

# Wisconsin Open Meetings Law – Summary

## I. Policy of the Open Meetings Law

- Importance of having a public informed about governmental affairs.
- Importance of vigilant application of the law.
- DOJ will provide legal advice to government agencies regarding open meetings.
- Most violations occur by mistake.
- Open meetings law require all meetings of all state and local governmental bodies be publicly held in places reasonably accessible to members of the public and open to all citizens at all times unless otherwise expressly provided by law.

## II. Open Meetings Law Applies to Every Meeting of a Governmental Body

- Entities that are governmental bodies:
  - State or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule, or order. Includes advisory entities.
  - A formally constituted subunit of a governmental body is a governmental body. A subunit is a separate, smaller body created by a parent body and composed exclusively of members of the parent body.
- Entities that are not governmental bodies
  - Ad hoc gatherings/committees – as not created by law.
  - Government agency staff – doesn't satisfy definition (staff is individual subordinates within agency).
  - Government department with only a single member.
  - Bodies that are formed for or meeting for the purpose of collective bargaining with municipal or state employees.
  - Bodies created by the Court.
- A meeting is defined as 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.
  - Definition of a meeting applies whenever a convening of members of a governmental body satisfies two requirements:
  - There is a purpose to engage in governmental business – formal or informal action including discussion, decision or informational gathering on matters within the governmental body's realm of authority.
  - The number of members present is sufficient to determine the governmental body's course of action on the business under consideration.
  - Typically, governmental bodies operate under a simple majority rule in which a margin of one vote is necessary for the body to pass a proposal. Under simple majority rule, open meetings law applies whenever one-half or more of the governmental body members gather to discuss or act on matters within the body's realm of authority.
- A meeting is not limited to all members being in same place – meetings by telephone or video conferencing qualifies as a convening of members if for the purpose of conducting governmental business and involves a sufficient number of members of the body to determine the body's course of action on the business under consideration.
- Written communication transmitted by electronic means such as email or instant messaging may constitute a convening of members but due to the complexity of determining the communication to be a conversation or meeting, it is recommended to proceed with caution or avoid electronic communication in conducting governmental body business.

- When a quorum of the members of one government body attend a meeting of another governmental body to engage in governmental business regarding a subject they have decision-making responsibility, it is considered two separate meetings and notice must be given of both meetings, although a single notice can be used if that notice clearly indicates that a joint meeting will be held and gives the names of each governmental body involved and published in each place where notices are published for the bodies.
- A social occasion is not a place to conduct government business and it is strongly recommended to not talk about government body business at a social gathering.

### III. **Two Basic Requirements of Open Meetings Law – Advance Public Meeting Notice and Conducting Business in Open Session**

#### ***Public Meeting Notice Requirements***

- The chief presiding officer of a governmental body or the officer’s designee is responsible for public meeting notification.
- Notice of each meeting must be given to the public, any members of the news media requesting it, and the official newspaper designated as the primary news source for the area.
  - Meeting notice to be posted in one or more places likely to be seen by the general public – advise posting at three different locations within jurisdiction that governmental body services or with a paid notice within jurisdiction. Nothing in the open meetings law prevents a governmental body from determining that multiple notice methods are necessary to provide adequate public notice of the body’s meetings.
- Every meeting public notice must give 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 news media thereof.
  - Information in the notice must be sufficient to alert the public to the importance of the meeting, so that they can make an informed decision whether to attend – generic designations are not sufficient.
  - If closed session, the notice must contain the subject matter to be considered in closed session.
- Every public meeting notice must be given at least 24 hours in advance of the meeting, unless “for good cause” exists. Then notice should be given ASAP and must be given at least two hours in advance.
- A governmental body, when conducting a meeting, is free to discuss any aspect of any subject identified in the public notice of that meeting, as well as issues reasonably related to that subject, but may not address any topics that are not reasonably related to the information in the notice.
  - There is no requirement that a governmental body must follow the agenda in the order listed on the meeting notice unless an agenda item has been notices for a specific time.

