

# Town of Abita Springs Training

## OPEN MEETINGS LAW & PUBLIC RECORDS LAW

**March 18, 2025**

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# Article XII, §3



- “No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.”
- Foundation for the Open Meetings Law and Public Records Law often called the “Sunshine Laws.”
- The provisions of both “shall be construed liberally in favor of the public.”

# Open Meetings



**R.S. 42:11, et seq.**

# Definitions – Meeting

➤ **Gathering**

➤ **Public Body**

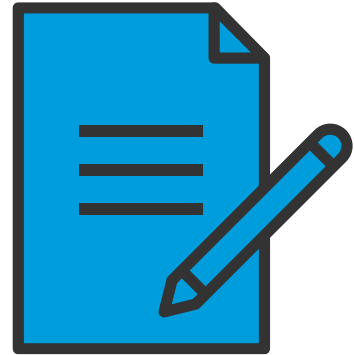
➤ **Quorum**

# General Requirements Voting



- **Must be physically present and viva voice (oral or electronic machine displaying vote and identifying who cast the vote).\***
- **May not utilize proxy voting unless the law specifically authorizes it.**
- **Secret Balloting, Straw Polling, and other means of circumventing a public vote are strictly prohibited.**
- **All votes shall be recorded in the minutes, journal, or other official, written minutes of the body.**
- **Public commenting must be afforded prior to action being taken on an item.**

# General Requirements - Notice



## Public Entity must provide written public notice of all of its meetings

- Written **notice** for regular meetings established by law, resolution, or ordinance must be given at the beginning of each calendar year.
- Written **notice** must also be given no later than 24 hours, exclusive of weekends and legal holidays, before any regular, special, or rescheduled meeting.
- A copy of the **notice** must be placed at least 24 hours, exclusive of weekends and legal holidays, prior to the meeting:
  - At the place of the meeting or the official office of the body, or
  - Published in the official journal of the public body.

# General Requirements – Notice

## (Cont'd)



- **Public Entity must provide written public notice of all of its meetings**
  - If the public body has a website, a copy of the **notice** must also be posted on the website no less than 24 hours, exclusive of weekends or legal holidays, immediately preceding the meeting.
  - If the public body is required to live broadcast meetings, notice must contain sufficient information is included in the written public notice for the public to locate the broadcast.



**NEW**

# General Requirements – Notice

(Cont'd)

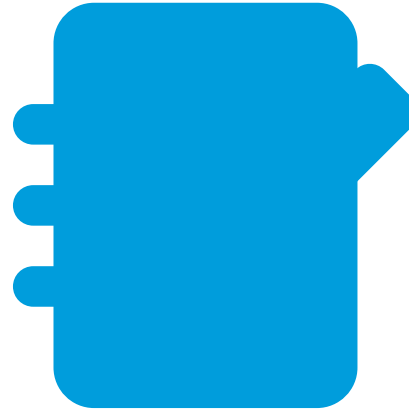
## Act 617 of 2024

- Requires submission of notices to the Commissioner of Administration with sufficient time for the Commissioner to post the notice on its website established for that purpose prior to the 24-hour deadline for public notice of meetings.
- Require notice of meetings to members of the public and media who request notice be given *at the same time and manner* as notice is given to members of the public body.



# General Requirements – Notice

(Cont'd)



## ■ The written notice must contain:

- Date, Time, and Location
- Copy of the Agenda; and
- If an executive session will be held regarding a strategy session or negotiations for collective bargaining or litigation, the following must also be attached:
  - Statement identifying court, docket number, and parties relative to pending litigation; or
  - Statement identifying the parties involved and reasonably identifying the subject matter of any prospective litigation for which formal written demand has been made.

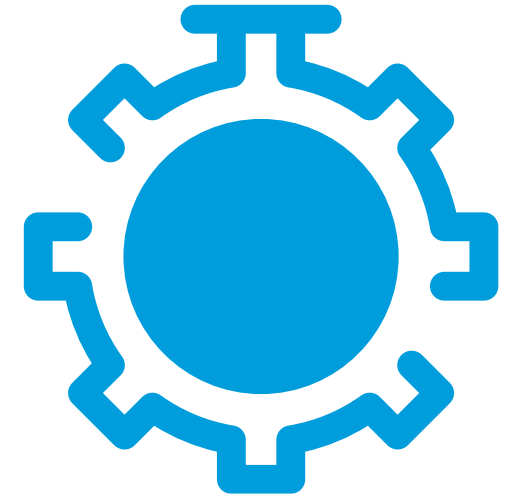
# General Requirements - Agenda

- **Descriptive language;**
- **Each item shall be listed separately;**
- **Presiding officer shall read aloud a description of the item prior to action being taken;**
- **No changes made within 24 hours, exclusive of weekends and legal holidays, preceding the meeting;**



# General Requirements – Agenda

## (Cont'd)



- The public body may amend the agenda and take up additional matters during the meeting, but shall do so only after a unanimous vote of members present. **This requirement may not be reduced through ordinance, policy or charter provision;** and
- Absent an ordinance, policy or charter provision to the contrary, the public body may withdraw, table, or otherwise remove items on the agenda by a majority vote of those present.

