



Louisiana Open Meeting Laws

CONSTITUTION

Article XII, Section 3, Louisiana Constitution (1974)

Right to Direct Participation

No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.

REVISED STATUTES

La. R.S. 42:11 Short title

This Chapter shall be known and may be cited as the "Open Meetings Law."

La. R.S. 42:12 Public policy for open meetings; liberal construction

A. It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy. Toward this end, the provisions of this Chapter shall be construed liberally.

B. Further, to advance this policy, all public bodies shall post a copy of this Chapter.

La. R.S. 42:13 Definitions

A. For the purposes of this Chapter:

- (1) "Consent agenda" means a grouping of procedural or routine agenda items that can be approved with general discussion.
- (2) "Meeting" means the convening of a quorum of a public body to deliberate or act on a matter over which the public body has supervision, control, jurisdiction, or advisory power. It shall also mean the convening of a quorum of a public body by the public body or by another public official to receive information regarding a matter over which the public body has supervision, control, jurisdiction, or advisory power.
- (3) "Public body" means village, town, and city governing authorities; parish governing authorities; school boards and boards of levee and port commissioners; boards of publicly operated utilities; planning, zoning, and airport commissions; and any other state, parish,

municipal, or special district boards, commissions, or authorities, and those of any political subdivision thereof, where such body possesses policy making, advisory, or administrative functions, including any committee or subcommittee of any of these bodies enumerated in this paragraph.

(4) "Quorum" means a simple majority of the total membership of a public body.

B. The provisions of this Chapter shall 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.

La. Atty. Gen. Op. No. 20-0098: There is nothing in the Open Meetings Law that prohibits a member of a public body from attending a meeting of another public body. Louisiana Revised Statutes 42:14(A) demands that every meeting of a public body shall be open to the public unless closed pursuant La. R.S. 42:16, 42:17, or 42:18. This means all members of the public are permitted to attend the meetings even if those members of the public happen to be members of a public body served by the commission or subcommittee holding the meeting. Whether attendance of a quorum of the City Council constitutes a violation of the Open Meetings Law by the City Council members depends on the particular facts of the situation in which they gather. The mere fact that a quorum is present in any particular location does not constitute a violation of the open meetings law. If a quorum of the Council is attending a PARC meeting and acting, deliberating, or receiving information on matters over which the Council has supervision, control, jurisdiction, or advisory power we recommend that the meeting notice indicate this and state that no action of the Council as a whole will be taken.

La. Atty. Gen. Op. No. 16-0170: Committees of public bodies must adhere to the provisions of Louisiana's Open Meetings Law, La. R.S. 42:11 et seq., just as the public bodies themselves must do.

La. Atty. Gen. Op. No. 16-0093: Because these councils serve such a public function, and consistent with our earlier opinions with regard to other nominating bodies, it is our opinion that the nominating councils for the Board of Commissioners of the Port of New Orleans are "public bodies" under the definition of that term in La. R.S. 42:13(A)(3). Accordingly, it is our further opinion that those councils must adhere to both the Open Meetings Law as well as the Louisiana Public Records Act, La. R.S. 44:1 et seq., in the conduct of their business.

La. Atty. Gen. Op. No. 14-0106: The Greater New Orleans Sports Foundation and the New Orleans Super Bowl XLVII Host Committee are not required to comply with the Open Meetings Law.

La. Atty. Gen. Op. No. 13-0043: The Rapides Primary Health Care Center, Inc., a federally qualified health care center and nonprofit corporation, is not required to comply with the Open Meetings Law.

La. Atty. Gen. Op. No. 12-0221: One member of a licensing board composed of thirteen members meeting with the executive director and a member of the staff of such board does not constitute a "meeting" under the Open Meetings Law. Without additional facts indicating a board member's inability to remain unbiased and impartial about a particular disciplinary matter, a board member receiving general information regarding admitted rule violations and proposed sanctions for consent agreements scheduled to be considered by the board at its next meeting would not require the board member to recuse herself from the vote to accept or reject the consent agreements as a resolution of the

complaint, despite the fact such information was received by the board member prior to the rest of the board members.

La. Atty. Gen. Op. No. 10-0121: If a majority of members of the New Orleans City Council or a majority of members of a Committee of the Council, assembled informally, deliberate, act or receive information regarding matters which are or may come before the Council or that Committee, such a gathering is to be considered a "meeting" which must comply with the Open Meetings Law. However, if a majority of the Council or a Committee meet by chance or gather at a social function, as long as there is no deliberation, action or information received concerning a matter over which the Council or Committee has "supervision, control, jurisdiction, or advisory power," such a gathering is not subject to the Open Meetings Law.

La. Atty. Gen. Op. No. 09-0197: An ad hoc committee formed by the Chairman of the St. Tammany Parish Council which possesses an advisory function is subject to the requirements of the Open Meetings Law.

La. Atty. Gen. Op. No. 93-0315: A private session of a quorum of a city council held to discuss "goal seeking" efforts of the municipality would be violative of the Open Meetings Laws.

La. Atty. Gen. Op. No. 87-0048: A meeting, as defined in the Open Meetings Laws, includes gatherings to discuss or act, and the fact that no binding action is taken or intended will not remove a meeting from the requirements of the Open Meetings Laws. Meetings held pursuant to prior notice of the intent to discuss official business must meet the requirements of the Open Meetings Laws.

La. Atty. Gen. Op. No. 84-0395: A "public body" includes any committee or subcommittee of a city governing authority, and the fact that a committee cannot make a final decision on a matter does not remove meetings of that committee from the ambit of the open meetings requirements. It was found, "In conclusion, a working committee of a municipality constitutes a public body when it meets to discuss matters over which it has authority or advisory power, even if the committee takes no binding action."

La. R.S. 42:14 Meetings of public bodies to be open to the public

A. Every meeting of any public body shall be open to the public unless closed pursuant to R.S. 42:16, 17, or 18.

B. Each public body shall be prohibited from utilizing any manner of proxy voting procedure, secret balloting, or any other means to circumvent the intent of this Chapter.

C. All votes made by members of a public body shall be viva voce and shall be recorded in the minutes, journal, or other official, written proceedings of the body, which shall be a public document.

D. Except school boards, which shall be subject to R.S. 42:15, each public body conducting a meeting which is subject to the notice requirements of R.S. 42:19(A) shall allow a public comment period at any point in the meeting 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 such comment period.

La. Atty. Gen. Op. No. 19-0128: The legislature has made it clear that any means used to circumvent the intent of the Open Meetings Law, such as proxy voting procedure, secret balloting, and informal polling, are prohibited. La. R.S. 42:14(B). One common way in which public bodies may violate these laws is through a “walking” or “rolling” quorum. A “walking” or “rolling” quorum is a procedural device used to have conversations with a quorum of the public body through multiple smaller conversations of less than a quorum. A “walking” or “rolling” quorum is unlawful because while no conversation has occurred with an actual quorum physically present at a single location, a quorum effectively participates in a discussion of an issue. Such action is impermissible because it enables a public body to determine how a majority of the public body would vote on an issue while depriving the public of the benefit of observing such a discussion and being able to offer public comments.

La. Atty. Gen. Op. No. 19-0022: Voting by a show of hands by members of a public body at a public meeting does not comply with the *viva voce* requirement of La. R.S. 42:14(C), and a vote taken in this manner would be in violation of the Open Meetings Law.

La. Atty. Gen. Op. No. 13-0221: The mayor of a Lawrason Act municipality has the authority to control which items appear on the agenda for a meeting of the municipality. This authority may be delegated to a municipal officer or employee as the mayor deems necessary and advisable. The public comment period at a meeting of a public body must occur at the beginning of the meeting, prior to action on an agenda item upon which a vote is to be taken.

