

## OPEN MEETINGS LAW TRAINING

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### *Open Meetings Law Overview*

- Public Policy
- Applicability
- Meeting Requirements
- Open Session v. Closed Session
- Penalties

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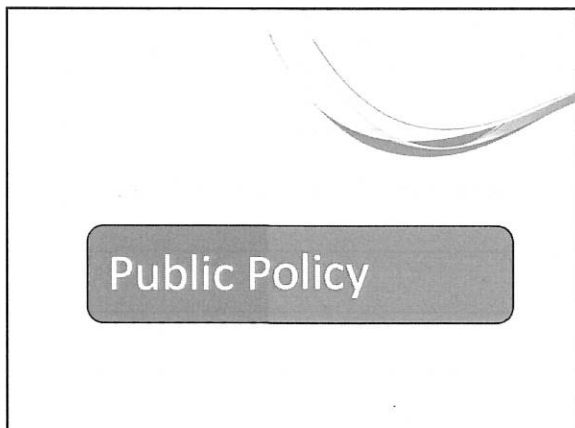
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### Public Policy

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"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. § 19.81(1)

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Applicability

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The Open Meetings Law applies to **MEETINGS of GOVERNMENTAL BODIES.**

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A **GOVERNMENTAL BODY** is any state or local agency, board, commission, committee, council, department or public body corporate and politic, ***that is created by constitution, statute, ordinance, rule or order.***

-Wis. Stat. § 19.82(1)

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A **MEETING** is a 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.

-Wis. Stat. § 19.82(2)

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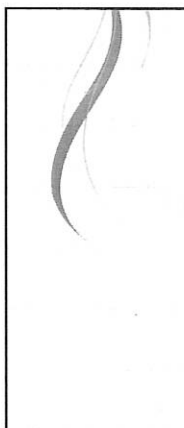
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In *State ex rel. Newspapers v. Showers*, 135 Wis.2d 77 (1987), the Wisconsin Supreme Court established a two-part test for determining whether a gathering is a Meeting, consisting of:

- The **PURPOSE** requirement
- The **NUMBERS** requirement

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**PURPOSE REQUIREMENT:** looks to whether the purpose of the gathering is to engage in governmental business *including discussion, decisions or information-gathering*.

-State ex rel. Badke v. Village Board of the Village of Greendale, 173 Wis. 2d 553 (1993).

- Interactions between members is not required.
- Not limited to formal or final decision making.

Does not include social or chance gatherings or a conference that is not intended to avoid the Open Meetings Law.

- **BUT**, there is a rebuttable presumption that governmental business is being discussed if half or more of the body is present.  
-Wis. Stat. § 19.82(2).

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**NUMBERS REQUIREMENT:** looks to whether the number of members present are sufficient to determine the governmental body's course of action on the business under consideration.

- **Negative Quorums**

- A negative quorum is when there is a sufficient number of members to block an action by on the body on a particular matter.

- **Walking Quorums**

- A walking quorum is when there is a series of gatherings among separate groups of the members of a body, each less than the quorum, who agree, passively or explicitly, to act in sufficient numbers to reach a quorum.

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Meeting  
Requirements

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All Open Meetings must be preceded by public **NOTICE** and must be held in a place that is open and **REASONABLY ACCESSIBLE** to members of the public.

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**NOTICE:**  
 "Every public notice of a meeting of a governmental body shall set forth the time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof."

-Wis. Stat. § 19.84(2).

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**NOTICE CONTENTS**

Notices must be **reasonably specific**. Determining what is reasonable requires a case-specific analysis. Look to:

- Burden of providing more specificity;
- Matters of particular interest to the public; and
- Non-routine actions.

-Generic designations are not sufficient (e.g. miscellaneous business, old business, new business, agenda revisions, other matters authorized by law).

-Separate notice must be given for each meeting.

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-No statutory requirement that a notice must indicate whether action will be taken at a meeting. However, Ct. App. has acknowledged that there may be instances where matters of public importance require notice that an action will take place.

*State ex rel. Olson v. City of Baraboo*, 2002 WI App 64, ¶15.

-No requirement that agenda items be discussed in the order they are listed on the notice, unless item noticed for a specific time.

-All closed sessions must be noticed. Must contain the specific nature of the business to be discussed in closed session, unless conferring with legal counsel re: litigation.

-Body must notice that it intends to go back into open session after a closed session, if that is the intent.

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#### **TIMING OF THE NOTICE**

Notices must be provided at least 24 hours in advance of the meeting, unless for good cause such notice is impossible or impractical.

If good cause exists, the notice should be given as soon as possible, and not less than two hours in advance of the meeting.

-Wis. Stat. § 19.84(3).

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#### **ACCESSIBILITY:**

Open meetings must be held in a place reasonably accessible to members of the public and open to all citizens at all times.

