



The Public Meetings Act

A Summary

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1. What is the purpose of the Public Meetings Act?

Answer: The overriding principle of the Act is that government should conduct its business in an open and transparent manner.

Public access to government agencies, boards, and commissions is critical to a representative form of government. Governmental boards and commissions are essentially engaged in the **public's** business. The first duty of government is to serve the public. Holding public meetings insures that all affected people are permitted an opportunity to be heard on issues that are important to their lives.

In 1973, the Wyoming Legislature enacted the Public Meetings Act. Wyo. Stat. Ann. § 9-692.10 through -692.16 (1973). Shortly after, Attorney General Clarence Brimmer answered several questions about the new public meeting law. *See* Op. Wyo. Att'y Gen. 1973-17 (Aug. 3, 1973).

Although the Act has been amended since its enactment in 1973 and portions of the Brimmer opinion are no longer valid or applicable, the Act's overriding purpose requiring state government to conduct its business in an open and transparent manner has remained steadfast. Currently, the Act's statement of purpose says: "agencies of Wyoming exist to conduct public business. Certain deliberations and actions shall be taken openly as provided by this act." Wyo. Stat. Ann. § 16-4-401. The Act expressly provides that "[a]ll **meetings** of the **governing body of an agency** are public meetings, open to the public at all times, except as otherwise provided." Wyo. Stat. Ann. § 16-4-403(a) (emphasis added). Thus, boards, commissions, and sub-agencies within departments or agencies of government are required to comply with the Act as set forth in this handbook.

2. Who is subject to the Act?

Answer: Meetings of State boards and commissions are subject to the Act's requirements. Meetings of directors of departments and State stand-alone agencies are not covered under the Act.

A. Agency:

All meetings of the governing body of an agency are public meetings and open to the public. Wyo. Stat. Ann. § 16-4-403(a). The Act defines an agency as: "any authority, bureau, board, commission, committee, or subagency of the state, a county, a municipality or other political subdivision which is created by or pursuant to the

Wyoming constitution, statute or ordinance, other than the state legislature and the judiciary[.]” Wyo. Stat. Ann. § 16-4-402(a)(ii).

B. State Boards and Commissions:

The Act applies to all multi-member state boards and commissions such as the Public Service Commission, Oil and Gas Conservation Commission, the Board of Education, and the Board of Control.

C. Directors and Stand-Alone Agencies:

Where the law governing a particular agency vests the full responsibility and authority for the agency’s decisions in a single individual (*e.g.*, Director of the Department of Administration and Information, Insurance Commissioner, State Examiner, State Engineer), the Act does not apply, since such an individual is not a ‘governing body’ within the definition of the Act.

D. Ad Hoc Advisory Committees:

Ad hoc advisory committees that have not been created by constitution or statute are not covered. An example of an *ad hoc* advisory committee is the gathering together of several multi-member boards and/or several agency heads for a particular purpose not considered an agency action, such as advising the Governor as to a particular problem or objective.

3. **When does the Act apply?**

Answer: Generally, the Act applies if at least a quorum of the members of a governing body meets, even informally, in order to consider matters which are within the agency’s official business.

According to the Act, all governmental meetings are open to the public, and the definition of meeting is broadly defined. A meeting is “an assembly of at least a quorum of the governing body of an agency which has been called by proper authority of the agency for the expressed purpose of discussion, deliberation, presentation of information or taking action regarding public business.” Wyo. Stat. Ann. § 16-4-402(a)(iii).

In 2012, the Wyoming Legislature defined the term “assembly.” An assembly “means communicating in person, by means of telephone or electronic communication,

or in any other manner such that all participating members are able to communicate with each other contemporaneously.” Wyo. Stat. Ann. § 16-4-402(a)(iv). The new definition makes it clear that a meeting can include telephonic and other electronic communications if the members are able to communicate with each other at the same time. Examples might include instant messaging, video conferencing, and conference calls. If a quorum of the members of a governing body are going to participate in such communication for the purpose of discussion, deliberation, presentation of information, or taking action regarding public business, the agency must give proper notice of a meeting and allow for public attendance.

In addition to the definition of “assembly,” the 2012 amendments further specify that, “[n]o meeting shall be conducted by electronic means or any other form of communication that does not permit the public to hear, read or otherwise discern meeting discussions contemporaneously. Communications outside a meeting, including but not limited to, sequential communications among members of an agency, shall not be used to circumvent the purpose of this act.” Wyo. Stat. Ann. § 16-4-403(d). Thus, if the governing body of an agency wishes to conduct a meeting by electronic means, the agency must also assure that members of the public are able to attend the meeting and discern the meeting discussions in real time. This provision also clarifies that e-mail or other forms of sequential communications cannot be used to thwart the purposes of the Act.

