



Open Meetings Law

[R.S. 42:11 – R.S. 42:28*](#)

***Formerly R.S.42:4.1-42:13
Renumbered by the Louisiana Law Institute
Pursuant to Act 861 of the 2010 Regular Session**

[Overview](#)

The following document summarizes the general principles and guidelines concerning [Louisiana’s Open Meetings Law](#). This document is presented in a “frequently asked questions” (FAQ) format. While the document is fairly detailed, remember that every situation is unique and that each situation deserves careful individual review.

To facilitate your use of this document, numerous links will direct your attention to related areas within the document and to other documents posted on the Louisiana Legislative Auditor’s website and on external websites. For example, under the index section, you may go directly to any area of the FAQ by clicking the question you wish to view. Within the FAQ, several links will direct you to other areas of the FAQ and to relevant external documents. If you click on the individual question number, you will link to the index in order to select another question to view.

Index

I. General

- 1. What is the Louisiana Open Meetings Law, and where is it found?**
- 2. To whom does the Open Meetings Law apply?**
- 3. What is a public body?**
- 4. When is a private non-profit entity a public body for the purposes of the Open Meetings Law?**
- 5. How should the Open Meetings Law be interpreted?**
- 6. What is a meeting?**
- 7. What is a Quorum?**
- 8. What is a Walking Quorum?**
- 9. What are the requirements of an Open Meeting?**
- 10. Is the public allowed to participate in Open Meetings?**
- 11. Are public bodies required to give notice before they meet?**
- 12. How should public bodies publish their notices for meetings?**
- 13. What must be included in the meeting notice?**
- 14. How are items listed on the agenda?**
- 15. Can an agenda be changed prior to the meeting?**
- 16. What are the procedures to add to or delete items from an agenda?**
- 17. What is the procedure for public bodies to take up items on the agenda?**
- 18. What is an extraordinary emergency?**
- 19. How is written public notice given?**
- 20. How are a public body's principal office and official journal determined?**
- 21. Are public bodies required to keep minutes?**
- 22. Are public bodies required to vote in any particular manner?**
- 23. Must public bodies allow the recording of their meetings?**

24. May a public body meet on a legal holiday?

II. Executive Session

25. When may public bodies have “closed” executive sessions?

26. What are valid reasons for entering into executive session?

27. What are invalid reasons for entering into executive session?

28. What are prerequisites for a closed session to discuss an individual’s character and fitness?

29. What is considered litigation for the purpose of closing a meeting?

30. What are the requirements for the State Mineral Board to close its meetings?

31. What are the requirements for a school board to close its meeting to discuss a student?

III. Violations of Open Meetings Law

32. What happens if a public body violates the Open Meetings Law?

33. Who must enforce the Open Meetings Law?

34. What relief may be granted for violations?

35. Where may one initiate enforcement proceedings?

36. What is the maximum amount that can be assessed as a civil penalty for Open Meetings Law violations?

IV. Special Notice to Propose Taxes

37. What are the notice provisions regarding public meetings to propose , increase, renew or continue taxes?

V. Miscellaneous

- 38.** What are the provisions regarding a public employer entering a collective bargaining agreement?
- 39.** Is a nonprofit corporation certified by BESE as a local charter authorizer subject to the Open Meetings Law?
- 40.** What is the notice requirement regarding a public hearing on municipal zoning regulations?
- 41.** How is a special meeting called by a Lawrason Act municipality?

VI. Attorney General Opinions

I. General

Q.1. What is the Louisiana Open Meetings Law, and where is it found?

R.S. [42:12](#) – [42:28](#)

- A.1.** The Open Meetings Law, found in R.S. 42:12 – 42:28, regulates [meetings](#) of [public bodies](#).

The Open Meetings Law is meant to ensure that decisions by the government are made in an open forum. The Open Meetings Law operates in conjunction with Louisiana’s Public Records Law to insure compliance with [Article XII, Section 3](#) of the Louisiana Constitution’s mandate that **“No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.”** The Open Meetings Law is designed to ensure state integrity and to increase the public’s trust and awareness of its governing officials.

The Legislature through [R.S. 42:11](#) has designated the official short title as the “Open Meetings Law.” R.S. 42:11 states:

Q.2. To whom does the Open Meetings Law apply?

R.S. [42:14](#) R.S. [42:17](#)

- A.2.** Louisiana’s Open Meetings Law applies to the meetings of any “[public body](#)” unless an express provision in R.S. [42:16](#), R.S. [42:17](#), or R.S. [42:18](#) allows the meeting to be closed.

Open Meetings Law does not apply to judicial proceedings.

Q.3. What is a public body?

R.S. [42:13](#)

- A.3.** A “public body” is a village, town, and city governing authority; parish governing authority; boards, such as school, port, or levee boards; any other state, parish, municipal, or special district boards, commissions, or authorities, as well as any of their political subdivisions if the body possesses policy making, advisory, or administrative functions. Any committee or subcommittee of any of these bodies is also a public body.

Specifically, any municipal government, state agency, or political subdivision that has a policy making, administrative, or advisory function is subject to the Open Meetings Law. The law also applies to any official committee of the public body that has been delegated any of these functions by the public body, or any unofficial committee or gathering of the body that consists of a quorum of the body.

[AG Op. 10-0155](#) cites the LA Supreme Court's four factor test for determining an entity's status as public or private: (1) whether the entity was created by the legislature, (2) whether its powers were specifically defined by the legislature, (3) whether the property of the entity belongs to the public, and (4) whether the entity's functions are exclusively of a public character and performed solely for the public benefit [*State v. Smith*, 357 So.2d 505 (La.1978)]. For a court to determine that an entity is public, all four factors must be present.

