Open Meetings Law

R.S. 42:11 – R.S. 42:28*

***Formerly R.S.42:4.1-42:13**
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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.

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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 or parish government council (i.e., police jury or board of alderman), state board or commission, or board of a 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.

See also AG Op. No. 25-0025 wherein the Attorney General opines that Local Emergency Planning Committees, which are established by the State Emergency Response Commission pursuant to the federal Emergency Planning and Community Right-to-Know Act (42 USC 11001, et seq.), are public bodies subject to the Open Meetings Law.

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)(4)**

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)(4). 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.

R.S. 42:17.2(A), provides that members of a public body, except the legislature and any parish board of election supervisors, who has a disability recognized by the Americans with Disabilities Act (ADA) shall be allowed to participate and vote in a meeting via electronic means as defined in R.S. 42:17.2 (video or teleconference). Such a member's participation via electronic means shall also count towards the making of a quorum. Each public body is required to adopt rules, regulations and procedures to facilitate the requirements of R.S. 42:17.2.1(A). For state agencies, the rules must be promulgated pursuant to the Administrative Procedures Act.

For a summary of all the **Disability Related Accommodation and Non-Emergency Electronic Meeting Requirements of the Open Meetings Law [See Section VI of this FAQ].**

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. 12-0177, AG Op. No. 17-0026 and AG Op. No. 19-0128

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.

A walking quorum can also occur via email or other electronic means where there are conversations with a quorum of the public body through multiple smaller conversations of less than a quorum. The AG has stated that such walking quorums are "unlawful because while no conversation occurred with an actual quorum physically present at a single location, a quorum effectively participates in the discussion of the issue" without the public having the benefit of observing the discussion. AG Op. No. 19-0128.

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).**

Additionally, certain public bodies are required to broadcast their meetings live, via television or the internet. See **Q.28

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.

- R.S. 42:14(E) requires all public bodies that have the capability to allow any member of the public with a disability recognized by the Americans with Disabilities Act (ADA), or caretaker of such person, to participate in its meetings via teleconference or video conference if so requested. That same provision states that public bodies that do not have such capability to adopt rules to facilitate viable alternative methods for members of the public with an ADA disability to participate in its meetings if such person, or caretaker, so requests. Each public body is required to adopt rules, regulations and procedures to facilitate the requirements of R.S. 42:17.2.1(A). For state agencies, the rules must be promulgated pursuant to the Administrative Procedures Act.

    - These requirements are not applicable during an executive session held in accordance with the law, or during any meeting that is sequestered in accordance with the law.
    - This provision of law does not apply to the following public bodies:
        - The legislature and committees thereof;
        - The State Board of Elementary and Secondary Education;
        - The Board of Regents;
        - The Board of Ethics/Ethics Adjudicatory Board;
        - The State Civil Service Commission;
        - Louisiana Citizens Property Insurance Corporation board of directors;
        - The board of supervisors for the LSU, U of La., LCTCS and Southern University systems; and
        - Any parish board of election supervisors.

For a summary of all the **Disability Related Accommodation and Non-Emergency Electronic Meeting Requirements of the Open Meetings Law [See Section VI of this FAQ].**

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.

R.S. 42:19 further provides that notice must be given to members of the public and the media who request notice be given to them at the same time and in the same manner as notice is given to members of the public body.

Please note: Act 617 of the 2024 Regular Session amended R.S. 42:19 to require that public bodies submit notice of their meetings to the Commission of Administration with sufficient time for the Commissioner to post the notice on the Division of Administration's website established for that purpose prior to the 24-hour deadline for public notices of meetings. Act 617 requires the Commissioner establish a timeline and plan for implementation of this requirement. Subsequently, Act 374 of the 2025 Regular Session repealed this change in the law in its entirety. Act 374 goes into effect on July 1, 2027. Therefore, the requirement to submit notice of meetings to the Commissioner remains in effect until that date. Currently, however, the Commissioner has not established a portal.