# General Requirements - Minutes



- **Must keep written minutes of all open meetings:**
  - Often Legal duty is prescribed to the Secretary, Clerk, etc.
- **Must include:**
  - Date, time, and place of meeting;
  - Members of the public body recorded as 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.**

# General Requirements – Minutes

## (Cont'd)



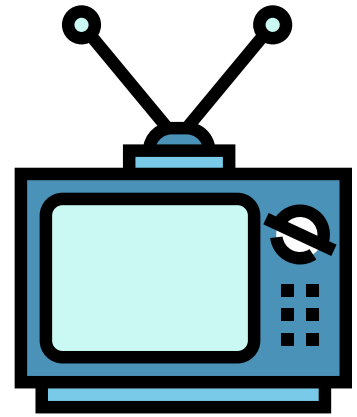
- **Minutes are a public record and must be made available within a reasonable time after the meeting, except as otherwise provided for by law.**
- **Municipalities, Parish Governing Authorities, School Boards, and other political subdivisions are required to publish their minutes in their official journal according to R.S. 43:143 or R.S. 43:171.**
- **If the public body has a website, they must publish their minutes online within 10 days from their publication in the official journal and must be maintained online for at least 3 months.**

# General Requirements – Public Participation



- **Public entities shall afford a public commenting period in all meetings prior to action being taken on agenda items which require a vote. R.S. 42:14(D)**
- **All of the proceedings in a public meeting, with the exception of proceedings held in an executive session, may be video or tape recorded, filmed, or broadcast live. R.S. 42:23**

# General Requirements Live Broadcast



- **Act 539 of 2024** – requires certain public bodies to broadcast their public meetings live via television or the internet and that sufficient information is included in the written public notice for the public to locate the broadcast.
  - **Parish Governing Authorities in parishes of 25,000 or more;**
  - **School Boards in parishes of 25,000 or more; and**
  - **Municipal Governing Authorities in municipalities of 10,000 or more.**

**R.S. 42:23**



# Exceptions – Executive Sessions



- **Public body** may only hold a closed executive session for one of the matters authorized under R.S. 42:17 or as otherwise provided for by law.
- Notice of the **public body's** intention to enter into executive session on a matter should be clearly noted in the agenda and written notice.
- **Public body** is required to vote to enter into executive session through a two-thirds vote of members present and the vote and the reason(s) for entering into executive session shall be entered into the minutes.
- No votes or final determinations shall be made while the **public body** is in executive session.



# Exceptions – Act 323 of 2023 Accommodations Public Participation – R.S. 42:14(E)



- **Public Bodies with capability to conduct electronic meetings (teleconference or video conference) 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.**
- **Not applicable during a properly held executive session or during any meeting that is sequestered in accord with law.**

# Exceptions – Act 323 of 2023 Accommodations

## Board Member Participation – R.S. 42:17.2.1

- Applies to all state and local public bodies as defined in the Open Meetings Law 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.
- **Board members participating through electronic means under this provision still receive their per diem.**





# Emergency Exception

## R.S. 42:17.1



- **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) **Matters on the agenda are limited to emergency or time-sensitive; and**
  - (3) Special Notice requirements met.

# Calling Special Meetings and Emergency Meetings (Lawrason Act)



## Special Meetings

- May be called by mayor or majority of board/council
- Board shall establish by ordinance how notice is to be provided
- Notice shall specify the business to be considered
- Items not in the notice may only be added at the meeting by unanimous vote & after public comment
- Must comply with Open Meetings law (posting of notice and agenda at least 24 hours).

