Region 2 Behavioral Health Board

Member Orientation

The chairman, or a designee, provides newly elected members with an orientation within one month of joining. Each board member will be provided with copies of the following items for review, and where indicated, signature and return.

1. Mission & Vision Statement of the Region 2 Behavioral Health Board (R2BHB)
2. Bylaws for the R2BHB
3. Copy of the Idaho State Statue establishing the regional board
4. Memorandum of Agreement between R2BHB and Public Health – Idaho North Central District (PH-INCD)
5. Code of Conduct; *signed form required*
6. Conflict of Interest; *signed form required*
7. Purchase Request Process
8. Needs & Gaps Report
9. Idaho Open Meeting Law summary document – includes links to full information
10. Roberts Rules of Order (simplified)
11. Board roster including terms of appointment

Region II Behavioral Health Board

Mission: Promote the development of an integrated network of preventative and responsive behavioral health care which is accessible and affordable to all Region 2 communities and individuals.

Vision: A community where physical, mental, social and emotional needs are met.

BY-LAWS
OF
THE REGION II BEHAVIORAL HEALTH BOARD

ARTICLE I: NAME AND ESTABLISHMENT

The name of this organization shall be Region II Behavioral Health Board.
In accordance with Idaho Code 39-3132 this board is established with the legislative intent to be recognized as a governmental entity authorized by the state, in the same manner as other single purpose districts. This board shall have no authority to levy taxes. The Board is authorized to provide the community family support and recovery support services listed in Idaho Code 39-3135 (7), but is not limited or required to manage those services.

ARTICLE II: JURISDICTION

The principal business of this board shall cover the following counties in the State of Idaho: Clearwater, Idaho, Latah, Lewis, and Nez Perce.

ARTICLE III: MEMBERS, OFFICERS, AND ELECTIONS

Section 1:
Members shall be selected in accordance to Idaho Code 39-3130 totaling 22 members with the following allocation:

a. Three (3) County Commissioners or their designee;
b. Two (2) Department of Health and Welfare employees who represent the behavioral health system within the region;
c. One (1) parent of a child with a serious emotional disturbance;
d. One (1) parent of a child with a substance use disorder;
e. One (1) law enforcement officer;
f. One (1) adult mental health services consumer representative;
g. One (1) mental health advocate;
h. One (1) substance use disorder advocate;
i. One (1) adult substance use disorder services consumer representative;
j. One (1) family member of an adult mental health services consumer;
k. One (1) family member of an adult substance use disorder services consumer;
l. A private provider of mental health services within the region;
m. A private provider of substance use disorder services within the region;
n. A representative of the elementary or secondary public education system within the region;
o. A representative of the juvenile justice system within the region;
p. A representative of the adult correction system within the region;

q. A representative of the judiciary appointed by the administrative district judge;
r. A physician or other licensed health practitioner from within the region;
s. A representative of a hospital within the region.

Section 2:
In accordance with Idaho Code 39-3134 the nominating committee shall meet annually or as needed to nominate officers to the board. The nominating committee shall request nominations from the board. A nominating committee shall be selected from the behavioral health board membership and consist of three (3) members who are in good standing. The nominating committee shall review the membership list for vacancies as outlined in Idaho Code 39-3134. The consumer, parent and family representatives shall be selected from nominations submitted by behavioral health consumer and advocacy organizations. The Behavioral Health Board chair will ask for volunteers to serve on this committee. If no one volunteers, the chair will appoint members to serve, and a committee chair. The committee will convene three (3) months before election month to begin nominating activities. A slate of officers will be presented to the Board the month preceding the election. At that time nominations may also be accepted from the floor. The contested officer candidates will have an opportunity to present their qualifications/desire to the board for a BHB officer position.

Section 3:
In accordance with Idaho Code 39-3134 the appointing authority shall meet annually or as needed to fill vacancies on the board. The committee shall request nominations from the board. The appointing authority in each region shall be a committee composed of the following:

a. Current Chair of the Regional Behavioral Health Board (Vice Chair if Board Chair stands for reappointment); and
b. One representative of the Department of Health and Welfare (Alternate Representative of the Department of Health Welfare if Representative stands for appointment).

Affirmed Nominees will be presented to the Region II Behavioral Health Board membership for final vote on each individual position. Nominees must abstain from voting for their respective positions.

Section 4:
At the June meeting, the board shall elect officers to a one year term beginning July 1st. The officers of the boards shall be: Chair, Vice Chair, Secretary and two At-Large positions for the Executive Committee.

Duties of Chair: The Board Chair conducts Behavioral Health Board meetings, prepares the meeting agenda after receiving agenda suggestions from Board and Staff members, assist all Board committees, identifies and monitors Behavioral Health Board agreed upon goals and maintain appropriate communication with Region II Board Members, Staff, Public Health, and other stakeholders.

Duties of Vice Chair: The vice chair shall act as an aid to the chair and shall perform the duties of the chair in the absence or inability of the chair to act.

Duties of Secretary: The Board Secretary receives notice from Board members when they are unable to attend Board meetings, keeps track of attendance without cause and notify any member after two such absences**.** The Board Secretary coordinates with the Board Chair to: maintain a list of current Board Members and their contact information, present the list of Board positions to be filled to the Behavioral Health Board Appointing Committee, monitor corrections to the Board minutes and maintain a file of the approved documents and maintain official Board documents in an electronic and/or hard copy file. The Public Health staff will provide administrative assistance to carry out these functions. Minutes are taken at each meeting and shall include all action items and recommendations. Copies of the minutes shall be distributed to Board members, Regional Behavioral Health Board Chair and a representative of the Idaho Department of Health and Welfare), and other regional advisory boards, if requested. The Public Health staff will provide administrative assistance during the meeting and will distribute minutes, agenda and other informational material prior to Board meetings.

Terms:

Midterm vacancy of the position of Chair shall be assumed by the current Vice-chair. The vacant vice-chair position shall be nominated by majority vote of the Board at the next regular meeting.

Officer removal notwithstanding any provision of the bylaws a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting of the Board at which a quorum is present, may recommend removal an officer if just cause is determined that the individual is unable or unwilling to perform the specified duties or is grossly negligent or derelict in their duties as an officer. Such determination of underperformance shall be sent in writing to the affected officer for review and comment 30 days prior to a vote to allow for due process.

Board Member removal notwithstanding any provision of the bylaws a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting of the Board at which a quorum is present, may recommend removal of a member if just cause is determined that the individual is unable or unwilling to perform the specified duties or is grossly negligent or derelict in their duties as a member.

The vote of the Board shall be provided to the Appointing Authority for their determination and action per Idaho Code 39-3134

Section 5:

The executive committee of the Behavioral Health Board shall be the officers of the board plus two board members elected by the board during the election. The executive committee shall include (1) mental health consumer or advocate and one (1) substance use disorder consumer or advocate. The Executive Committee shall be empowered to make fiscal, legal and business decisions on behalf of the full board. The Regional Behavioral Health Board has joined with Public Health, a governmental approved entity that can fulfill the same management

infrastructure function. The executive committee or partner public entity shall have the power to:

1. Establish a fiscal control policy as required by the state controller;
2. Enter into contracts and grants with other governmental and private agencies;
3. Develop and maintain bylaws as necessary;
4. Employ and fix the compensation, subject to the provisions of chapter 53; title 67, Idaho Code, of such personnel as may be necessary to carry out the duties of the board.

All meetings of the executive committee shall be held in accordance with the open meeting law.

ARTICLE IV: TERM – VACANCIES – COMPENSATION

Section 1:
In accordance with Idaho Code 39-3134, the term of each member of the board shall be for four (4) years and members shall be eligible for reappointment. Current membership and term expiration dates shall be recorded in the minutes of the September meeting each year.

Section 2:
Vacancies shall be filled for the unexpired term in the same manner as outlined in Idaho Code 39-3134.

Section 3:
As resources allow board members shall be reimbursed at the State prescribed rate for pre-approved travel and expense to attend meetings of the Board and other approved activities.

Section 4:
Board members shall be compensated as provided for in section 59-509(b), Idaho Code, and such compensation shall be paid from the operating budget of the regional behavioral health board as resources allow.

ARTICLE V: MEETINGS

Section 1:
The board generally meets once a month.

Section 2:
A simple majority of the members of the board constitutes a quorum. Voting is limited to Board Members who are entitled to vote at any meeting of the Board at which a quorum is present. Proxy Voting is not permissible.

Section 3:
All meetings are open to the public subject to the requirements of Idaho's Open Meeting Law.

Section 4:

Members unable to attend a meeting shall notify the Board Secretary, Chairperson, or designee. Three consecutive absences without good cause may be deemed a termination of Board membership. The Board Secretary or designee shall notify any member after two such absences. The appointing authority shall have the final say regarding member terminations.

Section 5:
Videoconference facilities shall be secured in remote communities as possible to facilitate the attendance of members in outlying communities.

Section 6:
Special Meetings of the Board may be called at the discretion of the chair and the Executive Committee, carry-out the duties and responsibilities imposed upon the Board by Chapter 31 Title 39.

ARTICLE VI: POWERS AND DUTIES

Section 1:
In accordance with Idaho Code 39-3135 the Regional Behavioral Health Board:

a. Shall advise the state behavioral health authority and the state behavioral health planning council on local behavioral health needs within the region;
b. Shall advise the state behavioral health authority and the behavioral health planning council of the progress, problems, and proposed projects of the regional service;
c. Shall promote improvements in the delivery of behavioral health services and coordinate and exchange information regarding behavioral health programs in the region;
d. Shall identify gaps in available services including but not limited to services listed in section 16-2402 (3) and 39-3131 Idaho Code and recommend service enhancements that address identified needs for consideration to the state behavioral health authority;
e. Shall assist the behavioral health planning council with planning for service system improvement. The behavioral health planning council shall incorporate the recommendation to the regional behavioral health boards into the annual report provided to the Governor by June 20th of each year. This report shall also be provided to the legislature.
f. May develop, or obtain proposals for, a petition for regional services for consideration by the state mental health authority.
g. May accept the responsibility to develop and provide community family support and recovery support services in their region.
h. Shall annually provide a report to the behavioral health planning council, the regional behavioral health centers, and the state behavioral health authority; and
i. The regional board may establish subcommittees as it determines necessary and shall, at a minimum, establish and maintain a children's mental health subcommittee and a financial subcommittee. Each board member is required to be a member of at least one (1) subcommittee and will actively work on initiatives in their area of interest and/or appointment.
j. The Chairman will appoint such other committees and subcommittees as are needed to achieve the objectives of the Board. The Chairman may invite individuals who are not

member of the Board to service on committees and subcommittees; however, committee chairs shall be members of the Behavioral Health Board.

ARTICLE VII: BASIC POLICIES

Section 1:
This board shall be noncommercial, nonsectarian and nonpartisan.

Section 2:
No person shall be excluded from membership on the basis of race, color, creed, national origin, or disability.

Section 3:
The Region II Behavioral Health Board may appoint "ex-officio" members to participate in Board activity as non-voting members whose expertise, experience, credentials, and/or geographic residence bring strategic value to the vision and mission of the Board. Appointments are made by motion and majority vote by the Board membership and serve for a specific term, or their term may be shortened at the pleasure of the Board.

ARTICLE VIII: PROCEDURES

Section 1:
PARLIAMENTARY AUTHORITY: *Robert's Rules of Order* (Simplified) shall be the governing authority for the order of business and conduct of all meetings of the Board, the Executive Committee, and other committees of this organization when not in conflict with these By-Laws.

Section 2:
All actions shall be based on a majority vote of the quorum.

Section 3:
Individual members of the Board shall not speak for the Board, except on specific delegation.

