

Open Meetings Law Overview

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Agenda

- Purpose and Public Policy
- Application
- Notice Requirements
- Meetings
- Closed Session
- Enforcement and Penalties

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Purpose

- The Open Meetings Law requires that the business of governmental bodies be conducted publicly.
- Provides the public with essential information regarding the affairs of government.
- Assists the public in becoming an informed electorate.
- Prevents governmental bodies from governing in secret.
- The Open Meetings Law is to be liberally interpreted to promote the policy of openness and transparency in government. Wis. Stat. s. 19.81(4)

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Public Policy

- In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business. Wis. Stat. s. 19.81(1)
- To that end, all meetings of governmental bodies must be preceded by public notice, and must be reasonably accessible to members of the public. Wis. Stat. s. 19.81(2).
- Meetings are presumed to be held in open session, with governmental bodies only moving into closed session sparingly and where necessary to protect the public interest. Wis. Dep't of Justice, *Wisconsin Open Meetings Law Compliance Outline*, at 1 (May 2024).

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Application



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“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 ... (exceptions not applicable here). Wis. Stat. s. 19.82(1)

- Broad enough to include “virtually any collective governmental entity, regardless of what it is labeled.”
- Defined primarily in terms of manner of creating rather than powers, therefore even purely advisory bodies may be covered.
- The “rule or order” clause has been liberally construed to include formal and informal actions creating a body and assigning it duties.

WISCONSIN DEP'T OF JUSTICE, WISCONSIN OPEN MEETINGS LAW COMPLIANCE GUIDE 2 (2024).

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Public Notice

Wis. Stat. s 19.84

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What?

Public notice of all meetings of governmental bodies. Wis. Stat. s. 19.84(1)

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When?

- At least 24 hours before the meeting.*
Wis. Stat. s. 19.84(3)
- Separate notice must be provided for each meeting at a time relatively close to when the meeting will be held.
Wis. Stat. s. 19.84(4)

*If for good cause 24-hours' notice is impossible or impracticable, shorter notice may be provided, but in no event may notice be provided less than 2 hours before the meeting.

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By Whom?

From the chief presiding officer of a governmental body or such person's designee. Wis. Stat. s. 19.84(1)(b)

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To Whom?

- The public
- News media who have filed a written request for such notices
- The official newspaper designated under Wis. Stat. s. 985.05 or if none exists, to a news medium likely to give notice in the area.

Wis. Stat. s. 19.84(1)(b)

Notice to the public shall be made using one of the following methods:

- Posting the notice in at least 3 public places likely to give notice to persons affected.
- Posting a notice in at least one public place likely to give notice to persons affected and placing a notice electronically on the governmental body's internet site.
- By paid publication in a news medium likely to give notice to persons affected

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Requirements

- Time
- Date
- Place
- Subject matter of the meeting, including anything that is intended for consideration at a potential closed session.
- Must be in such a format as to reasonably inform the public and news media of what will be discussed.
- Content of notices must be reasonably specific.
- May provide for a period of public comment.
Wis. Stat. s. 19.84(2)
- Must also comply with any other statutory requirements.
Wis. Stat. s. 19.84(1)(a)

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Closed Sessions Notice Requirements

- If the chief presiding officer is aware that a closed session is contemplated at the time notice is provided, the closed session must be in the notice. Wis. Stat. s. 19.84(2).
- The notice must contain the specific nature of the closed session item, as well as the exemption under which the closed session is authorized. Unless the closed session is to confer with legal counsel re: current or likely litigation, merely identifying the statutory exception is not sufficient.

Weinschenk Correspondence (Dec. 29, 2006).

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Exceptions

A formal subunit of a parent governmental body may conduct a meeting without public notice as required under this section if the meeting:

- Is held during a meeting of the parent body, during a recess of a meeting of a parent body, or immediately after the meeting of the parent body meeting, so long as:
 - I. The purpose of the meeting is to discuss or take action on a matter which was the subject of the parent body meeting;
 - II. The time, place and subject matter of the meeting is publicly announced in advance of the meeting of the parent body.

Wis. Stat. s. 19.84(6)

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The Meeting Itself



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Every meeting of a governmental body shall be:

- Proceeded by public notice
- Held in open session

All discussions shall be had, and all action shall be initiated, deliberated, and acted upon in open session. Except for as allowed by Wis. Stat. s. 19.85.