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.42.**

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 and what is a "consent 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) further provides that governing authorities of parishes and school boards with populations of one hundred twenty-five thousand (125,000) or more or municipalities with a population of one hundred thousand (100,000) or more may use a "consent agenda." R.S. 42:13(A)(1) defines "consent agenda" as "a grouping of procedural or routine agenda items that can be approved with general discussion." Under R.S. 42:19(A)(1)(b)(ii)(dd), when an agenda contains more than 50 items, the qualifying governing authority may take action on items on a consent agenda 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.

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.

NOTE: R.S. 42:19 provides that notice must be given to members of the public and the media who request notice be given to them at the same time and in the same manner as notice is given to members of the public body.

Additionally, please note: Act 617 of the 2024 Regular Session amended R.S. 42:19 to require that public bodies submit notice of their meetings to the Commission of Administration with sufficient time for the Commissioner to post the notice on the Division of Administration's website established for that purpose prior to the 24-hour deadline for public notices of meetings. Act 617 requires the Commissioner establish a timeline and plan for implementation of this requirement. Subsequently, Act 374 of the 2025 Regular Session repealed this change in the law in its entirety. Act 374 goes into effect on July 1, 2027. Therefore, the requirement to submit notice of meetings to the Commissioner remains in effect until that date. Currently, however, the Commissioner has not established a portal.

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, which 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 as the official journal for their respective parishes, towns, or cities for a term of one year. R.S. 43:141(A).

R.S. 43:140(3) defines "newspaper" as a publication that complies with the requirement of R.S. 43:141.1(A)* *and* during each year of the five-year period prior to the first publication of any legal or official notice therein:

(a) Has been published at regular intervals of not less than weekly.

(b) Has been originated and published for the dissemination of current news and intelligence of varied, broad, and general public interest, including

regular news coverage of local public meetings and events, and is not devoted to the interests of, or published for the entertainment or instruction of, or has a circulation restricted to, any particular sect, denomination, labor or fraternal organization, or other special group or class of citizens.

(c) Has not been published primarily for advertising purposes and has not contained more than seventy-five percent advertising in more than one-half of its issues, excluding separate advertising supplements inserted into but separately identifiable from any regular issue or issues.

(d) Has maintained a general paid circulation to bona fide paying subscribers within the area the publication is required.

R.S. 43:141.1(A)* requires newspapers selected as official journals to have a website and to post all official proceedings and public notices that it publishes on that website and on a collective website in which a majority of the state's official journals participate.

*R.S. 43:142 provides further qualifications of "newspaper" as follows:

(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. Do errors and omissions made by the official journal affect the validity of the notice?

A.21. No. R.S. 43:143.1(A) provides that "Except where constitutionally infirm, any fault in the publication of any official proceeding or public notice to be published in the official journal that is not due to the negligence of the public body shall not affect the validity of the publication of the proceeding or notice."

Q.22. Is there any guidance in state law regarding contracting and billing with official journals and compensation for printing?

A.22. Yes. There are several statutes concerning billing and contracting with official journals for parish and municipal authorities and for school boards. See, R.S. 43:143.1(B), R.S. 43:147, and R.S. 43:147.1

Most parts of these statutes became effective August 1, 2023; however, note that the provisions in R.S. 43:143.1 are to be implemented "not later than January 1, 2024" and that on July 1, 2027 R.S. 43:147 and R.S. 43:147.2 are repealed. On July 1, 2027, qualified newspapers are required to submit to parish and municipal authorities and school boards bids for official proceedings and public notice by online publication pursuant to R.S. 43:147.1, unless the governing body requests otherwise.

Q.23. Does publication on the public entity's website substitute for publication in an official journal?

A.23. No. While R.S. 43:141.1, provides in Paragraph (B) that parish, municipal governing authorities and school boards *may* publish a copy of the official proceedings and public notices that they are required to publish in their official journals on their respective websites, such publication would be *in addition to,* not a substitute for, publication in the official journal.

Q.24. Are public bodies required to keep minutes? **R.S. 42:20**

A.24. 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.25. Are public bodies required to vote in any particular manner? R.S. 42:14

A.25. 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. 80-2**.

