

OPEN MEETINGS LAW



Office of the Attorney General

Presented by: Olivia G. Boudreaux
Assistant Attorney General

Agenda: Overview

- Overview of Open Meetings Generally
- Public Comment
- Executive Sessions
- Notice of Meetings and Agendas
- Meeting Minutes
- Recording of Meeting
- Emergency Electronic Meetings
- New Law: Acts 2023, No. 393
- Enforcement of Open Meetings Law
- Penalties

Slide 2

DEC1 Condence this slide
Day, Erin C., 11/21/2023

Agenda: Acts 2023, No. 393

- Electronic Access to Persons with ADA Recognized Disabilities
 - Electronic Access by Members of the Public with a Disability
 - Electronic Access by Members of the Public Body with a Disability
 - Applicability to Public Bodies
- Public Body Meetings via Electronic Means
 - Requirements for an Electronic Meeting
 - Additional Notice Requirements
 - Conducting an Electronic Meeting
 - Example of Rules for Electronic Meetings
 - Exceptions

Sunshine Laws

- Public business must be performed in an open and public manner
- Citizens aware of the performance of public officials and the deliberations and decisions that go into the making of public policy
- Construed liberally

What is a public meeting?

Convening of a quorum of a public body to deliberate, act, or receive information on a matter over which the public body has supervision, control, jurisdiction, or advisory power.

La. R.S. 42:13(A)(1).



What is a public body?

Public body:

“Public body” means:

- A governing authority
 - That possesses policy making, advisory, or administrative functions
 - Including any committee or subcommittee of any of public body
-
- La. R.S. 42:13(A)(2)

Exceptions



What is a quorum?

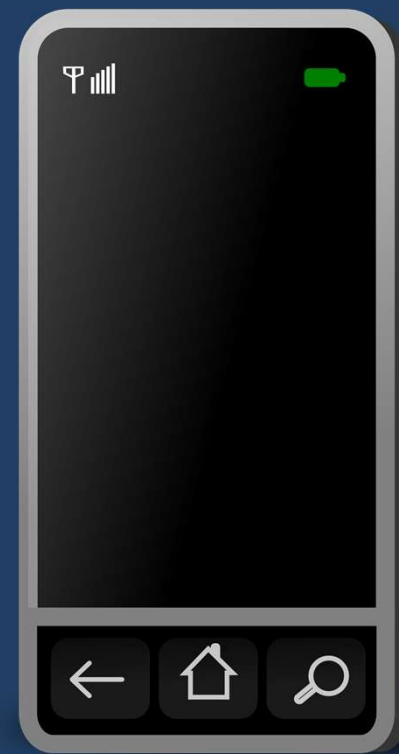
- “Quorum” means a simple majority of the total membership of a public body.
- A “walking” or “rolling” quorum is discussion of an issue through the use of multiple discussions of less than a quorum.
 - Unlawful
 - Violation of the Open Meetings Law

Quorums in Texts and Emails

Before sending a message to a quorum of a public body ask...

- What is the sender's intent: to convey information or elicit a response?
- Is the communication designed to facilitate a group discussion over email?

Walking or Rolling quorums can also happen through texts and emails.



Can I attend a regular in-person meeting by telephone?

- **NO** (generally).
- Opinion 13-0075: Members cannot participate by telephone for purposes of achieving a quorum.
- Votes shall be recorded in the minutes, which are public documents.



Public Comment

- All public bodies must allow a public comment period.
- Reasonable rules may be adopted.
- The law does not provide a definition of “reasonable” rules.



La. R.S. 42:15

School Board Public Comment

- Each school board subject to the open meetings law 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.
- 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.
- A comment period for all comments at the beginning of a meeting shall not suffice to meet the requirements of public comment for school board meetings.

Executive Session

Procedure for entering into Executive Session

- La. R.S. 42:16 provides the procedure for going into executive session. There must be a **vote of 2/3 of the members present.**
- **No final or binding action shall be taken during an executive session.**



Executive session (continued)

Proper Reasons to Enter Executive Session:

(1) Discussion of the character, professional competence, or physical or mental health of a person.