La. R.S. 42:15 School board meetings; public comment

A. Notwithstanding any other law to the contrary, each school board subject to the provisions of this Chapter, except as provided in Subsection B of this Section, shall allow public comment at any meeting of the school board prior to taking any vote. The comment period shall be for each agenda item and shall precede each agenda item.

B. The Orleans Parish School Board, at any meeting of the school board, shall provide an opportunity for public comment subject to reasonable rules, regulations, and restrictions as adopted by the school board.

C. For purposes of this Section, a comment period for all comments at the beginning of a meeting shall not suffice to meet the requirements of Subsection A or Subsection B of this Section.

La. R.S. 42:16 Executive Sessions

A public body may hold executive sessions upon an affirmative vote, taken at an open meeting for which notice has been given pursuant to R.S. 42:19, of two-thirds of its constituent members present. An executive session shall be limited to matters allowed to be exempted from discussion at open meetings by R.S. 42:17; however, no final or binding action shall be taken

during an executive session. The vote of each member on the question of holding such an executive session and the reason for holding such an executive session shall be recorded and entered into the minutes of the meeting. Nothing in this Section or R.S. 42:17 shall be construed to require that any meeting be closed to the public, nor shall any executive session be used as a subterfuge to defeat the purposes of this Chapter.

La. Atty. Gen. Op. No. 01-0468: Public bodies may convene executive sessions pursuant to R.S. 42:6 for the discussion of the character, professional competence, or physical or mental health of a person; strategy sessions or negotiations with respect to collective bargaining and/or prospective litigation; investigative proceedings regarding allegations of misconduct; etc. Please see the opinion so as to be advised of any other instances and the requirements associated with public bodies' authority to convene an executive session.

La. R.S. 42:17 Exceptions to open meetings

A. A public body may hold an executive session pursuant to R.S. 42:16 for one or more of the following reasons:

- (1) Discussion of the character, professional competence, or physical or mental health of a person, provided that such person is notified in writing at least twenty-four hours, exclusive of Saturdays, Sundays, and legal holidays, before the scheduled time contained in the notice of the meeting at which such executive session is to take place and that such person may require that such discussion be held at an open meeting. However, nothing in this Paragraph shall permit an executive session for discussion of the appointment of a person to a public body or, except as provided in R.S. 39:1593(C)(2)(c), for discussing the award of a public contract. In cases of extraordinary emergency, written notice to such person shall not be required; however, the public body shall give such notice as it deems appropriate and circumstances permit.
- (2) 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.
- (3) Discussion regarding the report, development, or course of action regarding security personnel, plans, or devices, including discussions concerning cybersecurity plans, financial security procedures, and assessment and implementation of any such plans or procedures.
- (4) Investigative proceedings regarding allegations of misconduct.
- (5) Cases of extraordinary emergency, which shall be limited to natural disaster, threat of epidemic, civil disturbances, suppression of insurrections, the repelling of invasions, or other matters of similar magnitude.
- (6) Any meeting of the State Mineral and Energy Board at which records or matters entitled to confidential status by existing law 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 such records or matters are confidential in their nature, and are disclosed to and accepted by the board subject to

such privilege, for the exclusive use in evaluating lease bids or development covering state-owned lands and water bottoms, which exception is proved pursuant to and consistently with the Public Records Act, being Chapter 1 of Title 44 of the Louisiana Revised Statutes of 1950, as amended, and other statutes to which the board is subject.

(7) Discussions between a city or parish school board and individual students or the parents or tutors of such students, or both, who are within the jurisdiction of the respective school system, regarding problems of such students or their parents or tutors; provided however that any such parent, tutor, or student may require that such discussions be held in an open meeting.

(8) 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 2552.

(9) The portion of any meeting of the Second Injury Board during which records or matters regarding the settlement of a workers' 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)(6).

(10) Or any other matters now provided for or as may be provided for by the legislature.

B. The provisions of this Chapter shall not apply to judicial proceedings.

C. The provisions of this Chapter shall not prohibit the removal of any person or persons who willfully disrupt a meeting to the extent that orderly conduct of the meeting is seriously compromised.

D. The provisions of R.S. 42:19 and R.S. 42:20 shall not apply to any meeting of a private citizens' advisory group or a private citizens' advisory committee established by a public body, when the members of such group or committee do not receive any compensation and serve only in an advisory capacity, except textbook advisory committees of the State Department of Education or the Board of Elementary and Secondary Education. However, all other provisions contained in this Chapter shall be applicable to such group or committee and the public body which established such group or committee shall comply with the provisions of R.S. 42:19 in providing the required notice of meetings of such group or committee.

La. Atty. Gen. Op. No. 18-0144: Our office recognizes the need for a public body to hold discussions with their attorney that, if held in open session, would jeopardize the rendition of professional legal services to the body. Additionally, our office notes that public bodies have the right to protect such communications under attorney-client privilege. Therefore, it is the opinion of this office that the Board of Trustees for PERS may enter into executive session under La. R.S. 42:17(A)(10) to discuss possible litigation before a formal written demand is made where that communication is subject to attorney-client privilege under La. Code Evid. art. 506.

La. Atty. Gen. Op. No. 13-0189: The Jefferson Parish Council, as the governing authority of the Parish's hospital service districts, may discuss marketing strategies and strategic plans, as defined by the Enhanced Ability to Compete Act, in executive session.

La. Atty. Gen. Op. No. 09-0048: Minutes from an executive session properly conducted under the Open Meetings Law (La. R.S. 42:6 and 42:6.1) and the Enhanced Ability to Compete Act (La. R.S. 46:1073) are confidential, and not required to be disclosed under the Public Records Act (La. R.S. 44:1 et seq.).

La. Atty. Gen. Op. No. 03-0124: LSU may conduct investigations of alleged fraudulent conduct in an executive session.

La. R.S. 42:17.1 Exception for meetings during a gubernatorially declared disaster or emergency

A. Notwithstanding any other provision of this Chapter to the contrary, a public body may conduct and its members may attend and participate in a meeting via electronic means provided all of the following:

(1) The governor has declared a state of emergency or disaster involving a geographic area within the jurisdiction of the public body and the nature of the emergency or disaster would cause a meeting of the public body conducted pursuant to the other provisions of this Chapter to be detrimental to the health, safety, or welfare of the public.

(2) The presiding officer of the public body certifies on the notice of the meeting that the agenda of the meeting is limited to one or more of the following:

(a) Matters that are directly related to the public body's response to the disaster or emergency and are critical to the health, safety, or welfare of the public.

(b) Matters that if they are delayed will cause curtailment of vital public services or severe economic dislocation and hardship.

(c) Matters that are critical to continuation of the business of the public body and that are not able to be postponed to a meeting held in accordance with the other provisions of this Chapter due to a legal requirement or other deadline that cannot be postponed or delayed by the public body.

(d) Other matters that are critical or time-sensitive and that in the determination of the presiding officer should not be delayed; however, such matters shall not be considered at the meeting unless the members of the body present at the meeting approve the consideration of the matters by a two-thirds vote.

(3) The public body and its presiding officer comply with all of the requirements of this Section.

B. No later than twenty-four hours prior to a meeting conducted pursuant to the provisions of this Section, the public body shall provide for all of the following:

(1) The notice and agenda for the meeting, which shall be posted on the website of the public body, emailed to any member of the public or the news media who requests notice of meetings of the public body, and widely distributed to every known news media outlet that broadcasts or publishes news within the geographic area within the jurisdiction of the public body.

(2) Detailed information regarding how members of the public may participate in the meeting and submit comments regarding matters on the agenda, which information shall be posted on the website of the public body, emailed to any member of the public or the news media who requests notice of meetings of the public body, and widely distributed to every known news media outlet that broadcasts or publishes news within the geographic area within the jurisdiction of the public body.