ARTICLE IX: AMENDMENTS

The sections of these By-Laws not mandated by law may be amended at any meeting of the Board by a two-thirds vote, provided the amendment is presented in writing to all members prior to the business meeting at which they are presented for adoption.

These By-Laws were approved at a regular Board meeting on the 12th day of May, 2016.

Signatures: _____
Chair

_____
Vice Chair

Idaho Statutes

TITLE 39
HEALTH AND SAFETY

CHAPTER 31
REGIONAL BEHAVIORAL HEALTH SERVICES

39-3132. REGIONAL BEHAVIORAL HEALTH BOARDS -- ESTABLISHMENT. There is hereby created and established in each region a regional behavioral health board. It is legislative intent that the regional behavioral health boards operate and be recognized not as a state agency or department, but as governmental entities whose creation has been authorized by the state, much in the manner as other single purpose districts. However, the regional behavioral health boards shall have no authority to levy taxes. For the purposes of section 59-1302(15), Idaho Code, the seven (7) regional behavioral health boards created pursuant to this chapter shall be deemed governmental entities. The regional behavioral health boards are authorized to provide the community family support and recovery support services identified in section 39-3135(7), Idaho Code. The services identified in section 39-3135(7), Idaho Code, shall not be construed to restrict the services of the regional behavioral health board solely to these categories.

History:
[39-3132, added 2014, ch. 43, sec. 16, p. 112.]

Idaho Statutes

TITLE 39
HEALTH AND SAFETY

CHAPTER 31
REGIONAL BEHAVIORAL HEALTH SERVICES

39-3133. EXECUTIVE COMMITTEE OF THE REGIONAL BEHAVIORAL HEALTH BOARDS. Each regional behavioral health board shall annually elect from within its membership an executive committee of five (5) members empowered to make fiscal, legal and business decisions on behalf of the full board or join with another governmental entity that can fulfill the same management infrastructure function. If the regional behavioral health board elects to create its own internal executive committee, the membership shall be representative of the regional behavioral health board membership and must, at a minimum, include one (1) mental health consumer or advocate and one (1) substance use disorder consumer or advocate. The executive committees or the partner public entity shall have the power and duty, on behalf of the regional behavioral health boards, to:

(1) Establish a fiscal control policy as required by the state controller;

(2) Enter into contracts and grants with other governmental and private agencies, and this chapter hereby authorizes such other agencies to enter into contracts with the regional behavioral health boards, as deemed necessary to fulfill the duties imposed upon the board to promote and sustain the ability of individuals with behavioral health disorders to live in the community and avoid institutionalization;

(3) Develop and maintain bylaws as necessary to establish the process and structure of the board; and

(4) Employ and fix the compensation, subject to the provisions of chapter 53, title 67, Idaho Code, of such personnel as may be necessary to carry out the duties of the regional behavioral health boards.

All meetings of the executive committee shall be held in accordance with the open meeting law as provided for in chapter 23, title 67, Idaho Code.

History:
[39-3133, added 2014, ch. 43, sec. 18, p. 112.]

Idaho Statutes

TITLE 39
HEALTH AND SAFETY

CHAPTER 31
REGIONAL BEHAVIORAL HEALTH SERVICES

39-3134. REGIONAL BEHAVIORAL HEALTH BOARD -- MEMBERS -- TERMS -- APPOINTMENT. A regional behavioral health board for each region shall consist of twenty-two (22) members and shall be appointed as provided herein. All meetings of the regional behavioral health board shall be held in accordance with the open meeting law as provided for in chapter 23, title 67, Idaho Code. Members shall be comprised of the following: three (3) county commissioners or their designee; two (2) department of health and welfare employees who represent the behavioral health system within the region; one (1) parent of a child with a serious emotional disturbance; one (1) parent of a child with a substance use disorder; a law enforcement officer; one (1) adult mental health services consumer representative; one (1) mental health advocate; one (1) substance use disorder advocate; one (1) adult substance use disorder services consumer representative; one (1) family member of an adult mental health services consumer; one (1) family member of an adult substance use disorder services consumer; a private provider of mental health services within the region; a private provider of substance use disorder services within the region; a representative of the elementary or secondary public education system within the region; a representative of the juvenile justice system within the region; a representative of the adult correction system within the region; a representative of the judiciary appointed by the administrative district judge; a physician or other licensed health practitioner from within the region; and a representative of a hospital within the region. The consumer, parent and family representatives shall be selected from nominations submitted by behavioral health consumer and advocacy organizations. The board may have nonvoting members as necessary to fulfill its roles and responsibilities. The board shall meet at least twice each year, and shall annually elect a chairperson and other officers as it deems appropriate.

On the effective date of this chapter, the appointing authority in each region shall be a committee composed of the chairperson of the board of county commissioners of each of the counties within the region, the current chair of the regional mental health board and the current chair of the regional advisory committee and, after the initial appointment of members to the regional behavioral health board, the current chair of the regional behavioral health board and one (1) representative of the department of health and welfare. The committee shall meet annually or as needed to fill vacancies on the board.

The appointing authority in each region shall determine if members of the regional mental health board and the regional advisory committee who are serving on the effective date of this chapter may continue to serve

until the end of the current term of their appointment or they may end all current appointments and create the board membership based upon the requirements of this section. If the appointing authority decides to allow current members of the board to serve out their current terms, appointments made after the effective date of this chapter shall be made in a manner to achieve the representation provided in this section as soon as reasonably practical.

The term of each member of the board shall be for four (4) years; provided however, that of the members first appointed, one-third (1/3) from each region shall be appointed for a term of two (2) years; one-third (1/3) for a term of three (3) years; and one-third (1/3) for a term of four (4) years. After the membership representation required in this section is achieved, vacancies shall be filled for the unexpired term in the same manner as original appointments. Board members shall be compensated as provided for in section 59-509(b), Idaho Code, and such compensation shall be paid from the operating budget of the regional behavioral health board as resources allow.

History:

[(39-3134) 39-3130, added 1969, ch. 202, sec. 8, p. 589; am. 2004, ch. 354, sec. 2, p. 1059; am. 2009, ch. 122, sec. 1, p. 386; am. and redesig. 2014, ch. 43, sec. 20, p. 113.]

Idaho Statutes

TITLE 39
HEALTH AND SAFETY

CHAPTER 31
REGIONAL BEHAVIORAL HEALTH SERVICES

39-3135. POWERS AND DUTIES. The regional behavioral health board:

(1) Shall advise the state behavioral health authority and the state planning council on local behavioral health needs of adults and children within the region;

(2) Shall advise the state behavioral health authority and the planning council of the progress, problems and proposed projects of the regional service;

(3) Shall promote improvements in the delivery of behavioral health services and coordinate and exchange information regarding behavioral health programs in the region;

(4) Shall identify gaps in available services including, but not limited to, services listed in sections 16-2402(3) and 39-3131, Idaho Code, and recommend service enhancements that address identified needs for consideration to the state behavioral health authority;

(5) Shall assist the planning council with planning for service system improvement. The planning council shall incorporate the recommendation to the regional behavioral health boards into the annual report provided to the governor by June 30 of each year. This report shall also be provided to the legislature;

(6) May develop, or obtain proposals for, a petition for regional services for consideration by the state behavioral health authority;

(7) May accept the responsibility to develop and provide community family support and recovery support services in their region. The board must demonstrate readiness to accept this responsibility and shall not be held liable for services in which there is no funding to provide. The readiness criteria for accepting this responsibility shall be established by the planning council. The planning council shall also determine when a regional behavioral health board has complied with the readiness criteria. Community family support and recovery support services include, but are not limited to:

(a) Community consultation and education;

(b) Housing to promote and sustain the ability of individuals with behavioral health disorders to live in the community and avoid institutionalization;

(c) Employment opportunities to promote and sustain the ability of individuals with behavioral health disorders to live in the community and avoid institutionalization;

(d) Evidence-based prevention activities that reduce the burden associated with mental illness and substance use disorders; and

(e) Supportive services to promote and sustain the ability of individuals with behavioral health disorders to live in the community

and avoid institutionalization including, but not limited to, peer run drop-in centers, support groups, transportation and family support services;

(8) If a regional board, after accepting the responsibility for a recovery support service, fails to successfully implement and maintain access to the service, the behavioral health authority shall, after working with the board to resolve the issue, take over responsibility for the services until the board can demonstrate its ability to regain organization and provision of the services;

(9) Shall annually provide a report to the planning council, the regional behavioral health centers and the state behavioral health authority of its progress toward building a comprehensive community family support and recovery support system that shall include performance and outcome data as defined and in a format established by the planning council; and

(10) The regional board may establish subcommittees as it determines necessary and shall, at a minimum, establish and maintain a children's mental health subcommittee.

History:

[(39-3135) 39-3132, added 1969, ch. 202, sec. 10, p. 589; am. 2004, ch. 354, sec. 4, p. 1060; am. 2006, ch. 277, sec. 8, p. 851; am. 2009, ch. 122, sec. 2, p. 387; am. and redesig. 2014, ch. 43, sec. 23, p. 114.]

Memorandum of Agreement

Region II Behavioral Health Board and Public Health-Idaho North Central District

Objective

The ultimate goal is to develop a strong, mutual relationship among the Region 2 Behavioral Health Board (R2BHB), the Public Health-Idaho North Central District (PH-INCD) and the Department of Health and Welfare, Division of Behavioral Health (DBH) to better serve all of our consumers in need of behavioral health services. We clearly understand each of our consumer bases, as well as those we mutually serve, benefit when we share and combine our expertise. As more attention is given to addressing consumers in a holistic manner, this effort becomes essential because of specific requirements under the Affordable Care Act and it is what is best for our consumers.

Background

Through this Memorandum of Agreement (MOA), the R2BHB, the PH-INCD and the DBH enter into a joint agreement that supports the establishment, maintenance, and execution of powers and duties under Idaho Statutes 39-3132, 39-3135 and 39-3136. This MOA seeks to outline the roles and responsibilities required of the R2BHB to demonstrate readiness to accept responsibility for Community Family Support and Recovery Support Services as defined in 39-3135. The DBH seeks to support the R2BHB's readiness, duties and powers by defining its role and responsibilities under this agreement in the promotion of better outcomes for Behavioral Health. The PH-INCD seeks to promote Healthy People in Healthy Communities and endeavors to partner with the R2BHB to promote, protect and preserve health in our communities. As stated in section XV, subsection B of the contract between the State of Idaho Department of Health and Welfare and the PH-INCD, "the Department or the Contractor may cancel the contract at any time, with or without cause, upon thirty (30) calendar days written notice to the other party specifying the date of termination."

R2BHB Mission

We promote the development of an integrated network of preventative and responsive behavioral health care which is accessible and affordable to all Region 2 communities and individuals.

R2BHB Vision

Our Vision is a community where physical, mental, social and emotional needs are met.

Roles and Responsibilities

1. PH-INCD Responsibilities:
   A. PH-INCD will comply with the rules, regulations and policies as outlined by the DBH and rules, regulations and policies pertaining to R2BHB as outlined in Idaho Statutes 39-3132, 39-3133, 39-3134, and 39-3135.
   B. PH-INCD shall ensure that procedural safeguards are followed in confidentiality requirements according to IDAPA 16.05.01, Use and Disclosure of Department Records.
   C. PH-INCD agrees to support the goals and objectives of the DBH in the establishment of readiness and maintenance of R2BHB under 39-3132.
   D. PH-INCD will manage personnel, operational and support tasks as stated in the Scope of Work, under the DBH contract.
   E. PH-INCD will not be responsible for services not funded or outlined within the Scope of Work under contract with the DBH.
   F. PH-INCD will participate with the R2BHB in the budget development process.
   G. PH-INCD will participate with the R2BHB to identify service gaps and contract opportunities.
   H. PH-INCD will provide the R2BHB with assistance in the development of the Gaps and Needs Analysis report to the State Behavioral Health Planning Council (SBHPC).
   I. PH-INCD will collaborate on joint projects or initiatives that fit within the scope of the R2BHB, including but not limited to grant opportunities pursuable by PH-INCD.
   J. PH-INCD will provide behavioral health integration expertise and resources from the R2BHB, where available, and/or through the IDHW Division of Behavioral Health.

