

OML penalties, remedies, standards report.

Alaska:

Penalties:

Are there sanctions for [OML] noncompliance?

**This court requires a “public interest” component before mtg. is void
Public interest is evaluated according to legislative
specified “factors;”**

A court may void action taken as the result of a meeting held in violation of the OMA only if it finds that, considering all circumstances, the **public interest** in compliance with the OMA outweighs the harm that would be caused to the public interest and to the public entity by voiding the action. In making this determination, the court must consider at least the **nine factors** specified by the legislature.

The governmental body that violates or is alleged to have violated the OMA can **cure** the violation, before or after court action, by holding another meeting in compliance with notice and other requirements of the OMA.

“Cure” or corrective action: legislatively authorized!!

“A governmental body that violates or is alleged to have violated this section may **cure** the violation or alleged violation by holding another meeting in compliance with notice and other requirements of this section and conducting a substantial and public reconsideration of the matters considered at the original meeting. If the court finds that an action is void, the governmental body may discuss and act on the matter at another meeting held in compliance with this section. *Alaska Stats. Sec. 44.62.310.*”

Judicial remedies available.

“Voidable” remedy is all that is available

The only judicial remedy specifically made available in the open meetings law is that action taken contrary to the law is voidable if a suit is filed within 180 days to challenge the action and the court finds, after weighing and balancing all appropriate factors, that the public interest is served by voiding the action. AS 44.62.310(f). In addition to this remedy spelled out in the open meetings act itself, a court could enter a declaratory judgment determining whether an OMA violation had occurred.

Availability of court costs and attorney fees.

Reasonable fee request under civil rules of procedure.

Public interest litigants and/or “private attorney’s general” much like our statute NRS 241.037, may be entitled to “full” amount of reasonable requested attorney’s fees based on court review of “relevant factors”

Alaska court rules provide that the prevailing party in civil suits is entitled to recover its costs and a portion of its attorneys fees from the other side. See Alaska Civil Rule of Procedure 82. However, two variations on this general rule that have evolved from court decisions interpreting Rule 82 are particularly significant in this context. First, the courts have ruled that a **public interest litigant** cannot be assessed fees against it even if it loses. Second, the courts have ruled that public interest litigants are normally entitled to

receive the **full amount of their attorneys' fees**, to the extent they are otherwise reasonable, **rather than the partial recovery generally authorized by rules**. The reasonableness of the fee request should be judged in light of "**all relevant factors**, including the nature and value of the services rendered, the duration and complexity of the litigation, and novelty of the issues presented, the amount in controversy, and the party's timekeeping procedures." (citations omitted) In most cases, news media or citizens seeking access to public records or meetings will be found to be public interest litigants. (Citation omitted) The Alaska Supreme Court has stated that the public interest exception to Alaska Civil Rule 82 is **intended to reward the successful plaintiff acting as 'a private attorney general' and to encourage meritorious claims which otherwise might not be brought**.

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Arizona

Penalties for OML violation:

Fee for violation = \$500.00 for civil infraction. A simple violation.

Penalty for knowingly aiding a person to violate the OML

Reasonable attorney fees payable by state or local government to successful plaintiff.

Public officer may be removed from office based on proof of “intent to deprive the public of information”

A civil penalty not to exceed five hundred dollars may be imposed against a person who violates the OML. A.R.S. § 38-431.07(A). Those penalties shall be deposited in the public body’s general fund.

For each violation the court may impose a **civil penalty** not to exceed five hundred dollars against a person who violates this article or who **knowingly** aids, agrees to aid or attempts to aid another person in violating this article and order such equitable relief as it deems appropriate in the circumstances. The civil penalties awarded pursuant to this section shall be deposited into the general fund of the public body concerned. The court may also order payment to a successful plaintiff in a suit brought under this section of the plaintiff’s **reasonable attorney fees, by the defendant state, the political subdivision of the state or the incorporated city or town** of which the public body is a part or to which it reports. If the court determines that a public officer with **intent to deprive the public of information** violated any provision of this article the court may and shall assess the public officer or a person who knowingly aided, agreed to aid or attempted to aid the public officer in violating this article, or both, with all of the costs and attorney fees awarded to the plaintiff pursuant to this section. If the court determines that a public officer with **intent to deprive the public of information** violated any provision of this article the **court may remove the public officer from office** and shall assess the public officer or a person who knowingly aided, agreed to aid or attempted to aid the public officer in violating this article, or both, with all of the costs and attorney fees awarded to the plaintiff pursuant to this section.

Public Body may not hire outside counsel to defend member or the body itself unless it has statutory authority.

A public body shall not expend public monies to employ or retain legal counsel to provide legal services or representation to the public body or any of its officers in any legal action commenced pursuant to any provisions of this article, **unless** the public body has authority to make such expenditure pursuant to other provisions of law and takes a legal action at a properly noticed open meeting approving such expenditure prior to incurring any such obligation or indebtedness.