C. For each meeting conducted pursuant to this Section:

(1) The public body shall provide a mechanism to receive public comment electronically both prior to and during the meeting.

(2) The public body shall properly identify and acknowledge all public comments during the meeting and shall maintain those comments in its record of the meeting.

(3) The presiding officer of the public body shall ensure that each person participating in the meeting is properly identified.

(4) The presiding officer shall ensure that all parts of the meeting, excluding any matter discussed in executive session, are clear and audible to all participants in the meeting including the public.

D. For the purposes of this Section, the following words and phrases shall have the following meanings:

(1) "Meeting via electronic means" shall mean a meeting occurring via teleconference or video conference.

(2) "Teleconference" shall mean a method of communication which enables persons in different locations to participate in a meeting and to hear and otherwise communicate with each other.

(3) "Video conference" shall mean a method of communication which enables persons in different locations to participate in a meeting and to see, hear, and otherwise communicate with each other.

La. Atty. Gen. Op. No. 22-0010: If a public body is conducting a regular meeting pursuant to La. R.S. 42:14, then all members participating in the meeting must be physically present at the meeting. Additionally, provided all other statutory requisites for holding an electronic meeting are satisfied, there is no prohibition in La. R.S. 42:17.1 against some or all the board members meeting in the same location to conduct a meeting *via* electronic means.

La. R.S. 42:18 Executive or closed meetings of legislative houses and committees

A. Notwithstanding any contrary provision of R.S. 42:16 and 17, executive or closed meetings may be held by the legislature, either house thereof, or any committee or subcommittee of either house, upon the affirmative vote of at least a majority of the members of the house or the committee or subcommittee thereof making the determination to hold such meeting, for one or more of the following purposes:

- (1) Discussion of confidential communications.
- (2) Discussion of the character, professional competence, or physical or mental health of any person subject to contract with or to employment, election, or appointment or confirmation of appointment by either house of the legislature or any committee or subcommittee of either or by any other public body.
- (3) 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 legislature, either house thereof, or any committee or subcommittee of either house.
- (4) Discussion regarding a report, development, or course of action regarding security personnel, plans, or devices.
- (5) Investigations by the legislature, either house thereof, or by any committee or subcommittee thereof, including the Legislative Audit Advisory Council or any other joint or statutory committee, whenever reasonable grounds exist to believe that the testimony to be elicited will reflect a failure of compliance with law.
- (6) Cases of extraordinary emergency, which shall be limited to natural disaster, threat of epidemic, civil disturbances, suppression of insurrections, the repelling of invasions, or other matters of similar magnitude.
- (7) Discussion by either house of the legislature, or any committee or subcommittee thereof, of any matter affecting the internal operations or management of the body.
- (8) Any other matters provided by law or pursuant to the joint rules of the legislature.

B. All procedural matters pertaining to the necessity, purposes, or reasons for the holding of executive or closed meetings under the provisions of this Section shall be in accordance with such rules as are adopted by each of the houses of the legislature for the purpose.

C. The provisions of this Chapter shall not apply to chance meetings, social gatherings, or other gatherings at which only presentations are made to members of the legislature or members of either house thereof or of any committee or subcommittee if no vote or other action, including formal or informal polling of members, is taken

La. R.S. 42:19 Notice of meetings

A.(1)(a) All public bodies, except the legislature and its committees and subcommittees, shall give written public notice of their regular meetings, if established by law, resolution, or ordinance, at the beginning of each calendar year. Such notice shall include the dates, times, and places of such meetings.

(b)(i) All public bodies, except the legislature and its committees and subcommittees, shall give written public notice of any regular, special, or rescheduled meeting no later than twenty-four hours, exclusive of Saturdays, Sundays, and legal holidays, before the meeting.

(ii)(aa) Such notice shall include the agenda, date, time, and place of the meeting. The agenda shall not be changed less than twenty-four hours, exclusive of Saturdays, Sundays, and legal holidays, prior to the scheduled time of the meeting.

(bb) Each item on the agenda shall be listed separately and described with reasonable specificity. Before the public body may take any action on an item, the presiding officer or his designee shall read aloud the description of the item except as otherwise provided in Subitem (dd) of this Item.

(cc) 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. Any such matter shall be identified in the motion to take up the matter not on the agenda with reasonable specificity, including the purpose for the addition to the agenda, and entered into the minutes of the meeting. Prior to any vote on the motion to take up a matter not on the agenda by the public body, there shall be an opportunity for public comment on any such 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 this Chapter.

(dd) If an agenda of a meeting of a governing authority of a parish with a population of two hundred thousand or more according to the latest federal decennial census or municipality with a population of one hundred thousand or more according to the latest federal decennial census contains more than fifty items, the governing authority may take action on items listed on a consent agenda without reading the description of each item aloud. However, before any action is taken on items listed on a consent agenda, the governing authority shall allow a public comment period. Any item listed on a consent agenda may be removed from the consent agenda by an individual member of the governing authority if a person objects to the presence of the item on the consent agenda and provides reasons for individual discussion at the meeting. The name of the person who objects to a consent agenda item and the reasons for the objection shall be included in the minutes of the meeting.

(iii) Following the above information there shall also be attached to the written public notice of the meeting, whether or not such matters will be discussed in an executive session held pursuant to R.S. 42:17(A)(2):

(aa) A statement identifying the court, case number, and the parties relative to any pending litigation to be considered at the meeting.

(bb) A 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.

(iv) In cases of extraordinary emergency, such notice shall not be required; however, the public body shall give such notice of the meeting as it deems appropriate and circumstances permit.

(2) Written public notice given by all public bodies, except the legislature and its committees and subcommittees, shall include, but need not be limited to:

(a) Posting a copy of the notice at the principal office 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 by publication of the notice in an 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, 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, and legal holidays, immediately preceding 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.

(b) Mailing a copy of the notice to any member of the news media who requests notice of such meetings; any such 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.

B. Reasonable public notice of day to day sessions of either house of the legislature, and of all matters pertaining to such meetings, including but not necessarily restricted to the content of notices, quorums for the transaction of business, proxy voting, viva-voce votes, and recordation of votes, shall be governed by the provisions of the Louisiana Constitution, the rules of procedure of the Senate and the House of Representatives, and the Joint Rules applicable to both houses. Reasonable public notice of meetings of legislative committees and subcommittees shall be given in accordance with such rules as are adopted by the respective houses for the purpose.

NOTE: See Acts 2012, No. 747, §2 regarding public bodies that do not have a website.

La. Atty. Gen. Op. No. 16-0075: A public body may take up a matter not on the agenda when the requirements of La. RS. 42:19(A)(1)(b)(ii)(cc) are met. Accordingly, if the requirements of La. R.S. 42:19 are met, then the Parish Council may take up an item not on the agenda.

La. Atty. Gen. Op. No. 15-0122: The Council for the City of Harahan may adopt a procedure governing its meetings which 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. With respect to the agenda for a special meeting, an individual council member may not

place an item on the agenda if such agenda item lacks the support of a majority of the members, as required by La. R.S. 33:405(C), irrespective of whether the council member attempts to add such an item more than twenty-four hours before the meeting. Further, as La. R.S. 42:19(A)(1)(b)(ii)(cc) requires unanimous approval of the members present to add an item to the agenda, the City of Harahan may not, by ordinance, lessen this requirement to a majority vote. Withdrawing an item does not require unanimous approval of all members present, as described by La. R.S. 42:19(A)(1)(b)(ii)(cc).