# Calling Special Meetings and Emergency Meetings (Lawrason Act)



## Emergency Meetings

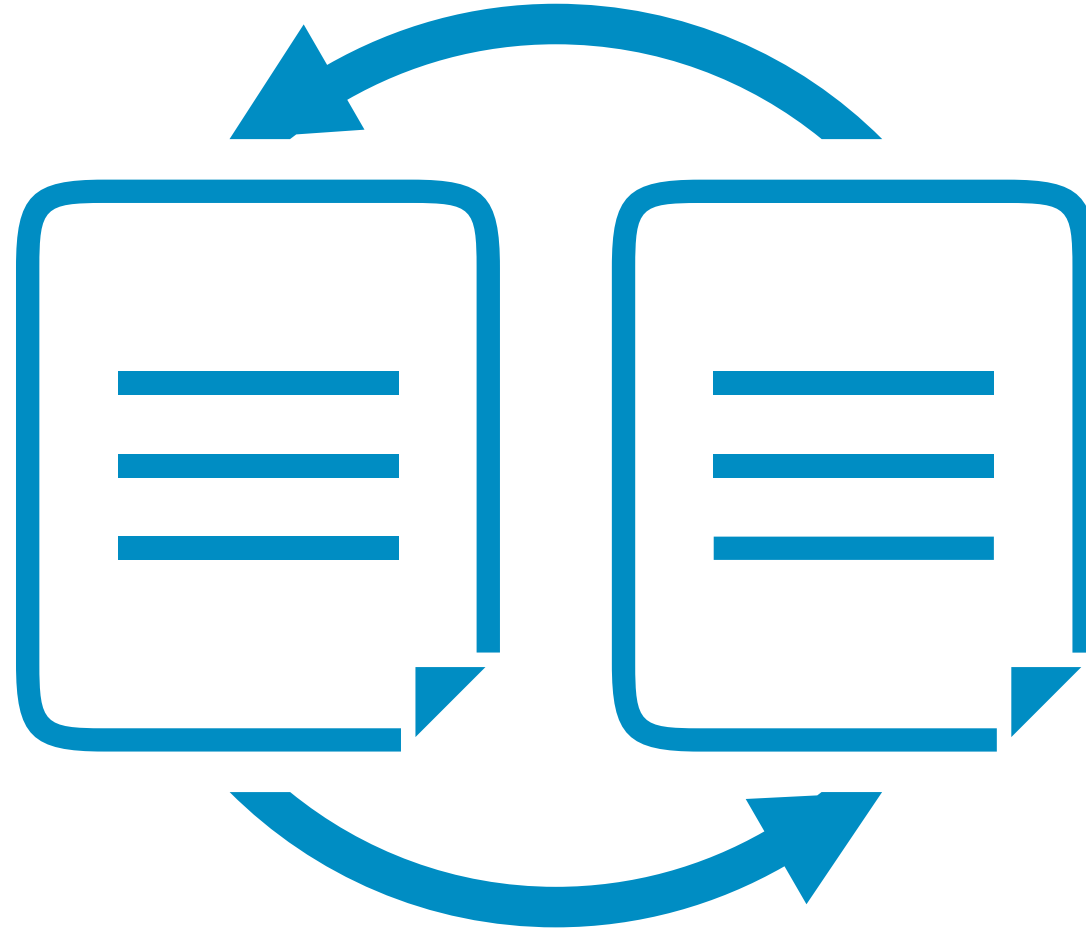
- **Extraordinary emergency as defined in R.S. 42:17(A)(5)**
- **Any board member or mayor may call**
- **Notice is to be provided “in the most practical manner available” & state generally the purpose of the meeting**
- **Ordinance may be adopted that were not previously considered by 2/3 vote**
- **Ordinance is only effective for 60 days.**

# Violations



- **Actions taken in violation of the Open Meetings Law may be voidable if legal action is commenced within 60 days of the action**
- **Civil Penalties of up to \$100 per violation may also be assessed, as a personal liability of the violator**

# PUBLIC RECORDS



R.S. 44:1, *et seq.*

# PUBLIC RECORDS



## ■ A Public Record is Basically:

- Anything that is created, prepared, possessed, or retained as a result of a duty or function carried out under the authority of the Constitution, Statutes, Ordinance, Regulation, Mandate, or Order of a public body, or
- Anything related to the receipt or payment of money received or paid by or under the authority of the Constitution or laws of the State.



# PUBLIC RECORDS



## ■ Definitions – Custodian

- The Public official or head of any public body having custody or control of a public record; or
- A representative specifically authorized by him/her to respond to requests to inspect any such public records.
- R.S. 44:33.1 mandates that public bodies make information concerning their custodian of records publicly available and posted on the internet.

