

The Open Meetings Law, often known as the "Sunshine Law", went into effect in 1977.

Amendments that clarify and reaffirm your right to hear the deliberations of public bodies became effective in 1979. In brief, the law gives the public the right to attend meetings of public bodies, listen to the debates and watch the decision making process in action. It requires public bodies to provide notice of the times and places of meetings, and keep minutes of all action taken.

As stated in the legislative declaration in the Open Meetings Law ([§100](#)): "It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy."

What is a meeting?

"Meeting" is defined to mean "the official convening of a public body for the purpose of conducting public business" ([§102\(1\)](#)), and has been expansively interpreted by the courts. Any time a quorum of a public body gathers for the purpose of discussing public business, the meeting must be convened open to the public, whether or not there is intent to take action, and regardless of the manner in which the gathering may be characterized. The definition also authorizes members of public bodies to conduct meetings by videoconference. A meeting cannot validly be held by telephone or through the use of email.

Since the law applies to "official" meetings, chance meetings or social gatherings are not covered by the law.

Also, the law is silent with respect to public participation. Therefore, a public body may permit the public to speak at open meetings, but is not required to do so.

What is covered by the law?

The law applies to all public bodies. "Public body" is defined to cover entities consisting of two or more people that conduct public business and perform a governmental function for the state, for an agency of the state, or for public corporations, including cities, counties, towns, villages and school districts ([§102\(2\)](#)). In addition, committees and subcommittees consisting solely of members of a governing body are specifically included within the definition. Consequently, city councils, town boards, village boards of trustees, school boards, commissions, legislative bodies and sub/committees of those groups all fall within the framework of the law. Citizens advisory bodies and similar advisory groups that are not created by law are not required to comply with the Open Meetings Law.

Notice of Meetings

The law requires that notice of the time and place of all meetings be given prior to every meeting ([§104](#)).

If a meeting is scheduled at least a week in advance, notice must be given to the public and the news media not less than 72 hours prior to the meeting. Notice to the public must be accomplished by posting in one or more designated public locations and, when possible, online.

When a meeting is scheduled less than a week in advance, notice must be given to the public and the news media "to the extent practicable" at a reasonable time prior to the meeting. Again, notice to the public must be given by means of posting in designated locations and online.

If videoconferencing is used to conduct a meeting, the public notice for the meeting must inform the public that videoconferencing will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations.

When can a meeting be closed?

The law provides for closed or "executive" sessions under circumstances prescribed in the law. It is important to

emphasize that an executive session is not separate from an open meeting, but rather is defined as a portion of an open meeting during which the public may be excluded ([§105](#)).

To hold an executive session, the law requires that a public body take several procedural steps. First, a motion must be made during an open meeting to enter into executive session; second, the motion must identify "the general area or areas of the subject or subjects to be considered;" and third, the motion must be carried by a majority vote of the total membership of a public body.

A public body cannot close its doors to the public to discuss the subject of its choice, for the law specifies and limits the subject matter that may appropriately be discussed in executive session. The eight areas that may be discussed behind closed doors include:

- (a) matters which will imperil the public safety if disclosed;
 - (b) any matter which may disclose the identity of a law enforcement agency or informer;
 - (c) information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
 - (d) discussions regarding proposed, pending or current litigation;
 - (e) collective negotiations pursuant to Article 14 of the Civil Service Law (the Taylor Law);
 - (f) the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;
 - (g) the preparation, grading or administration of examinations; and
 - (h) the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.
- These are the only subjects that may be discussed behind closed doors; all other deliberations must be conducted during open meetings.

It is important to point out that a public body can never vote to appropriate public monies during a closed session. Therefore, although most public bodies may vote during a properly convened executive session, any vote to appropriate public monies must be taken in public.

The law also states that an executive session can be attended by members of the public body and any other persons authorized by the public body.

Note that item (f) is often referenced as "personnel," even though that term does not appear in the grounds for holding executive sessions. Only when the discussion focuses on "a particular person or corporation" in relation to one or more of the topics listed in that provision is an executive session permitted.

After the meeting — minutes

If you cannot attend a meeting, you can still find out what actions were taken, because the Open Meetings Law requires that minutes of both open meetings and executive sessions must be compiled and made available ([§106](#)). Minutes of an open meeting must consist of "a record or summary of all motions, proposals, resolutions and any matter formally voted upon and the vote thereon." Minutes of executive sessions must consist of "a record or summary of the final determination" of action that was taken, "and the date and vote thereon." Therefore, if, for example, a public body merely discusses a matter during executive session, but takes no action, minutes of an executive session need not be compiled; however, if action is taken, minutes of the action taken must be compiled and made available.

It is also important to point out that the Freedom of Information Law requires that a voting record must be compiled that identifies how individual members voted in every instance in which a vote is taken. Consequently, minutes that refer to a four to three vote must also indicate who voted in favor, and who voted against. The law does not require the approval of minutes, but directs that minutes of open meetings be prepared and disclosed within two weeks.

Enforcement of the law

What can be done if a public body holds a secret meeting? What if a public body makes a decision in private that should have been made in public?

Any "aggrieved" person can bring a lawsuit. Since the law says that meetings are open to the general public, a person may be aggrieved if improperly excluded from a meeting or if an executive session was improperly held. Upon a judicial challenge, a court has the power to declare either that the public body violated the Open Meetings Law and/or declare the action taken void ([§107](#)). If the court determines that a public body has violated the law, it has the authority to require the members of the public body to receive training given by staff of the Committee. A court also has the authority to award reasonable attorney fees to the successful party. This means that if you go to court and you win, a court may (but need not) reimburse you for your expenditure of legal fees. If, on the other hand, the court found that a public body voted in private "in material violation" of the law "or that substantial deliberations occurred in private" that should have occurred in public, the court would be required to award costs and attorney's fees to the successful party. A mandatory award of attorney's fees would apply only when secrecy is the issue.

It is noted that an unintentional failure to fully comply with the notice requirements "shall not alone be grounds for invalidating action taken at a meeting of a public body."

The site of meetings

As specified earlier, all meetings of a public body are open to the general public. The law requires that public bodies make reasonable efforts to ensure that meetings are held in facilities that permit "barrier-free physical access" to physically handicapped persons, and that meetings are held in rooms that can "adequately accommodate" the volume of members of the public who wish to attend ([§103](#)).

Exemptions from the law

The Open Meetings Law does not apply to:

- (1) judicial or quasi-judicial proceedings, except proceedings of zoning boards of appeals;
- (2) deliberations of political committees, conferences and caucuses; or
- (3) matters made confidential by federal or state law ([§108](#)).

Stated differently, the law does not apply to proceedings before a court or before a public body that acts in the capacity of a court, to political caucuses, or to discussions concerning matters that might be made confidential under other provisions of law. For example, federal law requires that records identifying students be kept confidential. As such, a discussion of records by a school board identifiable to a particular student would constitute a matter made confidential by federal law that would be exempt from the Open Meetings Law.

Public Participation and recording meetings

The Open Meetings Law provides the public with the right to attend meetings of public bodies, but it is silent concerning the ability of members of the public to speak or otherwise participate. Although public bodies are not required to permit the public to speak at their meetings, many have chosen to do so. In those instances, it has been advised that a public body should do so by adopting reasonable rules that treat members of the public equally. Public bodies are required to allow meetings to be photographed, broadcast, webcast or otherwise recorded as long as the equipment used to do so is not disruptive or obtrusive. If the public body adopts rules regarding such activities, they must be reasonable and conspicuously posted, and provided to those in attendance upon request ([§103\(d\)](#)).

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