La. Atty. Gen. Op. No. 14-0173: Absent a policy or procedure providing otherwise, the president of a police jury has the authority to set the final agenda for a meeting of the police jury and may adjust or remove proposed agenda items. If an individual police juror wishes to add an item to the agenda at the time of the meeting, he or she may move to amend the agenda pursuant to La. R.S. 42:19.

La. Atty. Gen. Op. No. 10-0094: In order for a public body to amend the agenda, such a motion requires the unanimous approval of all members physically present in the meeting room, even if a member is temporarily absent from the meeting room. The Chairperson has the discretion to determine whether it is appropriate to entertain the motion to amend before or after the temporarily absent board member returns.

La. Atty. Gen. 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.

La. Atty. Gen. Op. No. 09-0300: Concerns about publication of unofficial meeting minutes pursuant to La. R.S. 43:144 do not outweigh the public’s interest in timely notice of actions taken at the meeting, since any corrections to the minutes made at a later meeting would appear in the minutes of the later meeting. The ten-day time limit set forth in La. R.S. 43:144 does not apply to the publication of minutes of meetings of the Board of Directors of the Jackson Parish Ambulance Service District.

La. R.S. 42:19.1 Procedure for the levy, increase, renewal, or continuation of a tax or for calling an election for such purposes by political subdivisions

A.(1)(a) Except as provided for in Subparagraph (b) of this Paragraph, in addition to any other requirements provided for in R.S. 42:19 or other provisions of law, public notice of the date, time, and place of any meeting at which a political subdivision as defined in Article VI, Section 44(2) of the Constitution of Louisiana intends to levy 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 submittal of such question to the voters of the political subdivision shall be published in the official journal of the political subdivision no more than sixty days nor less than thirty days before such public meeting; shall be announced to the public during the course of a public meeting of such political subdivision no more than sixty days nor less than thirty days before such public meeting; and notice of such meeting shall be written and hand delivered or transmitted by email to each voting member of any governing authority of a political subdivision that is required to approve such a measure previously adopted by another governing authority and to each state senator and representative in whose district

all or a portion of the political subdivision is located, no more than sixty days nor less than thirty days before such public meeting. Email delivery shall be made to the official email address of such voting members or legislators and to any other address provided in writing to the political subdivision by such a voting member or legislator. The inadvertent failure to notify a state senator or representative as required by this Subsection shall not constitute a violation of this Section; however, the knowing failure to notify a state senator or representative as required by this Subsection or the willful disregard of the requirement to notify a state senator or representative as required by this Subsection shall constitute a violation of this Chapter.

(b) If at a meeting held in accordance with Subparagraph (a) of this Paragraph a political subdivision adopts such a measure, the provisions of this Section shall not apply to a subsequent meeting of such political subdivision if the only action taken at the subsequent meeting is one which results in a change to the previously adopted measure that 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.

(2)(a) In the event of cancellation or postponement of a meeting at which consideration of or action upon a proposal to levy, increase, renew, or continue any ad valorem or sales and use tax or authorize the calling of an election for submittal of such questions to the voters of the political subdivision was scheduled, notice of the date, time, and place of any subsequent meeting to consider such proposal shall be published in the official journal of the political subdivision no less than ten days before such subsequent meeting.

(b) However, in the event that consideration of or action upon any such proposal was postponed at the scheduled meeting, or any such proposal was considered at the scheduled meeting without action or vote, then any subsequent meeting to consider such proposal shall be subject to the requirements of Subparagraph (a) of this Paragraph unless the date, time, and place of a subsequent meeting for consideration of such proposal is announced to the public during the course of such meeting.

B. The provisions of this Section shall not apply to any consideration of or action upon a proposal to levy additional or increased ad valorem property tax millages on property without voter approval to which the provisions of R.S. 47:1705(B)(2)(c) and (d) apply.

La. R.S. 42:20 Written minutes

A. All public bodies shall keep written minutes of all of their open meetings. The minutes to be kept by the legislature and legislative committees and subcommittees shall be governed by the provisions of R.S. 42:21. The minutes of all other public bodies shall include but need not be limited to:

(1) The date, time, and place of the meeting.

- (2) The members of the public body recorded as either present or absent.
- (3) The substance of all matters decided, and, at the request of any member, a record, by individual member, of any votes taken.
- (4) Any other information that the public body requests be included or reflected in the minutes.

B.(1) The minutes shall be public records and shall be available within a reasonable time after the meeting, except where such disclosures would be inconsistent with R.S. 42:16, 17, and 18, or rules adopted under the provisions of R.S. 42:21.

(2) 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.

La. Atty. Gen. Op. No. 04-0317: A Type 2 charter school is not subject to the mandates set forth in Title 43, Chapter 4 of the Louisiana Revised Statutes requiring the publication of minutes, unless a school's approved charter subjects the school to such publication requirements.

La. Atty. Gen. Op. No. 92-0847: Minutes must, at the least, reflect the date, time, and place of the meeting, the presence or absence of district members, substantive matters discussed and any votes taken, and any other information that district members request be reflected in the minutes.

La. R.S. 42:21 Minutes of legislative sessions, legislative committees and subcommittees

A. The journals of the proceedings of each of the houses of the legislature, as required to be kept by the provisions of Article III, Section 10(B) of the Louisiana Constitution, shall constitute the written minutes of open sessions of the Senate and of the House of Representatives.

B. The written minutes of standing, interim, joint, and other committees and subcommittees of the Senate and House of Representatives shall include such information as may be required by the rules of the respective houses.

La. R.S. 42:22 Presentation and consideration of offer to sell natural gas to a public body, or to operate or acquire ownership of, a gas utility owned or operated by a public body

A. For the purposes of this Section, "gas utility" means any revenue producing business or organization which is owned or operated by a public body, and which regularly supplies the public with natural gas at retail.

B. Prior to consideration or action by a public body to accept a proposal by a nonpublic entity to sell natural gas to a public body for use in its gas distribution system sales to retail customers for a term exceeding twelve months including rollovers or extensions, or to assume operation or acquire ownership of, a gas utility being operated or owned by the public body, the proposal shall:

- (1) Be introduced, in writing, at an open meeting of the public body.
 - (2) Not be considered by the public body until notice of the proposal has been published in the official journal of the public body and at least thirty days has lapsed after the introduction of the proposal.
 - (3) Include a written report of the most recent five-year history of the sale of natural gas to similar public bodies for use in gas distribution system sales to retail customers for a term exceeding twelve months including rollovers or extensions by the nonpublic entity if the entity is seeking to sell natural gas to a public body for use in its gas distribution system sales to retail customers for a term exceeding twelve months including rollovers or extensions to the public body or a five-year history of the purchase price of other gas utilities operated or owned by a public body paid by the nonpublic entity if the entity is seeking to assume operation or acquire ownership of the utility. A copy of the report shall be provided to all members of the public body and be available to the public.
 - (4) Include any written contract or agreement proposed between the nonpublic entity seeking to sell natural gas to a public body for use in its gas distribution system sales to retail customers for a term exceeding twelve months including rollovers or extensions to, or assume operation or acquire ownership of, the gas utility and the public body. A copy of the contract or agreement shall be provided to all members of the public body and be available to the public.
- C. Notice of the proposal and the availability of the written report and contract or agreement shall be published once in the official journal of the public body. The notice shall indicate the time and place where the public body will hold a public hearing and consider the proposal.
- D. No proposal shall be considered until a public hearing on it has been held. No proposal can be adopted at the meeting at which it is introduced.
- E. Any proposed revision or amendment of the published contract or agreement shall be noticed, published, and made available in its entirety in the same manner as required for the original contract or agreement. No such contract or agreement shall be entered into by the public body until at least thirty days have lapsed since the notice of the availability of the revised contract or agreement has been published.

