

IDAHO ASSOCIATION OF COUNTIES: OPEN MEETINGS – ADVANCED SESSION

March 23, 2023

Presentation by:

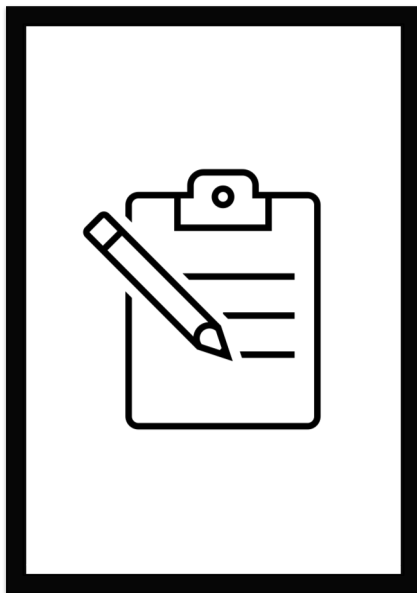
Brian V. Church, Office of the Attorney General

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DISCLAIMER



- Although I work for the Idaho Office of the Attorney General, this presentation is entirely my own. This presentation may not represent the views of the Office of the Attorney General.
- Additionally, I am not providing legal advice.

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A FREE RESOURCE

- <https://www.ag.idaho.gov/office-resources/manuals/>
- **Idaho Open Meeting Law Manual**
 - Question-and-answer section
 - Statute
 - Summary of decisions regarding the Open Meeting Law
 - Sample forms
 - Curing process

Office of the
Attorney General
**Idaho
Open Meeting Law
Manual**
Idaho Code §§ 74-201 through 74-208



January 2023
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TAKE AWAYS

Follow If in doubt, follow Open Meeting Law requirements. Other statutes or rules may also apply.

Work Work with your legal counsel on open meeting questions.

Cure Don't be afraid to cure Open Meeting Law violations.

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OVERARCHING REQUIREMENT

- All *meetings*
- Of a *governing body*
- Of a *public agency*
- Shall be open to the public and persons shall be permitted to attend the meeting.
- No *decision* shall made by secret ballot.
- From Idaho Code section 74-203 (italicized terms defined in section 74-202).

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WHAT I'LL COVER

- Part 1: which entities are subject to the Act?
- Part 2: what is a meeting?
- Part 3: notices and agendas: what to post, when, and where.
- Part 4: the meeting itself.
- Part 5: what to do after the meeting.

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PART 1 – GOVERNING BODIES OF PUBLIC AGENCIES



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PART 1 – WHAT ENTITIES ARE SUBJECT TO THE ACT?

- Let's focus on:
 - Public agencies
 - Governing bodies

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PART 1 – WHAT ENTITIES ARE SUBJECT TO THE ACT?

- **Public agency**
 - **County**
 - **Special district**
 - **Some other municipal corporation**
 - **Political subdivision**

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PART 1 – WHAT ENTITIES ARE SUBJECT TO THE ACT?

- **But a public agency also includes:**
 - **Any subagency**
 - **Not a defined term**
 - **Created by:**
 - **Statute**
 - **Ordinance**
 - ***Other* legislative act**
 - **A very broad category**

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PART 1 – WHAT ENTITIES ARE SUBJECT TO THE ACT?

- **Governing body**
 - **Members of a public agency**
 - The public agency must consist of at least 2 persons
 - With the authority to make decisions for the public agency
 - **Or** the authority to make recommendations to a public agency
 - Regarding any matter

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PART 1 – WHAT ENTITIES ARE SUBJECT TO THE ACT?



- **So, who counts?**
 - County boards of commissioners?
 - What about county-created commissions?
 - What if a county-created commission, which advises the county commissioners, creates a citizens advisory committee to advise the commission?

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PART 1 – WHAT ENTITIES ARE SUBJECT TO THE ACT?

