, professional review activities, review and discussion of medical staff investigations or disciplinary actions, and any strategy session concerning transactional negotiations with any referral source that is required by federal law to be conducted at arm's length, if the public body is a public hospital.<sup>131</sup>

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<sup>124</sup> Neb. Rev. Stat. § 84-1410(5).

<sup>125</sup> Neb. Rev. Stat. § 84-1411(5).

<sup>126</sup> Neb. Rev. Stat. § 84-1411(9).

<sup>127</sup> Neb. Rev. Stat. § 84-1415.

<sup>128</sup> Neb. Rev. Stat. § 84-1410.

<sup>129</sup> *Id.*

<sup>130</sup> Neb. Rev. Stat. § 84-1410(3).

<sup>131</sup> Neb. Rev. Stat. § 84-1410(1).

**Violations:** Any action taken at a meeting in violation of the Act shall be declared void by a district court if the suit commences within 120 days of the meeting where the alleged violation occurred.<sup>132</sup> Action resulting from substantial violations shall be voidable by the district court if commenced between 120 days and one year after the meeting.<sup>133</sup> The attorney general and county attorneys shall enforce the Nebraska Open Meetings Act.<sup>134</sup>

Any citizen of the state may commence in a suit in district court of the county where the meeting took place or where the person resides to request compliance with or to prevent violations of the Act, to declare an action of the public body as void, or to determine the applicability of the Act to discussions or decisions of a public body, and the court may order reasonable attorney fees and court costs if finding in favor of the citizen plaintiff.<sup>135</sup> Any member of the public body who knowingly violates or who attends or remains knowing that a meeting is in violation of the Act shall be guilty of a Class IV misdemeanor for a first offense and a Class III misdemeanor for a second or subsequent offense.<sup>136</sup>

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<sup>132</sup> Neb. Rev. Stat. § 84-1414(1).

<sup>133</sup> *Id.*

<sup>134</sup> Neb. Rev. Stat. § 84-1414(2).

<sup>135</sup> Neb. Rev. Stat. § 84-1414(3).

<sup>136</sup> Neb. Rev. Stat. § 84-1414(4).

## SOUTH DAKOTA

South Dakota's public meetings laws are embedded in South Dakota's Official Meeting statutes,<sup>137</sup> which were enacted in 1965.<sup>138</sup> S.D. Codified Laws § 1-25-1 states that an official meeting of a public body is open to the public unless a specific law is cited by the public body to close the official meeting to the public.

**Definitions:** An official meeting is defined as any meeting of a quorum of a public body at which official business or public policy of that public body is discussed and decided by the public body, whether in person or by means of teleconference or electronic means, including email, instant message, social media, text message, virtual meeting platform, provided the term does not include communications solely to schedule a meeting or confirm attendance availability for a future meeting.<sup>139</sup> A public body means any political subdivision or the state.<sup>140</sup>

**Notice Requirements:** In South Dakota, public bodies are required to provide public notice of any official meeting between 24 and 72 hours before the commencement of the meeting, depending on the type of public body, and the notice is required to include the date, time, and location of the meeting and be posted at the principal office of the public body and its website, if applicable.<sup>141</sup> For special and rescheduled meetings, the information in the notice shall be delivered in person, by mail, email, or telephone to members of the local news media who have requested notice in addition to the regular notice requirements mentioned above.<sup>142</sup>

**Minutes and Recordings:** Any official meeting may be conducted by teleconference if a quorum is present and each vote may be taken by voice vote unless any member votes in the negative and then the vote will be a roll call vote.<sup>143</sup> State public bodies shall keep detailed minutes of proceedings of regular or special meetings and must report how each member voted on any motion by which a roll call vote is taken.<sup>144</sup> Minutes shall be available for the public's inspection at all times at the principal place of business of the public body.<sup>145</sup>

**Public Participation:** The public body is required to set aside time for public comment at every official meeting but may be limited to the public body's discretion as to the amount of time public comment is allowed for each topic as long as the opportunity for public comment exists.<sup>146</sup> Any

<sup>137</sup> S.D. Codified Laws §§ 1-25-1 through 1-25-12.

<sup>138</sup> South Dakota SL 1965, Ch. 269.

