Midwest Environmental
ADVOCATES
pro bono publico

Open Meetings Law Tool-kit

How The Open Meetings Law Can Help You Protect Your Community

---

Brent Denzin, Attorney
Equal Justice Works Fellow

Last updated: August 29, 2007

Midwest Environmental Advocates, Inc. is a nonprofit environmental law center that provides technical assistance and legal representation to communities and groups working to protect the public's right to clean air and water.

Open Meetings Law

Table of Contents

I. Introduction

Sustainable development starts with open government. When the public participates in their community development process, governments are forced to take a hard look at the type of growth they are promoting. Given the heightened scrutiny, governing bodies often take time to review development proposals and make sure they fit the community's vision and avoid unnecessary impacts. Simply put, open government favors reasonable, and generally sustainable, development choices.

Unfortunately, local governments have a strong incentive to limit public participation. Public participation often brings public controversy, long delays, and general headaches for both applicants and city officials. To limit public controversy, government bodies often take steps to steer land use decisions away from the public eye, whether by issuing weak notices for public meetings, relying on closed sessions, or attempting to gather information outside of official public meetings.

To address these negative incentives and preserve public involvement, the Wisconsin Legislature enacted the Open Meetings Law. The basic principle is simple: All government meetings must be open to the public unless specifically exempted by statute. The law allows narrow exceptions to the open meetings requirement in specific cases where open meetings would violate other private rights and/or principles that support effective government. Nevertheless, the presumption is that all meetings will be open and local governments must meet a difficult burden before excluding the public.

While the standards are clear, the Open Meetings Law is only as strong as the public's commitment to enforce it. While the Legislature opened the door to local decisions, communities need to learn the law and stay active to keep it open.

This tool-kit provides a clear look at the legal standards for government meetings and identifies classic Open Meetings Law violations. With these tools, communities can keep development decisions in the public eye and on the path toward a sustainable future.

I. When Are Open Meetings Required?

The Wisconsin Statutes require governmental bodies to hold all meetings in open session, unless an exception is set forth by statute.[1] However, not all gatherings are "meetings" that are subject to the Open Meetings Law. The scope of the Open Meetings Law depends on a series of definitions[2] and exceptions[3] that are often confused, leading to unknowing violations. Before you attend a local meeting, take time to understand these definitions and exceptions and keep your officials on task.

II. What is a "Governmental Body"?

The Open Meetings Law applies to all "state and local governmental bodies."[4] A "governmental body" includes a:

> . . . state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order[.][5]

Whether an entity considers itself a governmental body is irrelevant. The Open Meetings Law focuses on what the body does *and* how it was created. As the Attorney General notes:

> [t]his provision focuses on the manner in which a body was created, rather than on the type of authority the body possesses. Purely advisory bodies created by constitution, statute, ordinance, rule or order are therefore subject to the open meetings law. *See State v. Swanson*, 92 Wis. 2d 310, 317, 284 N.W.2d 655 (1979).[6]

The Open Meetings Law specifically states that the term "governmental body" also includes "governmental or quasi-governmental corporation[s],"[7] meaning a "corporation created directly by the state Legislature or by some other governmental body pursuant to specific statutory authorization or direction."[8] Sometimes, local economic development corporations and similar entities will claim they are exempt from the Open Meetings Law because they are supposedly private corporations. However, after taking a closer look, these corporations often fit the definition of a "governmental body" and are therefore subject to the Open Meetings Law.

A. Sub-Units

A "formally constituted subunit" of a governmental body is itself a governmental body subject to the Open Meetings law.[9] For example, when a government body creates a committee to review development proposals, the committees are governmental bodies and must comply with the Open Meetings Law.[10]

B. Legislature

With the exception of specific legislative bodies identified in the statutes, the legislature, and sub-units within it, is generally considered a governmental body.[11] When in doubt, consult the list of exceptions in section 19.87 of the Wisconsin Statutes.[12]

C. What is Not a Governmental Body?

Perhaps the best way to identify a "governmental body," is to analyze what bodies are not considered "governmental bodies." According to the Attorney General, the following are **NOT** governmental bodies.

- Governmental offices held by a single individual, such as the Mayor's Office;
- Bodies meeting for collective bargaining;
- Bodies created by the Wisconsin Supreme Court;[13] and
- *Ad hoc* (one-time) gatherings. Governmental bodies must be created by some sort of directive[14] and have a defined membership for voting.[15] Consequently, loosely constituted groups of citizens and local officials, meetings between the administrators of a governmental agency and the agency's employees, or meetings "between the governmental employees and representatives of a governmental contractor" may not

be a "governmental body."[16] On the other hand, if any of these groups are defined numerically and given a directive that impacts policy, they would likely be considered a governmental body.[17]

See WIS. DEP'T OF JUSTICE, OFFICE OF THE ATT'Y GEN., WISCONSIN OPEN MEETINGS LAW: COMPLIANCE GUIDE 4-5 (Feb. 2007).

D.What Government Bodies Are Typically Involved in Big-Box Decisions?

Land use and development decisions will often involve the Common Council, Plan Commission, Public Works Committee and perhaps a Finance and/or Appropriations Committee. These are all governmental bodies and their meetings should be open to the public.

