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Open Meetings Law

The Open Meetings Law was created in 1959 and revised substantially in 1976. The law requires that meetings of governmental bodies be conducted in open session, with certain exceptions, and be preceded by a notice of the meeting. The law is set forth in ss. 19.81 to 19.98, Stats.

*Generally, the law requires that meetings of governmental bodies be conducted in **open session**, with certain exceptions, and be preceded by a **notice** of the meeting.*

Purpose

The Open Meetings Law contains a **declaration of policy**. This declaration, which was part of the original statute in 1959, makes the following statements:

- Representative government of the American type is dependent upon an informed electorate.
- It is the policy of this state that the public is entitled to the fullest and most complete information regarding governmental affairs as is compatible with the conduct of governmental business.
- All meetings of state and local governmental bodies must be publicly held in places reasonably accessible to the public and must be open to all citizens at all times, except where otherwise expressly provided by law.

The Open Meetings Law further states that it is to be liberally construed in order to achieve its purposes.

Definitions

The applicability of the Open Meetings Law is determined by the definitions of “governmental body,” “meeting,” and “open session.” Although these definitions are somewhat technical, the clear effect of the definitions is to apply the Open Meetings Law broadly. The definitions of these terms are as follows:

- **“Governmental body”**: A state or local agency, board, commission, committee, council, department, or public body corporate and politic created by constitution, statute, ordinance, rule, or order; a governmental or quasi-governmental corporation (except for the Bradley Center Sports and Entertainment Corporation); a local exposition district; or a long-term care district. The term includes a formally constituted subunit of any of these bodies. The term excludes a body or subunit that is formed for or meeting for the purpose of public employee collective bargaining.
- **“Meeting”**: The convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power, or duties delegated to or vested in the body. The definition creates a rebuttable presumption that if 1/2 or more of the members of a governmental body are present, the meeting is presumed to be for the purpose of exercising the powers vested in that governmental body. The definition excludes any social or chance gathering or conference that is not intended to avoid the Open Meetings Law. In addition, the definition excludes gatherings of members of a town board, town sanitary district, or drainage board, for certain inspections; different procedural requirements apply to these inspections.
- **“Open session”**: A meeting that is held in a place that is reasonably accessible to members of the public and open to all citizens at all times. In the case of a state governmental body, it means a meeting that is held in a building and room that enables access by persons with physical disabilities.

Requirements of the Law

Open Session Required

Every meeting of a governmental body must be held in open session and all discussions held at a governmental body meeting, and all action, whether formal or informal, must be initiated, deliberated upon, and acted upon in open session, except as specifically exempted by statute.

The applicability of the Open Meetings Law to a gathering of less than 1/2 of the members of a governmental body was addressed by the Wisconsin Supreme Court in *State ex rel. Newspapers, Inc. v. Showers*, 135 Wis. 2d 77, 398 N.W.2d 154 (1987). *Showers* involved an unannounced, private meeting of four members of the 11-member Milwaukee Metropolitan Sewerage Commission. The subject of the meeting was the Commission’s proposed operating and capital budgets. Adoption of these budgets required a 2/3rds vote of the Commission (i.e., eight votes).

In ruling that the requirements of the Open Meetings Law applied to meetings of “negative quorums” (i.e., a sufficient number of members to block action by the governmental body), the court provided a two-part test to determine when a gathering of less than 1/2 of the members of a governmental body triggers the Open Meetings Law. Under the test, such a meeting is subject to the law if: (1) the members have convened for the purpose of engaging in governmental business, whether discussion, decision-making, or information gathering; and (2) the number of members present is sufficient to determine the governmental body’s course of action on the subject under discussion.

Notice Requirements

Public notice of meetings of governmental bodies must be in the manner required by any other statutes and by the body’s chief presiding officer or a designee communicating notice to the public, to news media that have filed a written request for notice, and to the governmental body’s official newspaper. If no official newspaper exists, notice must be communicated to a news medium likely to give notice in the area.

*Notice must be given **at least 24 hours** before the commencement of the meeting. If there is good cause why a 24-hour notice is impossible or impractical, a shorter notice may be given; however, in no case may notice be provided less than **two hours** before the meeting.*

The meeting notice must specify each meeting’s time, date, place, and subject matter. Notice must be given **at least 24 hours** before the commencement of the meeting. If there is good cause why a 24-hour notice is impossible or impractical, a shorter notice may be given; however, in no case may notice be provided less than **two hours** before the meeting.

Departments and subunits of the University of Wisconsin System are exempt from the specific public notice requirements set forth above. These entities must, however, still provide notice reasonably likely to inform interested persons, as well as news media that have filed written requests for notice.

A subunit of a governmental body (such as a subcommittee) may conduct a meeting during a lawful meeting of its parent body, during the meeting’s recess, or immediately after the parent body meets, for the purpose of discussing or acting on a subject that is also the subject of the meeting of the parent body, without the required public notice. However, the parent body’s presiding officer must publicly announce the time, place, and subject matter of the subunit’s meeting in advance at the parent body’s meeting.