# PUBLIC RECORDS



- **Duty of Custodian of Public Records**

- Maintaining and Preserving Public Records; and,
- Responding to Public Records Requests

**It is highly recommended that Public Bodies work with their legal counsel in responding to public records requests**

# PUBLIC RECORDS

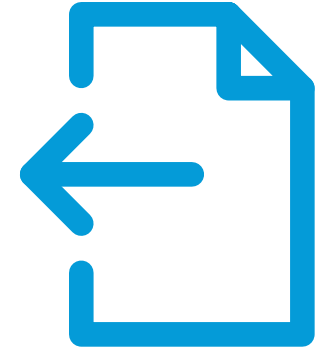


## ■ Maintaining Public Records

R.S. 44:36

- All public entities or persons having custody or control of public records shall preserve documents for the period of time specified by law for such public records.
- Where the law does not specify a particular period, public records shall be preserved at least three years from the date on which the public record was made, except where an agency, as defined in R.S. 44:402, has an approved records retention schedule developed and approved by the Secretary of State's Office pursuant to R.S. 44:411.
- Recordings of Public Meetings required under R.S. 42:23 shall be preserved and maintained for at least 2 years from the date on which the public record was made.

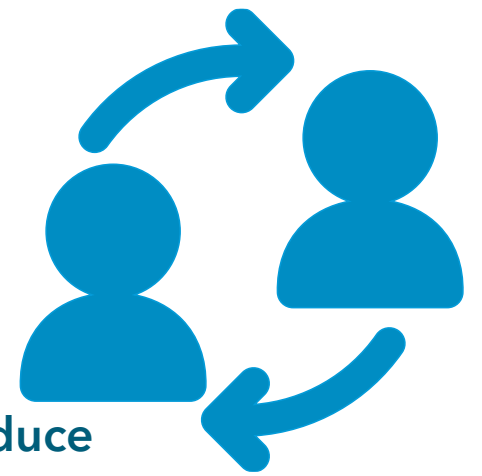
# PUBLIC RECORDS



## ■ Exceptions

- The Public Records Law provides various exceptions, exemptions, and limitations to the Public's Right of Access and Review of Public Records;
  - R.S. 44:4 provides that various documents or records are exempted from application of the Public Records Law;
  - R.S. 44:4.1 incorporates by reference statutory exceptions to the Public Records Law, the Attorney Client Privilege, and Work Product Privilege;
- In order for a statutory exception to the Public Records Law to be effective, it must be included within the Public Records Law, the Constitution, or incorporated by reference in R.S. 44:4.1.
- Provisions of the Louisiana Constitution, such as the Right to Privacy, may also provide additional exceptions, exemptions, or limitations to the Public's Right of Access to Records.

# PUBLIC RECORDS

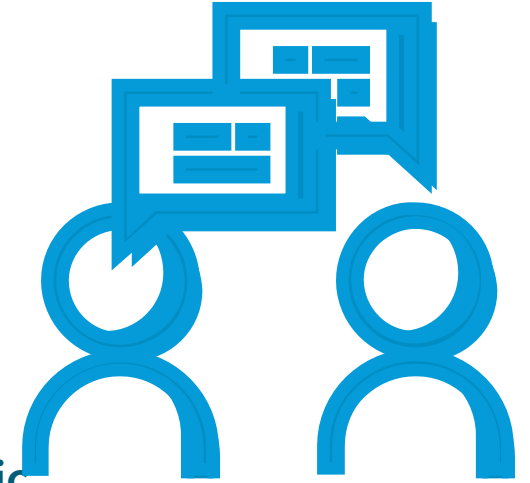


## ■ Responding to Public Record Requests

### ■ Who can request a public record?

- Any person of the age of majority (18 or older) may inspect, copy, or reproduce any public record.
  - ✓ Does not include individual in custody, post-sentencing for a felony conviction, who has exhausted their appellate remedies and the record requested is not limited to certain grounds under which post conviction relief can be obtained.
  - ✓ Exclusion does not extend to attorney for such incarcerated person.  
*Boren v. Taylor, 16-2078 (La. 6/29/17), 223 So.3d 1130.*
- Any person may obtain a copy or reproduction of any public record.
- The custodian has the burden of proving that a public record is not subject to inspection, copying, or reproduction.

# PUBLIC RECORDS



## ■ Responding to Public Record Requests

- The custodian shall **not** make any inquiry of any person requesting a public record, including the reasons for the request. R.S. 44:32
- The custodian may however ask to verify the age and identification of the person, and may require the person to sign a register.
- The request may be in person or in writing, and need not include the specific name or type of document requested. A reasonable description of information sought is sufficient.

