

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 324

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO THE OPEN MEETING LAW; AMENDING SECTION 74-208, IDAHO CODE, AS  
2 ADDED IN SECTION 5, HOUSE BILL NO. 90, AS ENACTED BY THE FIRST REGULAR  
3 SESSION OF THE SIXTY-THIRD IDAHO LEGISLATURE, TO INCREASE MONETARY  
4 CIVIL PENALTIES FOR VIOLATIONS OF THE OPEN MEETING LAW.  
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6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. That Section 74-208, Idaho Code, as added in Section 5, House  
8 Bill No. 90, as enacted by the First Regular Session of the Sixty-third Idaho  
9 Legislature, be, and the same is hereby amended to read as follows:

10 74-208. VIOLATIONS. (1) If an action, or any deliberation or decision-  
11 making that leads to an action, occurs at any meeting which fails to comply  
12 with the provisions of this chapter, such action shall be null and void.

13 (2) Any member of the governing body governed by the provisions of this  
14 chapter, who conducts or participates in a meeting which violates the provi-  
15 sions of this act shall be subject to a civil penalty not to exceed two hun-  
16 dred fifty dollars (\$250.00).

17 (3) Any member of a governing body who knowingly violates the provi-  
18 sions of this chapter shall be subject to a civil penalty not to exceed one  
19 thousand five hundred dollars (\$1,500).

20 (4) Any member of a governing body who knowingly violates any provision  
21 of this ~~act~~ chapter and who has previously admitted to committing or has been  
22 previously determined to have committed a violation pursuant to subsection  
23 (3) of this act section within the twelve (12) months preceding this subse-  
24 quent violation shall be subject to a civil penalty not to exceed two thou-  
25 sand five hundred dollars (\$2,500).

26 (5) The attorney general shall have the duty to enforce this chapter in  
27 relation to public agencies of state government, and the prosecuting attor-  
28 neys of the various counties shall have the duty to enforce this act in re-  
29 lation to local public agencies within their respective jurisdictions. In  
30 the event that there is reason to believe that a violation of the provisions  
31 of this act has been committed by members of a board of county commissioners  
32 or, for any other reason a county prosecuting attorney is deemed disquali-  
33 fied from proceeding to enforce this act, the prosecuting attorney or board  
34 of county commissioners shall seek to have a special prosecutor appointed  
35 for that purpose as provided in section 31-2603, Idaho Code.

36 (6) Any person affected by a violation of the provisions of this chap-  
37 ter may commence a civil action in the magistrate division of the district  
38 court of the county in which the public agency ordinarily meets, for the pur-  
39 pose of requiring compliance with provisions of this act. No private action  
40 brought pursuant to this subsection shall result in the assessment of a civil  
41 penalty against any member of a public agency and there shall be no private  
42 right of action for damages arising out of any violation of the provisions of

1 this chapter. Any suit brought for the purpose of having an action declared  
2 or determined to be null and void pursuant to subsection (1) of this section  
3 shall be commenced within thirty (30) days of the time of the decision or ac-  
4 tion that results, in whole or in part, from a meeting that failed to comply  
5 with the provisions of this act. Any other suit brought under the provisions  
6 of this section shall be commenced within one hundred eighty (180) days of  
7 the time of the violation or alleged violation of the provisions of this act.

8 (7) (a) A violation may be cured by a public agency upon:

9 (i) The agency's self-recognition of a violation; or

10 (ii) Receipt by the secretary or clerk of the public agency of  
11 written notice of an alleged violation. A complaint filed and  
12 served upon the public agency may be substituted for other forms of  
13 written notice. Upon notice of an alleged open meeting violation,  
14 the governing body shall have fourteen (14) days to respond pub-  
15 licly and either acknowledge the open meeting violation and state  
16 an intent to cure the violation or state that the public agency  
17 has determined that no violation has occurred and that no cure is  
18 necessary. Failure to respond shall be treated as a denial of any  
19 violation for purposes of proceeding with any enforcement action.

20 (b) Following the public agency's acknowledgment of a violation pur-  
21 suant to paragraph (a) (i) or (a) (ii) of this subsection, the public  
22 agency shall have fourteen (14) days to cure the violation by declaring  
23 that all actions taken at or resulting from the meeting in violation of  
24 this act void.

25 (c) All enforcement actions shall be stayed during the response and  
26 cure period but may recommence at the discretion of the complainant af-  
27 ter the cure period has expired.

28 (d) A cure as provided in this section shall act as a bar to the impo-  
29 sition of the civil penalty provided in subsection (2) of this section.  
30 A cure of a violation as provided in subsection (7) (a) (i) of this sec-  
31 tion shall act as a bar to the imposition of any civil penalty provided  
32 in subsection (4) of this section.