<sup>139</sup> S.D. Codified Laws § 1-25-12(1).

<sup>140</sup> S.D. Codified Laws § 1-25-12(3).

<sup>141</sup> S.D. Codified Laws § 1-25-1.1.

<sup>142</sup> *Id.*

<sup>143</sup> S.D. Codified Laws § 1-25-1.5.

<sup>144</sup> S.D. Codified Laws § 1-25-3.

<sup>145</sup> *Id.*

<sup>146</sup> S.D. Codified Laws § 1-25-1.

official meeting conducted by teleconference shall provide one or more physical locations where the public may listen and participate.<sup>147</sup> Members of the public may not be prevented from recording an official meeting if the recording is reasonable, obvious, and not disruptive.<sup>148</sup>

**Exceptions:** The only explicit exception listed within the South Dakota public meeting statutes is that the State Investment Council may discuss and consider any document or information exempt from public disclosure requirements when in an executive session.<sup>149</sup>

**Executive or Closed Sessions:** Executive or closed meetings may be held for the sole purpose of the reasons listed below, but any action resulting from an executive or closed meeting must be made at an official open meeting.<sup>150</sup> Any executive or closed meeting shall be held only upon a majority vote of the members of the public body present and voting, and discussion during the meeting is restricted to the purpose specified in the closure motion.<sup>151</sup>

A public body may hold an executive or closed meeting for the sole purpose of:

- Discussing the qualifications, competence, performance, character, or fitness of any public officer or employee or prospective officer or employee, but does not include independent contractors;
- Discussing disciplinary action of a student or the eligibility of a student to participate in interscholastic activities;
- Consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation or contractual matters;
- Preparing for contract negotiations with employees or employee representatives;
- Discussing market or pricing strategies by a board or commission of a business owned by the state or any of its political subdivisions, when public discussion may be harmful to the competitive position of the business;
- Discussing information pertaining to the protection of public or private property and any person on or within public or private property specific to:
  - Vulnerability assessment or response plan preventing or mitigating criminal acts;
  - Emergency management or response;
  - Public safety information that would create the substantial likelihood of endangering public safety or property, if disclosed;
  - Cyber security plans, communications network schema, passwords, or user identification names;
  - Guard schedules;

<sup>147</sup> S.D. Codified Laws § 1-25-1.6.

<sup>148</sup> S.D. Codified Laws § 1-25-11.

<sup>149</sup> S.D. Codified Laws § 1-25-10.

<sup>150</sup> S.D. Codified Laws § 1-25-2.

<sup>151</sup> *Id.*

- Lock combinations;
- Any blueprint, building plan, or infrastructure record that may expose or create vulnerabilities through disclosure;
- Any emergency or disaster response plans, safety or security audits, lists of emergency or disaster response personnel or material, any location or listing of weapons or ammunition, nuclear, chemical, or biological agents, or other military or law enforcement equipment or personnel.<sup>152</sup>

**Violations:** Violations of open meetings and public participation,<sup>153</sup> public notice,<sup>154</sup> executive or closed meetings,<sup>155</sup> or minutes requirements<sup>156</sup> are Class II misdemeanors. If a complaint alleging a violation is made, the state's attorney<sup>157</sup> may **(1)** prosecute the case, **(2)** determine there is no merit in prosecuting the case and send a copy of the complaint and any investigation to the attorney general for statistical purposes, or **(3)** send the complaint and any investigation to the South Dakota Open Meetings Commission<sup>158</sup> for further action.<sup>159</sup>

Upon receiving a referral from a state's attorney or the attorney general, the South Dakota Open Meetings Commission shall examine the complaint, investigative file, and any signed statements to issue a written determination on whether a violation occurred based on the votes of the Commission members.<sup>160</sup> The final determination will be filed with the attorney general and provided to the public body involved, the state's attorney, any person who has made a written request for the determination, and shall be deemed public record.<sup>161</sup> If the Commission finds a violation, it shall issue a public reprimand and if no violation is found, the decision to prosecute is left to the discretion of the attorney general or state's attorney.<sup>162</sup>

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<sup>152</sup> *Id.*

<sup>153</sup> S.D. Codified Laws § 1-25-1.

<sup>154</sup> S.D. Codified Laws § 1-25-1.1; S.D. Codified Laws § 1-25-1.3.