4. What are the notice requirements under the Act?

Answer: No action of a governing body of an agency is to be taken except during a public meeting **following notice of the meeting**. The Act contemplates fair and reasonable advance notice of meetings.

Under the Act, “[n]o action of a governing body of an agency shall be taken except during a public meeting following notice of the meeting in accordance with this act. Action taken at a meeting not in conformity with this act is **null and void** and not merely voidable.” Wyo. Stat. Ann. § 16-4-403(a) (emphasis added). However, the day-to-day administrative activities of an agency are not subject to the Act’s notice requirements.

An agency is required to provide notice of its meetings to any person who requests notice. The request may be made for the dates and times of future meetings of the agency.

In 2012, the legislature added that “[t]he request shall be in writing and renewed annually to the agency.” Wyo. Stat. Ann. § 16-4-404(a). This change might aid agencies in keeping current their lists of people requesting notice of meetings. The notice requirements vary for each type of meeting and are set out below:

A. Regular Meetings

In the absence of a statute setting out a schedule or requirement for regular meetings, a governing body is required by ordinance, resolution, bylaws, or rule to hold regular meetings, “unless the agency’s normal business does not require regular meetings[.]” Wyo. Stat. Ann. § 16-4-404(a). Under the Act, the governing body shall provide notice of its meeting to any person who requests notice. *Id.* Governing bodies must also comply with notice requirements in other statutes, outside the Act, that require them to provide notice to certain persons.

The notice requirement may be fulfilled by mailing or e-mailing a copy of the meeting schedule or resolution setting the next meeting to whomever has made a request for notice. No particular form of notice is required as long as it specifies clearly the name of the agency holding the meeting, the specific date, time and place of the meeting, and the general or specific purpose. Again, if a particular statute or ordinance, outside the Act, mandates special notice requirements for the particular governing body or situation at hand, then those requirements must be followed.

When notice under the Act is to be given, the agency should give sufficient advance notice of the meeting to the local news media to enable media representatives to attend the meeting. The Act does not specifically require that notice be made statewide. Nevertheless, whenever possible, agencies should adopt a regular meeting schedule, providing for an adequate number of scheduled meetings so that special meetings can be limited to the smallest number possible, and so notice of meeting schedules may be given to media representatives who normally cover the affairs of each agency or have requested notice of such meetings.

B. Special Meetings

In 2012, the legislature also clarified the type of notice required for special meetings as well as the timeframe for giving such notice.

Special meetings may be called by the presiding officer of a governing body by giving **verbal, electronic or written** notice of a meeting to each member of the governing body

and to each newspaper of general circulation, radio or television station requesting the notice. The notice shall specify the time and place of the special meeting and the business to be transacted and **shall be issued at least eight (8) hours prior to the commencement of the meeting. No other business shall be considered at the special meeting.** Proof of delivery of verbal notice to the newspaper of general circulation, radio or television station may be made by affidavit of the clerk or other employee or officer of the agency charged or responsible for distribution of the notice of the meeting.

Wyo. Stat. Ann. § 16-4-404(b) (emphasis added).

Prior to these amendments it was not entirely clear the type or how much notice an agency was required to give in order to hold a special meeting. The Attorney General's Office had typically advised simply that "reasonable" notice was required and suggested that written two week notice would be considered reasonable. These changes clarify that the notice may be verbal, electronic, or written and that the notice must be made at least eight hours prior to the meeting.

C. Recess of Meetings

A regular or special meeting may be recessed (cancelled or moved to another location) by the governing body as long as the alternate place and time are specified in the "order of recess." "A copy of the order of recess is to be conspicuously posted on or near the door of the place where the meeting or recessed meeting was held." Wyo. Stat. Ann. § 16-4-404(c).

D. Emergency Meetings

Governing bodies may hold emergency meetings on matters of "serious immediate concern to take temporary action without notice." Wyo. Stat. Ann. § 16-4-404(d). However, governing bodies shall make a reasonable effort to provide public notice. *Id.* **All actions taken at an emergency meeting are temporary. In order for actions taken at an emergency meeting to become permanent, they must be reconsidered and action taken at an open public meeting within 48 hours. *Id.***

The 2012 legislation clarified the procedures for emergency meetings. All action taken at an emergency meeting must be reconsidered and acted upon at an open public

meeting within 48 hours, “excluding weekends and holidays, unless the event constituting the emergency continues to exist after forty-eight (48) hours. In such case the governing body may reconsider and act upon the temporary action at the next regularly scheduled meeting of the agency, but in no event later than thirty (30) days from the date of the emergency action.” Wyo. Stat. Ann. § 16-4-404(d).