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California

Are there sanctions for noncompliance?

Only if the member is found guilty of a misdemeanor.

There is **no provision for sanctions** for a violation of the open meeting requirements of either of the Acts **except** those which may be imposed if a member is found to be guilty of a **misdemeanor**. Both Acts provide that it is a misdemeanor for a member of a state or legislative body to attend a meeting in violation of any provision of the Act, where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled.

Cal. Gov't Code §§ 11130.7 (Bagley-Keene Act); 54959 (Brown Act).

§ 54959. Penalty for unlawful meeting

Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor.

§ 54960.5. Costs and attorney fees

A court may award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to Section 54960 or 54960.1 where it is found that a legislative body of the local agency has violated this chapter. **The costs and fees shall be paid by the local agency and shall not become a personal liability of any public officer or employee of the local agency.** A court may award court costs and **reasonable attorney fees to a defendant** in any action brought pursuant to Section 54960 or 54960.1 where the defendant has prevailed in a final determination of such action and the court finds that the action was clearly **frivolous and totally lacking in merit.**

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Hawaii

Are there sanctions for [OML] noncompliance?

Removal from Office.

“Any final action taken in violation of sections 92-3 and 92-7 may be voidable upon proof of violation. A suit to void any final action shall be commenced within ninety days of the action.” See Haw. Rev. Stat. § 92-11. Suits may be commenced by any person in the corresponding circuit court of the State where the violation has occurred. See Haw. Rev. Stat. § 92-12. Furthermore, the Sunshine Law provides that “[a]ny person who willfully violates any provisions of [the law] shall be guilty of a misdemeanor, and, **upon conviction may be upon conviction summarily removed** from the board unless otherwise provided by the law.” Haw. Rev. Stat. § 92-13.

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Iowa

21.6.3 Iowa code

Burden of Proof: Preponderance of the evidence;

Penalty: “not more than \$500.00 nor less than \$100.00” assessed to governmental body;

Penalty assessed against public body member is to be paid by member, but there are exceptions;

“Upon a finding by a **preponderance of the evidence** that a governmental body has violated any provision of this chapter, a court: a. Shall assess each member of the governmental body who participated in its violation damages in the amount of not more than five hundred dollars nor less than one hundred dollars. These damages shall be paid by the court imposing it to the state of Iowa, if the body in question is a state governmental body, or to the local government involved if the body in question is a local governmental body.

21.6.3(b) Iowa Code

“The **costs and fees shall be paid by those members** of the governmental body who are assessed damages ...”

21.6.: Enforcement

Removal of p.b. member upon proof of prior violation for which damages were assessed;

Court may issue mandatory injunction for repeat violations;

Ignorance of the OML is no excuse! Opinion must be sought;

“Upon a finding by a preponderance of the evidence that a governmental body has violated any provision of this chapter, a court:

“d. Shall issue an order **removing a member of a governmental body** from office if that member has engaged in a prior violation of this **chapter for which damages were assessed** against the member during the member’s term.

e. May issue a mandatory injunction punishable by civil contempt ordering the members of the offending governmental body to refrain for one year from any future violations of this chapter.

4. Ignorance of the legal requirements of this chapter shall be no defense to an enforcement proceeding brought under this section. A governmental body which is in doubt about the legality of closing a particular meeting is authorized to bring suit at the expense of that governmental body in the district court of the county of the governmental body’s principal place of business to ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an attorney for the governmental body.”

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Florida

Are there sanctions for noncompliance?

Penalties:

Non-criminal infraction: “less than \$500.00

“Knowing” violations are criminal in nature.

Attorneys fees are recoverable against the public body.

For violations of the open meetings law, officials are guilty of a **non-criminal infraction**, which is punishable by a fine of less than \$500. Public officials who **knowingly violate** the open meetings law by attending a meeting held in violation of the law are guilty of a **misdemeanor**. Plaintiffs may recover attorneys’ fees against a public body. Fla. Stat. sec. 286.011(3-7) (2006).

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Idaho

Penalties:

Fee schedule per violation

(1) If an action, or any deliberation or decision-making that leads to an action, occurs at any meeting which fails to comply with the provisions of sections 67-2340 through 67-2346, Idaho Code, such action shall be null and void. (2) Any **member** of the governing body governed by the provisions of sections 67-2340 through 67-2346, Idaho Code, who **knowingly conducts or participates in a meeting which violates the provisions of this act shall be subject to a fine not to exceed one hundred fifty dollars (\$150) for a first violation and not to exceed three hundred dollars (\$300) for each subsequent violation as a civil penalty.**

Id. Code: 67-2347; Violations

No private right of action for damages:

'No private action brought pursuant to this subsection shall result in the assessment of a civil penalty against any member of a public agency and there shall be **no private right of action for damages** arising out of any violation of the provisions of sections 67-2342 through 67-2346, Idaho Code.'