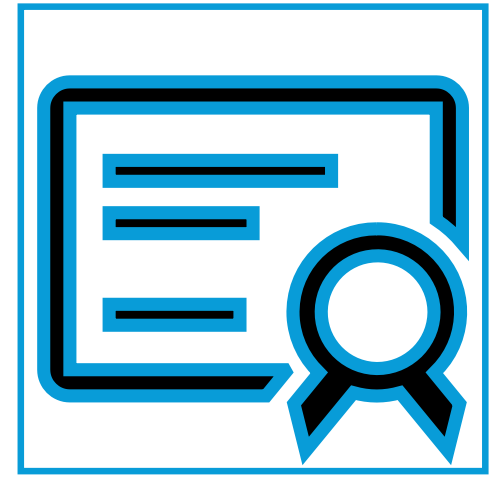
# PUBLIC RECORDS



## ■ Responding to Public Record Requests

- How long does a custodian have to respond to a public records request?
  - If the public record requested is not currently in use and is available for inspection, the custodian must allow for immediate examination of the record.
  - If the record requested is not immediately available or is currently in use, then the custodian shall certify the unavailability of the record to the requestor in writing and fix a day and hour within 5 days, exclusive of weekends or legal holidays, from the receipt of the request at which time the requestor may examine the record.

# PUBLIC RECORDS



## ■ Responding to Public Record Requests

- What if the custodian does not have the record requested?
  - The custodian must certify in writing that they do not have the record requested in their possession, citing why the record is not currently under their possession or control, the current location of the record, who has the current custody or control of the record, and the exact time at which the record was taken from their custody or control, to the best of their knowledge and belief.



# PUBLIC RECORDS



## ■ Responding to Public Record Requests

- What if the custodian believes that the requested record is not a public record?
  - The custodian shall within five days, exclusive of weekends and legal holidays, from receipt of the request notify the requestor in writing their determination that the requested record is not public and shall reference the basis under the law which the custodian has determined exempts the record, or any part of the record from inspection, copying, or reproduction.

# PUBLIC RECORDS



- What may be charged for copies of public records?
  - The custodian may charge a reasonable fee for providing copies of public records but may not charge for any in person inspection of records during regular office or working hours.
    - State Agencies must utilize the State Uniform Fee Schedule for Copies of Public Records adopted by the Commissioner of Administration (Section 301 of Title 4, Part I of the Louisiana Administrative Code).
    - A custodian of public records, not of a state agency, may establish and collect reasonable fees for making copies of public records, which may include the transmission of electronic copies.
    - If a custodian elects to establish and collect fees for copies, the custodian shall establish a reasonable fee schedule and post the schedule where it can be readily accessed by the public. (Act 247 of 2023)
    - Clerks of Courts have their own civil fee rules under R.S. 13:841.

# PUBLIC RECORDS



## ■ Denial of Public Record Request

### ■ What may a requestor do if they are denied a public record?

- Any person who has been denied the right to inspect, copy, reproduce or obtain a public record under the Public Records Law, by either:
  - Determination of the Custodian; or
  - Passage of (5) days exclusive of weekends and legal holidays from the date of request without determination or estimate of time from custodian.
  
- May institute a lawsuit in the district court for the parish where the custodian is located seeking a writ of mandamus, injunctive or declaratory relief, attorney's fees, costs and damages as provided for by law.

**R.S. 44:35**

# PUBLIC RECORDS



- Penalties for violations of the Public Records Law possibly include:
  - Actual Damages;
  - Civil Penalties\*, not to exceed \$100/day (excluding weekends & legal holidays);
  - Attorney fees and costs of litigation to enforce rights under the Public Records Law; and
  - Possibility for personal liability for custodian.
- Civil penalties are provided for only when the records custodian unreasonably or arbitrarily fails to respond; whereas actual damages may be awarded where a custodian unreasonably or arbitrarily fails to respond and/or withholds a public document requested.

*Aswell v. Division of Administration, State of Louisiana,*  
2015-1851 (La. App. 1 Cir. 6/3/16); 2016 WL 3126138.

# LEGAL ASSISTANCE

Resources regarding answers relating to audit matters and other topics of common interest.



[www.lla.la.gov](http://www.lla.la.gov)



## Legal FAQ

The Legal Section participates in the mission of LLA by providing written and oral opinions. These opinions relate to audit matters and are tendered to staff auditors, independent CPAs, and public officials. During the Legislative Session, the Legal Section tracks legislation regarding audit issues.

To speak directly with a legal professional, please call **225-339-3871**.

[Read More](#)



# QUESTIONS?



*Thank You*

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