La. Atty. Gen. Op. No. 05-0341: A town may sell its natural gas system to a public or non-public entity; the sale or lease of gas utilities encompass and incorporate the protections codified in the public bid law.

La. R.S. 42:23 Sonic and video recordings; live broadcast

A. All of the proceedings in a public meeting may be video or tape recorded, filmed, or broadcast live. However, any nonelected board or commission that has the authority to levy a tax shall video or audio record, film, or broadcast live all proceedings in a public meeting.

B. A public body shall establish standards for the use of lighting, recording or broadcasting equipment to insure proper decorum in a public meeting.

Fernandez v. City of Kenner, 21-550 (La.App. 5 Cir. 12/8/21); 335 So.3d 951: “We find that absent any specific law or ordinance setting forth contrary guidelines or policies, the Louisiana Open Meetings Law allows any individual in attendance at a public meeting to video or audio record a public meeting with his or her cell phone.”

La. Atty. Gen. Op. No. 13-0113: The State Board of Examiners of Interior Designers is a nonelected board without the authority to levy a tax. Thus, Act 363 of the 2013 Louisiana Legislative Session, which requires that a nonelected board or commission with the authority to levy a tax video or audio record, film or broadcast live the proceedings of a public meeting, does not apply to the Board. However, while the Board is not mandated to do so, La. R.S. 42:23(A) still permits the Board, if it so chooses, to video or tape record, film or broadcast live the proceedings of its meetings.

La. Atty. Gen. Op. No. 05-0166: A Fire District's video and audio recordings produced by security cameras are subject to a public records request. However, recordings of an executive session are covered within the exceptions of public records.

La. Atty. Gen. Op. No. 95-0277: Under R.S. 42:8 there is a general right for a citizen to record public meetings, but the public body is mandated to establish standards so this can be done in an orderly fashion.

La. R.S. 42:24 Voidability

Any action taken in violation of this Chapter shall be voidable by a court of competent jurisdiction. A suit to void any action must be commenced within sixty days of the action.

Deep S. Ctr. for Envtl. Justice v. Council of City of New Orleans, 2019-0774 (La.App. 4 Cir. 2/12/20); 292 So.3d 973, *writ denied*, 2020-00771 (La. 10/14/20); 302 So.3d 1114, and *writ denied*, 2020-00419 (La. 10/14/20); 302 So.3d 1122: When a public body has taken an action in such a way to violate the Open Meetings Law, the injury caused by the violation may be corrected by subsequent ratification provided the ratification is adopted after full compliance with the law.

Stewart v. Dep't of Pub. Safety & Corr., 2019-1205 (La.App. 1 Cir. 5/11/20); 303 So.3d 352: Sixty-day time limit for commencement of a suit to void an action taken in violation of Open Meetings Law is peremptive, not prescriptive.

La. R.S. 42:25 Enforcement

A. The attorney general shall enforce the provisions of this Chapter throughout the state. He may institute enforcement proceedings on his own initiative and shall institute such proceedings upon a complaint filed with him by any person, unless written reasons are given as to why the suit should not be filed.

B. Each district attorney shall enforce the provisions of this Chapter throughout the judicial district within which he serves. He may institute enforcement proceedings on his own initiative and shall institute such proceedings upon a complaint filed with him by any person, unless written reasons are given as to why the suit should not be filed.

C. Any person who has been denied any right conferred by the provisions of this Chapter or who has reason to believe that the provisions of this Chapter have been violated may institute enforcement proceedings.

La. R.S. 42:26 Remedies; jurisdiction; authority; attorney fees

A. In any enforcement proceeding the plaintiff may seek and the court may grant any or all of the following forms of relief:

- (1) A writ of mandamus.
- (2) Injunctive relief.
- (3) Declaratory judgment.
- (4) Judgment rendering the action void as provided in R.S. 42:24.
- (5) Judgment awarding civil penalties as provided in R.S. 42:28.

B. In any enforcement proceeding the court has jurisdiction and authority to issue all necessary orders to require compliance with, or to prevent noncompliance with, or to declare the rights of parties under the provisions of this Chapter. Any noncompliance with the orders of the court may be punished as contempt of court.

C. If a party who brings an enforcement proceeding pursuant to R.S. 42:25 prevails, the party shall be awarded reasonable attorney fees and other costs of litigation. If such party prevails in part, the court may award the party reasonable attorney fees or an appropriate portion thereof.

D. If the court finds that the proceeding was of a frivolous nature and was brought with no substantial justification, it may award reasonable attorney fees to the prevailing party.

Courville v. Louisiana Recreational and Used Motor Vehicle Commission, 08-0952 (La.App. 1 Cir. 9/19/09), 21 So.3d 340: Recreational and Used Motor Vehicle Commission's stated reasons for

entering into executive session, which were to discuss noticed “legal matters” and “a sensitive matter” were not of sufficient specificity to demonstrate how a public discussion of pending litigation would be detrimental and thus violated the Open Meetings Law.

La. R.S. 42:27 Venue; summary proceedings

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

B. Enforcement proceedings shall be tried by preference and in a summary manner. Any appellate court to which the proceeding is brought shall place it on its preferential docket, shall hear it without delay, and shall render a decision as soon as practicable.

La. R.S. 42:28 Civil penalties

Any member of a public body who knowingly and wilfully participates in a meeting conducted in violation of this Chapter, shall be subject to a civil penalty not to exceed five hundred dollars per violation. The member shall be personally liable for the payment of such penalty. A suit to collect such penalty must be instituted within sixty days of the violation.

La. Atty. Gen. Op. No. 94-547: Any member of a public body who knowingly and willfully participates in a meeting conducted in violation of R.S. 42:4.1 through R.S. 42:8, shall be subject to a civil penalty not to exceed one hundred dollars per violation. The member shall be personally liable for the payment of such penalty. A suit to collect such penalty must be instituted within sixty days of the violation.

La. R.S. 42:29 State Bond Commission; teleconference meetings

A. Subject to the limitations set forth in this Section, the State Bond Commission may hold periodic meetings via electronic means as defined in R.S. 42:17.1 as part of a regular schedule if such meetings comply with all of the following:

- (1) A physical anchor location for the meeting shall be established from which the meeting shall originate and at which the presiding officer of the meeting shall be present and conduct the meeting. Any member of the State Bond Commission or any member of the public may participate in person at the anchor location.
- (2) Such meetings shall comply with the requirements of R.S. 42:14, 16, 17, 19, 20, and 23.
- (3) The State Bond Commission shall adopt and publish procedures for notice of and the conduct of such meeting in advance thereof including but not limited to the means for participation and providing testimony or public comment prior to and during the meeting, including a toll-free call in line for participants and the public, the number for which shall be posted on the website of the State Bond Commission.
- (4) All public comments received in writing or by email shall be read into the record during the meeting.

- (5) All votes taken in the meeting shall be by roll call vote.
- (6) The entire meeting with the exception of a duly called executive session shall be audible to the public and broadcast over the internet.
- (7) The meeting shall be recorded and made available to the public in an online archive located on the website of the State Bond Commission.
- (8) If a problem occurs that causes the meeting to no longer be visible or audible to the public, the meeting shall be recessed until the problem is resolved. If the problem is not resolved in two hours or less, the meeting shall be adjourned.
- B.(1) The number of meetings held via electronic means authorized by this Section shall be one teleconference meeting per quarter during a calendar year.
- (2) Under no circumstances shall the State Bond Commission conduct successive meetings by teleconference.
- C. A meeting held pursuant to this Section shall not require a quorum to be present at the anchor location of the meeting. All members of the State Bond Commission participating at the anchor location or electronically shall be counted for purpose of establishing a quorum.
- D. The provisions of this Section shall not limit the conduct of meetings via electronic means during a gubernatorially proclaimed or declared disaster or emergency in the manner provided by R.S. 42:17.1.
- E. The State Bond Commission shall adopt rules, regulations, and procedures to allow the public to participate in a meeting via electronic means.
- F. For purposes of this Section, "anchor location" means the physical location from which the meeting via electronic means originates or the participants are connected.