Q.4 When is a private non-profit entity a public body for the purposes of the Open Meetings Law?

A.4 Generally, a private, non-profit entity is not subject to the Open Meetings Law. However, there are instances, in certain limited circumstances, when a private non-profit entity is a public body for purposes of the Open Meetings Law. Non-profit, private entities created by or on behalf of political subdivisions may be subject to the Open Meetings Law pursuant to La. R.S. 12:202.1.

Other private, non-profit entities may be subject to the Open Meetings Law based on the nature and character of their activities. The Attorney General, in [AG Op. No. 13-0043](#), states:

"Jurisprudence has made it clear that the mere fact that an entity is a private non-profit does not mean that it can never be a public body for purposes of the Open Meetings Law, nor does the fact that an entity receives public money mean that it is a public body for purposes of the Open Meetings Law".

The factors considered when determining whether a private non-profit entity is subject to the Open Meetings Law are as follows:

(1) whether the entity performs a government function or performs a function which, by law, is entrusted to other public bodies; (2) whether the entity is funded by public money; and (3) whether the entity exercises policy-making, advisory, and administrative functions."

The determination of whether a private, non-profit entity is a public body for the purpose of the Open Meetings Law is a fact specific question that must be answered on a case-by-case basis. See also, [AG Op. No. 14-0169](#)

Q.5. How should the Open Meetings Law be interpreted? R.S. [42:12](#)

A.5. According to R.S. [42:12\(A\)](#), the Open Meetings Law should be construed liberally. This means that if there is a question as to interpretation of a provision the entity should provide as much access/openness as possible. The Open Meetings Law operates with a general premise that all meetings of public bodies

should be open to the public. The burden, therefore, is on the individual seeking to engage in closed meetings to prove that an exception applies allowing the closing of the meeting.

Q.6. What is a meeting?

R.S. 42:13

A.6. A meeting is a convening of a [quorum](#) of a public body to deliberate or act on a matter that the public body has supervision, control, jurisdiction, or advisory power over. A meeting is also a convening of a quorum of a public body by the public body or a public official to receive information regarding a matter that the public body has supervision, control, jurisdiction, or advisory power over.

The Open Meetings Law does not apply to chance meetings or social gatherings of members of a public body at which there is no vote or other action taken, including formal or informal polling of the members.

If a gathering consists of a quorum of the body or a meeting of a committee of the body to conduct any business of the body, the gathering should be presumed to be a meeting and, thus, subject to the requirements of the Open Meetings Law.

Q.7. What is a Quorum?

R.S. 42:13(A)(3)

A.7. The default definition of a quorum is a simple majority of the total membership of a public body. For example, for town council that has five (5) aldermen, three (3) members would constitute a quorum necessary to conduct business at a meeting. This default definition applies only in the absence of a statutorily defined quorum for the public body, which may be a greater or lesser percentage of the body. The Attorney General (AG) has stated in [AG Op. No. 00-0144](#) that a public body cannot in its by-laws define a quorum as less than a majority of the total members. Such a by-law definition would abrogate the clearly stated definition in R.S. [42:13\(A\)\(3\)](#). Absent a statutorily defined quorum for the body, the body's quorum must be a simple majority.

Vacant positions must be counted in determining a quorum and will not reduce the number of members required to be present to conduct business. [AG. Op. No. 15-0172](#).

No official action may be undertaken by the body in the absence of a quorum of the body. A prohibited action, for example, could include debate on an item in the absence of a quorum, coupled with a vote without debate on the item in an open meeting. Members of the body, however, may engage in informal discussion of any matter in the absence of a quorum.

Q.8. What is a Walking Quorum?

A.8. For purposes of the Open Meetings Law, a “**walking quorum**” is a meeting of a public body in which some members leave the meeting and different members enter the meeting, precluding the physical presence of an actual quorum, but resulting in an actual quorum over the course of the discussion. [AG Op. No. 90-0349](#) and [AG Op. No. 17-0026](#).

Gatherings at which there is not a quorum present are not meetings under the Open Meetings Law, as presence of a quorum for the gathering is required for the gathering to constitute a meeting. According to *Brown v. East Baton Rouge Parish School Board*, 405 So.2d 1147 (La. App. 1 Cir. 1981) and [AG Op. No. 04-0004](#), walking quorums, in which members of the body come and go, or in which absent members are contacted during the meeting so as to prevent a physical quorum of the body, are not allowed and violate prohibitions against circumventing the intent of Louisiana’s Open Meetings Law.

Polling of a quorum of a public body is not permissible under the Open Meetings Law as the public should not be deprived of the opportunity to observe the deliberations of a public body in deciding upon a course of actions.

“A member who polls a majority of the members of a public body on a matter which may later be considered by the public body as a whole may violate the Open Meetings Law if the poll is used to circumvent the purpose and intent of the Open Meetings Law. Knowing how a majority of the public body will vote on a matter prior to the actual vote at a properly noticed public meeting can mean that a measure passes with little debate or that a measure is never brought up for debate.” [AG Op. No. 14-0065](#)

Q.9. What are the requirements of an Open Meeting? R.S. [42:14](#) – [42:23](#)

A.9. Meetings of public bodies are required to:

- have notice of the meeting at least 24 hours before the meeting via placement of a copy of the notice at the place of the meeting or at the body’s official office;
- allow for some means of public comment; [R.S. 42:14\(D\)](#) requires each public body (except school boards) conducting a meeting that is subject to the notice requirement of [R.S. 42:19\(A\)](#), to allow a public comment period prior to action on an agenda item upon which a vote is to be taken.* The governing body may adopt reasonable rules and restrictions regarding this comment period.

- allow for recording of the meeting by the audience;
- record minutes of the proceedings; and
- have “open” meetings – that is, observable to the public with an opportunity for public participation. Public bodies may not close their meetings to the public absent narrowly defined exceptions.