The person must be notified in writing at least twenty-four hours, exclusive of Saturdays, Sundays, and legal holidays, before the meeting.

The person may require that such discussion be held at an open meeting.

However, nothing shall permit an executive session for discussion of the appointment of a person to a public body or for discussing the award of a public contract.

Executive session (continued)

Proper Reasons to Enter Executive Session:

- (2) Strategy sessions or negotiations with respect to collective bargaining, prospective litigation after demand has been made, or active litigation.
- (3) Discussion regarding security or security procedures.
- (5) Cases of extraordinary emergency.

Executive session (continued)

Proper Reasons to Enter Executive Session:

(6) Any meeting of the State Mineral and Energy Board at which records or matters entitled to confidential status and are disclosed to the board for use in evaluating lease bids or development covering state-owned lands and water bottoms.



Executive session (continued)

Proper Reasons to Enter Executive Session:

(7) Discussions between a city or parish school board and individual students or the parents or tutors of such students.

About problems of such students, their parents, or tutors.

However, that any such parent, tutor, or student may require that such discussions be held in an open meeting.



Executive session (continued)

Proper Reasons to Enter Executive Session:

(8) Presentations and discussions at meetings of civil service boards of test questions, answers, and papers.



Executive session (continued)

Proper Reasons to Enter Executive Session:

(9) Second Injury Board for discussion of settlement of a workers' compensation claim.

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

No final or binding action shall be taken during an executive session.
The minutes must include the vote of each member to enter into executive session and the reason for doing so.

Notice of Meetings

- All public bodies shall give written public notice of any regular, special, or rescheduled meeting no later than 24 hours before the meeting.
- The agenda cannot be changed less than 24 hours before the meeting.
 - La R.S. 42:19



What is reasonable notice?

Written public notice must include:

- Agenda;
- Date;
- Time; and
- place of the meeting.
- Each agenda item must be listed separately and with reasonable specificity.
- Before the public body may take action on an item, the item must be read aloud

Posting the Notice

Copies of the notice must be posted at:

1. The principal office of the body holding the meeting; OR
2. The building in which the meeting is to be held; OR
3. In the official journal of the public body.
4. Must be posted on website if you have one.
5. Notice must be mailed to any member of the media who requests it.

Changes to the Agenda

- Upon unanimous approval the public body may take up a matter not on the agenda.
- The new matter must be identified in the motion to take it up with reasonable specificity.
- It must be entered into the minutes.
- There must be an opportunity for public comment, and amending the agenda cannot be used as a subterfuge to defeat the purpose of the Open Meetings Law.

Sample Notice

****NOTICE OF MEETING****

Louisiana Open Meetings Law Council

Wednesday, August 16, 2019

9:00 A.M

123 N. Main Street, Room 2, 2nd Floor

Agenda

1. Call to Order
2. Roll Call
3. Public Comment
4. New Business
 1. Approve budget for FY 2019-2020
 2. Adopt Resolution No. 19-0287
5. Executive Session
 1. *Polly Plaintiff v. Danny Defendant*, Docket no. C -123456, 19th Judicial District Court, Division A.
6. Adjournment.

Minutes

La. R. S. 42:20 requires that, at a minimum, minutes must include:

- Date
- Time
- Place of the meeting
- The members of the public body both present and 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 to be included.



Sample Minutes

Louisiana Open Meetings Law Council

Wednesday, August 16, 2022

9:00 A.M

123 N. Main Street, Room 2, 2nd Floor

Members Present:

Charles Citizen

Jennifer Justice

Mary Magnolia

Member Absent:

Taylor Tiger

Action Taken

1. Called to Order at 9:00 a.m.
2. Roll Call
3. Public Comment
4. New Business
 1. Council voted to approve budget for FY 2019-2020. Motion passed.
 2. Council voted to adopt Resolution No. 19-0287. Motion failed.
5. Executive Session
 1. Council entered Executive Session to discuss *Polly Plaintiff v. Danny Defendant*, Docket no. C-123456, 19th Judicial District Court, Division A under La. R.S. 49:17(A)(2) at 9:45am. Board reentered regular session at 9:55am.
 - Ayes - Charles Citizen, Jennifer Justice, and Mary Magnolia. Nays – None.
6. Adjourned at 10:00 a.m.