Frequently Asked About Topics

ELECTRONIC COMMUNICATION

La. Atty. Gen. Op. No. 19-0128: Please be aware that quorums can be achieved through electronic means as well. A group text message, email chain, or similar electronic communications of a quorum of the public body are no less violative of the Open Meetings Law than if those discussions were held in a back room. The effect is the same - discussions and deliberations of a public body occurred out of the view of the public. Any electronic communications between less than a quorum should be approached with caution by each individual board member, as e-mails or text messages could be forwarded and result in polling or a "walking quorum." It is the advice of this office that before sending an email or other electronic message, that the sender consider the intent of the message. Communications to relay information, such as the time and place of the meetings are permissible. However, if the intent of

the messages is to elicit a response, to engage in a discussion, or poll how the members of the public body are going to vote on an item, then the communications could constitute a violation of the Open Meeting Law.

La. Atty. Gen. Op. No. 12-0177: Without additional facts suggesting an intent to circumvent the Open Meetings Law and without inviting a discussion on the content of the material sent, the following is permissible behavior under the Open Meetings Law: (1) a council member relaying an opinion to other council members via e-mail about a topic which may later be discussed by the public body as a whole; (2) a council member forwarding requests, information, or opinions received from constituents to other council members on a topic which may later come before the public body; and (3) a council member forwarding a request received from a constituent requesting that council member to take action on a particular matter to other council members. The Open Meetings Law prohibits questioning a majority of a public body on how each member intends to vote, whether such an inquiry is called a poll or not. A “rolling quorum” or a “walking quorum” refers to a device used to circumvent the Open Meetings Law so as to allow a quorum of a public body to discuss an issue through the use of multiple discussions of less than a quorum. Such a device is not permissible under the Open Meetings Law.

La. Atty. Gen. Op. No. 10-0223: Electronic communication during a public meeting between members of a public body and constituents, staff and/or another member of a public body is not, in and of itself, a violation of the Open Meetings Law. However, the analysis of a potential Open Meetings Law violation is much different when considering electronic communication between a quorum of members of a public body during a public meeting.

PROXY VOTING / PARTICIPATION BY TELEPHONE / POLLING

La. Atty. Gen. Op. No. 14-0065: 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.

La. Atty. Gen. Op. No. 14-0011: The Board of Commissioners governing Terrebonne Parish Fire Protection District #10 may, but is not required to, transmit a meeting electronically to permit a member and any member of the public who is unable to attend to observe the meeting. Should the Board decide to permit this, the Board should adopt a policy governing the transmittal of meetings. A board member who accesses and views a meeting remotely may not be counted as present for purposes of a quorum, may not participate in general discussion of agenda items and may not vote. Further, a board member viewing the meeting remotely should not collect a per diem.

La. Atty. Gen. Op. No. 13-0075: A public body may not utilize telephone conference calls during a public meeting to obtain a quorum.

La. Atty. Gen. Op. No. 10-0055: Since the legislation creating the Natchitoches Parish Tourist Commission does not specifically authorize the use of proxy voting, the general prohibition against proxy voting in La. R.S. 42:5(B) applies.

La. Atty. Gen. Op. No. 09-0149: A parish executive committee may adopt any rules and bylaws that of the state central committee, insofar as they do not conflict with state law. In addition, since state law does not expressly authorize proxy voting by email, any proxy vote by email should not be accepted.

La. Atty. Gen. Op. No. 02-0106: The intent of La. R.S. 42:5(B) is to require physical presence at open meetings in order to participate in any matter. Any participation via telephone, whether it is to obtain a quorum or to allow voting by non-present board members is a violation of the open meetings law.

La. Atty. Gen. Op. No. 99-385: Deliberation or action by video telephone would be a violation of the open meetings laws.

La. Atty. Gen. Op. No. 99-0034: If a quorum of the Council or a committee thereof contacts each other by telephone for the purpose of discussing or deciding on a course of action on a matter over which it has authority, this would be considered a circumvention of the open meetings laws.

La. Atty. Gen. Op. No. 93-137: The Open Meetings Law prohibits representation by proxy. Further, telephone polls cannot be used to authorize action by a public body. Finally, the remedy of mandamus may be available to compel attendance of commission members. Attendance at meetings is not a discretionary duty, but is rather a duty purely ministerial in nature, for which the action of mandamus is appropriate.

La. Atty. Gen. Op. No. 92-166: The Slidell Ethics Board is a public body within the meaning of Louisiana's Open Meetings Law; telephone contact between a majority of the members of the Board in order to determine policy or a course action would constitute a violation of the Open Meetings Law.

La. Atty. Gen. Op. No. 88-238: A telephone poll cannot be used to authorize action by a board and results in a violation of the open meetings law.

La. Atty. Gen. Op. No. 78-1017: A telephone poll of members of a school board to discuss the employment and compensation of special counsel is prohibited by the Louisiana Open Meeting Law.

“PRE-MEETING”

La. Atty. Gen. Op. No. 01-243: “Agenda planning meetings” conducted by the Amite Town Council do not violate open meetings laws as proper notice is provided before each meeting.

La. Atty. Gen. Op. No. 87-48: “Pre-meeting” was subject to provisions Open Meeting Law.

La. Atty. Gen. Op. No. 80-939: Pre-meeting must comply with Sunshine Law.

PUBLIC COMMENT

La. Atty. Gen. Op. No. 08-0325: Although the Mayor has the power to preside over meetings of the Board of Aldermen, the Board may adopt rules for participation in meetings. Additionally, if the Board unanimously votes to add an item not on the agenda for discussion, the Mayor cannot prohibit the members from discussing such item. Although a citizen has the right to give public comment at a public meeting, there is no requirement that the citizen be allowed to add items to the agenda for discussion.

La. Atty. Gen. Op. No. 04-0107: La. R.S. 42:5.1 does not preclude a school board from placing requirements on individuals that desire to speak such as filling out a sign-up card before a school board meeting, limiting the speaker to the agenda item on which he would like to speak, limiting the amount of time for each speaker, and/or restricting speakers from making defamatory or accusatory comments.

La. Atty. Gen. Op. No. 01-0394: Public bodies conducting a meeting shall provide by adoption of reasonable rules for opportunity for public comment at the meeting.

La. Atty. Gen. Op. No. 01-0367: The comment period established by La. R.S. 42:5(D) applies only to items placed on the agenda, and the rules and regulations governing this period are to be established by each public body.

La. Atty. Gen. Op. No. 98-17: La. R.S. 42:5.1 does not preclude a school board from placing requirements on individuals that desire to speak such as filling out a sign-up card before a meeting.

La. Atty. Gen. Op. No. 94-152: The mayor of the City of Ville Platte may require the use of an agenda Application form for public participation in setting the agenda of the City's Board of Aldermen.

INTERVIEWS

La. Atty. Gen. Op. No. 13-0218: There is no impediment under Louisiana law for the full Board to evaluate and score proposals received for the executive director position. The evaluation and scoring of proposals are appropriate for discussion in executive session consistent with La. R.S. 42:17(A)(1); however, we caution against the Board discussing, among finalists, which candidate would be best suited for the position, as we interpret La. R.S. 42:17(A)(1) as requiring discussions of *the award* of a public record to be conducted in open session. If the Board Chair appoints an evaluation committee or panel, made up of Board members and/or non-Board members to evaluate and score the proposals, such committee or panel is subject to the Open Meetings Law. The committee may perform its work in executive session; however, any decision of a committee on a list of recommendations to the Board of finalists for consideration must be created in open session. Finally, once the contract is awarded, if the Board receives a public

records request, the Board should produce the proposals submitted in response to the RFP, as well as the scoring sheets and related notes made by the Board in evaluating the finalists.