- The key is to understand how a commission was created *and*

8.8.301: PLANNING AND ZONING COMMISSION:

;

A. Establishment: A planning and zoning commission ("the commission") is hereby established in and for the county pursuant to section 67-6504, Idaho Code. Such commission shall consist of seven (7) members, appointed by the chairman, and confirmed by a majority vote of the board. Members shall be selected without regard to political affiliation and shall serve without compensation, provided, however, that actual and necessary expenses shall be allowed if approved by the board.

PART 1 – WHAT ENTITIES ARE SUBJECT TO THE ACT?

- The key is to understand how a commission was created *and*
- What **authority** the commission has:

G. Powers And Duties: The commission shall act in an advisory capacity to the board, and shall perform such duties as may be imposed upon it by the board.

PART 1 - RECAP

- County Board of Commissioners
- Subagency of the county created pursuant to or by a statute, ordinance, or other legislative act
- Governing body
 - 2 or more members
 - Have authority to make decisions for the public agency
 - Or have authority to make recommendations to a public agency
 - Regarding any matter

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OVERARCHING REQUIREMENT

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- Shall be open to the public and persons shall be permitted to attend the meeting.
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PART 2 – WHAT IS A MEETING?



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PART 2 – WHAT IS A MEETING?

- The convening
- Of a governing body of a public agency
- To make a decision
- Or to deliberate toward a decision
- On any matter.

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PART 2 – WHAT IS A MEETING?

- Decision – broadly defined
- 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.

PART 2 – WHAT IS A MEETING?

- Deliberation is also broadly defined
- the receipt or exchange of information or opinion
- relating to a decision,
- but shall not include informal or impromptu discussions of a general nature that do not specifically relate to a matter then pending before the public agency for decision.

PART 2 RECAP

- Questions to think about:
 - Is a quorum of the governing body present?
 - Am I about to decide something with other members?
 - Am I about to receive information that may inform a later vote?
- If in doubt, follow the Open Meeting Law

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OVERARCHING REQUIREMENT

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- Of a ***public agency***
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- No ***decision*** shall made by secret ballot.

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PART 3 – KEEPING THE PUBLIC INFORMED



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PART 3 – KEEPING THE PUBLIC INFORMED

- Notice
 - No definition in the Act
 - Best practice
 - Who is meeting
 - Type of meeting
 - Date, time, and place
 - Ways for the public to listen or participate in the meeting
 - When and where posted depends on the type of meeting.


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BOCC: Business Meeting

Tuesday, April 4, 2023



[Find Business Meeting Documents Here](#)

Date: April 4, 2023

Time: 2:00 PM - 3:00 PM

Address: 451 Government Way
Coeur d'Alene, ID 83814

Monday 3-13-2023

- NO MEETINGS

Tuesday 3-14-2023

- BOCC: Status Update (CANCELLED)
- BOCC: University of Idaho (1:30 PM)
- BOCC: Business Meeting (2:00 PM)
- BOCC: Parks & Waterways (3:00 PM)

Wednesday 3-15-2023

- BOCC: Elected Officials (9:00 AM)
- Historic Preservation Commission (3:30 PM)

Thursday 3-16-2023

- BOCC: Community Development (9:00 AM)
- BOCC: Human Resources (10:00 AM)
- BOCC: Justice Center Expansion (11:00 AM)
- Planning and Zoning Commission (1:30 PM)
- Hearing Examiner: Community Development - Public Hearing (6:00 PM)

Friday 3-17-2023

- BOCC: HARSB (8:00 AM)

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PART 3 – KEEPING THE PUBLIC INFORMED

- **Agenda**
 - Again, not specifically defined.
- **Best practice**
 - State purpose of the meeting.
 - List items of business. But be specific!
- **Requirement**
 - Any item that may have a vote must be marked as an action item.
 - This does not lock body into considering that item only at that meeting.