2. R2BHB Responsibilities:
   A. R2BHB will advise the SBHPC on behavioral health needs for adults and children within region/district.
   B. R2BHB will advise the SBHPC on progress, problems and proposed projects of the regional/district service.
   C. R2BHB will promote improvements in the delivery of behavioral health services and coordinate and exchange information regarding behavioral health services in the region/district.
   D. R2BHB will develop an annual Gaps and Needs Analysis assessment of behavioral health services for the region/district.
   E. R2BHB will assist the SBHPC with planning for service improvements.
   F. R2BHB will report annually to the SBHPC, the DBH and PH-INCD the progress being made toward building a comprehensive community family support and recovery support system that will include performance and outcome data.

G. R2BHB will establish and maintain a children's mental health subcommittee.
H. R2BHB will work actively to build and support community support and recovery support services within the region/district.
I. R2BHB will follow all Idaho Code requirements for board membership as stated in 39-3134.
J. R2BHB will meet bi-annually with PH-INCD and DBH to ensure ongoing alignment and compliance with this MOA.
K. R2BHB will participate as a Regional Collaborative stakeholder and part of the Regional Medical/Health Neighborhood as a specialist in the role of behavioral health.

3. DBH Responsibilities:
   A. DBH will commit to annual funding of $50,000 for the life of the contract which will be established at 4-year intervals.
   B. DBH will provide federal grant writing support for efforts agreed upon by the R2BHB and the PH-INCD.
   C. DBH will write and submit those grants agreed to by the R2BHB and PH-INCD that can only be submitted through the DBH.
   D. DBH will meet bi-annually with the R2BHB and PH-INCD to ensure ongoing alignment and compliance with this MOA.
   E. In the event a lawsuit is filed against R2BHB, the Attorney General's office would protect the R2BHB with services as a state agency.

Region 2 Behavioral Health Board	Date 2/11/16
Public Health-Idaho North Central District	Date January 28, 2016
Department of Health and Welfare, ~~Division of Behavioral Health~~	Date 3/15/16

Board Policies – Code of Conduct

It is the policy of the Region II Behavioral Health Board that all board members, sub-committee members, advisors, and ex-officio members, will abide by the board code of conduct.

PURPOSE:
The purpose of this policy is to assure all board members, sub-committee members, advisors, and ex-officio members, observe the code of conduct and thus protect the public served.

PROCEDURE:
If a fellow board member or member of the public has substantiated reason to believe a board member has, in her or his actions, violated the code of conduct, the following process is in place:

Questions of conduct are to be sent in writing to the chair of the board. The chair will convene the executive committee to review the conduct question. The committee will investigate the situation, hearing from all parties involved. The process will include an opportunity for the member in question to provide information.

The proceedings of the conduct committee are to be held private. If no cause is found, the issue will be dismissed and no further action taken.

If, after investigation, substantiated cause is found that a violation of the code of conduct occurred, the executive committee shall make a recommendation to the full board regarding termination of a board member's term. The recommendation shall be taken up at the next scheduled meeting of the board.

In the event that the member in question is the chair, the vice chair will receive the question and the chair will be excluded from participating in executive committee review and recommendations. In the event the member in question is an executive committee member other than the chair, that member shall not be allowed to participate in the review and recommendations of the committee.

_____ _____

Signature Date

Region II Idaho Behavioral Health Board
Conflict of Interest Policy – Members of the Board

The members of the board shall act at all times in the best interests of the Regional Behavioral Health Board (RBHB) and not for personal or third-party gain or financial enrichment. When potential conflicts of interest arise, members shall identify the potential conflict to the full Board, which shall determine whether a conflict exists and what steps shall be taken to remedy substantive impropriety or to avoid an appearance of impropriety by the RBHB. For this purpose, the term "conflict of interest" means any financial or other interest which conflicts with the participation of an individual in particular decisions of the Board because the interest could significantly impair the individual's objectivity or could create an unfair competitive advantage for any person or organization. A copy of this policy shall be distributed to each member annually.

I have reviewed, and agree to abide by, the Policy of Conflict of Interest of the Region2 Idaho Behavioral Health Board that is currently in effect.

Signature:_____ Date:_____

Name:_____

1. The members of the RBHB, as fiduciaries, are under a legal duty to act only in the interests of the Regional Behavioral Health Board and not in their own self interests.
2. A financial interest which may give rise to a conflict of interest includes (1) a material ownership or investment interest in any entity with which the RBHB has a transaction or agreement, (2) a compensation arrangement with an organization or with any entity or individual with which the RBHB has a transaction or arrangement, or (3) a potential material ownership or investment interest in, or compensation arrangement with, any entity or individual with which the RBHB is negotiating a transaction or arrangement.
3. Other interests arise if a member of the RBHB sits on the governing board of another organization, but he or she is not compensated for this service, with which the RBHB is considering whether to enter into a program or other relationship with this other organization.
4. Competition with the RBHB might involve the improper use of an opportunity available to the RBHB, as where a member learns that the RBHB is competing for a particular grant or contract and the member advises another organization with which he or she is affiliated about the existence of the opportunity.

REGION II

Behavioral Health Board

PURCHASE REQUEST

Date:_____Requested by:_____

Requestor's phone number:_____Requestor's email:_____

Item Description:_____

Reason for purchase:_____

What population benefits from purchase:_____

Vendor Name:_____

Vendor Address:_____

Vendor Website:_____

Quantity:_____Unit Price:_____Shipping Costs:_____Total Amount:_____

Source of Funds: PH Contract: _____Grant:_____H&W Contract:_____

Who Will Order:_____

Date Region II Behavioral Health Board Reviewed:_____

Public Health Director Approval:_____

Approval Date:_____

Office Use Only:

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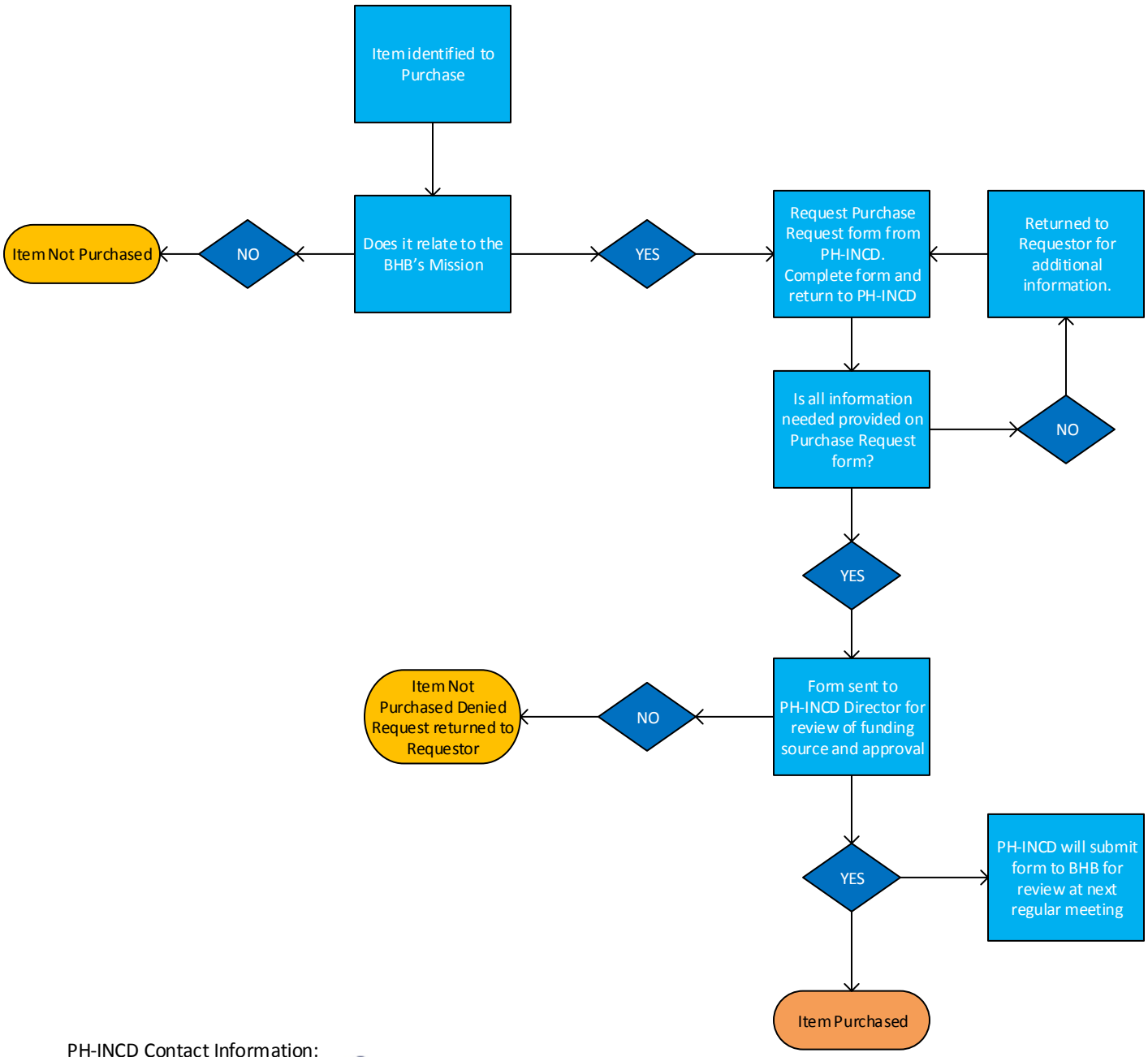
REGION II
Behavioral Health Board

PURCHASING PROCESS



PH-INCD Contact Information:
Perri Larson
plarson@phd2.idaho.gov
Phone: 208-799-0342
Fax: 208-799-0349

REGION 2 BEHAVIORAL HEALTH BOARD
NEEDS AND GAPS ANALYSIS
NOVEMBER 2015

Identified Regional Services Needs and Gaps	Short Fall and Challenges	Project Proposals, Process and Accomplishments	Improvement and Strategy Measures
Increased availability of and access to mental health services for children, youth, & adults	-Nature of frontier & rural areas -Need for crisis services & support - Child, youth, adult - Hospital based ER Psych. Crisis Team - Respite providers - Telehealth structure inadequate - No child psychiatrist in Region - No local In-patient services for children & youth	- Continued telehealth in outlying areas - Children's MH Planning Council Subcommittee - Increased number of psychiatric nurse practitioners - - Needs assessment on inpatient services for children and youth in Region 2-LCSC Social Work Program	- Advocate for St. Joe's telehealth - Acquire data on use of ER for SUD and psychiatric services - Grass roots effort to obtain Crisis Center in Lewiston
Increased availability of and access to SUD Services	-Nature of frontier & rural areas -Limited services -Detox facility -Stigmatizing attitudes -Funding Silos -Treatment resources for youth not in Juvenile Justice System	- Latah Country Recovery Center opened - Increased prescription drop off boxes - Drug courts - Community Meeting – Recovery Center 11/13/15	- Adult corrections accessing funds through Justice Reinvestment Act - WSU & Board research partnership - Grassroots effort for Lewiston Recovery & Resource Center
Funding for services for individuals with dual diagnosis	- Existing funding priorities not meet needs - Lack of data on population - Lack of long term treatment options	- Continue to survey stakeholders to prioritize needs - All area SUD providers certified on dual diagnosis (MH/SUD)	- Continue data collection - Latah County NAMI assisting WSU with data collection

