

# Executive Session Guidelines

## Introduction

The Idaho Open Meeting Law (Idaho Code 74-201 to 74-208) was designed to ensure transparency of the legislative and administrative processes within state and local governments. Those who conduct meetings must remember this policy above all when deciding whether a meeting should be open. If a meeting is closed, there must be a compelling reason, supported by the statute itself, or by subsequent court rulings.

## Definition

"Executive Session" means any meeting or part of a meeting of a governing body which is closed to any persons for deliberation on certain matters.

## References and Resources

Idaho State Statutes - [Idaho Code 74-201 to 74-208](#)

Office of the Attorney General - [Idaho Open Meeting Law Manual \(Idaho Code 74-201 through 74-208\)](#)

## Frequently Asked Questions Regarding Executive Session:

### What notice do I need to give for an Executive Session?

Executive sessions may occur during regular or special meetings. If an executive session occurs during a regular meeting, no less than a five (5) calendar day meeting notice and a forty-eight (48) hour agenda notice shall be given.

If an executive session occurs during a special meeting, at least a twenty-four (24) hour meeting and agenda notice shall be given, unless an emergency exists. Idaho Code 74-204 (2) identifies emergency situations.

#### Reference:

[Open Meeting Law Manual - 74-204 Notice of Meetings--Agendas  
Idaho Code 74-204](#)

### How should an Executive Session be identified on my meeting agenda?

The meeting agenda shall identify the specific subsections of Idaho Code 74-206 that authorize the executive session.

#### Reference:

[Idaho Code 74-206](#)

## Who gets to be in an Executive Session?

All "Governing Board" members

Anyone else that Governing Board members wish to attend

May have witnesses or guests come and go as needed

## How do I go into Executive Session?

The motion to go into executive session shall identify the specific subsections of Idaho Code 74-206 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.

### Reference:

[Open Meeting Law Manual - Going into Executive Session \(page 27\)](#)

[Idaho Code 74-206](#)

Sample motion to go into executive session:

"I move that we go into executive session pursuant to Idaho Code 74-206(1)(a) to consider hiring a public employee."

## What are common reasons to go into Executive Session?

- [Idaho Code 74-206\(1\)](#)
- Personnel selection and evaluation - Idaho Code 74-206(1)(a) and (b)
- Acquire interest in real property - Idaho Code 74-206(1)(c)
- Consider records exempt from disclosure - Idaho Code 74-206(1)(d)
- Discuss litigation – with your attorney - Idaho Code 74-206(1)(f)
- Consider claims or potential claims – with your risk manager or insurer - Idaho Code 74-206(1)(i)

### Reference:

[Open Meeting Law Manual - Common Reasons to go Into Executive Session \(pages 27-28\)](#)

## How do I come out of Executive Session?

When the business of the executive session is completed, the presiding officer states either that they are now out of executive session or that they are back in open session. Final actions / decisions must be made in public session, not executive session.

### Reference:

[Idaho Code 74-206\(3\)](#)

## What can be discussed in executive session?

Only subjects identified within the motion to enter the executive session and outlined in the specific subsections of Idaho Code 74-206 authorizing the executive session can be discussed in executive session.

### Reference:

## [Idaho Code 74-206](#)

### **What topics cannot be discussed in Executive Session?**

It's a violation 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. No executive session may be held for the purpose of taking any final action or making any final decision.

Caution: don't stray from the subject while in executive session.

#### **Reference:**

[Idaho Code 74-206\(2\)](#)

[Open Meeting Law Manual - Topics \(pages 28-29\)](#)

### **What happens if I violate Executive Session rules / laws?**

If an action, or any deliberation or decision making that leads to an action, occurs at any meeting which fails to comply with the provisions in Title 74 Chapter 2 (Idaho Code 74-201 through 74-207), such action shall be null and void.

#### *Civil Penalty:*

Any member of a governing body who conducts or participates in a meeting that violates the provisions of this act shall be subject to a civil penalty up to \$250. Any member of a governing body who knowingly violates the provisions of this act shall be subject to a civil penalty up to \$1500.

Any member of a governing body who knowingly violates any provision of this act and who has previously admitted to committing or has been previously determined to have committed a violation of this act within the last 12 months shall be subject to a civil penalty up to \$1500.

#### **Reference:**

[Open Meeting Law Manual - Violation of Executive Session Rules \(pages 30-31\)](#)

[Idaho Code 74-208](#)

#### *Curing Violations:*

A violation may be cured by a public agency, either by self-recognition or written notice of an alleged violation. If a violation is alleged, the governing body has 14 days to acknowledge if a violation occurred. Following the public agency's acknowledgement of a violation, the agency has 14 days to void the action or actions. The cure acts as a bar to the civil penalty.

#### **Reference:**

[Open Meeting Law Manual - Curing Violation of Exec. Session Rules \(pages 31-32\)](#)

[Curing Process - Idaho Code 74-208\(7\)](#)

[Open Meeting Law Manual - Curing Process Flow Chart \(page 41\)](#)

### **What Executive Session info is included in meeting minutes?**

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.

Minutes must reference statutory subsection authorizing executive session and identify purpose and topic of session.

**Reference:**

[Open Meeting Law Manual - Minutes pertaining to Executive Session  
Idaho Code 74-205\(2\)](#)