Recording

- All proceedings of a public meeting may be video or tape recorded, filmed, or broadcast live.
 - Public body shall establish standards for recording.
- Any nonelected board or commission with the authority to levy a tax shall video or audio record, film, or live broadcast meetings.
- Records of the proceedings of public meetings shall be preserved for a period of at least 2 years from the date of the recording.

Exception for Meetings During a Gubernatorially Declared Disaster or Emergency

La. R.S. 41:17.1: A public body may conduct a meeting via electronic means.

- The governor has declared a state of emergency or disaster involving a geographic area within the jurisdiction of the public body.
- The public body and its presiding officer comply with all of the requirements of this Section.



Certification

Presiding officer of the public body must certify on the notice of the meeting that the agenda of the meeting is limited to:

- Matters that are directly related to the declared emergency.
- Matters that if delayed will curtail vital public services.
- Matters that are critical to continuation of the business of the public body.
- Other critical/time-sensitive matters that in the determination of the presiding officer should not be delayed.
 - Shall not be considered unless the members of the body present at the meeting approve the consideration of the matters by a two-thirds vote.

Notice Requirements

The notice and agenda for the meeting and information on how members of the public may participate in the meeting and submit comments shall be 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
- Widely distributed to every known news media outlet within the geographic area within the jurisdiction of the public body

Misc. Requirements

For each emergency electronic meeting:

- Required to have a way to receive public comment electronically.
- Must identify and acknowledge all public comments during the meeting.
- Must maintain comments in its record of the meeting.
- Each person participating in the meeting must be properly identified.
- All parts of the meeting, excluding any matter discussed in executive session, must be clear and audible to all participants in the meeting including the public.

New Law: Acts 2023, No. 393.

Addresses two issues:

- Electronic Access to Regular Open Meetings
 - Members of the public with a disability
 - Members of the public body with a disability
- Public Bodies Meeting via Electronic Means



NEW

Electronic Access to Regular Open Meetings: Does this apply to the person requesting electronic access?

The Americans with Disability Act (ADA) defines “disability” to mean:

- A physical or mental impairment that affecting major life activities;
- A record of such an impairment; or
- Being regarded as having such an impairment.

Disability is construed in favor of broad coverage of individuals, and impairments may be temporary and still constitute a disability for the purposes of the ADA.

Electronic Access to Regular Open Meetings: Does this apply to the person requesting electronic access?

The ADA defines “major life activities” as including, but not limited to:

- Caring for oneself or performing manual tasks
- Seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working
- Operation of major bodily functions

Electronic Access to Regular Open Meetings: Does this apply to the person requesting electronic access?

The ADA itself does not provide anything specific as constituting a disability, but U.S. DOJ has provided 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
- Obsessive compulsive disorder
- Schizophrenia

Electronic Access to Regular Open Meetings: Does this apply to my public body?

Is your public body capable of allowing a person with a disability to participate in your meetings electronically?

Yes?

You must adopt rules to for participation for any such person who prior to the meeting requests that accommodation.

No?

You must adopt rules for any such person to participate in its meetings via an alternative method.

Electronic Access to Regular Open Meetings: Does this apply to my public body?

- Does your public body have a member with a disability recognized by the ADA?
 - Yes? It applies unless the public body is the legislature or a parish boards of election supervisors.
- You must allow a member with a disability recognized by the ADA to participate and vote in a meeting via electronic means.
 - Notwithstanding provisions to the contrary

Public Bodies Meeting via Electronic Means: Does this apply to my public body?

- The public body has powers, duties, or functions that are not limited to a particular political subdivision nor region.
- The public body conducts at least six regularly scheduled meeting in a calendar year.
- Examples of such boards would be the State Bond Commission and most licensing or regulatory boards, such as the Pharmacy Board.