La. Atty. Gen. Op. No. 94-14: It is not proper to go into executive session to make a selection or recommendation concerning hiring a town employee. Public meetings may be tape recorded.

La. Atty. Gen. Op. No. 91-158A: The vote of a School Board selecting an interview committee, and any decision, selection or recommendation of or concerning a job applicant or prospective employee by the School Board, or its committee, must be taken in an open meeting; however, discussion of the character or mental health of a person, including a job applicant or a prospective employee, and the interviewing of such person may be done in executive session.

La. Atty. Gen. Op. No. 88-186: Screening meetings and interview sessions of candidates for State Superintendent of Education may be held in executive session under La. R.S. 42:6.1 but should be limited to discussion of applicant's professional competence, character of health.

ATTENDANCE IN AN EXECUTIVE SESSION

La. Atty. Gen. Op. No. 99-51: The school board may call an executive session for discussions and strategies in the lawsuit at issue. No public disclosure is required of these discussions and strategies held in executive session. Non members may be permitted into an executive session of a public body if their presence is necessary and not a subterfuge to the open meetings laws.

La. Atty. Gen. Op. No. 93-233: A public body may permit anyone to attend an executive session if that person's presence is necessary and if the executive session is not being used as a subterfuge to defeat the purposes of the Louisiana Open Meetings Law.

La. Atty. Gen. Op. No. 87-639: A public body may exclude any non-members from an executive session, unless their attendance is required by law or necessity.

AGENDA ITEM DESCRIPTIONS

La. Atty. Gen. Op. No. 11-0275: Agenda items on a meeting notice of a public body must be reasonably clear so as to advise the public in general terms of the subjects which will be discussed. A council member serving as mayor pro tempore does not lose his or her ability to vote, and may cast votes for or against items on the agenda. Further, the mayor pro tempore may make or second a motion on the agenda. A quorum exists in a municipality of five council members when three members are in attendance, with one serving as the mayor pro tempore. Finally, two-thirds of a five member council is four members.

La. Atty. Gen. Op. No. 07-0181: Agenda for police jury meeting must be reasonably clear so that the general public could ascertain that the removal and reappointment of a hospital service district board member would be considered. Actions by the police jury taken in absence of this requirement are voidable by a court of competent jurisdiction within sixty days of the action.

La. Atty. Gen. Op. No. 85-0789: All special meetings must be convened following twenty-four hour notice. The notice given must state an agenda. This agenda must also state with specificity what matters are to be discussed. Merely stating that "the Board will consider any emergency matters which may be presented by the Superintendent and/or board members," is vague and, thus, not proper notice. The notice must be specific as to what matters will be discussed.

MEMBERS OF A PUBLIC BODY ATTENDING MEETINGS AS CITIZENS

La. Atty. Gen. Op. No. 14-0100: La. R.S. 38:330.1 creates specific predetermined terms of commissioners for the SLFPA-E and SLFPA-W Boards. Once a vacancy occurs, the notice provisions are triggered, and within ninety days, nominees should be submitted by the Nominating Committee to the governor. If an appointment occurs within the same year of the vacancy, the term of the commissioner is for four years, less the amount of time in which the notice was advertised and the appointment occurred. If an appointment is not made in the same year the vacancy occurred, then such appointment should be treated like an appointment to fill an unexpired term, and the term of office will be four years, less the amount of time in which it took the vacancy to be noticed and the appointment process to occur, even if the gap in the term created by the delay to appoint is significantly longer than ninety days.

La. Atty. Gen. Op. No. 11-0267: Members of the Commission who are not members of a subcommittee of the Commission may attend subcommittee meetings and participate in their capacity as citizens, but such participation must be limited to providing comment as is available to any other member of the public, as described by La. R.S. 42:14(D). However, as a cautionary measure, whenever it is likely that a quorum of the Commission will attend a subcommittee meeting, we recommend that the posted notice of the subcommittee meetings include a statement providing that it is possible that a quorum of the Commission may be in attendance at such meeting, but that no action of the Commission as a whole will be taken.

La. Atty. Gen. Op. No. 08-0239: Whether or not a quorum of the public body could be said to be "convening" for the purposes of the Open Meetings Law at a Town Hall Meeting requires an assessment of the particular facts relevant to the particular situation, taking into account the instruction to interpret the Open Meetings Law liberally, and the public policy underlying such a body of law.

La. Atty. Gen. Op. No. 99-215: A parish councilman who is not a member of a committee may attend that committee's meetings as an observer, as long as he does not take part in any deliberations or discussions of the committee.

REVISITING AN ISSUE

La. Atty. Gen. Op. No. 11-0034: Failure to pass an ordinance at the Council's December meeting does not prohibit a majority of the Council from voting to introduce the ordinance again at the January meeting, and then adopting the ordinance by a majority vote at the Council's subsequent meeting.

MEMBER QUALIFICATION

La. Atty. Gen. Op. No. 14-0100: La. R.S. 38:330.1 creates specific predetermined terms of commissioners for the SLFPA-E and SLFPA-W Boards. Once a vacancy occurs, the notice provisions are triggered, and within ninety days, nominees should be submitted by the Nominating Committee to the governor. If an appointment occurs within the same year of the vacancy, the term of the commissioner is for four years, less the amount of time in which the notice was advertised and the appointment occurred. If an appointment is not made in the same year the vacancy occurred, then such appointment should be treated like an appointment to fill an unexpired term, and the term of office will be four years, less the amount of time in which it took the vacancy to be noticed and the appointment process to occur, even if the gap in the term created by the delay to appoint is significantly longer than ninety days.

La. Atty. Gen. Op. No. 12-0068: A member of the Board of Directors of the Louisiana Energy & Power Authority whose term has expired and whose successor has not been reappointed continues to serve until his or her successor is appointed, retains his or her voting rights as a director, and is still counted toward the total membership of the public body for purposes of calculating a quorum.

La. Atty. Gen. Op. No. 08-0014: Members of a board shall continue to serve, despite the fact that the statute determining their qualifications has been amended, when their successors have not yet been named. When a member has been appointed pursuant to a statutory provision that has been repealed, that member should no longer continue to serve.

MATTERS WITHIN MEETINGS

La. Atty. Gen. Op. No. 13-0046: The mayor of a Lawrason Act community may not refuse to hold a special meeting which has been called for by a majority of the board of aldermen.

La. Atty. Gen. Op. No. 10-0066: The motion to introduce the ordinance to amend the 2010 Budget, which came before the Council for the Parish of Terrebonne on February 10, 2010, was properly done.

La. Atty. Gen. Op. No. 09-0172: The Chairman of the St. Charles Parish Council has the right to make a motion at Council meetings.

La. Atty. Gen. Op. No. 08-0325: Although the Mayor has the power to preside over meetings of the Board of Aldermen, the Board may adopt rules for participation in meetings. Additionally, if the Board unanimously votes to add an item not on the agenda for discussion, the Mayor cannot prohibit them from discussing such item. Although a citizen has the right to give public comment at a public meeting, there is no requirement that the citizen be allowed to add items to the agenda for discussion.



Jeff Landry
Attorney General

State of Louisiana

DEPARTMENT OF JUSTICE
CIVIL DIVISION
P.O. BOX 94005
BATON ROUGE
70804-9005

MEMORANDUM

TO: Public Bodies (as defined by La. R.S. 42:13)

FROM: Jeff Landry, Attorney General

DATE: December 2, 2020

RE: Additional Open Meetings Guidance in light of COVID 19 and the recent passage of La. R.S. 42:17.1

The following guidance on the Open Meetings Law is to assist public bodies during the current Public Health Emergency.

