

Idaho Open Meeting Law



IDAHO ASSOCIATION OF COUNTIES

1

Quick Links

The Idaho Open Meeting Law
<https://legislature.idaho.gov/statutesrules/idstat/Title74/T74CH2/>

The screenshot shows the Idaho Legislature website. The header includes the Idaho State seal, the text "The official website of the Idaho Legislature", and "STATE OF IDAHO". Navigation links include SENATE, HOUSE, COMMITTEES, LEGISLATORS, LAWS/RULES, LEGISLATIVE SESSIONS, and LIVE AUDIO/VIDEO STREAMING. A search bar is labeled "WHO'S MY CURRENT LEGISLATOR?". The breadcrumb trail reads: HOME > IDAHO LAWS & RULES > IDAHO STATUTES > TITLE 74 > CHAPTER 2. The main heading is "Idaho Statutes" with a "Print Friendly" button. A note states: "Idaho Statutes are updated to the web July 1 following the legislative session." The content area is titled "TITLE 74 TRANSPARENT AND ETHICAL GOVERNMENT" and "CHAPTER 2 OPEN MEETINGS LAW" with a "Download Entire Chapter (PDF)" link. A list of statute sections is provided:

- 74-201 FORMATION OF PUBLIC POLICY AT OPEN MEETINGS.
- 74-202 OPEN PUBLIC MEETINGS — DEFINITIONS.
- 74-203 GOVERNING BODIES — REQUIREMENT FOR OPEN PUBLIC MEETINGS.
- 74-204 NOTICE OF MEETINGS — AGENDAS.
- 74-205 WRITTEN MINUTES OF MEETINGS.
- 74-206 EXECUTIVE SESSIONS — WHEN AUTHORIZED.
- 74-206A NEGOTIATIONS IN OPEN SESSION.
- 74-207 OPEN LEGISLATIVE MEETINGS REQUIRED.
- 74-208 VIOLATIONS.

Additional text includes: "How current is this law?" and "Search the Idaho Statutes and Constitution".



IDAHO ASSOCIATION OF COUNTIES

2

Your Desk Reference

Idaho Open Meeting Law
Manual

<https://www.ag.idaho.gov/content/uploads/2018/04/OpenMeeting.pdf>

Office of the
Attorney General

Idaho Open Meeting Law Manual

Idaho Code §§ 74-201 through 74-208



JULY 2019

LAWRENCE WARDEN
Attorney General
700 West Jefferson Street
Boise, ID 83720-0010
www.ag.idaho.gov



IDAHO
ASSOCIATION OF
COUNTIES

3

Legislative Intent

“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 this state that the formation of public policy is public business and shall not be conducted in secret ([§74-201](#)).”



IDAHO
ASSOCIATION OF
COUNTIES

4

Key Definitions



IDAHO
ASSOCIATION OF
COUNTIES

5

Governing Body

- Members of any public agency that consist of two (2) or more members, with the authority to make decisions for recommendation to a public agency regarding any matter ([§74-202\(5\)](#))
- County governing bodies:
 - Board of county commissioners
 - Planning and zoning commission
 - Fair board
 - Any committee, subcommittee, or study group created by the county



IDAHO
ASSOCIATION OF
COUNTIES

6

Remember!

- All county advisory boards, committees, and commissions are subject to Idaho's Open Meeting Law, Public Records Act, Ethics in Government Act
- All county advisory boards, committees, and commissions need to be staffed by the county and trained to comply with applicable laws



IDAHO
ASSOCIATION OF
COUNTIES

7

Public Meeting

- The convening of a governing body of a public agency (the board of county commissioners) to make a decision or deliberate toward a decision ([§74-202\(6\)](#))
- Types of public meetings:
 - Regular meetings
 - Special meetings
 - Emergency meetings
 - Executive sessions



IDAHO
ASSOCIATION OF
COUNTIES

8

Regular Meeting

- The convening of the governing body of a public agency on a date fixed by law or rule, to conduct the business of the agency ([§74-202\(6\)\(a\)](#))



IDAHO
ASSOCIATION OF
COUNTIES

9

Special Meeting

- The convening of a governing body of a public agency pursuant to a special call for the conduct of business as specified in the call ([§74-202\(6\)\(b\)](#))



IDAHO
ASSOCIATION OF
COUNTIES

10

Emergency Meeting

- The convening of a governing body to address a situation involving injury or damage to persons or property, or immediate financial loss, or the likelihood of such injury, damage, or loss when [public] notice requirements ... would make such notice 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



IDAHO
ASSOCIATION OF
COUNTIES

11

Executive Session

- Any meeting or part of a meeting of a governing body that is closed to any persons for deliberation on certain matters ([§74-202\(3\)](#))



IDAHO
ASSOCIATION OF
COUNTIES

12

Meeting Notices, Agendas, and Minutes



IDAHO
ASSOCIATION OF
COUNTIES

13

Location of Public Meetings

- A governing body shall not hold a meeting in any place where discrimination on the basis of race, creed, color, sex, age or national origin is practiced ([§74-203\(4\)](#))
- Meetings may be held telephonically or virtually as long as someone from the county is on site a there is a system allowing all governing board members to participate and the public to listen/view the meeting ([§74-203\(5\)](#))



IDAHO
ASSOCIATION OF
COUNTIES

14

Regular Meeting Public Notice (§74-204)

- Notice generally set by BOCC resolution or county ordinance
- Notice must be physically posted in a prominent location at the courthouse
- Notice must be posted on the county website or social media pages
- Agenda must be posted 48 hours prior to the meeting



IDAHO
ASSOCIATION OF
COUNTIES

15

Special Meeting Public Notice (§74-204)