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

However, R.S. 42:17.2.1(A) appears to have created an exception to the line of Attorney General's opinions that *viva voce* requires the physical presence of all members of a public body to vote. That statute provides that members of a public body who has a disability recognized by the Americans with Disabilities Act (ADA) shall be allowed to participate and vote in a meeting via electronic means as defined in R.S. 42:17.2 (video or teleconference). Such a member's participation via electronic means shall also count towards the making of a quorum. Each public body is required to adopt rules, regulations and procedures to facilitate the requirements of R.S. 42:17.2.1(A). For state agencies, the rules must be promulgated pursuant to the Administrative Procedures Act.

For a summary of all the **Disability Related Accommodation and Non-Emergency Electronic Meeting Requirements of the Open Meetings Law [See Section VI of this FAQ].**

Q.26. If a member of the public body chooses to abstain from voting on a matter, must he/she say out loud that they are not voting?

A.26. Yes, if a member of the public body chooses to abstain from voting on a matter he/she should indicate that aloud and it should be recorded in the minutes.

Q.27. Must public bodies allow the recording of their meetings? R.S. 42:23

A.27. 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.28. Are public bodies required to live broadcast their public meetings? **R.S. 42:23**

A.28. R.S. 42:23 requires the following public bodies to broadcast their public meetings live via television or the internet:

- Parish Governing Authorities, including the parish governing authority's committee meetings, in parishes of twenty-five thousand or more;
- School Boards, including the school board's committees, in parishes of twenty-five thousand or more; and
- Municipal Governing Authorities; including committee meetings except for those whose members are volunteers, in municipalities of ten thousand or more.

This provision also mandates that the above entities include sufficient information on its written public notice for the public to locate the broadcast for viewing.

The requirement to broadcast does not include executive sessions.

Q.29. May a public body meet on a legal holiday? **R.S. 42:19**

A.29. 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.

Q.30. Are there any emergency exceptions to the Open Meeting Requirements?
R.S.42:17.1

A.30. Yes. A public body may conduct and its members may attend and participate in a meeting via electronic means (telephone or video conference) provided *all* of the following occur:

(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 open meetings law 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 items:

(a) A matter directly related to the public body's response to the disaster or emergency and which is critical to the health, safety, or welfare of the public.

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

(c) A matter that is critical to continuation of the business of the public body and that is not able to be postponed 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) No later than 24 hours prior to a meeting conducted under new law the public body shall provide for all of the following:

(a) The notice and agenda for the meeting 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.

(b) 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.

The telephone or video conference meeting under this exception must be conducted as follows:

(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.

Q.31. Is there a sample certification for a meeting conducted under the R.S. 42:17.1 emergency exception?

A.31. Sample language that a public entity may use for this written certification is as follows:

Certification of Meeting Conducted Pursuant to La. R.S. 42:17.1

In accordance with R.S. 42:17.1 this notice shall serve as certification of the [public entity's] inability to otherwise operate in accordance with the Louisiana Open Meetings Law due to such a meeting being detrimental to the health, safety, and/or welfare of the public as a result of the public health emergency, as declared by Governor _____ on[date] by [governor's emergency proclamation number].

The [public entity] will provide for attendance at its essential government meeting on [date] via [video or telephone] conference. It is essential that the [public entity] continue to operate to address [matters directly related to its response to the disaster or emergency and/or matters that if delayed will cause a curtailment of vital public services or severe economic dislocation and hardship and/or matters that are critical to the continuation of its business and that are not able to be postponed due to legal requirements and/or other matters that presiding officer has determined are critical or time-sensitive].

Considering the foregoing, and in accordance with R.S. 42:17:1 and [governor's emergency proclamation number], the [public entity's] meeting on [date] at [time] will be held via [video or telephone] conference and in a manner that will allow for observation and input by members of the public, as set forth below:

The meeting may be observed at [meeting access information]. Members of the public may submit public comment on an agenda item [describe method such as use of chat box during meeting, or by

sending an email to [email address] or leaving a voicemail at [phone number] no later than [time] on [date]]. All public comments will be properly identified and acknowledged during the meeting.

Certified this ___ day of ____, 20___.