<sup>155</sup> S.D. Codified Laws § 1-25-2.

<sup>156</sup> S.D. Codified Laws § 1-25-3.

<sup>157</sup> In South Dakota, a state's attorney is the chief prosecuting officer for each county. S.D. Codified Laws § 7-16.

<sup>158</sup> The South Dakota Open Meetings Commission is comprised of five state's attorneys appointed by the attorney general, and the members choose a chair annually by majority vote. S.D. Codified Laws § 1-25-8.

<sup>159</sup> S.D. Codified Laws § 1-25-6.

<sup>160</sup> S.D. Codified Laws § 1-25-7.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

## UTAH

A form of the Utah public meetings law was enacted in 1955,<sup>163</sup> but the more comprehensive Utah Open and Public Meetings Act was enacted in 1977.<sup>164</sup> The Open and Public Meetings Act declaration is “the state, its agencies and political subdivisions, exist to aid in the conduct of the people’s business. It is the intent of the Legislature that the state, its agencies, and political subdivisions take their actions openly and conduct deliberations openly.”<sup>165</sup> Members of public bodies receive annual training on the Act as ensured by each entity’s presiding officer.<sup>166</sup>

**Definitions:** Utah’s definition of meeting means a gathering of a public body or specified body, with a quorum present, and that is convened **(1)** by an individual with authority to convene the public body or specified body, and following the process provided by law for convening the public body or specified body; and **(2)** for the express purpose of acting as a public body to receive public comment about a relevant matter, deliberate about a relevant matter, or take action upon a relevant matter.<sup>167</sup> A specified body is an administrative, advisory, executive, or legislative body that is not a public body, consists of three or more members, and includes at least one member who is a legislator and officially appointed to the body by the president of the senate, the speaker of the house of representatives, or the governor, and does not include the legislative committees mentioned in the definition of a public body.<sup>168</sup>

A public body means any administrative, advisory, executive, or legislative body of the state or its political subdivisions that is created by the Utah Constitution or other law, consisting of two or more individuals, is supported in whole or in part by tax revenue, and is vested with the authority to make decisions regarding public business.<sup>169</sup> A public body is also an administrative, advisory, executive, or policymaking body of an association<sup>170</sup> that consists of two or more individuals, is supported in whole or in part by dues paid by a public school or whose employees participate in Utah State Retirement and Insurance Benefit Act benefits or programs, and is vested with the authority to make decisions regarding the participation of public school students in an interscholastic activity.<sup>171</sup> Public bodies do not include political parties or caucuses; conference, rules, sifting, or administrative staff committees of the legislature; a school community council or

<sup>163</sup> Utah Session Laws, L. 1955, Ch. 133 § 1.

<sup>164</sup> Utah Session Laws, L. 1977, Ch. 180 § 1.

<sup>165</sup> Utah Code Ann. § 52-4-102.

<sup>166</sup> Utah Code Ann. § 52-4-104.

<sup>167</sup> Utah Code Ann. § 52-4-103(5).

<sup>168</sup> Utah Code Ann. § 52-4-103(12).

<sup>169</sup> Utah Code Ann. § 52-4-103(7).

<sup>170</sup> An “association” means an organization that governs or regulates a student’s participation in an athletic interscholastic activity and does not include an institution of higher education. Utah Code Ann. § 53G-7-1101.

<sup>171</sup> Utah Code Ann. § 52-4-103(7).



charter trust land council; a taxed interlocal authority if a non-project entity; or the legislative Research and General Counsel Subcommittee, Budget Subcommittee, or Audit Subcommittee.<sup>172</sup>

**Notice Requirements:** A public body, or a specified body when a meeting is held on the Capitol Hill Complex, shall not give less than 24 hours' public notice of each meeting and the public notice shall include an agenda and the date, time, and place of the meeting.<sup>173</sup> Regular meetings held over the course of a year require annual notice, but agendas are required to be updated to notify the public as to the topics to be considered.<sup>174</sup> Notice shall be posted on the Utah Public Notice Website, the public body's official website,<sup>175</sup> and the physical location of the meeting, if required.<sup>176</sup>

