

“Sunshine” Laws: Open and Accountable Government

Council Transition Project

The Public Law Center

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What Are “Sunshine” Laws?

- **Open Meetings**: “Public bodies” must conduct business only in open, public meetings.
- **Public Records**: Documents in the possession of public bodies are “public records” that must be disclosed to the public upon request.

*Louisiana’s sunshine laws are “general” and inclusive in nature; that is, exceptions must be specifically authorized.

Legal Origins of “Open Government”

- La. Const. Art. XIII, Section 3

Right to Direct Participation

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

Louisiana’s “Sunshine” Laws:

Open Meetings Act—La. R.S. 42:11, *et seq.*

Public Records Act—La. R.S. 44:1, *et seq.*

Who Can Enforce Open Meetings Laws?

- §24(A) The Attorney General

OR

- §25(B) The District Attorney **may** institute enforcement actions at their own initiative and **must** do so upon receiving a complaint, unless written reasons are given for not filing suit.

OR

- §25(C): “Any person” who has been denied rights or reasonably believes there’s been a violation of the law may institute enforcement proceedings.

What Remedies Are Available?

- §24: Actions taken at a meeting conducted in violation of the Open Meetings Law can be voided by a suit filed within 60 days.
- §26: Other Remedies Include . . .
 - Civil Penalties of \$100 for Willful Violation
 - Noncompliance Is Punishable as Contempt
 - Prevailing Plaintiff Gets Attorney's Fees
 - Attorney's Fees Awarded Against Plaintiff Only If Litigation Is Frivolous

§28. Civil Penalties

- “Knowingly and willfully” participating in a meeting that violates Open Meetings Law is punishable by a fine of \$100 per violation.
- A member is personally liable for payment of the penalty.
- Suit must be filed within 60 days of a violation.

How Are Suits Handled by Courts?

- §27: Suit is filed in the district court for the parish where the meeting was held and must be *tried by preference* and in a summary manner.
- Appeals are heard on the *preferential docket without delay*, and a decision is to be rendered as soon as practicable.

Open Meetings Act Liberally Construed

R.S. 42:12(A): “It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy. Toward this end, the provisions of this Chapter shall be *construed liberally*.”

Internet Resources

- Louisiana Legislature Website: <http://legis.la.gov/>
- Louisiana Attorney General Opinions:
<http://ag.state.la.us/Opinions.aspx>
- New Orleans City Government Laws:
<http://www.nola.gov/en/GOVERNMENT/>
- Public Affairs Research Council's "Sunshine Headquarters":
<http://www.parlouisiana.com/sunshineheadquarters.cfm>

History of State Open Meetings Laws

- **Florida** was the first state to pass an open meetings law in 1905; it applied only to City Council hearings.
- **Alabama** became the first state to enact an expansive open meetings law in 1915.
- **Louisiana's** law was first enacted in 1952, but was amended and strengthened in the 1970's.
- By the early 1960's, 27 states had such laws; today, it's 50 out of 50.

DEFINITIONS



DEFINITIONS

- **"Meeting"** means the convening of a quorum of a public body to deliberate or act on a matter over which the public body has supervision, control, jurisdiction, or advisory power. R.S. 42:13(A)(1).
- **"Quorum"** means a simple majority of the total membership of a public body. R.S. 42:13(A)(3).

DEFINITIONS

"Public body" means village, town, and *city governing authorities*; parish governing authorities; school boards and boards of levee and port commissioners; boards of publicly operated utilities; planning, zoning, and airport commissions; and any other state, parish, municipal, or special district boards, commissions, or authorities, and those of any political subdivision thereof, where such body possesses policy making, advisory, or administrative functions, *including any committee or subcommittee of any of these bodies enumerated in this paragraph.* R.S. 42:13(A)(2).