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<p style="text-align: center;">Agenda</p> <p style="text-align: center;">Business Meeting</p> <p style="text-align: center;">March 21, 2023 2:00 PM</p> <p style="text-align: center;">451 N. Government Way, Administration Building, Meeting Room 1A/B</p>	
<p>A. Call to Order</p> <p>B. Moment of Silence</p> <p>C. Pledge of Allegiance</p> <p>D. Changes to the Agenda (Action) Idaho Law prohibits Board action on items brought under this section except in an emergency circumstance. Comments related to future public hearings should be held for that public hearing.</p> <p>E. Approve Meeting Minutes (Action)</p> <ol style="list-style-type: none"> 1. 02/08/2023 Coeur d' Alene Economic Development Corporation Minutes 2. 02/23/2023 Auditor Minutes 3. 03/07/2023 Business Meeting Minutes 4. 03/14/2023 Executive Session 74-206(1)(f) Minutes 5. 03/14/2023 Business Meeting Minutes 	<p>Idaho Association of Counties: Open Meetings – Advanced Session</p> <p>27</p>

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Regular meeting	Special meeting	Emergency meeting
Notice posted at least 5 calendar days before the meeting.	Notice at least 24 hours before the meeting.	Recommendation: post notice ASAP
Agenda posted at least 48 hours prior to the meeting.	Agenda posted at least 24 hours before the meeting.	Recommendation: post agenda ASAP
Posted at principal office. If no principal office, then at building where meeting will occur.	Posted same place(s) as a regular meeting.	Recommendation: post in same place(s) as a regular meeting.
Posted electronically.*	Secretary or some designated person must maintain list of news media requesting notification and “shall make a good faith effort to provide advance notification to them of the time and place of each meeting.”	Follow same notification procedure as a special meeting.

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PART 3 – KEEPING THE PUBLIC INFORMED

• Regular meeting

- **Convening of a governing body of a public agency**
- **On the date fixed by law or rule**
- **To conduct business of the agency**

C. Establishment Of Regular Meeting Dates And Times: The following meeting schedule is hereby established to be effective beginning January 1, 2012:

1. Weekly Business Meeting: A weekly business meeting will be held at two o'clock (2:00) P.M. on each Tuesday afternoon, except as otherwise scheduled, and will continue until business before the board is complete. This weekly meeting is designated for general external business of the board, including, without limitation:

PART 3 – KEEPING THE PUBLIC INFORMED

• Special meeting

- **Convening of a governing body of a public agency.**
- **Pursuant to a special call for the conduct of business as specified in the call.**

• Emergency

- **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.**

AMENDING THE AGENDA

Regular Meeting	Special Meeting
Posted 48 hours or more prior to the start of the meeting: no further action needed.	Posted 24 hours or more prior to the start of the meeting: no further action needed.
Posted before the start of the meeting, but less than 48 hours before: only effective upon motion and vote to amend the agenda.	Posted before the start of the meeting, but less than 24 hours before: only effective upon motion and vote to amend the agenda.
Amending the agenda after the meeting starts: requires motion that states reason for amendment and good faith reason why item was not included in the original agenda. No final action on this item, unless emergency declared and declaration and justification for emergency reflected in minutes.	Amending the agenda after the meeting starts: same as a regular meeting.

PART 3 RECAP

- Check the Open Meeting Law



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PART 4 – THE MEETING

- You want to meet.
- You've posted a notice.
- You've posted an agenda.
- Now what?

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PART 4 – THE MEETING

- Requirement:
 - Minutes
 - Members present
 - Proposed motions, resolutions, orders, or ordinances, and the vote
 - Results of votes
 - A member can request the vote of each member by name
 - Not required to create a full transcript or a recording of a meeting
 - Minutes must be available to public “within a reasonable time after the meeting”
 - Executive session (more on this momentarily)

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PART 4 – THE MEETING

- **Requirement:**
 - **Presence at meeting site:**
 - At least 1 member of the governing body, *or*
 - Director of the public agency, *or*
 - Chief administrative officer of the public agency
 - **Telephone or video conference of all other members is permitted**
 - But communications amongst members must be audible to the public

PART 4 – THE MEETING

- **What the Open Meeting Law does *not* address:**
 - How the chair is supposed to conduct the meeting.
 - Whether some parliamentary procedure guide will be used.
 - Whether public *input* will be accepted.
- **Work with your legal counsel on these issues.**