A copy of the Open Meetings Law must also be posted at the location of the meeting.

***School boards are required to allow public comment before taking any vote. The comment period shall be for each agenda item and shall precede each agenda item. [R.S. 42:15\(A\)](#).**

Q.10. Is the public allowed to participate in Open Meetings? [R.S. 42:14 - 42:18](#)

A.10. Yes.

- The legal purpose of open meetings is to allow individuals to observe and participate in the deliberations of public bodies. Meetings of public bodies must be open to the public unless closed pursuant to a statutory exception, such as set forth in [R.S. 42:16 – 42:18](#), which authorizes closed executive sessions. Public bodies must provide an opportunity for public comment prior to action on the agenda item upon which a vote is to be taken. The governing body may adopt reasonable rules and restrictions regarding the comment period.
- [R.S. 42:14](#), requires each public body, except school boards, conducting a meeting that is subject to the notice requirement of [R.S. 42:19\(A\)](#), to allow a public comment period prior to action on an agenda item upon which a vote is to be taken.
- A similar obligation is imposed for school boards, except that public comment must occur prior to taking any vote and must occur before each topic and not at the beginning of the meeting. [R.S. 42:15](#).

Q.11. Are public bodies required to give notice before they meet? [R.S. 42:19](#)

A.11. Yes. All public bodies, except the Legislature and its committees, shall give written public notice of any meeting.

If the meeting is a regular meeting established by law, resolution, or ordinance, the written public notice must be given (1) at the beginning of each calendar year

and; (2) no later than twenty-four (24) hours, exclusive of Saturdays, Sundays, and legal holidays, before any regular, special, or re-scheduled meeting.

A copy of the notice must be placed at the place of the meeting or at the official office of the body, or published in the official journal of the public body no less than twenty-four hours, exclusive of Saturdays, Sundays, and legal holidays, before the scheduled time of the meeting.

If the public body has a website, it shall post notice of its meetings via the internet on the website for no less than twenty-four hours, exclusive of Saturdays, Sundays, and legal holidays, immediately preceding the meeting.

Q.12. How should public bodies publish their notices for meetings?

A.12. For public bodies that are required to have regular meetings, the schedule for those meetings must be published at the beginning of each calendar year in the official journal.

In addition, all public bodies must publish notice of each meeting no later than twenty-four (24) hours, exclusive of Saturdays, Sundays, and legal holidays, before any regular, special, or re-scheduled meeting. The 24 hour notice before each meeting must be (1) placed at the place of the meeting *or* (2) at the official office of the body, *or* (3) published in the official journal of the public body.

If the public body has a website, it shall post notice of its meetings via the internet on the website for no less than twenty-four hours, exclusive of Saturdays, Sundays, and legal holidays, immediately preceding the meeting. This website notice is in addition to the 24 hour notice requirement.

Note: Agenda items concerning taxes have special notice requirements. See [Q.37](#).

Q.13. What must be included in the meeting notice?

R.S. [42:19](#)

A.13. All notices must include the date, time, and place of the meeting(s). Additionally, the required written public notice for any individual meeting requires that an agenda be attached. If an executive session is to be held regarding strategy sessions or negotiations for collective bargaining or litigation, the following must also be attached to the notice:

- Statement identifying the court, case number, and parties relative to any pending litigation to be considered at the meeting; and
- Statement identifying the parties involved and reasonably identifying the subject matter of any prospective litigation for which formal written demand has been made that is to be considered at the meeting.

The agenda must be reasonably clear to provide the public sufficient notice of what subjects will be discussed, according to the Attorney General as stated in [AG Op. No. 07-0181](#).

An exception exists for the requirements of notice in [extraordinary emergencies](#), but public bodies are still required to give notice of the meeting as they deem appropriate and as the circumstances permit.

R.S. [42:17\(D\)](#) provides an exception to notice requirements of R.S. [42:19](#) for meetings of private citizens' advisory groups or private citizens' advisory committees established by a public body, so long as the members do not receive compensation and serve only in an advisory capacity. Textbook advisory committees of DOE or BESE are not privy to this exception.

[Q.14.](#) How are items listed on the agenda? [R.S. 42:19](#)

A.14. Each item listed on the agenda shall be listed separately and described with reasonable specificity.

[Q.15.](#) Can an agenda be changed prior to the meeting? [R.S. 42:19](#)

A.15. R.S. 42:19(A)(1)(b)(ii)(aa) states that the agenda shall not be changed less than 24 hours, exclusive of Saturdays, Sundays, and legal holidays, prior to the scheduled time of the meeting.

[Q.16.](#) What are the procedures to add to or delete items from an agenda? [R.S. 42:19](#)

A.16. Public bodies may adopt procedures for governing their meetings and providing how members may place items on the agenda, provided that such procedures comply with the timelines set forth in the notice provisions of the Open Meetings Law and applicable statutory or charter provisions for the introduction and passage of instruments (i.e. ordinances and resolutions).

To add items to an agenda at the meeting itself, the Open Meetings Law requires unanimous approval of the members present to add an item to the agenda. In no case may a public body, by ordinance, charter provision or policy, lessen this requirement to a majority vote. [AG Op. No. 15-0122](#).

Any motion for a vote to add an item to the agenda shall include with reasonable specificity the subject matter of the additional agenda item and the purpose for adding the item to the agenda. Public comment on the motion must be allowed prior to any vote to add an item to the agenda.