_____
Signature of Agency Head/
Chief Executive Officer

Q.32. Are there any non-emergency exceptions to the Open Meetings Requirements?
R.S. 42:17.2

A.32. Yes. R.S. 42:17.2, authorizes certain statewide public bodies to conduct up to 1/3 of their meetings via electronic means (video or teleconference) outside of a gubernatorially declared state of disaster or emergency provided certain special requirements, including notice, agenda publication, and public participation, are met. This law is not related to any Americans With Disability (ADA) considerations.

For a summary of all the **Disability Related Accommodation and Non-Emergency Electronic Meeting Requirements of the Open Meetings Law [See Section VI].**

Public bodies to which this non-emergency exception applies:

- This exception only applies to those public bodies that have "powers, duties, or functions that are not limited to a particular political subdivision or region and that conducts at least six regularly scheduled meetings in a calendar year." R.S. 42:17.2(H)(1).

- **NOTE: the law specifically provides that licensing or regulatory bodies shall not conduct a disciplinary hearing or adjudication via electronic means. R.S. 42:17.2(H)(2).**

- Additionally, specific public bodies that would otherwise meet the definition of R.S. 42:17.2(H)(1) are specifically excluded as follows:
  - The legislature and committees thereof;
  - The State Board of Elementary and Secondary Education;
  - The Board of Regents;
  - The Board of Ethics/Ethics Adjudicatory Board;
  - The State Civil Service Commission;
  - Louisiana Citizens Property Insurance Corporation board of directors;
  - The board of supervisors for the LSU, U of La., LCTCS and Southern University systems; and
  - Any parish board of election supervisors.

Notice:

No later than 24 hours prior to the meeting, the public body shall provide all of the following

- The notice and agenda for the meeting posted on the public body's website, emailed to any member of the public or the news media who requests notice and posted and distributed as otherwise required by law;
- 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.

Meeting Requirements: R.S. 42:17.2(C)

- The presiding officer shall be present and shall preside over the meeting at an "anchor location," defined as the public location at which the public body holds in-person meetings or is specifically equipped with the technology necessary to meet via electronic means. This anchor location shall be open to the public and any member of the public shall be allowed to participate in person at the anchor location.
- The public body shall provide a mechanism to receive public comment electronically in the manner it prescribes prior to and, to the extent practical, during the meeting.
- The public body shall identify and acknowledge all public comments, inclusive of those received in person during the meeting and those received in writing or electronically prior to any submission deadline for the meeting and shall maintain those comments in its record of the meeting.
- The presiding officer shall ensure all of the following:
  (a) That each person participating in the meeting is properly identified.
  (b) 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.
  (c) That the voting decision of each participating member of the public body on each matter is clearly identified during each vote during the meeting and recorded and included in the archive of the meeting.
- If the public body is aware of any technical problem that causes the meeting to no longer be audible/visible to the public, the meeting shall be recessed until the problem is resolved. If the problem is not resolved within one hour, the meeting shall be adjourned. The presiding officer shall make an effort to alert all participants to that fact.
- The meetings shall be recorded and made available to the public in an online archive located on the public body's website for at least two years.

- All documents made available to members of the public in attendance at the anchor location shall be made available electronically to members of the public participating electronically to the extent practicable.

Quorum and Public Participation: 42:17.2(E)

- All members of the public body participating in a meeting held pursuant to R.S. 42:17.2, either at the anchor location or via electronic means, shall be counted for the purpose of establishing a quorum and may vote.
- Each public body conducting meetings pursuant to R.S. 42:17.2 shall adopt rules, regulations and procedures to allow the public to participate in the meeting via electronic means.

Number of Electronic Meetings: R.S. 42:17.2(F)

- The number of electronic meetings are limited to no more than 1/3 of the meetings held in a calendar year. Additionally, the number of successive electronic meetings shall be limited to a reasonable number and a schedule published indicating which meetings are conducted in person and which are electronic.
- **Any public body that is strictly advisory or that primarily focuses on issues dealing with disabilities or assisting military families may conduct successive meetings electronically without limitation.**

Per diem R.S. 42:17.2(G)

- Members of a public body who participate in a meeting via electronic means are not eligible to receive a per diem.

II. Executive Session

Q.33. When may public bodies have "closed" executive sessions? R.S. 42:16

A.33. 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 ligation 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.34. What are valid reasons for entering into executive session?