Exemptions From Open Session

A meeting of a governmental body may be convened in closed session only for specific enumerated purposes. These purposes are:

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- Deliberating concerning a case that was the subject of any judicial or quasi-judicial trial or hearing before the particular governmental body.
- Considering dismissal, demotion, licensing, or discipline of any public employee or person licensed by a board or commission or the investigation of charges against such a person or considering the grant or denial of tenure for a university faculty member and taking formal action on any such matter. Under the law, the affected public employee, licensed person, or faculty member must receive actual notice of any evidentiary hearing preceding a final action and of any meeting at which final action may be taken. The notice must state that the person has a right to demand that the evidentiary hearing or meeting be held in open session.
- Considering employment, promotion, compensation, or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.
- Considering specific probation, extended supervision, or parole applications or considering strategy for crime detection or prevention.
- Deliberating or negotiating purchasing of public properties, investing public funds, or conducting other specified public business, if competitive or bargaining reasons require a closed session.
- Deliberating by the Council on Unemployment Compensation or the Council on Worker’s Compensation in a meeting at which all employer members of the Council or all employee members of the Council have been excluded.
- Deliberating the preservation of burial sites if the location of a burial site is a subject of the meeting and if discussing the location in public would be likely to result in disturbance of the burial site.
- Considering financial, medical, social, or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons, in which public discussion

would likely have a substantial adverse effect on the reputation of any person referred to in the histories or data, or involved in the problems or investigations.

- Conferring with the governmental body's legal counsel who is rendering oral or written advice concerning strategy to be adopted regarding litigation in which the body is or is likely to become involved.
- Considering a request for confidential written advice from the Government Accountability Board (GAB) or from any local government ethics board.
- Considering matters related to acts by businesses under the state's "Economic Adjustment Program," in which public discussion could adversely affect the business, its employees, or its former employees.

In addition, the law requires the GAB to meet in closed session for the purpose of deliberation concerning an investigation of any violation of the law under the jurisdiction of the GAB's Ethics and Accountability Division.

Closed Session Procedure

The Open Meetings Law establishes a procedure that must be followed when a meeting of a governmental body goes into closed session. The requirements are:

- The chief presiding officer of the governmental body must announce to those present at the meeting the nature of the business to be considered in the closed session and the specific exemption under which the closed session is claimed to be authorized. The announcement must be made part of the record of the meeting.
- A motion to convene in closed session must be made and adopted by majority vote. The vote must be conducted in such a manner that each member's vote is ascertained and recorded in the meeting's minutes.
- The business to be taken up at the closed session is limited to the matters contained in the presiding officer's announcement of the closed session.
- A governmental body may not commence a meeting, subsequently convene in closed session, and thereafter reconvene in open session within 12 hours after completing the closed session, unless public notice of the subsequent open session was given at the same time and in the same manner as the public notice of the meeting held prior to the closed session.
- A governmental body may not consider the final ratification or approval of a public employee collective bargaining agreement at a closed meeting.

Legislative Meetings

The Open Meetings Law is applicable to the Legislature as follows:

- Senate and Assembly meetings and meetings of committees, subcommittees, and other subunits must comply with the Open Meetings Law, except that meetings called solely to schedule business before a legislative body do not have to comply with the public notice requirements of the law.
- If a provision of the Open Meetings Law conflicts with a Senate or Assembly rule or a joint rule of the Legislature, and the legislative meeting is conducted in compliance with that rule, that provision of the Open Meetings Law will not apply.

- The Open Meetings Law does not apply to any partisan caucus of the Senate or Assembly, except as provided by legislative rule.
- The Senate or Assembly Committee on Organization may vote to examine tax returns only if the tax returns are disclosed to the committee in a closed meeting.

Voting

Unless otherwise specifically provided by statute, a secret ballot may not be used to determine elections or the decisions of a governmental body, except for the election of officers. A member of a governmental body may require that each member's vote on any question be ascertained and recorded, other than a vote for election of officers. Motions and roll call votes of each governmental body meeting must be recorded, preserved, and open to public inspection as required by the Open Records Law.

Other Requirements

A duly elected or appointed member of a governmental body may not be excluded from any meeting of that body. Likewise, a member of a governmental body may not be excluded from any meeting of a subunit of that body, unless the body's rules provide otherwise.

A governmental body holding a meeting in open session must make a reasonable effort to accommodate anyone who wishes to record, film, or photograph the meeting, unless these activities interfere with the conduct of the meeting or the rights of the participants.

Any person may request advice from the Attorney General as to how the Open Meetings Law applies under any circumstances.

Penalties; Enforcement

Penalties

Any member of a governmental body knowingly attending a meeting of the body held in violation of the Open Meetings Law, or, in his or her official capacity, violating the law by some act or omission, is subject to a nonreimbursable forfeiture of not less than \$25 nor more than \$300 for each violation.

A member of a governmental body is not liable for his or her attendance at a meeting held in violation of the law if the person makes or votes in favor of a motion to prevent the violation from occurring, or his or her votes on any relevant motions prior to the violation are inconsistent with the circumstances causing the violation.

Enforcement

The Open Meetings Law is enforced by the Attorney General in the name and on behalf of the state or by the district attorney of any county where a violation may occur on the complaint of any person. Any forfeitures recovered, together with reasonable costs, are awarded to the state in actions brought by the Attorney General and to the county in actions brought by a district attorney. In addition, the Attorney General or district attorney may commence an action, separately or in conjunction with a forfeiture action, to obtain other appropriate legal or equitable relief including, but not limited to, mandamus, injunction, or declaratory judgment.

Action taken at a meeting of a governmental body held in violation of the Open Meetings Law is voidable upon a lawsuit brought by the Attorney General or the district attorney of the county where the violation occurred. However, the court may hold the action void only if it finds that, under the facts of the particular case, the public interest in enforcing the Open Meetings Law outweighs any public interest in sustaining the validity of the action taken at the meeting.

If a district attorney refuses or fails to begin a lawsuit to enforce the Open Meetings Law within 20 days after receiving a verified complaint, the person making the complaint may commence a lawsuit in the name and on behalf of the state. The court may award actual and necessary costs of prosecution, including reasonable attorney fees, to the person who commenced the lawsuit if he or she prevails. However, any forfeiture imposed is paid to the state.

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