Reasonable access does not mean total access, nor does it mean that a body can systematically exclude or arbitrarily refuse admittance to any individual.




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**RECORDING**

Citizens have the right to tape record or videotape meetings in open session, as long as doing so does not disrupt the meeting. Reasonable efforts must be made to accommodate anyone who wants to record, film or photograph an open session meeting

-Wis. Stat. § 19.90.

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**CITIZEN PARTICIPATION**

The Open Meetings Law grants citizens the right to attend and observe meetings occurring in open session. It does not require that members of the public be allowed to speak or actively participate in the meeting. However, a body may set aside a portion of the meeting for public comment if it wishes to.

-Wis. Stat. §§ 19.83(2) and 19.84(2).

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Open Session v.  
Closed Session

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**Open Session** means a meeting which is held in a place reasonably accessible to members of the public and open to citizens at all time.

-Wis. Stat. § 19.82(1)

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Every meeting of a governmental body must first be convened in open session. All business of any kind must be initiated, discussed and acted upon in open session unless one of the 11 exemptions in Wis. Stat. § 19.85(1) applies.

If one of the exemptions applies, bodies can motion and vote to go into **Closed Session**.

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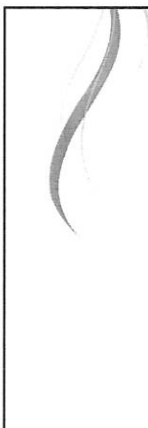
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No business may be taken up during the closed session except that relating to matters specifically noticed.

Bodies have wide discretion to admit anyone into a closed session whose presence the body determines is necessary for the business at hand.

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**AUTHORIZED CLOSED SESSIONS**

***-Judicial or quasi-judicial hearings:*** deliberations on a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body can be held in closed session. Wis. Stat. § 19.85(1)(a).

***-Employment and Licensing Matters:*** for "[c]onsidering dismissal, demotion, licensing or discipline of any public employee or a 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..." Wis. Stat. § 19.85(1)(b).

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***-Consideration of employment, promotion, compensation and performance evaluation data*** of any public employee over which the governmental body has jurisdiction or exercises responsibility. Wis. Stat. § 19.85(1)(c).

***-Considering extended supervision, probation, parole or strategy for crime detection or prevention:*** except during parole commission hearings designed for victims or family members to have direct input in parole decision making process for certain crimes. Wis. Stat. § 19.85(1)(d).

***-Conducting public business with competitive or bargaining implications:*** for "[d]eliberating or negotiating the purchase of public properties, the investing of public funds, or conducting other specific public business, whenever competitive or bargaining reasons require a closed session." Wis. Stat. § 19.85(1)(e).

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***-Deliberating to discuss unemployment insurance.*** Wis. Stat. § 19.85(1)(ee).

***-Deliberating to discuss worker's compensation issues.*** Wis. Stat. § 19.85(1)(eg).

***-Deliberating on issues arising out of location of burial sites.*** Wis. Stat. § 19.85(1)(em).

***-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 upon any person referred to in such histories or data, or involved in such problems or investigations. Wis. Stat. § 19.85(1)(f).

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-**Conferring with legal counsel** for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved. Wis. Stat. § 19.85(1)(g).

-**Consideration of requests for confidential written advice from the elections commission or the ethics commission** or from any county or city ethics board. Wis. Stat. § 19.85(1)(h).

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## Penalties

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Any member of the governmental body who **"knowingly"** attends a meeting in violation of the Open Meetings Law is subject to a forfeiture between \$25 and \$300 for each violation. **This is personal liability.**

**"knowingly"** means not only positive knowledge of the illegality of a meeting, but also the awareness of the high probability of the meeting's illegality or conscious avoidance or awareness of the illegality.

State v. Swanson, 92 Wis. 2d 310 (1979).

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No liability for member knowingly attending an unlawful meeting if the member makes or votes in favor of a motion to prevent the violation from occurring.

A body may not reimburse a member for a forfeiture incurred as a result of violation, unless the enforcement action involved an issue regarding the constitutionality of the Open Meetings Law.

77 Op. Att'y Gen. 177, 180 (1988).

Courts can order that a body obtain Open Meetings Training.

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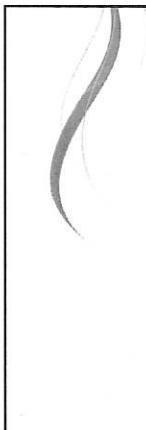
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Courts may award any other appropriate legal or equitable relief, including declaratory and injunction relief.

**Any action taken at a meeting of a governmental body in violation of the Open Meetings Law is voidable.**

However, only after a court finds that the public's interest in enforcement of the Open Meetings Law outweighs the public interest in sustaining the validity of the action taken.

Statute of Limitations on actions to enforce the Open Meetings Law is **two years** after the cause of action accrues.

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