R.S. 42:19, which sets forth the requirements for notice of meetings, states at (A)(1)(b)(ii) that the notice shall include the agenda. Furthermore, any matter proposed that is not on the agenda shall be identified with reasonable specificity in the motion to take up the matter not on the agenda, including the purpose for the addition to the agenda. The matter must also be entered into the minutes of the meeting. Prior to any vote by the public body on the motion to take up a matter not on the agenda, there must be an opportunity for public comment on the motion in accordance with R.S. 42:14 or 15. The public body shall not use its authority to take up a matter not on the agenda as a subterfuge to defeat the purposes of R.S. 42:12 through 23.

Unless required by ordinance, charter provision or adopted policy to the contrary, public entities may remove, table, or withdraw agenda items by a majority vote of those members present.

Q.17. What is the procedure for public bodies to take up items on the agenda?

R.S. 42:19

A.17. R.S. 42:19 provides that before the public body may take any action on an item, the presiding officer or designee shall read aloud the description of the item.

R.S. 42:19(A)(1)(b)(ii)(dd) provides that governing authorities of parishes with populations of two hundred thousand or more or municipalities with a population of one hundred thousand or more that have more than fifty items on their consent agenda may take up each item without reading the description of each item aloud. The governing authority shall, however, allow a public comment period prior to any action on any item listed on a consent agenda. R.S. 42:13(4) defines “consent agenda” as “a grouping of procedural or routine agenda items that can be approved with general discussion.”

Q.18. What is an extraordinary emergency?

R.S. 42:17 R.S. 42:18

A.18. Extraordinary emergencies, for the purpose of the Open Meetings Law, are limited to natural disaster, threat of epidemic, civil disturbances, suppression of insurrections, the repelling of invasions, or other matters of similar magnitude. According to the AG, the classic definition of extraordinary emergency includes work stoppages and strikes. [AG Op. No. 08-0129](#).

A meeting at the first available work day after Christmas to avoid a possible court challenge for non-payment of tenure award was a case of extraordinary emergency. *Eastwold v. Garsaud*, 427 So.2d 48 (La. App. 4th Cir. 1983).

Q.19. How is written public notice given?

R.S. 42:19

A.19. The Open Meetings Law contains an illustrative list of methods or acceptable means for providing written public notice. The following methods are acceptable for giving written public notice:

- Posting copies of notice at the principal office [See [Q.20.](#)] of the public body holding the meeting, or if no such office exists, at the building in which the meeting is to be held; or
- Publication of the notice in the official journal [See [Q.20.](#)] of the public body no less than twenty-four hours, exclusive of Saturdays, Sundays, or legal holidays, before the scheduled time of the meeting; or
- Posting on the website: If the public body has a website, additionally by providing notice via the Internet on the website of the public body for no less than twenty-four hours, exclusive of Saturdays, Sundays, or legal holidays, immediately preceding the scheduled time of the meeting. The failure to timely post notice via the Internet pursuant to this Subparagraph or the inability of the public to access the public body's website due to any type of technological failure shall not be a violation of the provisions of this Chapter.

Public notice of day to day sessions of the Legislature is governed by the Louisiana Constitution, rules of procedure of the Senate and House of Representatives, and the Joint Rules.

The law requires the public entity to mail a copy of the notice to any member of the news media who requests notice of public meetings. The member of the news media shall be given notice of all meetings in the same manner as is given to members of the public body.

Q.20. How are a public body's principal office and official journal determined?

R.S. 43:140

A.20. The public body generally determines its principal office. The official journal of the public body is determined by the body -- subject to the requirements found in R.S. 43:140, *et seq.* R.S. 43:141 and R.S. 43:142 provide that police juries, city and parish councils, municipal corporations, and school boards in all the parishes except Orleans, at their first meeting in June of each year, shall select a newspaper with the following qualifications as official journal for their respective parishes, towns, or cities for a term of one year:

- (1) Published in an office physically located in the parish in which the body is located for a period of five years preceding the selection;**
- (2) Not missed during that period as many as three consecutive issues unless caused by fire, flood, strike, or natural disaster;**
- (3) Maintained a general paid circulation in the parish in which the body is located for five consecutive years prior to the selection; and**
- (4) Entered in a U.S. Post Office in that parish under a periodical permit in that parish for a period of five consecutive years prior to the selection.**

Where there is no newspaper published in an office physically located within the parish that meets the requirements of R.S. 43:140(3), a newspaper in an adjoining parish may be designated as the official journal. [R.S. 43:146](#)

The newspaper selected shall be known as the official journal of the parish, town, city or school board, and it shall publish all minutes, ordinances, resolutions, budgets and other official proceedings of the police jury, town or city councils, or the school board. [R.S. 43:143](#) Municipal corporations shall select an official journal published in an office physically located within their municipal boundaries if a newspaper as defined in [R.S. 43:140\(3\)](#) is published therein. If no qualified newspaper is published within the municipal boundaries, a newspaper published in the parish of the municipal corporation that meets the requirements of a newspaper as defined in R.S. 43:140(3) shall be selected. [R.S. 43:145](#) In case of vacancy the governing body shall select an official journal for the unexpired term. [R.S. 43:149](#)

Q.21. Are public bodies required to keep minutes?

R.S. [42:20](#)

A.21. Yes, public bodies are required to keep written minutes of all of their open meetings.

These minutes must include the following:

- The date, time, and place of the meeting;
- The members of the public body recorded as either present or absent;
- The substance of all matters decided, and, at the request of any member, a record, by individual member, of any votes taken; and

- Any other information that the public body requests be included or reflected in the minutes.

The AG stated in [AG Op. No. 11-0275](#) that minutes need not be verbatim transcripts of the meeting and that summaries satisfy the requirement.

All minutes are public documents and subject to public records requests unless specifically exempted.

According to Title 43 of the Louisiana Revised Statutes the various political subdivisions of the state are required to publish the minutes of their proceedings in the official journal of the body.