Housing	- Lack of Crisis Beds - Lack of transitional & supportive housing - Limited safe & sober housing - Limited housing for women - Lack of Therapeutic Foster Homes-Path Has no homes in Region	-Iris Apartments – 1 crisis bed -*Rising Sun Homes* -Opened 3/2015 in Lewiston - Exploring additional home in Lewiston -*Abbadaddy House*- Cottonwood - Housing Committee conducting needs assessment	- Explore grant options - Housing Committee created to pursue funding - Partnership with WSU for research & grant resources
Transportation	- Limits access to treatment & support services - Shackling policy remains degrading - Lack of transportation options for children & youth to facilities - Taxi services unaware of funding - Limited driving privileges for SUD and mental health population	- Access to telehealth reduces need for transportation - CIT training for first responders -Shackling legislation passed in 2014	-Explore Virtual Care Works -Shackling policy – Additional reform
Public Education & Advocacy	- Stigmatizing attitudes - Improve media relations - Lack of resources for public education - Inadequate knowledge of need for parent/caregiver respite - Support for Lewiston NAMI - Few outcomes measures available on program & educational effectiveness	- Training for medical staff, schools & law enforcement - Respite Training developed - AMH Designated Examiner training - Mental Health First Aid - Parenting with Love and Logic/Limits - Children's MH subcommittee - Youth Mental Health First Aid - Purchase & show "Paper Tigers in 5 counties during 2016	Develop outcome measures to determine effectiveness of training and educational programs
Children and youth Mental Health Court	- Lack of funding, staff, program design & providers	- Currently understudy by Corrections & Mental Health - Utilize Region 1 model	- Continue discussion with state - Gain support from District Judges and Magistrates

Ongoing funding needed for Federally qualified healthcare	- Lack of health insurance - Idaho did not take Medicaid expansion funds - Snake River Clinic has limited funding & resources	- CHAS Clinic established for indigent clients - State Healthcare Innovation Plan funded by Feds and awarded to DHW www.yourhealth.Idaho.gov - Increased access to health insurance through Affordable Care Act - Reduction in funds spent from county catastrophic budget	-Continue to advocate at State level to access available federal Medicaid Funds - Healthy Idaho
Physicians Workforce Development - identify independently licensed clinicians nationwide	-Psychiatrist salaries below national standards	-2014 Legislature approved loan repayment for physicians for Psychiatrists at State Hospitals - School loan repayment for physicians relocating to Idaho	
Prevention – Substance Abuse, Mental Health and Suicide	-Inadequate funding for prevention services -Increased suicide prevention training	- LCSC Counseling Center secured grant focusing on prevention on college campus - LCSC Counseling Center applied for second preventative grant - Mental Health First Aid classes available in Nez Perce & Latah Counties -Suicide prevention – Support use of gun locks through distribution of locks and education - Suicide memory walks – 3 – with educational materials and counselors	

Office of the
Attorney General

Idaho
Open Meeting Law
Manual

Idaho Code §§ 74-201 through 74-208

JULY 2015

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

State of Idaho
Office of Attorney General
Lawrence Wasden

INTRODUCTION

Open and honest government is fundamental to a free society. The Idaho Legislature formalized our state's commitment to open government by enacting the Idaho Open Meeting Law in 1974. The Open Meeting Law codifies a simple, but fundamental, Idaho value: The public's business ought to be done in public.

One of my duties as Attorney General is to ensure that state agencies and officials comply with the Idaho Open Meeting Law. The 44 elected county prosecuting attorneys have the same duty with regard to agencies and officials of local government.

My Office is committed to assisting Idaho's state and local officials in complying with their obligation under this law. Toward that end, my Office regularly conducts training sessions for state and local officials throughout Idaho.

My Office has prepared this updated manual for your use and reference. This manual's purpose is to inform government agencies of their obligations, and citizens of their rights, under Idaho's Open Meeting Law.

Sincerely,

LAWRENCE G. WASDEN
Attorney General

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POLICY CONSIDERATIONS UNDERLYING THE OPEN MEETING LAW

The Idaho Open Meeting Law[1] was designed to ensure transparency of the legislative and administrative processes within state and local governments. The Legislature articulated this policy in the Act's first section:

> 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.[2]

Open meetings offer the public a chance to observe the way their government operates and to influence their government in positive and important ways. Closed meetings often can lead to distrust of governmental decisions and acts.

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.

Remember, when in doubt, open the meeting.

[1] Idaho Code §§ 74-201 to 74-208 (2015).
[2] *Id.* at § 74-201.

QUESTIONS AND ANSWERS

PUBLIC BODIES OR AGENCIES COVERED BY THE OPEN MEETING LAW

Question No. 1: What public bodies or agencies are subject to the Open Meeting Law?

Answer: The Open Meeting Law provides: "All meetings of a *governing body* of a *public agency* shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by this act. . . ."[3] "Governing body" is defined to mean the members of any public agency "with the authority to make decisions for or recommendations to a public agency regarding any matter."[4] "Public agency" is defined to encompass various categories of governmental entities and subdivisions at all levels of government.[5] The governing bodies of public agencies that are created by or pursuant to statute, as well as public agencies that are created by the Idaho Constitution, are subject to the Open Meeting Law.[6] The only public agencies that are statutorily exempt from the Open Meeting Law are the courts and their agencies and divisions, the judicial council and the district magistrates commission.[7] Deliberations of the Board of Tax Appeals, the Public Utilities Commission and the Industrial Commission, in a fully submitted contested case proceeding, are also exempted from the requirement that they take place in open public meeting.[8]

Question No. 2: Does the Open Meeting Law apply to a public agency headed by a single individual as contrasted with a multi-member body?

Answer: No. Section 74-202(5) defines a governing body to mean "the 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." (Emphasis added.) By definition, the Open Meeting Law applies only to a governing body which consists of two or more members

[3] Idaho Code § 74-203(1) (emphasis added).
[4] Idaho Code § 74-202(5).
[5] Idaho Code § 74-202(4).
[6] Attorney General Opinion No. 77-30
[7] Idaho Code § 74-202(4)(a).
[8] Idaho Code § 74-203.

and thus does not apply to a public agency headed by a single individual.

This also extends to *employees* of a public agency headed by a single individual; meetings held by employees of a department headed by a single individual (or multiple parties, for that matter) do not have to be open to the public. An illustrative example of this principle arose in the 2008 case of *Safe Air For Everyone v. Idaho State Dep't of Agriculture*.[9] There, the Idaho State Department of Agriculture (ISDA) invited representatives from federal, state, and tribal agencies to a meeting to discuss issues surrounding crop residue burning. The meeting was closed to the public. Several employees of the ISDA attended the meeting, but the director did not.

An environmental group sued the ISDA, arguing that the employees' participation in the meeting constituted a violation of the Open Meeting Law because the director had delegated decision-making authority to the employees, thus making the employees a "governing body." The Supreme Court disagreed, stating that

> [b]y definition, a 'governing body' [under the Act] must have 'the authority to make decisions for or recommendations to a public agency regarding any matter.' The employees do not have '*the* authority' to make decisions for or recommendations to the ISDA. Any decision they make can be countermanded by a supervisor, and their supervisor can likewise deny them permission to make recommendations. . . . [T]he authority to make decisions for the agency or recommendations to the agency must be statutorily based.[10]

Of course, it should be noted that under the Idaho Administrative Procedure Act (A.P.A.) various state agencies must hold open public meetings when they adopt rules or when they determine certain contested cases.[11] The open public meeting requirements of the A.P.A. apply regardless of whether the public agency is headed by a single individual or by a multi-member body.

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[9] 145 Idaho 164, 177 P.3d 378 (2008).
[10] *Id.* at 168, 177 P.3d at 382.
[11] Idaho Code § 67-5201 to 67-5292.

Question No. 3: When is a subagency of a public agency subject to the Open Meeting Law?

Answer: A subagency of a public agency is subject to the Open Meeting Law if the subagency itself "is created by or pursuant to statute, ordinance or other legislative act."[12] In *Cathcart v. Anderson*, the Washington Supreme Court interpreted a Washington statute similar to section 74-202(4)(d). The court held that, under the language "created by or pursuant to," it is not necessary that a statute, ordinance or other legislative act expressly create a subagency so long as there is an enabling provision which allows that subagency to come into existence at some future time.

Question No. 4: Are advisory committees, boards and commissions subject to the Open Meeting Law?

Answer: The Open Meeting Law defines "public agency" to include "any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act,"[13] and "governing body" to include any body "with the authority to make decisions for or *recommendations* to a public agency regarding any matter."[14] Thus, advisory committees, boards and commissions are subject to the Open Meeting Law if the body is created by or pursuant to statute, ordinance, or other legislative act and if the body has authority to make recommendations to a public agency.

In contrast, an administrative committee, board or commission is not subject to the Open Meeting Law if it is not entrusted with the formation of public policy, but merely carries out the public policy established by a governing body, and if its activities do not constitute the making of "decisions for or recommendations to" a public agency.[15] Likewise, the Open Meeting Law does not apply to voluntary, internal staff meetings if the group is not created by or pursuant to statute, ordinance or other legislative act, even though the discussions may lead to recommendations to the governing

[12] Idaho Code § 74-202(4)(d); *Cathcart v. Anderson,* 85 Wash. 2d 102, 530 P.2d 313 (1975); Attorney General Opinion No. 7-75.
[13] Idaho Code § 74-202(4).
[14] Idaho Code § 74-202(5) (emphasis added).
[15] *Idaho Water Resources Board v. Kramer,* 97 Idaho 535, 572, 548 P.2d 45, 72 (1976).

body.[16] Generally, however, if you are ever unsure of whether a meeting should be open, it is this Office's recommendation to err on the side of opening the meeting.

Question No. 5: Does the Open Meeting Law apply to the governor?

Answer: The Open Meeting Law has no application to the governor when he is acting in his official executive capacity, since the Open Meeting Law does not apply to a public agency headed by a single individual.

CHARITABLE ORGANIZATIONS (501C(3)) AND HOMEOWNER'S ASSOCIATIONS

Question No. 6: Do charitable organizations have to comply with the Idaho Open Meeting Law?

Answer: The Open Meeting Law applies only to governmental entities. Typically, charitable organizations are private. Generally, nonprofit organizations are governed by their chartering documents and bylaws. Additionally, Title 30, Chapter 3 of the Idaho Code, provides the legal foundation for Idaho nonprofits. Consult the chartering documents, bylaws and Idaho Code, Title 30, Chapter 3, to determine the requirements of corporate records and meetings.

Question No. 7: Do homeowners associations have to comply with the Idaho Open Meeting Law?

Answer: No. The Open Meeting Law applies only to governmental entities. Homeowners associations are private entities. Homeowners associations are generally governed by agreements between the members and the association and their bylaws. Members should consult their association documents and bylaws to determine the association rules for meetings.

[16] See *Safe Air For Everyone v. Idaho State Dep't of Agriculture,* 145 Idaho 164, 177 P.3d 378 (2008); People v. Carlson, 328 N.E.2d 675 (Ill. App. Ct. 1975); *Bennett v. Warden,* 333 So.2d 97 (Fla. 1976).

PUBLIC ACTIONS OR ACTIVITIES COVERED BY THE OPEN MEETING LAW

Question No. 8: What constitutes a meeting under the Open Meeting Law?

Answer: The Open Meeting Law defines "meeting" to mean "the convening of a governing body of a public agency *to make a decision or to deliberate toward a decision* on any matter."[17] "Decision" is then defined to include "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*."[18]

The term "deliberation" is also a defined term and means "the receipt or exchange of information or opinion relating to a decision, but shall not include informal or impromptu discussions of a general nature which do not specifically relate to a matter then pending before the public agency for decision."[19] Note that this does not require any discussion or preliminary decision making. Even the receipt of information relating to a "decision"—i.e., a measure on which the governing body will have to vote—amounts to deliberation, and therefore triggers the definition and requirements of a "meeting" under the Open Meeting Law.