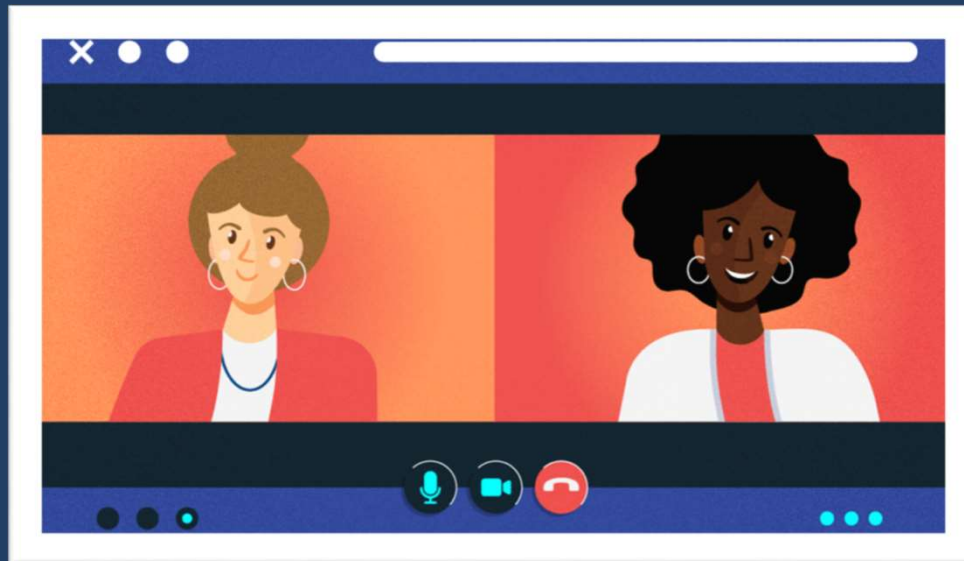
Public Bodies Meeting via Electronic Means: Does this apply to my public body?

The public body is **not**:

- The legislature, either house of the legislature, or any committee of the legislature
- BESE
- Board of Regents
- Ethics Board or Ethics Adjudicatory Board
- State Civil Service Commission
- Board of Directors of the Louisiana Citizens Property Insurance Corporation
- State Board of Commerce and Industry
- Board of supervisors for the LSU System, ULS, LCTCS, or Southern University System.
- A parish board of election supervisors

Public Bodies Meeting via Electronic Means: My public body applies, now what?

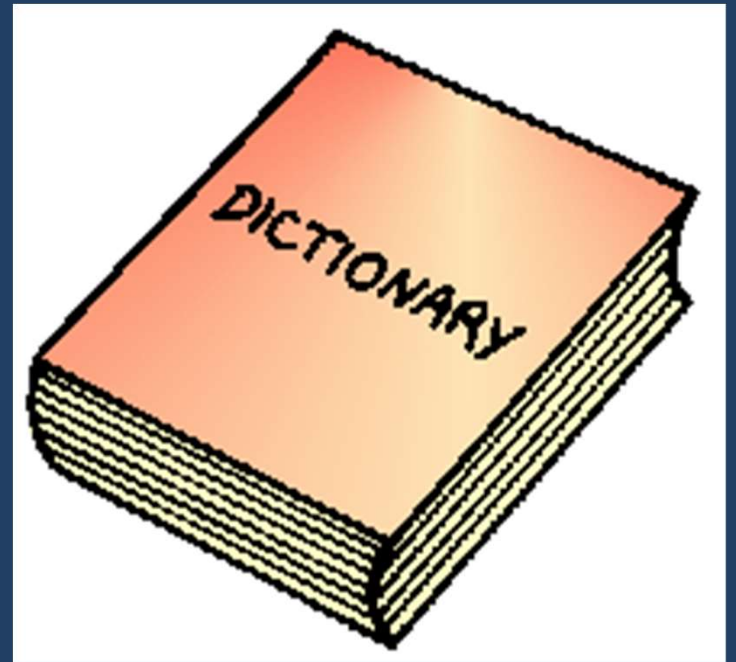
Public body may conduct a meeting via electronic means provided that *you meet all of the requirements.*



Glossary:

Terms you need to know:

- Anchor location
- Meeting via electronic means
- Teleconference
- Video conference



General Rules: Meeting via Electronic Means

- You must adopt rules, regulations, and procedures to allow the public to participate via electronic means.
- You may only have meetings via electronic means up to 1/3 of regularly scheduled meetings in a calendar year.
- You must limit the number of successive meetings via electronic means.