PART 4 – EXECUTIVE SESSION

- The meeting of a governing body of a public agency
- Or a part of a meeting of a governing body of a public agency
- Closed to any persons
- For deliberation
- On certain matters

PART 4 – EXECUTIVE SESSION

- The “certain matters” are listed in statute, Idaho Code section 74-206.
 - Consider hiring certain persons
 - Consider evaluation, dismissal, or discipline, or to hear complaints or charges against certain persons
 - Acquire interest in non-public agency owned property
 - Consider records exempt under Idaho’s Public Records Act
 - Communicate with agency’s legal counsel on certain topics
 - Communicate with agency’s risk manager or insurer on certain topics
 - For last two, mere presence of attorney or person insufficient

PART 4 – EXECUTIVE SESSION

- Executive session is *deliberation* only
 - Okay to receive and exchange information and opinion relating to a decision
 - No final decisions – those must occur in open session
 - No final action – this must also occur in open session
- Must have a vote to enter executive session
 - Motion must state specific subsection(s) in Idaho Code 74-206(1) that is or are the basis of the executive session
 - Requires 2/3 vote in affirmative and a roll call vote

PART 4 – EXECUTIVE SESSION

- Minutes
 - Include reference to specific Idaho Code section 74-206(1) subsection.
 - “provide sufficient detail to identify the purpose and topic of the executive session.”
 - “shall not contain information sufficient to compromise the purpose of going into the executive session.”

PART 4 – EXECUTIVE SESSION

- On the agenda
 - Identify the Executive Session as an action item
 - Identify the specific Idaho Code section 74-206(1) subsection
 - State the reason for the executive session
- C. Business
 1. Treasurer
 - a. Executive Session pursuant to Idaho Code §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. - BOCC Division (Closed Session - Discussion)
 - b. Decisions / Direction (Open Meeting - Action)

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PART 4 – EXECUTIVE SESSION

- Recommendations
 - Identify each basis for going into executive session
 - Time stamp entry into and out of executive session
 - Short, small, and focused

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<p><u>Executive Session Only</u></p> <p><input type="checkbox"/> Meeting and Agenda Notice posted at least 24 hours prior to the session. [Idaho Code § 74-204(3)]</p> <p><input type="checkbox"/> Posting of Amended Agenda [Idaho Code § 74-204(4)]</p>
<p><u>Executive Session During Regular or Special Meeting</u></p> <p><input type="checkbox"/> Motion to enter Executive Session to discuss one of the exemptions listed in Idaho Code § 74-206.</p> <p><input type="checkbox"/> 2/3 vote to enter Executive Session reflected in regular/special meeting minutes. [Idaho Code § 74-206(1)]</p>
<p><u>During Session</u></p> <p><input type="checkbox"/> First: Any agenda amendments? [Idaho Code § 74-204(4)(b) and (c)]</p> <p><input type="checkbox"/> Secretary or other person appointed to take minutes. [Idaho Code § 74-205(1)]</p>
<p><u>After Session</u></p> <p><input type="checkbox"/> Minutes must reference statutory subsection authorizing executive session and identify purpose and topic of session. [Idaho Code § 74-205(2)]</p> <p><input type="checkbox"/> Minutes available to the public within a reasonable time after the meeting. [Idaho Code § 74-205(1)]</p>

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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)(g)]

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

CONVENE AT: _____ ADJOURN AT: _____

	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>
_____, Chair (print name)	_____	_____	_____
_____, Member (print name)	_____	_____	_____
_____, Member (print name)	_____	_____	_____

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Clerk/Deputy Clerk: _____
(Signature)

