

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 155

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO VIOLATIONS OF THE OPEN MEETING LAW; AMENDING SECTION 67-2347, IDAHO CODE, TO INCREASE MONETARY CIVIL PENALTIES FOR VIOLATIONS OF THE OPEN MEETING LAW AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-2347, Idaho Code, be, and the same is hereby amended to read as follows:

67-2347. VIOLATIONS. (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 conducts or participates in a meeting which violates the provisions of this act shall be subject to a civil penalty not to exceed two hundred fifty dollars (~~\$250.00~~).

(3) Any member of a governing body who knowingly violates the provisions of this act shall be subject to a civil penalty not to exceed one thousand five hundred dollars (~~\$1,500~~).

(4) Any member of a governing body who violates any provision of this act and who has previously admitted to committing or has been previously determined to have committed a violation pursuant to subsection (3) of this act ~~section~~ within the twelve (12) months preceding this subsequent violation shall be subject to a civil penalty not to exceed two thousand five hundred dollars (~~\$2,500~~).

(5) The attorney general shall have the duty to enforce this act in relation to public agencies of state government, and the prosecuting attorneys of the various counties shall have the duty to enforce this act in relation to local public agencies within their respective jurisdictions. In the event that there is reason to believe that a violation of the provisions of this act has been committed by members of a board of county commissioners or, for any other reason a county prosecuting attorney is deemed disqualified from proceeding to enforce this act, the prosecuting attorney or board of county commissioners shall seek to have a special prosecutor appointed for that purpose as provided in section 31-2603, Idaho Code.

(6) Any person affected by a violation of the provisions of this act may commence a civil action in the magistrate division of the district court of the county in which the public agency ordinarily meets, for the purpose of requiring compliance with provisions of this act. 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. Any suit brought for the purpose of

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