Wis. Stat. s. 19.83(1)

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“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. If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any social or chance gathering or conference which is not intended to avoid this subchapter, ... (other exceptions not applicable here). Wis. Stat. s. 19.82(2)

Showers Test:

- **Purpose:** There must be a purpose to engage in governmental business.
- **Number:** The number of members present must be sufficient to determine the parent body's course of action regarding the proposal discussed.

State ex rel. Newspapers, Inc. v. Showers, 135 Wis. 2d 77, 102, 398 N.W.2d 154, 165 (1987).

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Meetings and Not Meetings

Definitely a meeting: Conference calls (video or telephone)

Probably a meeting: Reply-all email communications and text messages.

Maybe a meeting: Blogs and social media interactions.

Probably not a meeting: Hard-copy written correspondence.

Not a meeting: Social or chance gathering that is not for the purpose of circumventing open meetings laws.

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Factors to Consider

Number of participants involved in the communication.
Number of communications regarding the subject.
Timeframe over which the communications take place.
The extent to which the communications resemble an in-person conversation

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Open Meetings – Potential Violations

Multiple Meetings
If a quorum of the members of one body attend a meeting of another body to engage in governmental business (including information gathering) regarding a subject over which they have decision making authority, that is a meeting which must be separately noticed.

Walking Quorums
A walking quorum is a series of gatherings among separate groups of members of a governmental body, each less than quorum size, who agree, tacitly or explicitly, to act uniformly in sufficient number to reach a quorum.

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Showers, 135 Wis. 2d 77, 82, (quoting State ex rel. Lynch v. Conza, 71 Wis. 2d 662, 687, 239 N.W.2d 313 (1976)).

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“Open Session”

A meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times. Wis. Stat. 19.82(3)

- Doors should remain unlocked during open sessions.
- Virtual meetings comply with the law if they are properly noticed, and the public has access.
- Audio/video recordings and photography is allowed as long as it does not disrupt the meeting.

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Open Sessions: Reasonably Accessible

- Three aspects to public accessibility:
 - **Physical location** in the community
 - Meetings should be held within the body's geographic area
 - May not be held on private premises unless open & **reasonably accessible** to public
 - **Room size** and acoustics
 - Must be reasonably calculated to accommodate all citizens who wish to attend
 - Body members must take reasonable steps to make it possible to be heard
 - **Physical accessibility**
 - In open session, the room should be **unlocked**
 - If doors must be closed due to noise, notice should be posted inviting entry
 - Accessibility for people with disabilities
 - State bodies must meet in facilities people can access w/o assistance. Wis. Stat. § 19.82(3).
 - Statute not applicable to local bodies, but they must provide reasonable access.

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Reasonably Accessible: Covid's Impact

- The type of access that constitutes reasonable access during pandemic circumstances may be different from the types of access required in other circumstances.
 - Whether a meeting is “reasonably accessible” is a factual question determined on a case-by-case basis.
- The Attorney General has long advised that bodies may convene their meetings **via telephone or video conference**.
 - However, courts have not resolved the question of whether the practice of convening meeting in this matter is always permissible.
 - The **public must be provided an effective way to monitor the meetings**.
- **Notices** must include instructions on how to attend the meeting remotely, including any required call-in number and/or log-in information.

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Reasonably Accessible: Covid's Impact (cont.)

Best practices:

- Bodies should be mindful that it may be burdensome, infeasible, or impossible for some members of the public to attend in person or remotely.
 - Bodies should **facilitate reasonable access** to meetings for such individuals.
 - For example, bodies could hold meetings in person with a remote option.
- Bodies are encouraged to retain practices adopted to promote transparency during the pandemic to the extent those practices increase accessibility.
- **Bottom Line:** The more access to meetings, the better. Providing multiple options—even post-pandemic—to the public to attend meetings helps to fulfill the purpose of the open meetings law.

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Open Sessions: Citizen Participation

- The open meeting law ensures the right to **attend and observe** open session meetings
- The law does **not** require a body to allow the public to speak or actively participate
- However, the law **permits** a portion of an open meeting to be set aside as a **public comment period**
 - Public comment periods are **not** required
 - Such a period must be included on the meeting notice
- During a public comment period, a body:
 - may **receive information** from the public and
 - may **discuss** any subject raised by the public but
 - may **not** take formal action

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Generally, a governmental body cannot discuss or act upon any item or topic that was not properly noticed.