Question No. 9: Does the term "meeting" include such things as informal gatherings, briefing sessions, informal discussions, attendance at social functions, etc.?

Answer: As noted above, a "meeting" is the convening of a governing body to make a decision or deliberate toward a decision. Additionally, a quorum must be present.[20]

The California Court of Appeals discussed the dual facets of deliberation and action in *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors*:

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[17] Idaho Code § 74-202(6) (emphasis added).
[18] Idaho Code § 74-202(1) (emphasis added).
[19] Idaho Code § 74-202(2).
[20] *Idaho Water Resources Board v. Kramer,* 97 Idaho 535, 571, 548 P.2d 45, 71 (1976).

> It [California's open meeting law] declares the law's intent that deliberation as well as action occur openly and publicly. Recognition of deliberation and action as dual components of the collective decision-making process brings awareness that the meeting concept cannot be split off and confined to one component only, but rather comprehends both and either. To "deliberate" is to examine, weigh and reflect upon the reasons for or against the choice . . . . Deliberation thus connotes not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision.[21]

The California court then reasoned and ruled:

> An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance. There is rarely any purpose to a non-public, pre-meeting conference except to conduct some part of the decisional process behind closed doors. Only by embracing the collective inquiry in discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices. As operative criteria, formality and informality are alien to the law's design, exposing it to the very evasions it was designed to prevent. Construed in light of the Brown Act's objectives, the term "meeting" extends to informal sessions or conferences of board members designed for the discussion of public business.[22]

A similar result was reached by the Florida Supreme Court in the case of *City of Miami v. Berns* wherein the Florida court ruled that public officials violate Florida's open meeting law when they meet privately or secretly and transact or agree to transact public business at a future time in a certain manner.[23] The Florida court went on to state that, regardless of whether a meeting or gathering is formal or informal, "[i]t is the law's intent that any meetings,

[21] *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors,* 69 Cal. Rptr. 480, 485 (Cal. Ct. App. 1968).
[22] Id. at 487.
[23] *City of Miami v. Berns,* 245 So.2d 38 (Fla. 1971).

relating to any matter on which foreseeable action will be taken, occur openly and publicly."[24]

The same considerations must be applied with respect to the Idaho Open Meeting Law. Therefore, it is the opinion of the Attorney General that the provisions of the Open Meeting Law must be complied with whenever a quorum of the members of the governing body of a public agency meets to decide or deliberate on matters which are within the ambit of official business. Those meetings can be formal, informal, or social. So long as a quorum is present and the intent is to deliberate or make a decision, then the meeting must be open.

The requirement that the Open Meeting Law be complied with whenever a quorum of a governing body meets to deliberate or to make a decision should not be evaded by holding smaller meetings with less than a quorum present or by having a go-between contact each of the governing body members to ascertain his/her sentiment.

Question No. 10: Since any meeting of two county commissioners constitutes a quorum under Idaho law, are county commissioners prohibited from having any contact with each other outside of a duly organized open meeting?

Answer: While it is the opinion of the Attorney General that the Open Meeting Law must be complied with whenever a quorum of the members of a governing body of a public agency meet to decide or deliberate on matters which are within the ambit of official business, this Office does not believe that the Legislature intended for the Open Meeting Law to act as a bar to all communications between individual county commissioners outside of open meetings.

Question No. 11: Are adjudicatory deliberations exempt from the Open Meeting Law?

Answer: Only for those agencies expressly exempted. The Open Meeting Law excludes the deliberations of certain agencies (the Board of Tax Appeals, the Public Utilities Commission and the Industrial Commission), in fully submitted adjudicatory proceedings,

[24] *Id.* at 41; see also *Canney v. Bd. of Pub. Instruction of Alachua Cnty,* 278 So.2d 260 (Fla. 1973); *Bd. of Pub. Instruction of Broward Cnty v. Doran,* 224 So.2d 693 (Fla. 1969).

from the requirement of open public meeting.[25] In creating this exemption for adjudicatory deliberations by only these three agencies, it appears the Legislature intended that non-adjudicatory deliberations at these agencies, and all deliberations at all other agencies—i.e., except for the above-described informal or impromptu discussions of a general nature—must be conducted in a public meeting. Of course, the subject matter under adjudication may be separately identified under the Open Meeting Law as justifying a closed executive session.

Question No. 12: Can I still address questions and comments to a commissioner or board member individually related to a pending matter?

Answer: In other words, as representatives, can I still contact members of a governing body with unsolicited "information or opinion relating to a decision" that is pending before the public agency?[26] The Idaho Supreme Court has addressed this specific question.

In *Idaho Historic Preservation Council v. City Council of Boise*, a divided Court overturned a Boise City Council decision that allowed a corporation to demolish a building in Boise.[27] In reviewing an appeal from the City's Preservation Commission, members of the City Council stated at the public [open] meeting that they had received numerous telephone calls concerning the issue. Although the Court framed the issue in terms of due process, it may also raise open meeting questions.

In overturning the City's decision, the Court stated:

> [W]hen a governing body sits in a quasi-judicial capacity, it must confine its decision to the record produced at the public hearing, and that failing to do so violates procedural due process of law. This Court has also observed that when a governing body deviates from the public record, it essentially conducts a second fact-gathering session without proper notice, a clear violation of due process. Since the substance of the telephone calls received by the members of the City Council was not

[25] Idaho Code § 74-203(2).
[26] Idaho Code § 74-202(2).
[27] *Idaho Historic Pres. Council v. City Council of Boise,* 134 Idaho 651, 8 P.3d 646 (2000).

> recorded or disclosed at the public hearing, the Commission had no opportunity to rebut any evidence or arguments the City Council may have received from the callers.

Id. at 654, 8 P.3d at 649 (internal citations omitted).

The Court concluded:

> This decision does not hold the City Council to a standard of judicial disinterestedness. As explained above, members of the City Council are free to take phone calls from concerned citizens and listen to their opinions and arguments prior to a quasi-judicial proceeding. In order to satisfy due process, however, the identity of the callers must be disclosed, as well as a general description of what each caller said.[28]

Therefore, in the event that unsolicited information is received and considered by a governing board member, the appropriate action is to disclose the source of the information and the substance of the information so that it may be included within the public record. In sum, any information that you wish to use to form the basis of your decision must be made a part of the public record.

PROCEDURAL REQUIREMENTS OF THE OPEN MEETING LAW

Question No. 13: What are the notice requirements of the Open Meeting Law?

Answer: The Open Meeting Law requires two types of notice: (1) meeting notice and (2) agenda notice. The notice requirements are satisfied by posting meeting notices and agendas in a prominent place at the principal office of the public agency, or, if no such office exists, at the building where the meeting is to be held. The Open Meeting Law does not require publication of the notice in a newspaper or advertisement. However, other statutes governing particular entities may require publication of notice.

The Open Meeting Law also requires that notice be posted at specific minimum times prior to the meeting. These times vary,

[28] Id. at 656, 8 P.3d at 651.

depending on the type of meeting being held. The notice of an executive session must state the authorizing provision of law.

Question No. 14: What are the notice and agenda requirements for a regular meeting?

Answer: For "regular meetings," the Open Meeting Law requires no less than a five (5) calendar day meeting notice and a forty-eight (48) hour agenda notice, unless otherwise provided by statute.[29] Any public agency that holds meetings at regular intervals at least once per calendar month, which are scheduled in advance over the course of the year, may satisfy this notice requirement by posting meeting notices at least once each year of its regular meeting schedule. Agenda notice must still be posted at least 48 hours before the meeting.

Question No. 15: What are the notice and agenda requirements for a special meeting or executive session only meeting?

Answer: For "special meetings," or when only an "executive session" will be held, meeting and agenda notice must be posted at least twenty-four (24) hours before the meeting, unless an emergency exists. An emergency is a situation which involves injury or damage to persons or property, or immediate financial loss, or the likelihood of such injury, damage or loss, when the notice requirements of the section would make such notice impractical, 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. This notice and an accompanying agenda must be given by the secretary or other designee of each public agency to any representative of the news media who has requested notification of such meetings and the secretary must make a good faith effort to provide such advance notification to them of the time and place of each meeting.[30]

Question No. 16: What must an agenda contain?

Answer: What constitutes an "agenda" to satisfy the posting requirement is not set forth in the Open Meeting Law. However, an "agenda" is defined in *Black's Law Dictionary* (9th ed.) as a "list of

[29] Idaho Code § 74-204.
[30] Idaho Code § 74-204(2) and (3).

things to be done, as items to be considered at a meeting, [usually] arranged in order of consideration." The agenda notice requirement is not satisfied by merely posting a weekly schedule of the governing board which sets forth the time, place of the meetings, and who is participating. Rather, the notice must specifically set forth the purpose of the meeting and "items of business." Agenda items should be listed with specificity and not buried in catchall categories such as "director's report."

Question No. 17: May an agenda be amended after posting?

Answer: Yes. The procedure depends on when the agenda is amended.

More than 48 hours before the start of a meeting (or more than 24 hours before a special meeting), the agenda may be amended simply by posting a new agenda.

Less than 48 hours before the meeting (or less than 24 hours before a special meeting), but before the meeting has started, the agenda may be amended by: (1) posting the new agenda, and (2) making and passing a motion at the meeting to amend the original agenda and stating the good faith reason the new items were not included in the original agenda notice.

After commencement of the meeting, the agenda may be amended to accommodate unforeseen issues, provided that: (1) there is a motion made that states the good faith reason the new item was not on the original agenda, and (2) the motion to amend is adopted by the governing body.

To sum up, amending an agenda during a meeting or less than 48 hours before the start of a meeting (24 hours for a special meeting) requires: (1) a motion, (2) a good faith reason why the item was not included in the original agenda, (3) a vote adopting the amended agenda, and (4) a record of the motion and vote in the minutes of the meeting.

Question No. 18: May qualifications or restrictions be placed on the public's attendance at an open meeting?

Answer: A public agency may adopt reasonable rules and regulations to ensure the orderly conduct of a public meeting and to ensure orderly behavior on the part of those persons attending the

meeting. In *Nevens v. City of Chino*, a California appellate court nullified a city council measure, which prohibited the use of any tape recorders at city council proceedings.[31] While acknowledging that the city council had an absolute right to adopt and enforce rules and regulations necessary to protect its public meetings, the court held that the rule prohibiting tape recorders was too arbitrary, capricious, restrictive and unreasonable. A similar holding might be reached if a governing body prohibits the use of cameras if their presence is not in fact disruptive of the conduct of the meeting.

Another limitation is that the body cannot make it practically impossible for the public to be present at a meeting. For example, in *Noble v. Kootenai County*, a board of commissioners conducted a site visit to a proposed subdivision. When arriving at the site, the board intentionally avoided a group that was gathered near the entrance to the site location and conducted its site visit outside the group's hearing. The court held that this was a violation, stating that "Idaho's open meeting laws . . . are designed to allow the public to be present during agency hearings. At the very least this means that the public must be permitted to get close enough to the hearing body to hear what is being said."[32]

In any event, the governing standard is the reasonableness of the rules and regulations. Use of a timed agenda, "heavy gavel" and/or compliance with Robert's Rules of Order or some other procedural guideline may serve to facilitate the orderly conduct of a public meeting.

Question No. 19: Does the Open Meeting Law require the governing body of a public agency to accept public comments and testimony during meetings?