**Minutes and Recordings:** Written minutes and a recording of the meeting shall be taken of all public meetings and must include (1) the date, time, and place of the meeting; (2) the names of members present and absent; (3) the substance of all matters discussed by the public body, which may include a summary of public comment; (4) a record of each member's votes; (5) the name of each person who is not a member but was recognized by the presiding officer and their comments; and (6) any other information that is a record of the proceedings that any member requests to include.<sup>177</sup> Minutes are public records and the public body must maintain a publicly available online version of the minutes linking each section to a place in the recording where the topic was discussed.<sup>178</sup> Public bodies shall make minutes that are pending approval available within 30 days of the meeting and approved minutes within three business days of approval on the Utah Public Notice Website along with any documentation referenced at the meeting.<sup>179</sup> For closed meetings, minutes and recordings are still required, but are not considered a public record except by court order.<sup>180</sup>

**Public Participation:** Any part of an open meeting may be independently recorded by any person in attendance if the recording does not interfere with the conduct of the meeting.<sup>181</sup> If a member of the public bridges a topic that is not on the meeting's agenda, it may be discussed.<sup>182</sup> Except for work sessions or emergency meetings, meetings of a local school board under the Act shall allow

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<sup>172</sup> *Id.*

<sup>173</sup> Utah Code Ann. § 52-4-202.

<sup>174</sup> *Id.*

<sup>175</sup> The requirement to post notice to a public body's official website is only for those entities that meet certain budget and population thresholds. Utah Code Ann. § 52-4-202.

<sup>176</sup> Utah Code Ann. § 52-4-202.

<sup>177</sup> Utah Code Ann. § 52-4-203(2)(a).

<sup>178</sup> Utah Code Ann. § 52-4-203(2)(b).

<sup>179</sup> Utah Code Ann. § 52-4-203.

<sup>180</sup> Utah Code Ann. § 52-4-206.

<sup>181</sup> Utah Code Ann. § 52-4-201.3.

<sup>182</sup> Utah Code Ann. § 52-4-202.

reasonable opportunity for public comment pursuant to the local school board's policies and procedures if the public comment complies with the valid time, place, and manner.<sup>183</sup>

**Exceptions:** The notice requirement may be disregarded if it becomes necessary to hold an emergency meeting to consider matters of an urgent nature because of unforeseen circumstances and the public body or specified body gives the best practicable notice of the time and place and topics to be heard at the meeting, but may not take action on a topic unless included with the advance public notice.<sup>184</sup> A recording of a public meeting is not required when the meeting is a site visit or traveling tour if no vote is taken.<sup>185</sup> The Act provides a provision that the Act may not be construed as restricting a member of a public body from transmitting an electronic message to another member of a public body when not convened in a public meeting.<sup>186</sup>

**Executive or Closed Sessions:** A closed meeting may be held if a quorum is present, the meeting began as an open meeting for which notice has been given, two-thirds of the members present vote to close the meeting or it is required to close a meeting, and only when discussing permitted matters under the Act, or when certain public bodies must discuss ethics complaints.<sup>187</sup>

A closed meeting may be held for:

- Discussion of the character, personal competence, or physical or mental health of an individual, except when filling a midterm vacancy or temporary absence;
- Strategy sessions to discuss collective bargaining;
- Strategy sessions to discuss pending or reasonably imminent litigation;
- Strategy sessions to discuss the purchase, exchange, or lease of real property or a proposed development agreement, project proposal or financing proposal if discussion would prevent the public body from contemplating under the best possible terms;
- Strategy sessions to discuss the sale of real property if discussion would disclose the appraisal or estimated value of a property or prevent the public body from contemplating the transaction on best possible terms and previously gave public notice that the property would be offered for sale and the terms of the sale are publicly disclosed before the public body approves the sale;
- Discussion regarding deployment of security personnel, devices, and systems;
- Investigative procedures regarding allegations of criminal misconduct;
- As relating to the Independent Legislative Ethics Commission, the Independent Executive Branch Ethics Commission, or a legislative ethics committee, the receipt or review of an ethics complaint;
- As relating to a county legislative body, commercial information;

<sup>183</sup> Utah Code Ann. § 52-4-201.3.

<sup>184</sup> Utah Code Ann. § 52-4-202.