#### ***Open Session Requirements***

- All meetings shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times.
  - The policy of openness and accessibility favors governmental bodies holding meetings in public places rather than private premises. Generally speaking, places such as a private room in a restaurant are not considered reasonably accessible. A governmental body should meet on private premises only in exceptional cases where the body has a specific reason for doing so that does not compromise the public’s right to information about governmental affairs.
  - The policy of openness and accessibility also requires the governmental bodies hold meetings at locations near to the public they serve.
  - The law also requires that the meeting location also be accessible for those with disabilities. The Americans with Disabilities Act and other federal laws may also require governmental bodies to meet accessibility that exceed the requirements imposed by Wisconsin’s open meetings law.

- All meetings must be initially convened in open session. All business of any kind, formal or informal, must be initiated, discussed, and acted upon in open session, unless one of the exemptions set forth in Wisconsin statute applies.
- The open meetings law grants citizens the right to attend and observe meetings of governmental bodies that are held in open session. It also grants citizens the right to tape record or videotape open session meetings as long as doing so does not disrupt the meeting.
  - The law does not permit recording of an authorized closed session.
- The open meetings law grants citizens the right to attend and observe meetings of governmental bodies that are held in open session but does not require a governmental body to allow members of the public to speak or actively participate in the body's meeting.
  - Unless a statute specifically applies, a governmental body is free to determine for itself whether and to what extent it will allow citizen participation at its meeting.
  - There are some state statutes that require governmental bodies to hold public hearings on specified matters.
  - Although not required, the open meetings law does permit a governmental body to set aside a portion of an open meeting as a public comment period.
    - Such a period must be included on the meeting notice.
    - During this period, the body may receive information from the public and may discuss any matter raised by the public.
    - If a member raises a subject that is not on the agenda, it is advisable to limit the discussion of that subject and to defer any extensive deliberation to a later meeting so that more specific notice can be given.
    - The body also may not take formal action on a subject raised in the public comment period unless that subject is also identified in the meeting notice.
- No secret ballots may be used to determine any election or decision of a governmental body, except the election of officers of a body.
  - If a member of a governmental body requests that the vote of each member be recorded on a particular matter, a voice vote or a vote by a show of hands is not permissible unless the vote is unanimous and the minutes reflect who is present for the vote.
- The open meetings law requires a governmental body to create and preserve a record of all motions and roll-call votes at its meetings. This requirement applies to both open and closed sessions.
  - As long as the body creates and preserves a record of all motions and roll-call votes, it is not required by the open meetings law to take more formal or detailed minutes of other aspects of the meeting.
  - Other statutes outside the open meetings law may prescribe particular minute-taking requirements for certain governmental bodies and officials that go beyond what is required by the open meetings law.
  - The general legislative policy of the open meetings law is 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 – provide public with a reasonably intelligible description of the essential substantive elements of every motion made, who initiated and seconded the motion, the outcome of any vote on the motion, and if a roll-call vote, how each member voted.
  - Nothing in the open meetings law prohibits a body from making decisions by general consent, without a formal vote. Whether a decision is made by consensus or other method, Wisconsin statute requires the body to create and preserve a meaningful record of that decision.
- All meeting records, open and closed, must be open to public inspection to the extent prescribed in the state public records law unless the particular record at issue is subject to a specific statutory exemption or the custodian concludes that the harm to the public from its release outweighs the benefit to the public.

- As long as the reasons for convening in closed sessions continue to exist, the custodian may be able to justify not disclosing any information that requires confidentiality and would separate information that can be made public from that which cannot, and disclose the former. Once the underlying purpose for the closed session ceases to exist, all records of the session must then be provided to any person requesting them.

#### **IV. Closed Session Requirements**

- If closed session contemplated at the time public notice is given, the notice must contain the subject matter of the closed session.
  - If closed session not contemplated at time of public notice, that does not foreclose a government body from going into closed session to discuss an item contained in the notice.
  - In both situations, a governmental body must follow the procedure set forth in Wisconsin statute before going into closed session.