Answer: No. While other statutes, such as the Local Planning Act, may require the solicitation of public comments, the Open Meeting Law does not expressly require the opportunity for public comment.[33]

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[31] *Nevens v. City of Chino,* 44 Cal. Rptr. 50 (Cal. Ct. App. 1965).
[32] *Noble v. Kootenai County,* 148 Idaho 937, 943, 231 P.3d 1034, 1040 (2010).
[33] See *Coalition for Responsible Government v. Bonner County,* First Judicial District, Bonner County Case No. CV-97-00107 (May 15, 1997) (on file with the Office of the Attorney General).

Question No. 20: May the members of a governing body vote by secret ballot at an open meeting?

Answer: No decision at any meeting of a governing body of a public agency may be made by secret ballot.[34]

Question No. 21: If a voice vote is used, must the minutes of the meeting reflect the vote of each member of a governing body by name?

Answer: If a voice vote is taken, the minutes of the meeting must reflect the results of all votes, but the minutes need not indicate how each member voted, unless a member of the governing body requests such an indication.[35]

Question No. 22: May a vote be conducted by written ballots?

Answer: A vote may be conducted by written ballot, but written ballots would not comply with the Open Meeting Law unless the ballots are made available to the public on request and unless the members casting the ballots are identifiable by signature or other discernible means.[36] The reason identification of the vote of individual members is treated differently between voice votes and votes by written ballot is that, with respect to voice votes, members of the public in attendance can readily ascertain the vote of individual members of the governing body. In contrast, a vote by written ballot is tantamount to a secret vote, unless such ballot is signed or identifies the name of the voting member.

Question No. 23: What types of records must be maintained under the Open Meeting Law?

Answer: The Open Meeting Law requires that the governing body of a public agency must provide for the taking of written minutes of all of its meetings, but it is not necessary to make a full transcript or recording of the meeting, except as otherwise provided by law.[37] These minutes are public records and must be made available to the

[34] Idaho Code § 74-203(1).
[35] Idaho Code § 74-205(1)(c).
[36] Attorney General Opinion No. 77-13.
[37] Idaho Code § 74-205(1).

general public within a reasonable time after the meeting. The minutes must include, at a minimum, the following information:

(a) All members of the governing body present;

(b) All motions, resolutions, orders, or ordinances proposed and their disposition;

(c) The results of all votes and, upon the request of a member of the governing body, the vote of each member by name.

Other statutes may provide more specific requirements for particular entities.

In addition, section 74-205(2) provides that minutes of executive sessions must be kept, but they need contain only sufficient detail to identify the purpose and topic of the executive session and do not need to include the disclosure of material or matters that compromise the purpose of the executive session. The minutes pertaining to the executive session, however, must include a reference to the specific statutory subsection authorizing the session.

Question No. 24: Are there any prohibitions on where a public meeting may be held?

Answer: Yes. Section 74-203(3) specifically provides: "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." Thus, for example, a public meeting may not be held at a private club if the private club excludes women from membership, even if women are allowed entrance for the purpose of attending the meeting.

Question No. 25: Does the Open Meeting Law permit holding a meeting by telephone conference call?

Answer: Yes. The Open Meeting Law specifically authorizes the holding of a meeting by telephone conference call. However, at least one member of the governing body or the director or chief administrative officer must be physically present at the meeting

location designated in the meeting notice.[38] Additionally, the communications among the members of the governing body must be audible to all persons attending the meeting. Care should also be taken to ensure that votes are not made in such a way to permit an illegal secret ballot or vote.

Question No. 26: Are discussions conducted via telephones, computers, cell phones (including texting) or other electronic means exempted from the Open Meeting Law?

Answer: As discussed in this manual, the Open Meeting Law applies to the deliberations and discussions between two or more members of a board or commission on some matter which foreseeably will come before that board or commission for action. The use of a telephone to conduct such discussions does not remove the conversation from the requirements of the Open Meeting Law.

Similarly, members of a public board may not use computers or texting to conduct private conversations among themselves about board business. A one-way e-mail or text communication from one city council member to another, when it does not result in the exchange of council members' comments or responses on subjects requiring council action, does not constitute a meeting subject to the Open Meeting Law; however, such e-mail or text communications are public records and must be maintained by the records custodian for public inspection and copying.

SPECIFIC STATUTORY EXEMPTIONS: EXECUTIVE SESSIONS

Question No. 27: What types of meetings may be closed under the Open Meeting Law?

Answer: A closed meeting—that is, an "executive session"—may be held for the reasons listed in § 74-206(1):

> (a) To consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated to fill a particular vacancy or need, unless a vacancy in an elective office is being filled;

[38] Idaho Code § 74-203(5).

(b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member, individual agent or public school student;

(c) To acquire an interest in real property which is not owned by a public agency;

(d) To consider records that are exempt from disclosure as provided by law;

(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;

(g) By the commission of pardons and parole, as provided by law;

(h) By the custody review board of the Idaho department of juvenile corrections, as provided by law; or

(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.

(j) To consider labor contract matters authorized under section 67-2345A [74-206A](1)(a) and (b), Idaho Code.

This provision enumerates specific and not general statutory exemptions to the requirement of conducting an open meeting. It is the Attorney General's opinion that a public agency cannot conduct an executive session to consider general personnel matters, but can only meet in executive session to consider those specifically

enumerated personnel matters found at section 74-206(1)(a) and (b); that is, "to consider hiring a public officer, employee, staff member or individual agent" or "to consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member, individual agent or public school student." Additionally, Idaho Code section 74-206(3) specifically directs that the exceptions be construed narrowly. No entity should try to "shoehorn" an issue into an executive session exception.

An executive session may be held to consider acquiring an interest in real property that is not owned by a public agency. However, an executive session cannot be held for the purpose of acquiring an interest in real property owned by a public agency.[39]

It should be noted that the Open Meeting Law establishes circumstances where executive sessions are permissible. In other words, the act authorizes, but does not require, closed meetings. In addition, even though certain enumerated matters may be "considered" in an executive session, it must be emphasized that: "[N]o executive session may be held for the purpose of taking any final action or making any final decision."[40]

It is important to remember that section 74-206(1) sets forth specific procedural steps to be followed to have a valid executive session. *Failure to do so will invalidate any action taken as a result of the executive session. Additionally, it may subject the board members to liability for those actions.* Procedurally, the presiding officer must identify the specific authorization under the Open Meeting Law for the holding of an executive session and at least a two-thirds (⅔) vote in favor of the executive session must be recorded in the minutes of the meeting by individual vote.

Question No. 28: What procedure must be followed before an executive session, closed to the public, may be held?

Answer: It must be noted that executive sessions take place only at meetings. Before any executive session may be held, there must be a valid open meeting and a vote to hold an executive session. Every such "meeting" must satisfy the Open Meeting Law's notice and

[39] Attorney General Opinion No. 81-15.
[40] Idaho Code § 67-2345(4); Attorney General Opinion No. 77-44; Attorney General Opinion No. 81-15.

agenda requirements.[41] If the governing body of a public agency then wishes to consider matters which may legally be considered in a closed meeting, an executive session may be held if two-thirds (⅔) of the members vote to hold an executive session. Prior to such vote, the presiding officer must identify the authorization under the Open Meeting Law for the holding of an executive session. Then, when the vote is taken, the individual vote of each member of the governing body must be recorded in the minutes.[42]

Question No. 29: May legal counsel meet privately with the governing body of a public agency to discuss threatened or pending litigation?

Answer: Yes. Section 74-206(f) expressly provides that an executive session may be held "[t]o 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."

Question No. 30: Must the governing body's attorney be present during an executive session?

Answer: Generally, the governing body's attorney need not be present when the governing body meets in executive session. An exception is an executive session authorized under Idaho Code section 74-206(1)(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." (Of course, the attorney's "presence" may be facilitated via a telecommunications device.) An executive session under this subsection is solely for the purpose of communicating with legal counsel on pending or probable litigation.

Question No. 31: If a more specific statute requires open meetings and has no provision for executive sessions, is the executive session provision of the Open Meeting Law still applicable?

[41] Idaho Code § 74-204.
[42] Idaho Code § 74-206(1).

Answer: Yes. The executive session provision takes precedence over other statutes that may apply to a particular entity. Thus, even if a statute requires all meetings of a governing body to be open, executive sessions may still be held.[43]

PENALTIES FOR NONCOMPLIANCE

Question No. 32: What is the validity of action taken in violation of the Open Meeting Law?

Answer: If an action, or any deliberation or decision making that leads to an action, occurs at any meeting that fails to comply with the provisions of the Open Meeting Law, such an action may be declared null and void by a court.[44]

Any member of the governing body taking such an action, who participates in any such deliberation, decision making, or meeting, is subject to a civil penalty not to exceed two hundred fifty dollars ($250).[45] The maximum civil penalty for a subsequent violation is two thousand five hundred dollars ($2,500).[46]

Any governing body member who knowingly violates a provision of the Open Meeting Law is subject to a civil penalty of not more than one thousand five hundred dollars ($1,500).[47]

It is the opinion of the Attorney General that the Idaho Legislature intended that such fines be paid by the individual member of the governing body, not the governing body itself.

Question No. 33: Who enforces the Open Meeting Law?

Answer: The Attorney General enforces the Open Meeting Law in relation to the public agencies of state government. County prosecuting attorneys enforce the Open Meeting Law in relation to

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[43] *Nelson v. Boundary County*, 109 Idaho 205, 706 P.2d 94 (Ct. App. 1985).
[44] Idaho Code § 74-208(1).
[45] Idaho Code § 74-208(2).
[46] Idaho Code § 74-208(4).
[47] Idaho Code § 74-208(3).

the local public agencies within their respective jurisdictions.[48]

Any person affected by a violation of the Open Meeting Law is entitled to bring a lawsuit in the magistrates' division of the county in which the public agency normally meets for the purpose of requiring compliance with the provisions of the Open Meeting Law. The lawsuit would ask the court to declare any improper actions void and to enjoin the governing body from violating the Open Meeting Law in the future. Such a lawsuit must be commenced within thirty (30) days of the time of the decision or action that results, in whole or in part, from a meeting that failed to comply with the provisions of the Open Meeting Law. Any other lawsuit must be commenced within one hundred eighty (180) days of the time of the violation.[49]

Question No. 34: If there is a violation of the Open Meeting Law at an early stage in the process, will all subsequent actions be null and void?

Answer: Yes. Section 74-208(1) clearly indicates that an action or any deliberation or decision making that leads to an action, which occurs at any meeting not in compliance with the provisions of the Open Meeting Law, will be null and void. The 1992 Legislature added the "deliberation or decision making that leads to an action" language to the provisions of section 74-208(1). This language clarifies the consequences of a violation under the previous requirement.

The Idaho Supreme Court has held that the procedure for voiding actions taken in violation of the Open Meeting Law must be read literally. Thus, any action may not be declared void if it is not challenged within the thirty-day time limit established by section 74-208(6).[50]

Question No. 35: If a violation of the Open Meeting Law occurs, what can a governing body do to correct the error?

Answer: The governing body should follow the steps outlined in Idaho Code § 74-208(7) to "cure" the violation. A violation is cured by repealing any action taken at an illegal meeting or disregarding

[48] Idaho Code § 74-208(5).
[49] Idaho Code § 74-208(6).
[50] *Petersen v. Franklin County*, 130 Idaho 176, 938 P.2d 1214 (1997).

deliberations made in violation of the Open Meeting Law. Should it choose to, a governing body may, in a properly noticed meeting, repeat the deliberation or decision that occurred at the illegal meeting.

Question No. 36: Are members of the governing body of a public agency criminally liable for violations of the Open Meeting Law in which they knowingly participate?

Answer: The Open Meeting Law specifically provides civil monetary penalties for violations. The Open Meeting Law does not expressly provide for criminal liability for knowing violations. Nonetheless, it is possible that a member of a governing body may be guilty of a misdemeanor for violations of the Open Meeting Law in which he or she knowingly participates.