<sup>185</sup> Utah Code Ann. § 52-4-203(7).

<sup>186</sup> Utah Code Ann. § 52-4-210.

<sup>187</sup> Utah Code Ann. § 52-4-204.

- As relating to the Utah Higher Education Savings Board of Trustees, fiduciary or commercial information;
- Deliberations of a public body relating to procurement evaluations or protests;
- The purpose of considering trade secrets, if the consideration is necessary to properly conduct a procurement;
- As relating to the governing board or a governmental nonprofit corporation, the purpose of discussing trade secrets, if discussion would reasonably be expected to result in injury to the owner of the trade secrets;
- As relating to the Cannabis Production Establishment Licensing Advisory Board, to review confidential information regarding violations and security requirements for operation of cannabis production establishments;
- Considering a loan application, if public discussion would disclose nonpublic information or result in the unfair competitive injury to the person submitting the information;
- Discussion of the board of the Point of Mountain State Land Authority regarding potential tenants of land.<sup>188</sup>

A meeting is required to be closed for:

- A meeting of the Health and Human Services Interim Committee to review a specific report and provide a response to the report;
- A meeting of the Child Welfare Legislative Oversight Panel to review a specific report and provide a response to the report or review an individual case;
- A meeting of a conservation district for the purpose of advising the Natural Resource Conservation Service of the U.S. Department of Agriculture, if protected by federal law;
- A meeting of the Compassionate Use Board for the purpose of reviewing petitions for medical cannabis cards;
- A meeting of the Colorado River Authority of Utah if the purpose of the meeting is to discuss a claim to use the water and failing to close the meeting would result in adverse impact;
- A meeting of the General Regulatory Sandbox Program Advisory Committee if the purpose of the meeting is to discuss an application for participation and failing to close the meeting would reveal the contents of a classified record;
- A meeting of a project entity<sup>189</sup> if the purpose of the meeting is to conduct a strategy session to discuss market conditions related to a business decision and if failing to close the meeting would result in adverse impact.<sup>190</sup>

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<sup>188</sup> Utah Code Ann. § 52-4-205.

<sup>189</sup> A “project entity” is a Utah interlocal entity or an electric interlocal entity that owns an electric generation and transmission facility. Utah Code Ann. § 11-13-103.

<sup>190</sup> Utah Code Ann. § 52-4-205.

**Violations:** Individuals constituting a quorum of a public body may not act together outside a meeting to predetermine action to be taken by the public body at a meeting.<sup>191</sup> The public body may remove a person from a public meeting if the person is willfully disrupting the meeting to the extent that orderly conduct is seriously compromised.<sup>192</sup> Any final action taken in violation of the Act is voidable by a court of competent jurisdiction if commenced within 30 days of the action, but a court may not void a final action for failure to comply with posting notice requirements if the public body otherwise complies with the notice requirements and the failure was due to an unforeseen internet hosting or communication technology failure.<sup>193</sup> The court may award a prevailing plaintiff reasonable attorney fees and costs for voiding action or to compel compliance or applicability to decisions of a public body.<sup>194</sup>

The attorney general and county attorneys shall enforce the Act and the attorney general shall provide notice to all public bodies annually regarding any changes to the Act.<sup>195</sup> When an appropriate challenge of a closed meeting is brought, the court shall review the recording or written minutes to make a determination and if there was a violation, the court shall publicly disclose information about the meeting but if there was no violation, the court shall dismiss without disclosing any information about the meeting.<sup>196</sup> In addition to other penalties under the Act, a member of the public body who intentionally violates or who knowingly or intentionally abets or advises a violation of any of the closed meeting provisions is guilty of a Class B misdemeanor.<sup>197</sup>

If you have any further questions, please do not hesitate to contact LSO Research at 777-7881.

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<sup>191</sup> Utah Code Ann. § 52-4-208(1).

<sup>192</sup> Utah Code Ann. § 52-4-301.

<sup>193</sup> Utah Code Ann. § 52-4-302.

<sup>194</sup> *Id.*; Utah Code Ann. § 52-4-303.

<sup>195</sup> Utah Code Ann. § 52-4-303.

<sup>196</sup> Utah Code Ann. § 52-4-304.

<sup>197</sup> Utah Code Ann. § 52-4-305.