R.S. [42:17\(D\)](#) provides an exception to the minutes requirements of R.S. [42:20](#) for meetings of private citizens' advisory groups or private citizens' advisory committees established by a public body, so long as the members do not receive compensation and serve only in an advisory capacity. Textbook advisory committees of DOE or BESE are not privy to this exception.

[R.S. 42:20\(B\)\(2\)](#) provides that if the public body has a website, the public body shall post on its website a copy of the minutes made available pursuant to Paragraph (1) of this Subsection and shall maintain the copy of those minutes on the website for at least three months after the posting. If the public body is required to publish its minutes in an official journal, the public body shall post its minutes on its website as required by this Paragraph within ten days after publication in the official journal. If the public body is not required to publish its minutes in an official journal, the public body shall post its minutes on its website as required by this Paragraph within a reasonable time after the meeting. The inability of the public to access the public body's website due to any type of technological failure shall not be a violation of the provisions of this Chapter.

Q.22. Are public bodies required to vote in any particular manner? R.S. [42:14](#)

A.22. Yes, members must vote *viva voce*. This requirement has been determined by the AG to require the physical presence of the member and prohibits submission of votes in writing by absent members, [AG Op. No. 07-0040](#), or through vote via telephone, [AG Op. No. 14-0011](#). Further, members are not allowed proxies unless specifically afforded this right by specific statute ([AG Op. No. 92-0352](#) and [AG Op. No. 10-0055](#)) and may not undertake voting by secret ballot.

The *viva voce* requirement can be satisfied through use of electronic machines that display how individuals vote. [AG Op. No. 14-0140](#).

[AG Op. No. 11-0070](#) provides: “This office has previously opined that the ‘viva voce’ language in R.S. 42:14 requires a vote with a ‘live voice,’ and that the person voting must be physically present. See [AG Op. No. 07-0040](#) and [AG Op. No. 99-0385](#). Thus, the members of a public body cannot validly authorize an action via a written vote, even if done unanimously.”

The *viva voce* requirement also precludes voting by a show of hands alone. [AG Op. No. 19-0022](#)



Q.23. Must public bodies allow the recording of their meetings? R.S. [42:23](#)

A.23. Yes, the proceedings of all or any part of a public meeting may be video or tape recorded, filmed, or broadcast live. The public body shall, however, establish standards for the use of lighting, recording, or broadcasting equipment to insure proper decorum in a public meeting. The AG has stated in [AG Op. No. 08-0211](#) that public bodies are required to allow recording even if they provide recording themselves, but may regulate where the media may be located to facilitate order and safety.

R.S. 42:23(A) provides that any non-elected board or commission that has the authority to levy a tax shall video or audio record, film, or broadcast live all proceedings in its public meetings.

R.S. 33:9099.2, however, exempts meetings of the governing authority of any crime prevention and security district, improvement district, or other district created by or pursuant to Chapter 29 of Title 33 of the Revised Statutes, from the provisions of R.S. 42:19.1 (additional notice requirements for taxing authorities) and 42:23(A), which requires non-elected boards or commissions with authority to levy taxes to video or audio record, film, or broadcast live all proceedings of their public meetings.

Q.24. May a public body meet on a legal holiday? R.S. [42:19](#)

A.24. Nothing prohibits a public body from meeting on any day of the week (including legal holidays), but the public body must continue to adhere to all requirements of the Open Meetings Law.

While a public body may not be prohibited from conducting business on legal holidays, doing so should be avoided as a matter of principle. Meetings on legal holidays may be construed as attempts to circumvent requirements of the Open Meetings Law, unless there is a valid reason for conducting the meeting on the legal holiday, such as an emergency situation that requires immediate action.

R.S. 42:19 excludes Saturdays, Sundays, and legal holidays from the calculation of the twenty-four hour periods for posting and amending of meeting notices.

II. Executive Session

Q.25. When may public bodies have “closed” executive sessions? R.S. 42:16

A.25. Public bodies may have “closed” executive sessions only as provided by statute. R.S. 42:16, 42:17, and 42:18 provide the instances for which a public body may enter into executive session and limit the matters that may be discussed within an executive session.

In order for a public body to enter into an executive session, a vote of 2/3 of members present at an open meeting, for which proper notice was given pursuant to R.S. 42:19, is necessary* -- along with an accompanying statement of the reason for entering into the executive session. The vote of each member on the motion to enter into executive session along with the reason for entering the executive session must be recorded and entered into the minutes.

R.S. 42:19(A)(1)(b)(iii) requires that a notice of intent to move into Executive Session under the provisions of R.S. 42:17(A)(2) be attached to the written public notice of the meeting. The notice shall contain a statement identifying any court, case number, or parties relative to any pending litigation to be considered at the meeting, and a statement identifying the parties involved and reasonably identifying the subject matter of any prospective litigation for which formal written demand has been made.

Public bodies are authorized to enter into executive sessions to discuss the character, professional competence, or physical or mental health of a person. However, the public body must provide written notice to the individual at least twenty-four hours, exclusive of weekends and legal holidays, prior to the meeting. Further, the public body may not enter into executive session for the purposes of this discussion, if the individual requests that the matter be discussed in an open meeting. Finally, this exception does not apply to any discussion related to the appointment (or reappointment) of an individual to a public body or the award of a public contract.

*R.S. 42:19(A)(1)(cc) provides that “upon unanimous approval of the members present at a meeting of a public body, the public body may take up a matter not on the agenda.” Therefore, if a public body wishes to take up an item for which executive session is authorized but which was not published on the agenda, the public body must first have a unanimous vote to add the item to the agenda. Then the public body must have a 2/3 vote to go into executive session on that item.

Q.26. What are valid reasons for entering into executive session?