Idaho Code Section 18-315 provides:

> Every willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision shall have been made for the punishment of such delinquency, is punishable as a misdemeanor.

Idaho Code Section 18-317 states:

> When an act or omission is declared by a statute to be a public offense and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor.

In *Alder v. City Council of City of Culver City*, the court considered the California Open Meeting Law (the Brown Act), which included no penalty provisions or provisions for enforcement when violations occur.[51] Relying on two California statutes identical to Idaho Code sections 18-315 and 18-317, the California court ruled that violations of the Open Meeting Law were punishable as misdemeanors even though the Open Meeting Law did not expressly make violations punishable as misdemeanors.

[51] *Alder v. City Council of City of Culver City,* 7 Cal. Rptr. 805 (Cal. Ct. App. 1960).

THE STATUTE

(Idaho Code §§ 74-201 to 74-208)

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

74-202. Open Public Meetings—Definitions. As used in this chapter:

(1) "Decision" means 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, but shall not include those ministerial or administrative actions necessary to carry out a decision previously adopted in a meeting held in compliance with this chapter.

(2) "Deliberation" means the receipt or exchange of information or opinion relating to a decision, but shall not include informal or impromptu discussions of a general nature which do not specifically relate to a matter then pending before the public agency for decision.

(3) "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.

(4) "Public agency" means:

(a) any state board, commission, department, authority, educational institution or other state agency which is created by or pursuant to statute, other than courts and their agencies and divisions, and the judicial council, and the district magistrates commission;

(b) any regional board, commission, department or authority created by or pursuant to statute;

(c) any county, city, school district, special district, or other municipal corporation or political subdivision of the state of Idaho;

(d) any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act.

(5) "Governing body" means the 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.

(6) "Meeting" means the convening of a governing body of a public agency to make a decision or to deliberate toward a decision on any matter.

(a) "regular meeting" means the convening of a governing body of a public agency on the date fixed by law or rule, to conduct the business of the agency.

(b) "special meeting" is a convening of the governing body of a public agency pursuant to a special call for the conduct of business as specified in the call.

74-203. Governing bodies—Requirement for open public meetings.

(1) Except as provided below, all meetings of a governing body of a public agency shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by this act. No decision at a meeting of a governing body of a public agency shall be made by secret ballot.

(2) Deliberations of the board of tax appeals created in chapter 38, title 63, Idaho Code, the public utilities commission and the industrial commission in a fully submitted adjudicatory proceeding in which hearings, if any are required, have been completed, and in which the legal rights, duties or privileges of a party are to be determined are not required by this act to take place in a meeting open to the public. Such deliberations may, however, be made and/or conducted in a public meeting at the discretion of the agency.

(3) Meetings of the Idaho life and health insurance guaranty association established under chapter 43, title 41, Idaho Code, the Idaho insurance guaranty association established under chapter 36, title 41, Idaho Code, and the surplus line association approved by the director of the Idaho department of insurance as authorized under chapter 12, title 41, Idaho Code, are not required by this act to take place in a meeting open to the public.

(4) 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.

(5) All meetings may be conducted using telecommunications devices which enable all members of a governing body participating in the meeting to communicate with each other. Such devices may include, but are not limited to, telephone or video conferencing devices and similar communications equipment. Participation by a member of the governing body through telecommunications devices shall constitute presence in person by such member at the meeting; provided however, that at least one (1) member of the governing body, or the director of the public agency, or the chief administrative officer of the public agency shall be physically present at the location designated in the meeting notice, as required under section 74-204, Idaho Code, to ensure that the public may attend such meeting in person. The communications among members of a governing body must be audible to the public attending the meeting in person and the members of the governing body.

74-204. Notice of meetings—Agendas.

(1) 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. Provided however, that any public agency that holds meetings at regular intervals of at least once per calendar month scheduled in advance over the course of the year may satisfy this meeting notice by giving meeting notices at least once each year of its regular meeting schedule. The notice requirement for meetings and agendas shall be satisfied by posting such notices and agendas in a prominent place at the principal office of the public agency, or if no such office exists, at the building where the meeting is to be held.

(2) Special meetings. No special meeting shall be held without at least a twenty-four (24) hour meeting and agenda notice, unless an emergency exists. An emergency is a situation involving injury or damage to persons or property, or immediate financial loss, or the likelihood of such injury, damage or loss, when the notice requirements of this section 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. The notice required under this section shall include at a minimum the meeting date, time, place and name of the public agency calling for the meeting. The secretary or other designee of each public agency shall maintain a list of the news media requesting notification of meetings and shall make a

good faith effort to provide advance notification to them of the time and place of each meeting.

(3) Executive sessions. If an executive session only will be held, a twenty-four (24) hour meeting and agenda notice shall be given according to the notice provisions stated in subsection (2) of this section and shall state the reason and the specific provision of law authorizing the executive session.

(4) An agenda shall be required for each meeting. The agenda shall be posted in the same manner as the notice of the meeting. An agenda may be amended, provided that a good faith effort is made to include, in the original agenda notice, all items known to be probable items of discussion.

(a) If an amendment to an agenda is made after an agenda has been posted but forty-eight (48) hours or more prior to the start of a regular meeting, or twenty-four (24) hours or more prior to the start of a special meeting, then the agenda is amended upon the posting of the amended agenda.

(b) If an amendment to an agenda is proposed after an agenda has been posted and less than forty-eight (48) hours prior to a regular meeting or less than twenty-four (24) hours prior to a special meeting but prior to the start of the meeting, the proposed amended agenda shall be posted but shall not become effective until a motion is made at the meeting and the governing body votes to amend the agenda.

(c) An agenda may be amended after the start of a meeting upon a motion that states the reason for the amendment and states the good faith reason the agenda item was not included in the original agenda posting.

74-205. Written minutes of meetings.

(1) The governing body of a public agency shall provide for the taking of written minutes of all its meetings. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law. All minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

(a) All members of the governing body present;

(b) All motions, resolutions, orders, or ordinances proposed and their disposition;

(c) The results of all votes, and upon the request of a member, the vote of each member, by name.

(2) Minutes pertaining to executive sessions. 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.

74-206. Executive sessions—When authorized.

(1) 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 (⅔) vote of the governing body. An executive session may be held:

(a) To consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need. This paragraph does not apply to filling a vacancy in an elective office or deliberations about staffing needs in general;

(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;

(c) To acquire an interest in real property which is not owned by a public agency;

(d) To consider records that are exempt from disclosure as provided in chapter 1, title 74, Idaho Code;

(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;

(g) By the commission of pardons and parole, as provided by law;

(h) By the custody review board of the Idaho department of juvenile corrections, as provided by law; or

(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.

(j) To consider labor contract matters authorized under section 74-206 (1)(a) and (b), Idaho Code.

(2) 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.

(3) No executive session may be held for the purpose of taking any final action or making any final decision.

74-206A. Negotiations in Open Session.

(1) All negotiations between a governing board and a labor organization shall be in open session and shall be available for the public to attend. This requirement also applies to negotiations between the governing board's designated representatives and representatives of the labor organization. This requirement shall also apply to meetings with

any labor negotiation arbitrators, mediators or similar labor dispute meeting facilitators. Provided, however, a governing board or its designated representatives may hold an executive session for the specific purpose of:

(a) Considering a labor contract offer or to formulate a counteroffer; or

(b) Receiving information about a specific employee, when the information has a direct bearing on the issues being negotiated and a reasonable person would conclude that the release of that information would violate that employee's right to privacy.

(2) All documentation exchanged between the parties during negotiations, including all offers, counteroffers and meeting minutes shall be subject to public writings disclosure laws.

(3) Any other provision notwithstanding, including any other provisions to the contrary in sections 33-402 and 74-204, Idaho Code, the governing body shall post notice of all negotiation sessions at the earliest possible time practicable. This shall be done by the governing body by immediately posting notice of the negotiation session on the front page of its official website. If time permits, the governing body shall also post notice within twenty-four (24) hours at its regular meeting physical posting location.

(4) Public testimony, if any, shall be posted as an agenda item.

74-207. Open legislative meetings required. All meetings of any standing, special or select committee of either house of the legislature of the state of Idaho shall be open to the public at all times, except in extraordinary circumstances as provided specifically in the rules of procedure in either house, and any person may attend any meeting of a standing, special or select committee, but may participate in the committee only with the approval of the committee itself.

74-208. Violations.

(1) 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 of this chapter, such action shall be null and void.

(2) Any member of the governing body governed by the provisions of this chapter, who conducts or participates in a meeting which violates the provisions of this act shall be subject to a civil penalty not to exceed two hundred fifty dollars ($250).

(3) Any member of a governing body who knowingly violates the provisions of this chapter shall be subject to a civil penalty not to exceed one thousand five hundred dollars ($1,500).

(4) Any member of a governing body who knowingly violates any provision of this chapter and who has previously admitted to committing or has been previously determined to have committed a violation pursuant to subsection 3 of this section within the twelve (12) months preceding this subsequent violation shall be subject to a civil penalty not to exceed two thousand five hundred dollars ($2,500).

(5) The attorney general shall have the duty to enforce this chapter in relation to public agencies of state government, and the prosecuting attorneys of the various counties shall have the duty to enforce this act in relation to local public agencies within their respective jurisdictions. In the event that there is reason to believe that a violation of the provisions of this act has been committed by members of a board of county commissioners or, for any other reason a county prosecuting attorney is deemed disqualified from proceeding to enforce this act, the prosecuting attorney or board of county commissioners shall seek to have a special prosecutor appointed for that purpose as provided in section 31-2603, Idaho Code.

(6) Any person affected by a violation of the provisions of this chapter may commence a civil action in the magistrate division of the district court of the county in which the public agency ordinarily meets, for the purpose of requiring compliance with provisions of this act. No private action brought pursuant to this subsection shall result in the assessment of a civil penalty against any member of a public agency and there shall be no private right of action for damages arising out of any violation of the provisions of this chapter. Any suit brought for the purpose of having an action declared or determined to be null and void pursuant to subsection (1) of this section shall be commenced within thirty (30) days of the time of the decision or action that results, in whole or in part, from a meeting that failed to comply with the provisions of this act. Any other suit brought under the provisions of this section shall be commenced within one hundred eighty (180) days of the time of the violation or alleged violation of the provisions of this act.

(7) [Curing a violation.]

(a) A violation may be cured by a public agency upon:

(i) The agency's self-recognition of a violation; or

(ii) 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 of an alleged open meeting violation, the governing body shall have fourteen (14) days to respond publicly and either acknowledge the open meeting violation and state an intent to cure the violation or state that the public agency 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.

(b) 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.

(c) 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.

(d) 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.

SUMMARY OF DECISIONS INTERPRETING THE IDAHO OPEN MEETING STATUTE

IDAHO ATTORNEY GENERAL'S OFFICE

REPORTED DECISIONS

1. *Petersen v. Franklin County*, 130 Idaho 176, 938 P.2d 1214 (1997) (actions that violate Open Meeting Law that are not challenged within the time limit established by Idaho Code § 67-2347(4) are not void).

2. *Student Loan Fund of Idaho, Inc. v. Payette County*, 125 Idaho 824, 875 P.2d 236 (Ct. App. 1994) (merely alleging violation of Open Meeting Law, without additionally alleging a specific "palpable injury," is insufficient to confer standing).

3. *Gardner v. Evans*, 110 Idaho 925, 719 P.2d 1185 (1986) (an aggrieved party will not prevail in a claim for improper notice under the Open Meeting Law when they cannot demonstrate any disadvantage stemming from the deficient notice).

4. *Nelson v. Boundary County*, 109 Idaho 205, 706 P.2d 94 (Ct. App. 1985) (Open Meeting Law's provisions authorizing executive sessions preempt Idaho Code § 31-713's requirement that all meetings of county commissioners must be public).