5. Does the Act cover deliberations after a contested hearing?

Answer: Yes.

Because the definition of “meeting” includes deliberations, deliberations by a governing body after a contested hearing, but before a decision is rendered, are subject to the Act. Excepted from this requirement are deliberations by the governing body following personnel hearings, professional licensing hearings and other executive sessions expressly exempted under Wyo. Stat. Ann. § 16-4-405.

6. When can a governing body go into executive session?

Answer: A governing body may go into executive session when any of the events listed in Wyo. Stat. Ann. § 16-4-405(a) occur and a member makes a motion to go into executive session, which is seconded and the motion carries by a majority of members in attendance when the motion is made.

Wyoming statute § 16-4-405(a) provides that governing bodies may hold executive sessions in the following situations:

(i) With the attorney general, county attorney, district attorney, city attorney, sheriff, chief of police or their respective deputies, or other officers of the law, on matters posing a threat to the security of public or private property, or a threat to the public's right of access;

(ii) To consider the appointment, employment, right to practice or dismissal of a public officer, professional person or employee, or to hear complaints or charges brought against an employee, professional person or officer, unless the employee, professional person or officer requests a public

hearing. The governing body may exclude from any public or private hearing during the examination of a witness, any or all other witnesses in the matter being investigated. Following the hearing or executive session, the governing body may deliberate on its decision in executive sessions;

(iii) On matters concerning litigation to which the governing body is a party or proposed litigation to which the governing body may be a party;

(iv) On matters of national security;

(v) When the agency is a licensing agency while preparing, administering or grading examinations;

(vi) When considering and acting upon the determination of the term, parole or release of an individual from a correctional or penal institution;

(vii) To consider the selection of a site or the purchase of real estate when the publicity regarding the consideration would cause a likelihood of an increase in price;

(viii) To consider acceptance of gifts, donations and bequests which the donor has requested in writing be kept confidential;

(ix) To consider or receive any information classified as confidential by law;

(x) To consider accepting or tendering offers concerning wages, salaries, benefits and terms of employment during all negotiations;

(xi) To consider suspensions, expulsions or other disciplinary action in connection with any student as provided by law.

Wyo. Stat. Ann. § 16-4-405(a)(i)-(xi).

In 2012, the legislature added the requirement that “[a] motion to hold an executive session which specifies any of the reasons set forth in paragraphs (a)(i) through (xi) of this section shall be sufficient notice of the issue to be considered in executive session.” Wyo. Stat. Ann. § 16-4-405(c). Prior to this addition, it was not clear that an

agency had to offer any particular reason for going into executive session. This language indicates legislative intent to require agencies to do so. Thus, when going into executive session, if an agency specifies one of the reasons for which an agency may hold executive session provided by the Act, the agency will have satisfied any such notice requirement.

7. Does the Act require that minutes be taken?

Answer: Minutes must be taken at all meetings, regardless of whether official action has been taken.

If no action is taken, the minutes do not need to be published; however, they should be available for public examination. Wyo. Stat. Ann. § 16-4-403(c)(i). An agency is not required to record or publish minutes for day-to-day administrative activities of an agency or its officers or employees. Wyo. Stat. Ann. § 16-4-403(c)(ii).

8. Do governing bodies need to take minutes during executive session?

Answer: Yes.

“Minutes shall be maintained of any executive session.” Wyo. Stat. Ann. § 16-4-405(b). Minutes and proceedings of executive sessions shall be confidential and produced only in response to a court order, except for portions of minutes reflecting a member’s objection to the executive session. *Id.*

9. Are there penalties for not complying with the Act?

Answer: Yes.

In 2012, the legislature also amended the penalty provision. Prior to the 2012 amendments, a violation of the Act was a misdemeanor. The penalty provision now provides:

Any member or members of an agency who knowingly or intentionally violate the provisions of this act shall be liable for a civil penalty not to exceed seven hundred fifty dollars (\$750.00) except as provided in this subsection. Any member

of the governing body of an agency who attends or remains at a meeting knowing the meeting is in violation of this act shall be liable under this subsection unless minutes were taken during the meeting and the parts thereof recording the member's objections are made public or at the next regular public meeting the member objects to the meeting where the violation occurred and asks that the objection be recorded in the minutes.

Wyo. Stat. Ann. § 16-4-408(a).

In addition to the penalties listed above, any action taken at a meeting where the Act was not followed is null and void.