2024

January	February	March
S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29	S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31
April	May	June
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July	August	September
S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
October	November	December
S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	S M T W T F S 1 2 3 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

General Rules: Meeting via Electronic Means

- You must, to the extent practicable, publish a schedule of your meetings indicating which are in person and which are via electronic means.
- No member of the public body who participates via electronic means can receive per diem for attendance at the meeting.

Schedule

SUN	MON	TUE	WED	THU	FRI	SAT

Notice Required for Meeting via Electronic Means

At least 24 hours prior to the meeting the notice and agenda for the meeting AND detailed information on how members of the public may participate must be:

- Posted on your website
- Emailed to any member of the public or news media who requests notice of your meetings

Conduct Required for Meeting via Electronic Means

- At the anchor location:
 - Presiding officer is present
 - It must be open to the public
 - Anyone is allowed to participate in-person
- Must have a mechanism to receive public comment electronically
- Must identify and acknowledge all public comments
- Must maintain comments in its record of the meeting



Conduct Required for Meeting via Electronic Means

- Presiding officer has additional duties.
- Meeting must be recorded and made publicly available in an online archive on the website for at least two years.
- To the extent practical, all documents made available to the public at the anchor location must be made available to the public participating electronically

Example of Rules, Regulations, and Procedures to allow the Public to Participate via Electronic Means

DISCLAIMER: this is not advice or guidance to adopt same or similar rules—this is an example of rules already promulgated and currently in use by a public body.

- Louisiana Bond Commission administrative rules for Virtual Meetings
 - 71 LAC Pt III, § 2501 *et seq.*
- Section 2501 – Definitions
- Section 2503 – Notifying the Public of a Virtual Meeting
- Section 2505 – Public Comment Prior to and During a Virtual Meeting
- Section 2507 – Procedure During a Virtual Meeting

Section 2501 – Definitions

- Anchor Location—shall be Conference Room 173 on the First Floor of the Capitol Annex Building or any other physical location from which the meeting originates as provided in R.S. 42:29(F).
- Chairman—shall mean the chairman of the State Bond Commission, or his designee.
- Quorum—shall mean a majority of members of the State Bond Commission, including those present at either the anchor location or participating in the meeting via electronic means.
- Recording Secretary—shall mean the member of the State Bond Commission staff responsible for recording the meeting.
- Virtual Meeting—shall have the same meaning as “Meeting via electronic means” as provided in R.S. 42:17.1(D)(1).

Section 2503 – Notifying the Public of a Virtual Meeting

A. The State Bond Commission shall post the agenda for the virtual meeting in accordance with the Louisiana Open Meetings Law, R.S. 42:11. The agenda for the virtual meeting shall specifically identify the meeting as a virtual meeting, or a meeting that will be conducted via electronic means, and shall include the following:

1. the anchor location for the virtual meeting;
2. an electronic link to access the virtual meeting;
3. instructions for joining the virtual meeting;
4. email address for the public to submit electronic comments prior to the virtual meeting;
5. the final date and time by which members of the public may submit electronic comments prior to the virtual meeting.

B. The electronic link, instructions for joining the virtual meeting, and email address to submit comments, as provided in LAC 71:III.2503.A.2, 3 and 4, shall be placed on the State Bond Commission website once the agenda is posted.

Section 2505 – Public Comment Prior to and During a Virtual Meeting

A. Members of the public wishing to participate in a virtual meeting may do so in any of the following manners:

1. a computer using computer video and audio;
2. a computer using computer video and phone audio;
3. a smartphone using video and audio;
4. a phone using audio only;
5. a smart device (iPad, tablet, etc.) using the device's video and audio;
6. a smart device (iPad, tablet, etc.) using the device's video and phone audio;
7. attend in person at anchor room.

Section 2505 – Public Comment Prior to and During a Virtual Meeting (continued)

B. Members from the public wishing to provide public comment on any agenda item prior to the virtual meeting may do so by emailing those comments to the email designated on the agenda and the State Bond Commission website. Such public comment(s) shall include the following information:

1. the individual's name;
2. entity/company represented (if applicable);
3. title/position (if applicable);
4. agenda item for which he/she is providing comment.