If a public comment period is a properly noticed part of the meeting, the governmental body may discuss a matter raised by the public, so long as no official action is taken.

Wis. Stat. s. 19.83(2)

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Ballots, Votes, and Records

- Secret ballots are only allowed for the election of officers (or if otherwise specifically provided by statute).
- Any member of a body may require that a vote be taken in such a manner that the vote of each member is ascertained and recorded (except for statutorily authorized secret ballots).
- Motions and roll call votes shall be recorded, preserved, and subject to public records law.

Wis. Stat. s. 19.88(1)-(3)

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Closed Sessions



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Closed Sessions Notice Requirements

- Every meeting must initially be convened in open session. Wis. Stat. s. 19.83(1).
- If the chief presiding officer is aware that a closed session is contemplated at the time notice is provided, the closed session must be in the notice. Wis. Stat. s. 19.84(2).
- A body may not commence a meeting, convene a closed session, then reconvene again in open session within 12 hours after completion of the closed session *unless* specific in the notice.

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Convening a Closed Session


- A closed session may be convened by a properly made and passed motion.
 - The motion must provide the applicable exemption.
 - The motion must pass by a majority vote.
- The vote of each member must be ascertained and recorded in the minutes.

Wis. Stat. s. 19.85(1)

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Convening a Closed Session

- The chief presiding officer must announce to those present at the meeting:
 - The nature of the business to be considered at the closed session.
 - The specific exemption(s) applicable.
- The announcement must become part of the record of the meeting.
- No business beyond the chief presiding officer's announcement may be taken up in the closed session.



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When Closed Sessions are Allowed

- Deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that 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 person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter...
- Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.
- Considering specific applications of probation, extended supervision or parole, or considering strategy for crime detection or prevention.
- Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.
- Deliberating by the council on unemployment insurance in a meeting at which all employer members of the council or all employee members of the council are excluded.

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When Closed Sessions are Allowed


- Deliberating by the council on worker's compensation in a meeting at which all employer members of the council or all employee members of the council are excluded.
- Deliberating the location of a burial site 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 which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.
- Conferring with legal counsel concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.
- Consideration of requests for confidential written advice from the elections commission, the ethics commission, or from any county or municipal ethics board.

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Other Closed Session Rules

No members of a governmental body may be excluded from any meeting of the body. Nor may a member be excluded from a subunit of that body, unless the body's rules state otherwise.

Wis. Stat. s. 19.89



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Enforcement & Penalties



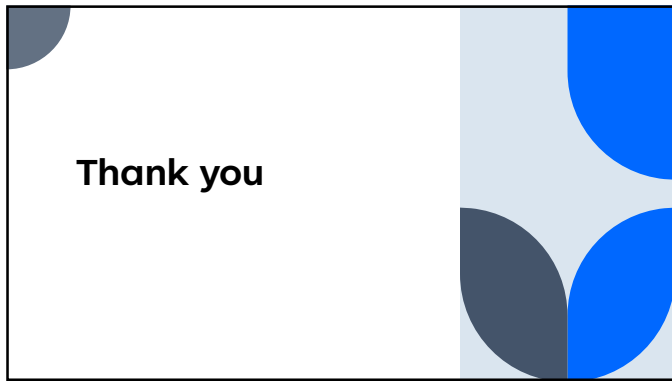
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Enforcement: Options and Penalties

- The open meetings law may be enforced by the attorney general, local district attorney, or by a private relator. Wis. Stat. § 19.97:
- Penalties:
 - Civil forfeiture of \$25 to \$300 per violation for any member of a body who knowingly attends a meeting held in violation of the open meetings law or otherwise violates the law
 - A member is not liable for attending an unlawful meeting if the member makes or votes in favor of a motion to prevent the violation from occurring. Wis. Stat. § 19.96.
 - Members of a body who—acting openly and in good faith—seek and rely upon the advice of the body's official legal counsel may not be found liable for any violation
- An action taken at an unlawful meeting may be voidable if:
 - the court finds that the public interest in the enforcement of the open meetings law outweighs the public interest in sustaining the validity of the action



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