

Public Meetings Law

The Oregon State Bar is subject to the Public Meetings Law by virtue of ORS 9.010⁽¹⁾. The Public Meetings Law gives effect to Oregon's policy of open decision-making by the state's public bodies; in furtherance of that policy, the law requires that meetings at which decisions about the public's business is made are open to the public; that the public has reasonable notice of the time, place, and agenda for the meetings; and that the meetings be accessible to persons wishing to attend.

The Public Meetings Law applies to all meetings of a quorum of the Board of Governors. It also applies to meetings of the Board's standing and other committees for which a quorum is required to make a decision or a recommendation to the Board.

The Public Meetings Law is a public attendance law, not a public participation law. The right of the public to attend does not include the right to participate by giving testimony or comment.

Voting

- All official action must be taken by a public vote.
- The vote of each member must be recorded.
- If written ballots are used, each ballot must identify the member voting and the vote must be announced.

Minutes

Minutes must be kept of all public meetings, either in writing or by sound, video, or digital recording. The minutes must include at least the following:

- The names of members present,
- Motions and other proposals offered, and their disposition,
- The results of all votes and the vote of each member by name,
- The substance of the discussion on any matter (a true reflection of the matters discussed and the views of the participants), and
- A reference to any document discussed at the meeting.

Minutes are public records even before they are approved, although they can be marked as "draft" or otherwise to indicate their status.

Executive Session

An executive, or "closed," session is a public meeting that is closed to certain persons while the public body deliberates on certain matters. Executive sessions are not the same as meetings and proceedings that are exempt from the Public Meetings Law altogether, such as judicial proceedings and meetings of the State Lawyers Assistance Committee. Executive sessions must comply with all applicable provisions of the Public Meetings Law, while exempt proceedings need not.

The Public Meetings Law allows for executive session in a variety of circumstances; those that typically apply to the bar are sessions to:

- Consider the employment of specific candidates for executive director,
- Deliberate with agents designated to negotiate real property transactions for the bar,
- Discuss the contents of any public record that is exempt from disclosure,
- Consult with legal counsel concerning the bar's rights and duties in pending or anticipated litigation, and
- Review and evaluate the performance of the executive director, except that discussion of the executive director's salary may not be held in executive session.

Regardless of the basis for the executive session, the board or other body must return to open session to take any final action or make a final decision.

The Public Meetings Law does not define "final action" or "final decision," but the fact that further action or further decisions may be needed does not make any particular action or decision less final. Two factors are relevant in determining whether an action is final: The nature of the proposed decision, and the purpose of the statutory authorization for executive session. A decision to spend money is rarely appropriate for

executive session. When the finality of a decision is less clear, consideration should also be given to the rationale for the executive session and whether a public announcement of the proposed decisions will frustrate the policy behind the executive session or seriously compromise further action that must be taken. When in doubt, prudence suggests making the action or decision in open session.

Convening an Executive Session

An executive session may be called during any regularly scheduled, special, or emergency meeting for which due notice has been given. When the body is ready for executive session, the presiding officer must announce the statutory authority for the executive session prior to going into executive session. The announcement should identify any persons other than news media who may remain and, if final action is anticipated, when the open session will resume. If media are present, the presiding officer should indicate any matters to be discussed in executive session that may not be disclosed.

Attendance at Executive Session

The Public Meetings Law expressly permits representatives of the media to attend executive sessions. The rationale is that it offers them background information that will enhance their understanding of the final decisions and their ability to keep the public better informed. However, the public body may require that the media not report specific information discussed during the executive session. Absent such a directive, the media is entitled to report without limitation, which may frustrate the purpose of having the executive session. At the same time, the nondisclosure requirement should be no broader than necessary to serve the body's needs. The media cannot, in any event, be forbidden from reporting the general nature of the discussion or the statutory basis for the executive session.

"Representative of the media" is not defined in the Public Meetings Law but is interpreted by the Attorney General to mean reporters of media that generally report on the activities of the body or matter of the nature under consideration.

Other than representatives of media, executive sessions are generally closed to all but members of the governing body and persons reporting to the body about the subject of the executive session or who are otherwise involved in the matter. The governing body may, however, invite others to attend without losing the executive character of the session.

Effect of Violation

A person who is affected by any decision made in contravention of the Public Meetings Law may seek injunctive or declaratory relief to require compliance with or prevent violations of the law. Improperly taken actions are not void, but if a court finds that the violation resulted from intentional disregard of the law or willful misconduct by a quorum of the body, the court may void the decision if no other equitable relief is available. At the court's discretion, a successful plaintiff may be awarded attorney fees and costs. Those attorney fees and costs will be the personal obligation of any member who is found to have engaged in willful misconduct.

If the violation is also a violation of the Government Standards and Practices Act, civil penalties may also be assessed against individual members of the governing body, unless they acted on the advice of the public body's legal counsel.