Section 2505 – Public Comment Prior to and During a Virtual Meeting (continued)

C. Members of the public wishing to provide public comment during the virtual meeting may do so in any one of the following manners:

1. by using an audio and/or video device at such time when the chairman calls for public comment on that agenda item;
2. by using the “chat” feature, or similar method of providing written comment, during the virtual meeting;
3. if attending the virtual meeting at the anchor location, by filling out a public comment card and providing it to the recording secretary. The recording secretary will then forward the public comment card to the chairman to read into the record when discussing that agenda item.

D. Subject to LAC 71:III.2507.C.3, all public comments, both those submitted prior to the virtual meeting or during the virtual meeting, will be acknowledged and read into the record at the appropriate time.

Section 2507 – Procedure During a Virtual Meeting

A. Upon commencement of the meeting, all members of the public shall be muted. Once the meeting is called to order, the chairman shall state that this is a virtual meeting of the State Bond Commission, and shall provide the manner in which the public may submit or make comments during the meeting, including the code for members of the public to unmute themselves.



Section 2507 – Procedure During a Virtual Meeting (continued)

B. Prior to the introduction of the first agenda item, the recording secretary shall take roll to establish a quorum. Members of the State Bond Commission may either be present at the anchor location or participate via electronic means.

1. In order to participate in a virtual meeting via electronic means, a member of the State Bond Commission must participate via audio and video. As such, any member of the State Bond Commission participating via electronic means must be visually present throughout the meeting.
2. In the event a State Bond Commission member's audio or video capabilities are compromised, he/she may no longer be counted for purposes of a quorum, and thus, may not vote on any agenda item for which the audio or video was compromised.
3. A member of the State Bond Commission who is physically present at the anchor location and visible through the anchor location's camera shall satisfy the requirements of LAC 71:III.2507.B.1 for purposes of a quorum and participation.

Section 2507 – Procedure During a Virtual Meeting (continued)

C. Prior to action on an agenda item, the chairman shall read into the record the following:

1. any public comment received prior to the meeting (if any);
2. any public comment received during the meeting via public comment card, “chat” function, etc. (if any);
3. notwithstanding LAC 71:III.2507.C.1. and 2., profanity and inappropriate language is prohibited and shall not be read into the record.

D. Prior to action on an agenda item, the chairman shall also ask if anyone from the public is present, either via electronic means or at the anchor location, and wishes to speak on those agenda item(s). If anyone from the public wishes to speak, the chairman shall allow him/her reasonable time to do so.

Section 2507 – Procedure During a Virtual Meeting (continued)

E. In accordance with R.S. 42:29(A)(5), all votes taken at a virtual meeting shall be by roll call vote.

F. To the extent possible, the State Bond Commission shall follow any and all procedures that it follows for its non-virtual meetings, including those procedures in LAC 71:III.103.

G. After the conclusion of a virtual meeting, a recording of the meeting shall be made available to the public via the State Bond Commission's website.

New Laws: Acts 2023, No. 393— Exceptions

- Disability measures for members of the public do not affect how you conduct executive session.
- Any law requiring physical presence for quorum and voting is still in place and applicable for a member of the public body with a disability.
- No licensing or regulatory public body can conduct a disciplinary hearing or adjudication via electronic means.

Enforcement

La. R.S. 42:25 provides for who can enforce the provisions of the Open Meetings Law:

- The Attorney General
- District Attorneys
- Any person who has been denied any right to an open meeting

Penalties

La. R.S. 42:26 allows:

- Writ of mandamus
- Injunctive relief
- Declaratory Judgment
- Judgment rendering action void
- Judgment awarding civil penalties
- Attorney's fees and court costs
- Suit must be brought within 60 days



Penalties PT.2

Civil Penalty

Any member who knowingly and willfully participates in a meeting violating this principle shall pay up to:

- \$500 *per violation*
- Personally liable
- Suit must be brought within 60 days
- See La. R.S. 42:28



THE END