R.S. 42:17 – 42:18

A.34. 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, including discussions concerning cybersecurity plans, financial security procedures, and assessment and implementation of any such plans or procedures;

- 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.35. What are invalid reasons for entering into executive session?

A.35. A public body may not go into executive session for any reason that is not a specifically authorized exception, as set for in **Q.28.** 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, no votes may take place in executive session.

Q.36. What are prerequisites for a closed session to discuss an individual's character and fitness? **R.S. 42: 17(A)(1)**

A.36. 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)(7).

Q.37. What is considered litigation for the purpose of closing a meeting? **R.S. 42:19**

A.37. 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.38. What are the requirements for the State Mineral Board to close its meetings?

A.38. 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.39. What are the requirements for a school board to close its meeting to discuss a student?

A.39. 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.40. What happens if a public body violates the Open Meetings Law? **R.S. 42:24**

A.40. 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.41. Who must enforce the Open Meetings Law? **R.S. 42:25**

A.41. 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.42. What relief may be granted for violations? **R.S. 42:26**

A.42. 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.

Q.43. Where may one initiate enforcement proceedings? **R.S. 42:27**

A.43. Enforcement proceedings shall be instituted in the district court for the parish in which the meeting took place or will take place.

Q.44. What is the maximum amount that can be assessed as a civil penalty for Open Meetings Law violations? **R.S. 42:28**

A.44. 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.

IV. Special Notice to Propose Taxes

Q.45. 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.45. 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.46. What are the provisions regarding a public employer entering a collective bargaining agreement? R.S. 44:67.1

A.46. 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.47. What is the notice requirement regarding a public hearing on municipal zoning regulations? R.S. 33:4724

A.47. 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.48. How is a special meeting called by a Lawrason Act municipality? R.S. 33:405(C)

A.48. 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.

Q.49. Is there a summary of the Disability Related Accommodation and Non-Emergency Electronic Meeting Requirements of the Open Meetings Law?

A.49. For a summary of all the **Disability Related Accommodation and Non-Emergency Electronic Meeting Requirements of the Open Meetings Law** **[See Section VI of this FAQ]****.**

VI. Summary of Disability Related Accommodation and Non-Emergency Electronic Meeting Requirements of the Open Meetings Law

I. All State and Local Government Meetings

A. Public Participation -- R.S. 42:14(E)

- Applies to all state and local public bodies, which is defined in the Open Meetings law as "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 [. . .]." R.S. 42:13(A)(3).
    - The law specifically excludes the following public bodies from its provisions:
        - The legislature and committees thereof;
        - The State Board of Elementary and Secondary Education;
        - The Board of Regents;
        - The Board of Ethics or Ethics Adjudicatory Board;
        - The State Civil Service Commission;
        - The board of directors of the Louisiana Citizens Property Insurance Corporation;
        - The Louisiana Board of Commerce and Industry;
        - The board of supervisors for LSU, University of Louisiana System, Louisiana Community and Technical College System, Southern University System; and
        - Any parish board of election supervisors.

- All public bodies that have the capability to conduct electronic meetings (tele or videoconference) shall adopt rules, regulations and procedures to allow any member of the public with a disability recognized by the Americans with Disabilities Act (ADA), or caretaker of such person, to participate in its meetings if such person so requests.

- Public bodies that do not have such capability shall adopt rules to facilitate viable alternative methods for members of the public with an ADA disability to participate in its meetings if such person, or caretaker, so requests.

- State agencies, defined in R.S. 49:951 as all state entities except committees/boards of the Court and the Legislature, shall promulgate rules pursuant to the Administrative Procedures Act (APA).

- Requirements of R.S. 42:14(E) are not applicable during an properly held executive session or during any meeting that is sequestered in accordance with the law.

B. Board Participation -- R.S. 42:17.2.1

- Applies to all state and local public bodies as defined in Open Meetings Law (R.S. 42:13(A)(3) *except* the legislature and any parish board of election supervisors.
- Provides that a member of a public body who has a disability recognized by the ADA *shall* be allowed to participate and vote in a meeting via electronic means as defined in R.S. 42:17.2 (video or teleconference).
- Such a member's participation via electronic means shall also count towards the making of a quorum.
- Each public body is required to adopt rules, regulations and procedures to facilitate the requirements of R.S. 42:17.2.1(A).
- State agencies (as defined in R.S. 49:951) shall promulgate rules pursuant to APA.

