

# Open and Public Meetings Act

## A Summary of Key Provisions for Legislators | May 2020

*The Open and Public Meetings Act (OPMA) requires that members of a public body be “provided with annual training on the requirements of [the Open and Public Meetings Act]” (Section 52-4-104). This document is intended to facilitate compliance with that requirement and to help legislators understand OPMA. This summary is intended for a state legislative audience and does not attempt to explain or address requirements for other public bodies. Key terms are defined at the end of the document.*

OPMA’s stated goal is to ensure that the state, its agencies, and its political subdivisions deliberate and take action openly (Section [52-4-102](#)).

## Public Notice

(Section [52-4-202](#))

A public body is required to provide public notice of a meeting at least 24 hours before the meeting. The public notice is required to:

- specify the date, time, and place of the meeting;
- include an agenda that specifies the topics the public body will consider;
- be posted on the Utah Public Notice Website and at the location of the meeting; and
- be provided to a newspaper or local media correspondent.

A public body may discuss an item raised by the public that is not listed on the agenda but may not take final action on the item at the meeting.

## Minutes and Recordings

(Section [52-4-203](#))

- A public body is required to keep written minutes and a recording of all meetings unless the meeting is a site visit or traveling tour where no vote or action is taken.
- A recording of the open portions of the meeting must be posted on the Utah Public Notice Website within three business days after the public meeting.
- Draft minutes are required to be made available to the public within 30 days after the meeting.
- The approved minutes and any public materials distributed at the meeting must, within three business days after their approval, be:
  - posted on the Utah Public Notice Website; and
  - made available at the public body's office.

## 2020 Amendments to OPMA

- [2020 S.J.R. 16](#) modifies the legislative rules relating to electronic meetings and enacts legislative rules relating to electronic meetings during emergencies.

## Executive Order 2020-5

- Governor Herbert issued [Executive Order 2020-5](#) on March 18, 2020, suspending the enforcement of provisions of Sections 52-4-202 and 52-4-207 due to the COVID-19 Novel Coronavirus. This Order is in effect until June 30, 2020.

## Closed Meetings

(Sections [52-4-204](#) and [52-4-205](#))

A public body may hold a closed meeting only for certain purposes, including to discuss:

- a person’s character, competence, or health;
- pending or imminent litigation;
- certain matters regarding acquisition or sale of real property, including water rights or shares;
- the deployment of security personnel, devices, or systems;
- an investigation of alleged criminal conduct;
- the receipt or review of an ethics complaint, if the public body is the Independent Legislative Ethics Commission;
- certain matters under the jurisdiction of a legislative ethics committee; and
- certain deliberations and decision making involved in the procurement process.

A public body may close a meeting only by a two-thirds vote with a quorum present, except that a majority vote is sufficient for closing a meeting of:

- the Health and Human Services Interim Committee to review a fatality review report;
- the Child Welfare Legislative Oversight Panel to review a fatality review report or review and discuss an individual case; or
- an ethics committee of the Legislature to receive legal advice or deliberate on a complaint.

No vote is required to close a meeting of the Independent Legislative Ethics Commission to review an ethics complaint if the publicly distributed agenda for the meeting states that the meeting will be closed.

A public body that closes a meeting is required to announce and record in the minutes the reasons for closing the meeting.

A public body may not close a meeting to discuss filling a midterm vacancy or temporary absence for an elected position, or to discuss a person whose name was submitted to fill a midterm vacancy or temporary absence for an elected position.

An ordinance, resolution, rule, regulation, contract, or appointment may not be approved during the closed portion of a meeting.

## Emergency Meetings

(Section [52-4-202](#))

A public body may hold an emergency meeting and is not required to give 24-hour notice if unforeseen circumstances arise that require the public body to consider matters of an emergency or urgent nature. However, a public body may not hold an emergency meeting unless it attempts to notify all members of the public body and a majority of its members approve the meeting.

## Definitions (Section 52-4-103)

**Anchor Location** means the physical location from which an electronic meeting originates, or the participants are connected.

**Meeting** means a convening of a public body with a quorum present to discuss, receive public comment about, or act upon a matter over which the public body has jurisdiction or advisory power.

Meeting does not mean a chance or social gathering or a convening of a public body that has both legislative and executive responsibilities in certain circumstances.

**Public Body** means an administrative, advisory, executive, or legislative body of the state or its political subdivisions that:

## Electronic Meetings

(Sections [52-4-207](#) and [JR1-1-402, 403, JR7-1-407](#))

A public body may not convene or conduct a meeting by electronic communications unless it has adopted procedures to govern electronic meetings. The Legislature's rule governing electronic legislative meetings states that a meeting may be held by electronic means during an emergency. Electronic meetings shall comply with OPMA, including posting written notice of the meeting at the anchor location.

When calculating a quorum for each vote during an electronic meeting a member is included if that member is:

- present in person at the anchor location; or
- participating and able to communicate electronically.

In a non-emergency situation, a committee member may remotely participate in a public meeting if:

- the member will be more than 50 miles away from the meeting location;
- at least three days before the meeting, the member requests permission of the chair to participate from a remote location; and
- the chair obtains permission from the speaker of the House of Representatives and president of the Senate to conduct an electronic meeting.

## Penalties

(Sections [52-4-302](#) and [52-4-305](#))

**Open Meetings** - Any final action taken in a meeting that is in violation of certain open-meeting provisions of OPMA is voidable by a court.

**Closed Meetings** - It is a class B misdemeanor to knowingly or intentionally violate the closed meeting provisions of OPMA.

- is created by the Utah constitution, state statute, rule, ordinance, or resolution;
- expends, disburses, or is supported in whole or in part by tax revenue; and
- is vested with the authority to make decisions regarding the public's business.

Public body does not include a political party, political group, or political caucus, or a conference committee, rules committee, or sifting committee of the Legislature.

## **Executive Order 2020-5**

(Extended until June 30,2020)

A public body governed by OPMA may hold an electronic meeting even if the public body has not adopted a resolution, rule, or ordinance governing the use of electronic meetings. Furthermore, a public body that convenes or conducts an electronic meeting is not required to:

- post written notice at the principal office of the public body or specified body, or if no principal office exists, at the building where the meeting is to be held;
- post written notice at an anchor location;
- establish one or more anchor locations for the public meeting, at least one of which is in the building and political subdivision where the public body would normally meet if they were not holding an electronic meeting;
- provide space and facilities at an anchor location so that interested persons and the public may physically attend and monitor the open portions of the meeting; or
- if comments from the public will be accepted during the electronic meeting, provide space and facilities at an anchor location so that interested persons and the public may physically attend, monitor, and participate in the open portions of the meeting.

A public body that holds an electronic meeting shall:

- provide means by which interested persons and the public may remotely hear or observe, live, by audio or video transmission, the open portions of the meeting;
- if comments from the public will be accepted during the electronic meeting, provide a means by which interested persons and the public participating remotely may ask questions and make comments by electronic means in the open portions of the meeting; and
- if the public body has not adopted a resolution, rule, or ordinance governing the use of electronic meetings, adopt as soon as practicable a resolution, rule, or ordinance, which may be adopted at an electronic meeting pursuant to this Order, governing the use of electronic meetings in accordance with Section 52-4-207.