R.S. [42:17](#) – [42:18](#)

A.26. Valid reasons for entering into executive session include:

- Discussion of character, professional competence, or physical or mental health of a person*;

*This reason does not apply to appointments of a person to a public body or to discussions of the award of a public contract -- except as provided in [R.S.39:1593\(C\)\(2\)\(c\)](#) [See now R.S. [39:1595\(B\)\(7\)](#)]. R.S. [42:17\(A\)\(1\)](#). Written notice must be given to the individual at least twenty-four hours, exclusive of weekends and legal holidays, prior to the meeting, and an executive session may not be held if the individual requests this discussion occur in an open meeting.

- Strategy sessions or negotiations with respect to collective bargaining, prospective [litigation](#) after formal written demand, or litigation when an open meeting would have a detrimental effect on the bargaining or litigating position of the public body;
- Discussion regarding the report, development, or course of action for security personnel, plans, or devices;
- Investigative proceedings regarding allegations of misconduct;
- Cases of extraordinary emergency, limited to natural disaster, threat of epidemic, civil disturbances, suppression of insurrections, the repelling of invasions, or other matters of similar magnitude;
- Any meeting of the [State Mineral Board](#) at which records or matters entitled to confidential status by existing laws are required to be considered or discussed by the board with its staff or with any employee or other individual, firm, or corporation;
- Discussions between a city or parish [school board](#) and individual students or the parents or tutors of those students, or both;
- Presentations and discussions at meetings of civil service boards of test questions, answers, and papers produced and exhibited by the office of the state examiner, municipal fire and police civil service, pursuant to R.S. [33:2492](#) or [33:2552](#);

- Portion of any meeting of the Second Injury Board during which records or matters regarding the settlement of a worker's compensation claim are required to be considered or discussed by the board with its staff in order to grant prior written approval as required by R.S. [23:1378\(A\)\(8\)](#); and
- Hospital Service Districts (HSDs) are authorized to enter into executive session in order to discuss matters declared to be part of the marketing strategies and strategic plans of the HSD under the Enhanced Ability to Compete Act, see [R.S. 46:1073](#).
- Any other matters that are or that will be provided for by the Legislature.

R.S. [42:18](#) allows for additional reasons for executive session by the houses of the Legislature and its committees.

Q.27. What are invalid reasons for entering into executive session?

A.27 A public body may not go into executive session for any reason that is not a specifically authorized exception, as set for in [Q.26](#). The executive session must be strictly and solely for that exception. General matters or matters tangential to the specifically authorized exception may not be discussed in executive session. Additionally, not votes may take place in executive session.

Q.28. What are prerequisites for a closed session to discuss an individual's character and fitness? **R.S. [42: 17\(A\)\(1\)](#)**

A.28. Absent extraordinary circumstances, the individual that is the subject of discussion must be given at least 24 hours written notice, exclusive of Saturdays, Sundays, or legal holidays, prior to the scheduled time contained in the notice of the meeting at which such executive session is to take place. The individual can require that the discussion occur in an open meeting. This discussion cannot be of the appointment of the individual to a public body or the awarding of a public contract, except as otherwise provided for in [R.S. 39:1593\(C\)\(2\)\(c\)*](#).

Act 864 of 2014 Regular Session reorganized the Procurement Code and appears to have carried forward the provisions of R.S. 39:1593(C)(2)(c) in [R.S. 39:1595\(B\)\(6\)](#).

Q.29. What is considered litigation for the purpose of closing a meeting? **R.S. [42:19](#)**

A.29. A body is not allowed to close a meeting to discuss the possibility of litigation. It may discuss in closed session current litigation that is on-going and already filed only if discussion in open meeting would be detrimental to the body's position in

the litigation. A body must also ensure that the proper information concerning the case number, statement of the matter, identity of the court and parties, is included on the agenda and public notice prior to the meeting in which the closed session will occur.

Q.30. What are the requirements for the State Mineral Board to close its meetings?

A.30. The State Mineral Board may have closed sessions under any of the other statutorily provided exceptions, and may also close its meetings at which records or matters entitled to confidential status by existing laws are required to be considered or discussed by the board with its staff or with any employee or other individual, firm, or corporation to whom the records or matters are confidential. The records must be disclosed to and accepted by the board subject to a privilege for the exclusive use in evaluating lease bids or development covering state-owned lands and water bottoms. An exception for the records must be provided for in Chapter I of Title 44 of the Louisiana Revised Statutes or other statutes to which the board is subject.

Q.31. What are the requirements for a school board to close its meeting to discuss a student?

A.31. Students must be within the jurisdiction of the respective school board. The discussion must be regarding problems of students or their parents or tutors, and must be open if the parent, tutor, or student requests that the discussion be held in open meeting.

III. Violations of Open Meetings Law

Q.32. What happens if a public body violates the Open Meetings Law?

R.S. 42:24

A.32. Any action taken in violation of the Open Meetings Law shall be voidable by a court of competent jurisdiction. However, any suit to void any action must be commenced within sixty days of the action and sufficiently pled to state a cause of action under the Open Meetings Law. See *Greemon v City of Bossier City*, 65 So.3d 1263 (La. 2011).

Actions taken at a meeting that were in violation of Open Meeting Law due to lack of notice at least 24 hours before meeting, were cured by subsequent ratification of the action taken at subsequent valid meeting. *Marien v. Rapides Parish Police Jury*, 717 So.2d 1187 (La. App. 3rd Cir. 1998).

Q.33. Who must enforce the Open Meetings Law?

R.S. 42:25

A.33. The AG is required to enforce the Open Meetings Law throughout the state, and district attorneys are charged with enforcement within the judicial districts within which they serve. Any individual who has been denied any right under the Open Meetings Law or that believes that his or her rights have been violated may institute enforcement proceedings.