- A special meeting requires 24 hour meeting and agenda notice unless the meeting is to address an emergency



IDAHO
ASSOCIATION OF
COUNTIES

16

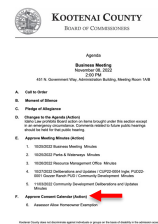
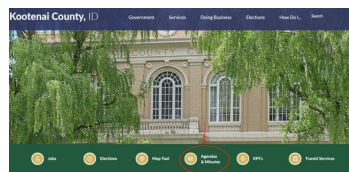
Public Notice of Executive Session (§74-204)

- Notice of executive session must state the reason and the specific provisions of law authorizing the executive session
- 24 hour notice is required if the executive session will take place at a special meeting
- 48 hour agenda notice is required if the executive session will take place at a regular meeting



The Meeting Agenda (§74-204)

- Meeting agendas are required for all public meetings
- The agenda for regular meetings must be posted 48 hours prior to the regular meeting time
- The agenda for a special meeting must be posted 24 hours prior to the special meeting time
- Meeting agendas must be posted on the county website
- Action items must be designated on the agenda as an "action item"



Amending a Meeting Agenda

- Only "good faith" agenda amendments are permitted after an agenda is posted
- Action items can only be added to an agenda if the item constitutes an emergency



IDAHO
ASSOCIATION OF
COUNTIES

19

An Agenda

- Includes topics to be discussed/decided at the meeting
- Is written for those not familiar with county government
- Does not have acronyms
- Is your promise to the public



IDAHO
ASSOCIATION OF
COUNTIES

20

An Agenda

- Is not a list of categories (i.e.: old business, new business, adjourn)
- Is not a list of presenters
- Is not requests for actions hidden in "reports"



IDAHO
ASSOCIATION OF
COUNTIES

21

Meeting Minutes ([§74-205](#))

- Written minutes shall be made and kept of all public meetings and be made available to the public within a reasonable timeframe.
- Meeting minutes must include:
 - The names of the governing body members present
 - All motions, resolutions, order, or ordinances and their disposition
 - The results of all votes, and upon request of a governing board member, the vote of each member by name



IDAHO
ASSOCIATION OF
COUNTIES

22

Meeting Minutes – Practical Suggestions

- Meeting minutes reflect what was decided at a meeting (not what you wish happened)
- Minutes should be an expanded version of the agenda (if its not on the agenda, it shouldn't be in the minutes)
- Minutes should not be editorialized
- Minutes create the history of your county (make them clear for future BOCCs)
- Minutes shouldn't be a transcript unless required



Meeting Minutes and Executive Sessions

- Minutes pertaining to an executive session should include a reference to the statutory authority subsection authorizing the executive session
- Minutes of an executive session should provide sufficient detail to identify the purpose and topic of the executive session (without disclosing what was actually discussed in executive session)
- Minutes of an executive session should not contain information that would compromise the purpose of the executive session



Approving Meeting Minutes

- Approval of board minutes should be on the agenda
 - Ok to use consent agendas
- Draft minutes should be made available to the public as soon as possible
- BOCC should review minutes to ensure the minutes accurately reflect BOCC actions
- Anything not in the minutes **DID NOT** happened



Meeting Roles

- Chairman of the board presides
- A quorum of board members is required to conduct business
- Clerk of the board (or clerk's designee) prepares and publishes the agenda, takes minutes, disseminates information, and records the meeting if required
- County staff and elected officials may be required to attend and provide updates, reports, or answer questions



Executive Sessions



IDAHO
ASSOCIATION OF
COUNTIES

27

Executive Sessions

- May occur during a regular or special meeting
- Require approval of 2/3 the governing board by roll call vote
- Vote must be recorded in the official meeting minutes
- The motion to enter executive session and the meeting minutes must state the specific statutory authorization for the executive session
- Any final decision must be made in the open meeting



IDAHO
ASSOCIATION OF
COUNTIES

28

Who Attends and Executive Session

- All governing board members
- Anyone invited by the governing board
- Though not required, as a matter of practice, it is helpful to have legal counsel sit in with the board



IDAHO
ASSOCIATION OF
COUNTIES

29

Permitted Reasons for an Executive Session ([§74-206](#))

- Personnel selection, evaluation, discipline, or termination
- Acquire interest in real property
- Consider records exempt from disclosure
- Discuss litigation with your attorney
- Consider claims or potential claims with the county risk manager or insurer



IDAHO
ASSOCIATION OF
COUNTIES

30

When in Executive Session, Stay on Topic

- Only discuss the topic for which you are in executive session
- TIP: Set a time limit for the executive session



IDAHO
ASSOCIATION OF
COUNTIES

31

Open Meeting Law Violations

- Types of violations:
 - Inadequate notice
 - Decisions made on topics not on the agenda
 - Decisions made on topics improperly added to the agenda
 - Decisions arising from deliberations occurring outside of a public meeting
 - Failure to disclose a conflict of interest



IDAHO
ASSOCIATION OF
COUNTIES

32

Open Meeting Law Violations ([§74-208](#))

- Failure to comply with render board action null and void
- Any board member participating in an illegal meeting may be subject to civil penalties:
 - \$250
 - \$1,500 for “knowingly” participating in an illegal meeting
 - \$2,500 for multiple “knowing” violations within 12 months



IDAHO
ASSOCIATION OF
COUNTIES

33

Curing Open Meeting Law Violation ([§74-208](#))

- A public agency may “cure” an open meeting law violation by first acknowledging that a violation occurred and redoing any action undertaken as part of an open meeting law violation
- “Curing” a violation vacates any potential civil penalties
- The curing process must happen within 14 days of a violation
- A cure protects you from civil penalties



IDAHO
ASSOCIATION OF
COUNTIES

34