5. *Gardner v. School Dist. No. 55*, 108 Idaho 434, 700 P.2d 56 (1985).

6. *Baker v. Ind. School Dist. of Emmett*, 107 Idaho 608, 691 P.2d 1223 (1984).

7. *State v. City of Hailey*, 102 Idaho 511, 633 P.2d 576 (1981).

8. *Idaho Water Resources Board v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

9. *Nelson v. Boundary County*, 109 Idaho 205, 706 P.2d 94 (Ct. App. 1985).

10. *Idaho Historic Preservation Council v. City Council* of *Boise*, 134 Idaho 651, 8 P.3d 646 (2000).

11. *Farrell v. Lemhi County Board of Commissioners*, 138 Idaho 378; 64 P.3d 304 (2002).

12. *State v. Yzaguirre*, 144 Idaho 471, 163 P.3d 1183 (2007).

13. *Safe Air For Everyone v. Idaho State Dep't. of Agri.*, 145 Idaho 164, 177 P.3d 378 (2008).

14. *City of McCall v. Buxton*, 146 Idaho 656, 201 P.3d 629 (2009).

15. *Idaho Press Club, Inc. v. State Legislature of the State*, 142 Idaho 640, 132 P.3d 397 (2006).

16. *Fox v. Estep*, 118 Idaho 454, 797 P.2d 854 (1990).

17. *Acheson v. Klauser*, 139 Idaho 156, 75 P.3d 210 (Idaho Ct. App. 2003).

18. *Noble v. Kootenai County ex rel. Kootenai* County *Bd. of Comm'rs*, 148 Idaho 937, 231 P.3d 1034 (2010), reh'g denied (May 19, 2010).

UNREPORTED DECISIONS
(On File with the Office of Attorney General)

1. *Coalition for Responsible Government v. Bonner County*, First Judicial District, No. CV-97-00107 (1997)

2. *State v. Thorne*, et al.; Idaho Fourth Judicial District No. 3L-97763 (1994).

3. *Playfair v. S. Lemhi Sch. Dist. 292 Bd. of Trustees*, CIV. 09-375, 2009 WL 2474205 (D. Idaho Aug. 12, 2009).

4. *Kline v. Power County Board of Commissioners*, Idaho Sixth Judicial District No. CV-2011-0248 & CV-2011-0279 (2012).

ATTORNEY GENERAL'S OFFICE ANALYSES

1. Attorney General Opinion No. 08-3, 2008 WL 4360202.

2. Attorney General Opinion 85-9, (December 31, 1985) 1985 WL 167852.

3. Attorney General Opinion 89-7, (July 19, 1989) 1989 WL 4084.

State of Idaho
Office of the Attorney General

OPEN MEETING LAW CHECKLIST

Regular Meetings

Meeting Date and Time:_____

Meeting Location: _____

_____

_____

[Idaho Code § 74-203(4) and (5)]

Before Meeting

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

During Meeting

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

After Meeting

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

State of Idaho
Office of the Attorney General

OPEN MEETING LAW CHECKLIST

Special Meetings

Meeting Date and Time:_____

Meeting Location: _____

_____

_____

[Idaho Code § 74-203(4) and (5)]

Before Meeting

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

During Meeting

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

After Meeting

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

State of Idaho
Office of the Attorney General

OPEN MEETING LAW CHECKLIST

Executive Sessions

Session Date and Time:_____

Session Location: _____

_____

_____

[Idaho Code § 74-203(4) and (5)]

Executive Session Only

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

Executive Session During Regular or Special Meeting

- ❑ Motion to enter Executive Session to discuss one of the exemptions listed in Idaho Code § 74-206.
- ❑ ⅔ vote to enter Executive Session reflected in regular/special meeting minutes. [Idaho Code § 74-206(1)]

During Session

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

After Session

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

>> SAMPLE FORM <<

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

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

Meeting Date, Time and Location: _____

EXECUTIVE SESSION MOTION AND ORDER

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

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

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

CONVENE AT: _____ ADJOURN AT: _____

	YES	NO	ABSTAIN
_____ , Chair (print name)	_____	_____	_____
_____ , Member (print name)	_____	_____	_____
_____ , Member (print name)	_____	_____	_____

Clerk/Deputy Clerk: _____
(Signature)

>> SAMPLE FORM <<

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

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

Meeting Date, Time and Location: _____

MOTION AND ORDER TO AMEND AGENDA

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

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

_____

_____

_____

_____

_____

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

_____

_____

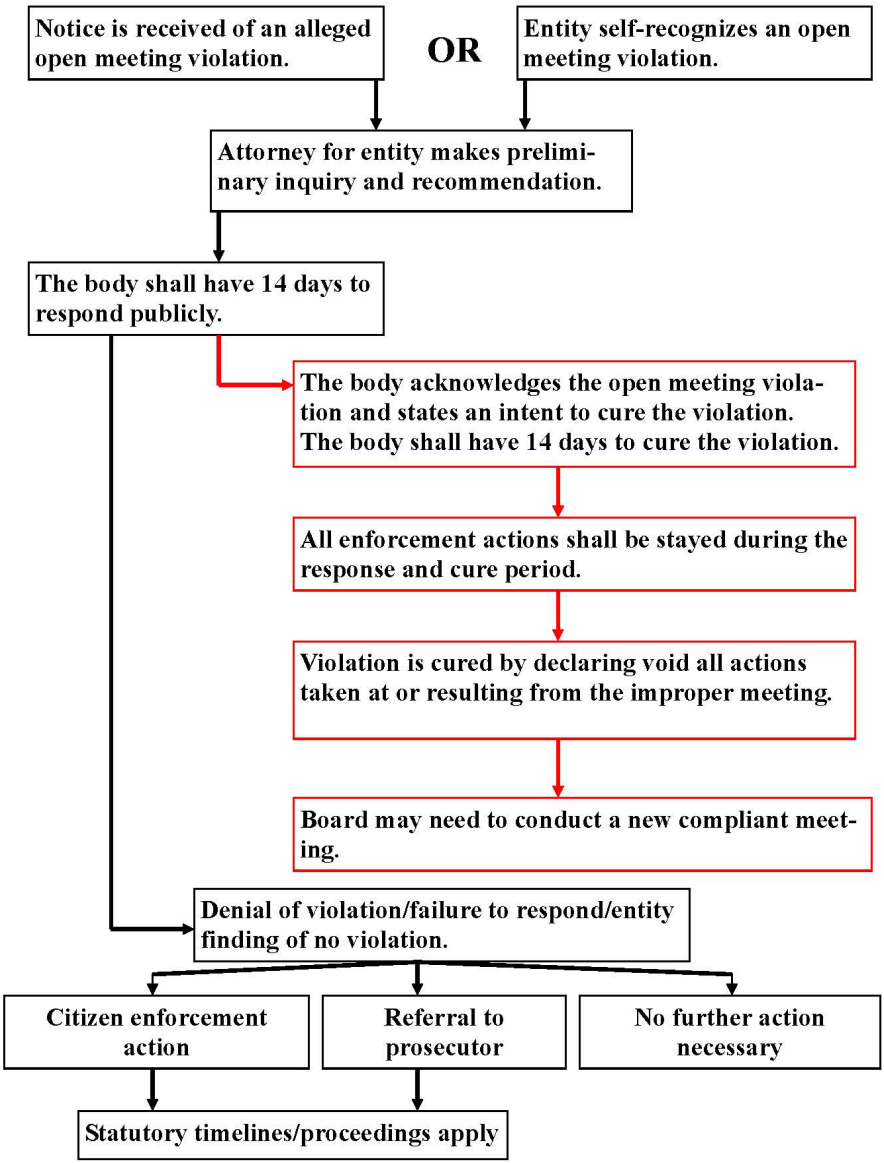
_____

_____

	YES	NO	ABSTAIN
_____ , Chair (print name)	_____	_____	_____
_____ , Member (print name)	_____	_____	_____
_____ , Member (print name)	_____	_____	_____

Clerk/Deputy Clerk: _____
(Signature)

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



Roberts Rules of Order – Simplified

Guiding Principle:

Everyone has the right to participate in discussion if they wish, before anyone may speak a second time.
Everyone has the right to know what is going on at all times.
Only urgent matters may interrupt a speaker.
Only one thing (motion) can be discussed at a time.

A **motion** is the topic under discussion (e.g., "I move that we add a coffee break to this meeting"). After being recognized by the president of the board, any member can introduce a motion when no other motion is on the table. A motion requires a second to be considered. Each motion must be disposed of (passed, defeated, tabled, referred to committee, or postponed indefinitely).

How to do things:

You want to bring up a new idea before the group.

After recognition by the president of the board, present your motion. A second is required for the motion to go to the floor for discussion, or consideration.

You want to change some of the wording in a motion under discussion.

After recognition by the president of the board, move to amend by

- adding words,
- striking words or
- striking and inserting words.

You like the idea of a motion being discussed, but you need to reword it beyond simple word changes.

Move to substitute your motion for the original motion. If it is seconded, discussion will continue on both motions and eventually the body will vote on which motion they prefer.

You want more study and/or investigation given to the idea being discussed.

Move to refer to a committee. Try to be specific as to the charge to the committee.

You want more time personally to study the proposal being discussed.

Move to postpone to a definite time or date.

You are tired of the current discussion.

Move to limit debate to a set period of time or to a set number of speakers. Requires a 2/3^{rds} vote.

You have heard enough discussion.

Move to close the debate. Requires a 2/3^{rds} vote. Or move to previous question. This cuts off discussion and brings the assembly to a vote on the pending question only. Requires a 2/3^{rds} vote.

You want to postpone a motion until some later time.

Move to table the motion. The motion may be taken from the table after 1 item of business has been conducted. If the motion is not taken from the table by the end of the next meeting, it is dead. To kill a motion at the time it is tabled requires a 2/3^{rds} vote. A majority is required to table a motion without killing it.

You believe the discussion has drifted away from the agenda and want to bring it back.
Call for orders of the day.

You want to take a short break.
Move to recess for a set period of time.

You want to end the meeting.
Move to adjourn.

You are unsure that the president of the board has announced the results of a vote correctly.
Without being recognized, call for a “division of the house." At this point a roll call vote will be taken.

You are confused about a procedure being used and want clarification.
Without recognition, call for "Point of Information" or "Point of Parliamentary Inquiry." The president of the board will ask you to state your question and will attempt to clarify the situation.

You have changed your mind about something that was voted on earlier in the meeting for which you were on the winning side.
Move to reconsider. If the majority agrees, the motion comes back on the floor as though the vote had not occurred.

You want to change an action voted on at an earlier meeting.
Move to rescind. If previous written notice is given, a simple majority is required. If no notice is given, a 2/3^{rds} vote is required.

You may INTERRUPT a speaker for these reasons only:

to get information about business – **point of information**
to get information about rules – **parliamentary inquiry**
if you can't hear, safety reasons, comfort, etc. – **question of privilege**
if you see a breach of the rules – **point of order**
if you disagree with the president of the board’s ruling – **appeal**

Quick Reference

	Must Be Seconded	Open for Discussion	Can be Amended	Vote Count Required to Pass	May Be Reconsidered or Rescinded
Main Motion	√	√	√	Majority	√
Amend Motion	√	√		Majority	√
Kill a Motion	√			Majority	√
Limit Debate	√		√	2/3^{rds}	√
Close Discussion	√			2/3^{rds}	√
Recess	√		√	Majority	
Adjourn (End meeting)	√			Majority	
Refer to Committee	√	√	√	Majority	√
Postpone to a later time	√	√	√	Majority	√
Table	√			Majority	
Postpone Indefinitely	√	√	√	Majority	√