Exceptions for Chance Meetings or Social Gatherings: R.S. 42:13(B)

- No vote or other action taken
- No formal or informal polling of members

Open Meetings of Public Bodies



§14. Open Meetings of Public Bodies

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

B. Each public body shall be prohibited from utilizing any manner of

- * *proxy voting* procedure,
- * *secret balloting*, or
- * *any other means to circumvent the intent of this Chapter.*

Public Comment at Meetings



Public Comment at Meetings

- **§14(D):** "Except school boards . . . , each public body . . . shall allow a public comment period at any point in the meeting prior to action on an agenda item upon which a vote is to be taken."
- **§15(A):** "[E]ach school board . . . shall allow public comment . . . prior to taking any vote. The comment period shall be for each agenda item and shall precede each agenda item."
- **§15(C):** "[A] comment period for all comments at the beginning of a meeting shall not suffice"

Convening in Executive Session



§16: Convening in Executive Session

- Permitted with 2/3 vote of members present.
- Limited to exempt matters listed in 42:17.
- No final or binding action may be taken.
- Vote of each member to go into an executive session must be recorded.
- Reason must be stated on the record.
- Cannot be used as a subterfuge to avoid open meeting requirements.

§17. Reasons for Executive Session

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

BUT:

- The person must be notified 24 hours in advance and may require that discussion be held at an open meeting;
- Executive session is not permitted for discussion of the appointment of a person to a public body;
- Nor for discussing the award of a public contract.

(2) Strategy sessions or negotiations regarding:

- 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.

§17. Reasons for Executive Session

(3) Discussion regarding the report, development, or course of action regarding *security* personnel, plans, or devices.

(4) *Investigative proceedings* regarding allegations of misconduct.

(5) Cases of *extraordinary emergency*, which shall be limited to natural disaster, threat of epidemic, civil disturbances, suppression of insurrections, the repelling of invasions, or other matters of similar magnitude.

§17. Reasons for Executive Session

- (6) State Mineral and Energy Board;
- (7) School board discussion with student and parents;
- (8) Civil service questions and answers;
- (9) Second Injury Board;
- (10) Any other matters as provided by the Legislature.

Exempted from Open Meetings Act

- §17(B): Doesn't apply to judicial proceedings.
- §17(C): Doesn't prevent you from removing a disruptive person from a public meeting.
- §17(D): Doesn't require Notice and Minutes (§§19-20) from a private citizens advisory committee established by a public body—if members receive no compensation—but other provisions apply. **Public body must give notice and take minutes for the advisory committee.**

NOTICE OF MEETING



§19. Notice of Meetings: *When?*

- Regular Meetings: Notice at beginning of year (dates, times, and places).
- Regular, Special, or Rescheduled Meetings: No later than 24 hours before the meeting (*agenda*, date, time, and place).
- If pending or prospective litigation is to be discussed, must identify the case, parties, and subject matter.

§19. Notice of Meetings: *How?*

- o Post notice at principal office, publish in the official journal, or post on website no less than 24 hours before.
- o Mail notice to any member of the news media who requests it.
- o In addition, City Code §2-12:
 - o Requires that notice be posted on a board maintained on the first floor of City Hall.
 - o Encourages transmittal to technology office and posting on City's website.

WRITTEN MINUTES OF MEETINGS



§20. Written Minutes

- Date, time, and place of meeting
- Members “present” and “absent”
- Substance of matters decided and, upon a member’s request, a record of individual members’ votes on each matter
- Minutes are public records and must be made available within a reasonable time after the meeting, except for executive sessions.

§23. Sonic or Video Recordings

- Meetings may be videotaped, recorded, filmed, or broadcast live by members of the public.
- The public body can establish standards for lighting and the use of audiovisual equipment to assure proper decorum in the meeting.

Voidability and Enforcement

- §24: *Voidability*—Violations are voidable by the courts if suit is filed within 60 days.
- Consider the disruptive implications of litigation filed a month or two after action taken in violation of the Open Meetings Law. And remember . . .
- §25(C): “Any person” who has been denied rights or reasonably believes there’s been a violation may institute enforcement proceedings.

§26. REMEDIES AND ATTORNEY'S FEES

Mandamus

Injunctive Relief

Declaratory Judgment

Judgment Voiding Action Taken by the Body

Civil Penalties of \$100 for Willful Violation

Noncompliance Punishable as Contempt

Prevailing plaintiff gets reasonable attorney's fee.

If frivolous, prevailing party may be awarded fee.