Q.34. What relief may be granted for violations?

R.S. 42:26

A.34. A party* who prevails in an enforcement proceeding may be granted any or all of the following relief:

- A writ of mandamus – Court order to compel a public official or body to perform mandatory or purely ministerial duties correctly;
- Injunctive relief – Temporarily compel the public body to act or stop acting, pending a final resolution on the issue;
- Declaratory judgment – a binding adjudication that establishes the rights and other legal relations of the parties without providing for or ordering enforcement;
- Judgment rendering the action void as provided in R.S. 42:24; and
- Judgment awarding civil penalties as provided in R.S. 42:28.

A party who prevails in an enforcement proceeding shall be awarded reasonable attorney fees and other costs of litigation. If the party prevails in part, the court may award reasonable attorney fees or an appropriate proportion thereof. If the court finds that the proceeding was of a frivolous nature and was brought with no substantial justification, the court may award reasonable attorney fees to the prevailing party.

***Act 340 of the 2019 Regular Session** amended the language of R.S. 42:26(C) from person to party. The Digest notes that this change was to clarify that the Attorney General or District Attorney may be entitled to reasonable attorney fees and other costs of litigation if they prevail in enforcement actions brought under the Open Meetings Law.



Q.35. Where may one initiate enforcement proceedings? **R.S. 42:27**

A.35. Enforcement proceedings shall be instituted in the district court for the parish in which the meeting took place or will take place.

Q.36. What is the maximum amount that can be assessed as a civil penalty for Open Meetings Law violations? **R.S. 42:28**

A.36. A maximum of \$500 per violation* can be assessed against an individual who knowingly and willfully participates in a meeting conducted in violation of the Open Meetings Law. The member shall be personally liable for the payment of the penalty.

*** Act 340 of the 2019 Regular Session** (Effective August 1, 2019) raised the civil penalty to \$500 up from \$100 per violation.

IV. Special Notice to Propose Taxes

Q.37. What are the notice provisions regarding public meetings to propose, increase, renew or continue taxes?

R.S. 42:19.1
R.S. 47:1705(B)(2)

A.37. **R.S. 42:19.1** provides notice requirements in addition to those in R.S. 42:19, which are prerequisites for the proposal, increase, renewal, or continuation of a tax, or for the calling of an election for such purposes by political subdivisions.

R.S. 42:19.1(A)(1) requires that public notice of the date, time, and place of any meeting at which a political subdivision intends to propose a new ad valorem property tax or sales and use tax, or increase, or renew any existing ad valorem property tax or sales and use tax, or authorize the calling of an election for submitting such a question to the voters of the political subdivision shall be published in the official journal of the political subdivision and announced to public during the course of a public meeting of the political subdivision no more than Sixty (60) days nor less than twenty (20) days before such public meeting. If the scheduled meeting is cancelled or postponed, a new public notice of the subsequent meeting is required under R.S. 42:19.1(A)(2)(a) to be published in the official journal of the political subdivision no less than ten (10) days before the subsequent meeting.

R.S. 42:19.1(A)(1), requires that written notice of the meeting must be hand delivered or transmitted by email to each voting member of any governing authority of a political subdivision who is required to approve such measures

previously adopted by another governing authority (i.e. police jury approval of tax related decisions of certain parish boards and commissions) and to each state senator and representative in whose district all or a portion of the political subdivision is located, no more than sixty (60) days nor less than twenty (20) days before the scheduled meeting at which action will be taken on the ad valorem property tax or sales and use tax.

Further, once a meeting is held in accordance with the provisions of R.S. 42:19.1(A)(1), no additional notice is required under R.S. 42:19.1 for subsequent meetings of the political subdivision at which the only action reduces the rate or term of the tax in the measure and thereby reduces the total amount of tax that would be collected under the measure, or substantially reduces the cost to the political subdivision of any bond or debt obligation to be incurred by the political subdivision (i.e. refinancing of bonds at lower rate).

If the consideration of the action is postponed or considered without action or vote, any subsequent meeting to consider action of the tax would be subject to the ten day notice provisions of R.S. 42:19.1(A)(2)(a) unless the date, time, and place of a subsequent meeting for consideration is announced to the public during the course of the meeting at which action is postponed or considered without action or vote.

[R.S. 33:9099.2](#), exempts meetings of the governing authority of any crime prevention and security district, improvement district, or other district created by or pursuant to Chapter 29 of Title 33 of the Revised Statutes, from the provisions of R.S. 42:19.1 (additional notice requirements for taxing authorities) and R.S. 42:23(A), which requires non-elected boards or commissions with authority to levy taxes to video or audio record, film, or broadcast live all proceedings of their public meetings.

Note: The provisions of R.S. 42:19.1 are separate from the notice requirement for “**Roll Forward**” actions under the provisions of R.S. 47:1705(B)(2)(c)&(d).

V. Miscellaneous

Q.38. What are the provisions regarding a public employer entering a collective bargaining agreement? **R.S. 44:67.1**

A.38. R.S. 44:67.1 states that no public employer shall accept or ratify a collective bargaining agreement until it has been made available to the public via the Internet website of the public employer for at least 5 business days. The public employer shall issue a written public notice in the manner provided in R.S. 42:19(A)(2) informing the public of how the agreement may be accessed and

the date, time, and place of the meeting at which the agreement will be considered by the public employer for acceptance or ratification.