Louisiana Constitution Article XII, § 3 establishes a general constitutional right to observe the deliberations of public bodies. The Open Meetings Law, La. R.S. 42:11, *et seq.*, describes and defines this constitutional right. However, this constitutional right is expressly qualified and subordinate to laws passed by the legislature.¹

Can a meeting be held over video or telephone conference?

Yes, if certain criteria are met. Act 302 of the 2020 Regular Legislative Session amended the Open Meetings Law to provide an exception for allowing meetings to be held over video or telephone conference during a gubernatorially declared disaster or emergency. Act 302 enacted La. R.S. 42:17.1, which allows all public bodies to conduct, and its members to attend and participate in, a meeting held via electronic means provided all of the following criteria are satisfied:

- The governor declares a state of emergency or disaster involving an area within the jurisdiction of the public body and, due to the nature of the emergency or disaster, holding a meeting as normal in person is detrimental to the health, safety, or welfare of the public.
- The presiding officer of the public body certifies on the notice of the meeting that the agenda is limited to one of the following topics:
 - Matters directly related to the public body's response to the disaster or emergency and that are critical to the health, safety, or welfare of the public;
 - Matters, if they are delayed, that will cause curtailment or harm to vital public services or severe economic dislocation and hardship;
 - Matters critical to the continuation of the business of the public body and that are not able to be postponed to a meeting held in person due to a

- legal requirement or other deadline that cannot be postponed or delayed by the public body; and/or
- o Other matters that are critical or time-sensitive and that in the determination of the presiding officer should not be delayed; however, such matters shall not be considered at the meeting unless the members of the body present at the meeting approve the consideration of the matters by a two-thirds vote.
- The public body and its presiding officer comply with the other notice and public comment requirements set forth in La. R.S. 42:17.1.

Has the quorum requirement changed in light of COVID-19?

No. Quorum requirements remain applicable, and a quorum of members must be present to conduct business. A quorum is a simple majority of the total membership of the public body. La. R.S. 42:13(4). Thus, a simple majority of the total membership of the public body must still be engaged in the meeting in order to conduct business.

Can members that participate via teleconference be counted towards the quorum?

Yes. If the provisions of La. R.S. 42:17.1 are satisfied, members that are participating via teleconference may be counted toward the quorum, participate in the board discussion, and vote.

Do notice requirements change in an emergency?

Yes. In cases of extraordinary emergency, written public notice shall not be required for meetings held in person. La. R.S. 42:19(A)(1)(b)(iv). The public body shall give notice as it deems appropriate and circumstances permit. *Id.* Under usual circumstances, reasonable public notice includes the agenda, date, time, and place of meeting.

During a gubernatorially declared emergency or disaster, meetings held via electronic means must abide by the notice requirements found in La. R.S. 42:19, including posting the notice and agenda on the website of the public body twenty-four hours in advance of the meeting. In addition, the public body must supply detailed information regarding how members of the public may participate in the meeting and submit public comments. This information must be emailed to any member of the public or the news media who requests notice of the meeting.¹ Finally, the notice, agenda, and public comment information must be widely distributed to the public body's official journal and every known news media outlet that broadcasts or publishes news within the geographic area within the jurisdiction of the public body.

¹ The members of the public or the news media are not required to submit a new request for notice for each subsequent meeting. Any request should be treated as a standing request for notice.

Can a public body enter executive session and restrict attendance?

Yes. Louisiana Revised Statutes 42:16-17 allows a public body to hold an executive session upon an affirmative vote of two-thirds of the constituent members present. The reasons a public body may hold an executive session are enumerated in La. R.S. 42:17 and include matters of extraordinary emergencies such as the threat of an epidemic. During an executive session, the public body can restrict who is allowed in the executive session.

The vote to hold executive session must be taken at an open meeting for which notice has been given pursuant to La. R.S. 42:19.² No final or binding action may be taken during an executive session, and the public comment period requirement is still applicable.³

Note that the public body should still give notice, as circumstances permit, to allow the public an opportunity to comment prior to any action, including deliberations and discussions, on an agenda item upon which a vote is to be taken. To the extent possible, the agenda should list each item separately and describe each item with reasonable specificity.⁴

Do the public comment requirements change during an emergency?

No. The public comment requirements do not change, unless the meeting is held via electronic means in accordance with La. R.S. 42:17.1. Louisiana Revised Statutes 42:14 requires public bodies to allow a public comment period before acting on an agenda item upon which a vote is to be taken. School boards are additionally required to have a public comment period preceding each agenda item.⁵ Reasonable rules and restrictions are permitted regarding such comment periods and are discussed below.⁶

Louisiana Revised Statutes 42:17.1(B)(2) requires that a public body who holds a meeting through teleconference must provide detailed information on the public body's website, setting forth how members of the public may participate in the meeting and submit public comments, and the public body is required to distribute this information to all known local media outlets. The public body must provide a mechanism to receive public comments electronically both prior to and during the meeting.⁷ During the meeting, the public body must properly identify and acknowledge all public comments and must keep all comments in the record of the meeting.⁸ The presiding officer has the responsibility to ensure that each person participating in the meeting is properly identified, and that all parts of the meeting (excluding discussions held in executive sessions) are clear and audible to all participants in the meeting and the public.⁹

Reasonable rules and restrictions for public comment periods may include but are not limited to the following:

- Limiting the amount of time for each speaker;
- Limiting the number of people in a meeting room to comply with the Governor's Public Health Emergency Proclamations or guidance from the Centers for

Disease Control and Prevention. However, the public body must provide a mechanism for the persons to simultaneously observe the meeting and allow them to participate in the public comment period;

- Requiring persons present for public comment to maintain an appropriate distance from others;
- Establishing procedures to receive public comments via video, email, facsimile, telephone or other means for a certain period preceding the meeting and having an administrator read the comments to the members during the public comment period of the meeting. This will serve to adhere to the public comment requirement in La. R.S. 42:14 and 17(C), and allow interested persons to socially distance themselves while still having a mechanism to participate;
- Reading aloud the items on the agenda with reasonable specificity, including the matter to be discussed and potential action to be taken at the start of the meeting, if broadcasting live or holding a meeting through electronic means. The Board may pause the proceeding for 30 minutes or a reasonable time to allow for public comments to be submitted to the public body by way of phone calls, emails, or comments on the live stream, etc.; and
- Any other rules or restrictions that are reasonable and in keeping with Open Meetings Laws and the spirit of those laws.

¹ *St. Mary Anesthesia Assocs., Inc. v. Hosp. Serv. Distr. No. 2 of Par. of St. Mary*, 01-2852 (La. App. 1 Cir. 12/20/02), 836 So. 2d 379, 383, writ denied; *St. Mary Anesthesia Assocs., Inc. v. Hosp. Servs. Distr. No. 2 of Par. of St. Mary*, 03-0220 (La. 3/28/03), 840 So. 2d 577; *Ortega v. Recreation & Parks Comm'n for Par. of E. Baton Rouge*, 17-1502 (La. App. 1 Cir. 7/18/18), 255 So. 3d 6, 15.

² La. R.S. 42:16.

³ La. R.S. 42:16.

⁴ La. R.S. 42:19.

⁵ La. R.S. 42:15.

⁶ La. R.S. 42:14; La. R.S. 17:81; La. Atty. Gen. Op. No. 04-0107.

⁷ La. R.S. 42:17(C)(1).

⁸ La. R.S. 42:17(C)(2).

⁹ La. R.S. 42:17(C)(3) and (4).