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PART 5 – AFTER THE MEETING

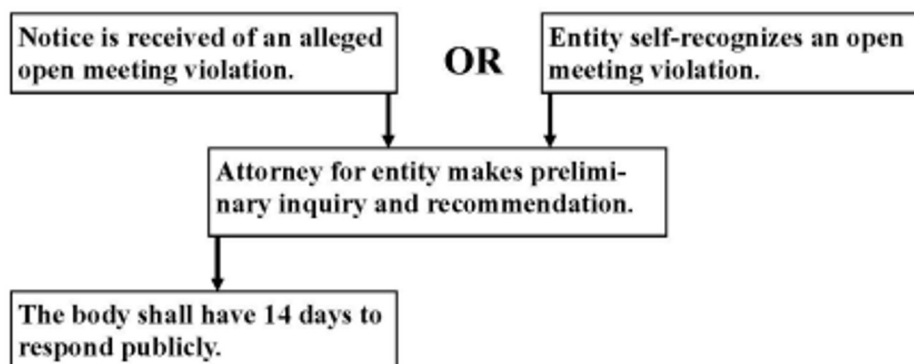
- Minutes
- Plan for next meeting
- Be prepared to address an Open Meeting Law violation

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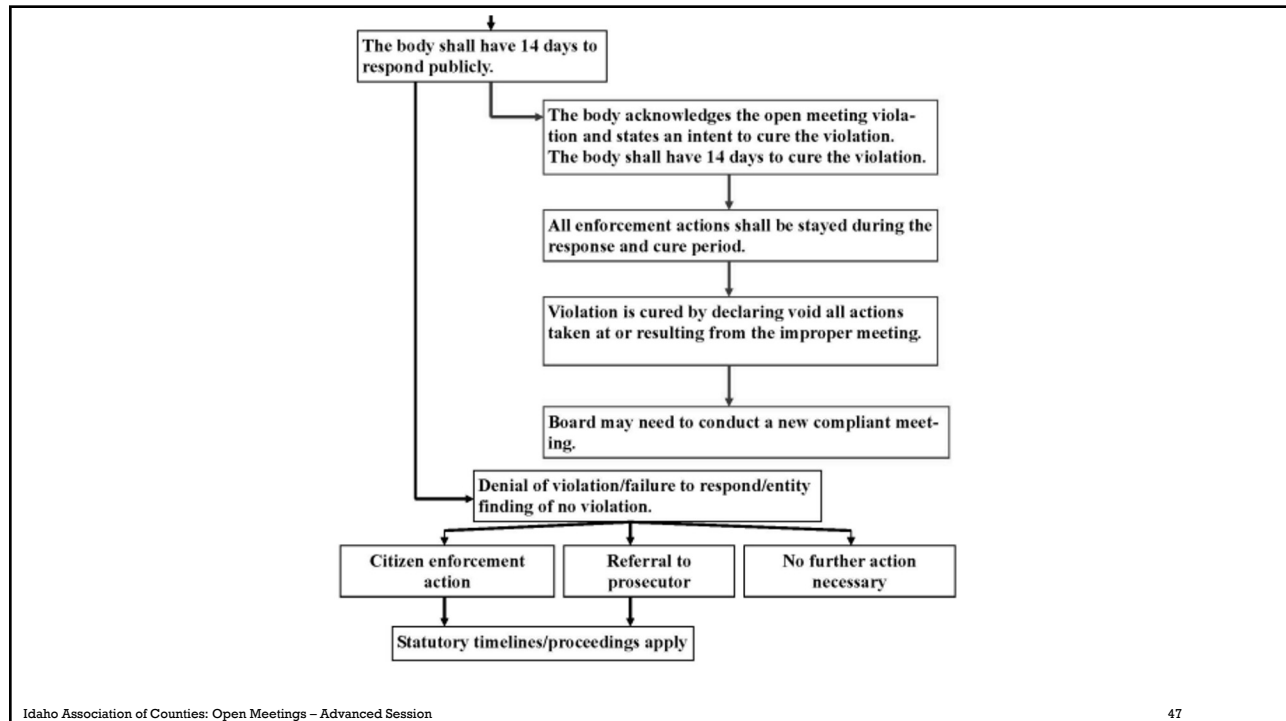
Curing Process – Idaho Code § 74-208(7)



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TAKE AWAYS

Follow	If in doubt, follow Open Meeting Law requirements. Other statutes or rules may also apply.
Work	Work with your legal counsel on open meeting questions.
Cure	Don't be afraid to cure Open Meeting Law violations.

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