Q.39. Is a non-profit corporation certified by BESE as a local charter authorizer subject to the Open Meetings Law? R.S. [17:3981.2](#)

A.39. R.S. 17:3981.2 states that non-profit corporations certified by BESE as local charter authorizers shall be subject to the Open Meeting Law, Public Records Law and the Code of Governmental Ethics. See R.S. 17:3981.2(C)

Q.40. What is the notice requirement regarding a public hearing on municipal zoning regulations? R.S. [33:4724](#)

A.40. R.S. 33:4724 requires publication at least 3 times in the official journal or a paper of general circulation regarding a public hearing on zoning regulations. The provision also requires that there be at least 10 days between the first publication and the hearing.

Additional requirements apply to notice to land owners affected by the zoning regulation.

Q.41. How is a special meeting called by a Lawrason Act municipality? R.S. [33:405\(C\)](#)

A.41. A special meeting may be called either by the mayor or a majority of the board of aldermen/council of a Lawrason Act municipality. The special meeting shall comply with the Open Meetings Law, specifically R.S. 42:19, regarding notice and agenda.

In addition to compliance with the provisions of the Open Meetings Law, notice of the special meeting shall be provided in the manner as established by the board/council through ordinance.

The notice calling the special meeting shall identify the subject matter to be considered, and the agenda for the special meeting shall be limited to those matters identified in the notice.

Additional items may be taken up in the special meeting, but only upon a unanimous vote of the board/council, following an announcement of the purpose of the additional item and affording anyone in attendance opportunity to speak on the additional item.

VI. Attorney General Opinions



New
2019

AG Op. No. 19-0022 – The Louisiana Open Meetings Law mandates that all votes be made *viva voce* (Latin for “by word of mouth; orally”) and recorded in the minutes or written proceedings of the meeting. All votes made by a member of a public body must be made orally or by mouth. As such, voting by a show of hands alone is in violation of this requirement. (The *viva voce* requirement can be satisfied through use of electronic machines that display how individuals vote.

AG Op. No. 17-0026 - A public body is not permitted to circumvent the open meetings law by deliberating informally to make decisions. Such deliberations must be open to the public. Therefore, the review committee created by the City of Mandeville consisting of the Planning Director and design consultants which meet to (1) consider architectural reviews of applications for building permits and (2) consider applications for changes to buildings in the city’s historic district is a committee created by the public body which must comply with the Open Meetings Law.

AG Op. No. 16-0170 – Committees of public bodies must adhere to the provisions of the Open Meetings Law, just as the public bodies themselves must do.

AG Op. No. 16-0167 – As the publication and notice requirements of Article VII, §23(C) and R.S. 47:1705 were met prior to holding its public hearing for a roll-forward millage, the school board’s subsequent re-vote with public comment approving the resolution to adopt the roll-forward millage at a subsequent meeting was valid. The subsequent vote with public comment cured any defects from the vote on the resolution at a prior meeting at which public comment was not provided in violation of the Open Meetings Law.

AG Op. No. 16-0093 – AG discusses the issues surrounding whether a nominating committees and other similar bodies are a “public body” within the meaning of the Open Meetings Law.

AG Op. No. 16-0075 – An ordinance not on the agenda and not an emergency must be placed on the agenda unanimously by the governing authority prior to it being voted on. La. R.S. 42:19(A)(1)(b)(iii)(cc)

AG Op. No. 15-0122 – A Lawrason Act municipality may adopt a procedure for governing its meetings that allows individual council members to place items on the agenda, provided such a request complies with the timelines set forth in the ordinance and the notice provisions of the Open Meetings Law. Further, as the Open Meetings Law requires unanimous approval of the members present to add an item to the agenda, in no case may a municipality, by ordinance, lessen this

requirement to a majority vote. Finally, the Open Meetings Law does not require unanimous approval of all members present to withdraw an item from the agenda.

AG Op. No. 15-0080 - The AG discussed the issues whether a Volunteer Fire Department is a public entity and whether it must comply with state laws including, but not limited to, the Open Meetings Law, Public Records Law, Public Bid Law, Local Government Budget Act, etc.

AG Op. No. 14-0172 - The AG discusses the issues whether it is proper to label an agenda item: “*Discuss any other business properly brought before this committee*”

AG Op. No. 14-0169 – The AG discusses the issues surrounding whether a particular private non-profit entity might be classified as a public entity, and whether a particular private non-profit qualifies as a public body for purposes of the Open Meetings Law or Public Records Law.

AG Op. No. 14-0065 – The AG discusses the restrictions against the polling of a majority of members of a public body in regards to the Open Meetings Law.

AG Op. No. 13-0221 – The AG discusses who is responsible for preparing the agenda for a town meeting and the requirements for public comment periods.

AG Op. No. 13-0043 - Jurisprudence has made it clear that the mere fact that an entity is a private non-profit entity does not mean that it can never be a public body for purposes of the Open Meetings Law, nor does the fact that an entity receives public money mean that it is a public body for purposes of the Open Meetings Law

AG Op. No. 12-0177 – The AG discusses application of Open Meetings Law to electronic communications between members of a public body.

AG Op. No. 12-0206 – Housing Authority Board cannot exclude an individual placed on a No-Trespass List from attending its public meetings held on property subject to the No-Trespass List, without first obtaining an injunction, sanction or other judicial legal relief. Finally, there is nothing within the Open Meetings Law that provides authority for a public body to require any attendees of an open meeting to provide advanced notice of intent to attend the meeting.

AG Op. No. 12-0078 – The AG discusses the requirements for a public body to convene an Executive Session under the provisions of R.S. 42:17(A)(2).

AG Op. No. 10-0271 – The AG discusses the procedure for amending the posted agenda and the remedies available for a violation of the Open Meetings Law.

[AG Op. No. 09-0037](#) - It is proper for “financial matters” to be placed on the Sabine Parish School Board's consent agenda, if such matters are routine or non-controversial. If a member of the public body determines that any item on the consent agenda requires discussion, then the item must be treated as a typical agenda item, allowing for debate and a separate vote.