II. Non-Emergency Exception to 1/3 of Open Meetings of Statewide Boards

R.S. 42:17.2 authorizes certain statewide public bodies to conduct up to 1/3 of their meetings via electronic means (video or teleconference) outside of a gubernatorially declared state of disaster or emergency provided certain special requirements, including notice, agenda publication, and public participation, are met. **This law is not related to ADA considerations.**

Public bodies to which this exception applies:

- This exception only applies to those public bodies that have "powers, duties, or functions that are not limited to a particular political subdivision or region and that conducts at least six regularly scheduled meetings in a calendar year." R.S. 42:17.2(H)(1).
    - Examples of such boards would be the State Bond Commission and most licensing or regulatory boards, such as the Pharmacy Board.
    - **NOTE: the law specifically provides that licensing or regulatory bodies *shall not* conduct a disciplinary hearing or adjudication via electronic means. R.S. 42:17.2(H)(2).**

- Additionally, specific public bodies that would otherwise meet the definition of R.S. 42:17.2(H)(1) are excluded from the provisions of this law as follows:
    - The legislature and committees thereof;
    - The State Board of Elementary and Secondary Education;
    - The Board of Regents;
    - The Board of Ethics or Ethics Adjudicatory Board;
    - The State Civil Service Commission;
    - The board of directors of the Louisiana Citizens Property Insurance Corporation;
    - The Louisiana Board of Commerce and Industry;
    - The board of supervisors for LSU, University of Louisiana System, Louisiana Community and Technical College System, Southern University System; and
    - Any parish board of election supervisors.

Notice:

No later than 24 hours prior to the electronic meeting, the public body shall provide all of the following

- The notice and agenda for the meeting posted on the public body's website, emailed to any member of the public or the news media who requests notice and posted and distributed as otherwise required by law;
- 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.

Meeting Requirements: R.S. 42:17.2(C)

- The presiding officer shall be present and shall preside over the meeting at an "anchor location," defined as the public location at which the public body holds in-person meetings or is specifically equipped with the technology necessary to meet via electronic means. This anchor location shall be open to the public and any member of the public shall be allowed to participate in person at the anchor location.
- The public body shall provide a mechanism to receive public comment electronically in the manner it prescribes prior to and, to the extent practical, during the meeting.
- The public body shall identify and acknowledge all public comments, inclusive of those received in person during the meeting (at the anchor location) and those received in writing or electronically prior to any submission deadline for the meeting and shall maintain those comments in its record of the meeting.
- The presiding officer shall ensure all of the following:
  (a) That each person participating in the meeting is properly identified.
  (b) 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.
  (c) That the voting decision of each participating member of the public body on each matter is clearly identified during each vote during the meeting and recorded and included in the archive of the meeting.
- If the public body is aware of any technical problem that causes the meeting to no longer be audible/visible to the public, the meeting shall be recessed until the problem is resolved. If the problem is not resolved within one hour, the meeting shall be adjourned. The presiding officer shall make an effort to alert all participants to that fact.
- The meetings shall be recorded and made available to the public in an online archive located on the public body's website for at least two years.
- All documents made available to members of the public in attendance at the anchor location shall be made available electronically to members of the public participating electronically to the extent practicable.

Quorum, Voting and Rules: 42:17.2(E)

- All members of the public body participating in a meeting held pursuant to R.S. 42:17.2, either at the anchor location or via electronic means, shall be counted for the purpose of establishing a quorum and may vote.
- Each public body conducting meetings pursuant to R.S. 42:17.2 shall adopt rules, regulations and procedures to allow the public to participate in the meeting via electronic means.

Number of Electronic Meetings: R.S. 42:17.2(F)

- The number of electronic meetings is limited to no more than 1/3 of the meetings held in a calendar year.
- Additionally, the number of successive electronic meetings shall be limited to a reasonable number and a schedule shall be published indicating which upcoming meetings will be conducted in person and which will be electronic.
- **Any public body that is strictly advisory or that primarily focuses on issues dealing with disabilities or assisting military families may conduct successive meetings electronically without limitation.**

Per diem R.S. 42:17.2(G)

- Members of a public body who participate in a meeting via electronic means are not eligible to receive a per diem.