##### ***Procedure for Convening in Closed Sessions***

- Meeting must initially be convened in open session.
- Governmental body must pass a motion, by recorded majority vote to convene in closed session.
  - If unanimous motion, no requirement to record votes individually.
  - Before governmental body votes on the motion, the chief presiding officer must announce and record in open session the nature of the business to be discussed and the specific statutory exemption that is claimed to authorize the closed session.
  - If several exemptions are relied on to authorize a closed discussion of several subject, the motion should make it clear which exemptions correspond to which subjects.
- The governmental body must limit its discussion in closed session to the business specified in the announcement.
- Wisconsin Statute contains 13 exemptions to the open session requirement that permit, but do not require a governmental body to convene in closed session.
  - See Wisconsin Open Meetings Law Compliance Guideline for detailed information on the exemptions.
- The open meetings law gives wide discretion to a governmental body to admit into a closed session anyone whose presence the body determines is necessary for the consideration of the matter that is the subject of the meeting.
- A governmental body vote should occur in open session unless the vote is clearly an integral part of deliberations authorized to be conducted in closed sessions under Wisconsin statutes (should vote in open session unless doing so would compromise the need for the closed session).
- A governmental body may not commence a meeting, convene in closed session, and subsequently reconvene in open session within 12 hours after completion of a closed session unless public notice of the subsequent open session is given “at the same time and in the same manner” as the public notice of the prior open session.

#### **V. Open Meetings Law Enforcement and Penalties**

##### ***Enforcement***

- Both the Attorney General and the district attorneys have authority to enforce the open meetings law.
- A district attorney has authority to enforce the open meetings law only after an individual files a verified meetings law complaint with the district attorney.
  - The verified complaint must be signed by the individual and notarized and should include available information that will be helpful to investigators:
    - Identifying the governmental body and any members thereof alleged to have violated the law.

- Describing the factual circumstances of the alleged violations.
  - Identifying witnesses with relevant evidence.
  - Identifying any relevant documentary evidence.
- An enforcement action brought by a district attorney or by the Attorney General must be commenced within six years after the cause of action accrues or be barred.
  - Proceedings to enforce the open meetings law are civil actions subject to the rules of civil procedure, rather than criminal procedure, and governed by the ordinary civil standard of proof.
    - Open meetings law enforcement action is commenced like any civil action by filing and serving a summons and complaint.
    - Open meetings law cannot be enforced by the issuance of a citation because citation procedures are inconsistent with the statutorily-mandated verified complaint procedure.
  - If the district attorney refuses to commence an open meetings law enforcement action or otherwise fails to act within 20 days of receiving a complaint, the individual who filed the complaint has a right to bring an action, in the name of the state, to enforce the open meetings law.
  - Although an individual may not bring a private enforcement action prior to the expiration of the district attorney's 21 day review period, the district attorney may still commence an action even though more than 20 days have passed. It is not uncommon for the review and investigation of open meetings complaints to take longer than 20 days.
  - Court proceedings brought by private relators to enforce the open meetings law must be commenced within two years after the cause of action accrues or the proceedings will be barred.

### **Penalties**

- Any member of a governmental body who knowingly attends a meeting held in violation of the open meetings law, or otherwise violates the law, is subject to a forfeiture of between \$25 and \$300 for each violation.
  - The Wisconsin Supreme Court has defined knowingly as not only positive knowledge of the illegality of a meeting, but also awareness of the high probability of the meeting's illegality or conscious avoidance of awareness of the illegality.
- A member of a governmental body who is charged with knowingly attending a meeting held in violation of the law may raise one of two defenses:
  - That the member made or voted in favor of a motion to prevent the violation.
  - That the member's votes on all relevant motions prior to the violation were inconsistent with the cause of the violation.
  - A member who is charged with a violation other than knowingly attending a meeting held in violation of the law may be permitted to raise the additional statutory defense that the member did not act in his or her official capacity.
  - A member of the body can avoid liability if he or she can factually prove that he or she relied, in good faith and in an open and unconcealed manner, on the advice of counsel whose statutory duties include the rendering of legal opinions as to the actions of the body.
- A governmental body may not reimburse a member for a forfeiture incurred as a result of a violation of the law, unless the enforcement action involved a real issue as to the constitutionality of the open meetings law.
- In addition to the forfeiture penalty, Wisconsin Statute provides that a court may void any action taken at a meeting held in violation of the open meetings law if the court finds that the interest in enforcing the law outweighs any interest in maintaining the validity of the action.