III. Disability Recognized by the Americans with Disabilities Act

The Americans with Disability Act (ADA), in 42 USC §12102, defines "disability" for the purpose of an individual under the ADA to mean:

- A physical or mental impairment that substantially limits one or more major life activities of the individual;
- A record of such an impairment; or
- Being regarded as having such an impairment.

The ADA further defines "major life activities" as including, but not limited to, the following:

- Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working; and
- Operation of major bodily functions, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

42 USC §12102(4) provides that disability shall be construed in favor of broad coverage of individuals, and that impairments may be temporary in nature and still constitute a disability for the purposes of the ADA.

The ADA itself does not define or identify specific medical conditions as constituting a disability. However, the Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Justice: Civil Rights Division, who are tasked with enforcement of the ADA, have through rulemaking provided guidance that the following medical conditions, when substantially limiting major life activities, will likely constitute a disability for the purposes of the ADA:

- Blindness
- Deafness
- Intellectual disability
- Partial or complete missing of limbs or mobility impairments requiring a wheelchair
- Autism
- Cancer
- Cerebral palsy
- Diabetes
- Epilepsy
- Human Immunodeficiency Virus (HIV),
- Multiple sclerosis
- Muscular dystrophy
- Major depressive disorder
- Bipolar disorder
- Post-traumatic stress disorder (PTSD)
- Obsessive compulsive disorder (OCD)
- Schizophrenia

VII. Attorney General Opinions

AG Op. No. 25-0025 The AG opines that Local Emergency Planning Committees, which are established by the State Emergency Response Commission pursuant to the federal Emergency Planning and Community Right-to-Know Act (42 USC 11001, et seq.), are public bodies subject to the Open Meetings Law.

AG Op. No. 22-0127 The AG opines when a non-profit exercises the authority conferred by R.S. 33:909.21 (special security district), it is a public body subject to the Open Meetings Law and it is therefore prohibited from engaging in proxy voting.

AG Op. No. 22-0010 The AG opines that there is no prohibition in the virtual meeting exception of R.S. 42:17.1 against some or all board members meeting in the same location to conduct a meeting by electronic means provided all statutory requisites are satisfied. Please note: statutory requirements include special notice as well as accommodation for public participation during the meeting.

AG Op. No. 20-0150 The AG opines that a Parish Teacher Association that does not constitute a committee of the School Board or serve in any advisory capacity to

the School Board and reports only to the Superintendent and Assistant Superintendent is not a public body for the purposes of the Open Meetings Law, notwithstanding its initial creation by the School Board.

AG Op. No. 20-0103 The AG reaffirms that a Parish Executive Committee for a political party is not a public body for the purposes of the Open Meetings Law. The Parish Governing Authority is required to provide access to the Courthouse to a Parish Executive Committee for its initial meeting following an election pursuant to R.S. 18:444(C)(1); however, the Parish Governing Authority is not required to provide a meeting place free of charge for subsequent meetings.

AG Op. No. 20-0098 The AG states that nothing in the Open Meetings Law prohibits members of a public body from attending open meetings of another public body as citizens. The AG notes that whether a quorum of members of a public body attending an open meeting of another public body is a violation of the Open Meetings Law is a fact specific question. That is, the mere fact that a quorum is present at any particular location does not constitute a violation of the Open Meetings Law; the quorum acting, deliberating or receiving information on matters over which the public body has supervision, control, jurisdiction or advisory power would.

AG Op. No. 19-0128. The AG discusses the Open Meetings Law regarding permissible and prohibited communications between board members outside of a public meeting.

AG Op. No. 19-0145 – Under the provisions of R.S. 42:17(D) a working group created by a public body that is composed of uncompensated citizens and serves only to advise the public body is subject to the Open Meetings Law but is exempted from the provisions of R.S. 42:19 (notice requirements) and 42:20 (written minutes).

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 Laws 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.