III. WHAT IS A MEETING?

Government body gatherings are only open to the public if they are considered "meetings" under the law.[18] Although it may seem easy to spot a "meeting," in some cases the line between meetings and informal gatherings is unclear. The legal definition of meeting relies on what is known as the **Showers Test.**[19] A gathering is a "meeting" if it has the:

1) the number of members present is sufficient to determine the governmental body's course of action (a quorum or negative quorum), and
2) the purpose of the meeting is to conduct government business.[20]

With regard to numbers, it is important to understand how many different ways a government body can have a quorum. For example:

- Simple Majority. When actions can carry by a margin of one vote, a simple majority is more than half of the entire body.
- Negative quorums: When enough members gather to vote down a proposal, the Shower's number test is met.
- Walking quorums: If separate groups of members, each less than a quorum or negative quorum, gather multiple times and slowly gather enough people and agree to join together and reach a quorum, then the meetings are subject to open meetings laws.[21]
- Telephone conference calls: If it meets the Showers test of purpose and numbers, it is a meeting and must "provide the public with an effective means to monitor the conference."[22] Broadcasting can accomplish this public participation goal.[23]
- Electronic communications: This is a developing area of Open Meetings law and will likely be subject to future litigation. Although courts have not addressed meetings held over email, the Attorney General has pointed out aspects of this communication that may constitute a meeting.[24] First, the use of "forwarding" and "replying to all" allows individual members of a governmental body to receive the opinions of a quorum or other members by reading through past replies.[25] Second, it is important to note the similarities of someone hearing one opinion after another on a telephone conference and reading one opinion after another on a string of emails.[26] Both could easily have the purpose of conducting

governmental business and the numbers, in terms of consecutive opinions, to constitute a meeting. This type of communications strongly suggests open meetings coverage.

- Multiple meetings: When a quorum of the members of one governmental body attend a meeting of another governmental body under circumstances where their attendance is not chance or social, in order to gather information or otherwise engage in governmental business regarding a subject over which they have decision-making responsibility, two separate meetings occur, and notice must be given of both meetings.[27] However, subunits, meeting during a parent meeting, do not necessarily need additional notice, if they are discussing the same subject as the parent body.[28]

- **TIP:** It is important to note that the name of the meeting is irrelevant. For example, if enough non-members of a government body or subunit attend any meeting that meets the Showers Test, then it is subject to the Open Meetings Law requirements.[29]

If the numbers are present, then you need to decide whether the members were meeting to engage in "governmental business."[30] "Governmental business" refers to formal or informal action, including discussion, decision or information gathering, on matters within the governmental body's realm of authority.[31] Therefore, simply receiving information from a proposed developer would be a meeting if a quorum was present.

- **TIP:** Government bodies often view open meetings as involving discussions of the information or potential for formal decisions on the subject before them. Members of the public should remind these bodies that information gathering is a "meeting" as well.

Regardless of the stated purpose, if **half or more** of the government body meets, the gathering is presumed to be for government purpose.[32] The government body has the burden of proving otherwise.[33]

IV. What is an "Open Session"?

If a governmental body is holding a meeting, it must be in "open session."[34] A meeting is in "open session" when it:

1) posts notice to the public (discussed in "What Type of Notice is Required?");[35]
2) locates in a "reasonably accessible" location;[36]
3) allows members of the public to observe the proceedings;[37]
4) allows for video and tape recording;[38] and
5) records all motions and roll call votes.[39]

A. Accessibility

An "open session" must be "reasonably accessible to members of the public and open to all citizens at all times."[40]

To be "reasonably accessible", the place must be reasonably calculated to be large enough to accommodate all citizens who wish to attend the meetings.[41] Absolute access is not, however, required. If a reasonable attempt was made, governmental bodies may continue with their meeting even if members of the public cannot fit in the room.[42] Additionally, governmental bodies must hold meetings in areas that are generally considered open to the public. Meeting should not be held in privately owned places.[43] Finally, the Attorney General interprets the accessibility requirement to restrict meetings to areas that are near the public that is served by the meeting, and specifically within the district they serve, unless it is impossible or impractical.[44]

B. Video/Tape Recording

The public can tape open meetings as long as they do not disrupt the meeting.[45] The government body must make a "reasonable effort" to accommodate those that wish to video or tape-record the meeting.[46]

C. Participation

Open meetings do not necessarily involve unlimited public participation, just public access. Specific statutes may require time for comment. However, in general, open meetings are not required to allow *active* public participation and can limit the degree to which citizens participate.[47] Nevertheless, mere attendance sends a message to government officials that the public is watching. Additionally, any "governmental body" may provide for a "period of public comment, during which the body may receive information from members of the public."[48]

If notice designates a public comment period, the meeting should allow for active public participation in addition to public access.

D. Minutes of Meetings / Records of Votes

Minutes are not required under open meetings laws, but may be required by other statutes.[49] Most often, they are required at meetings because the city clerk's statutory duties include taking minutes.[50]

Regardless of the need to record minutes, all governmental bodies need to record motions and roll call votes in a manner that allows the public to associate a member with a vote (no silent ballots, unless to elect officers).[51] This is required for both open and closed meetings.[52]

V. What Type of Notice is Required?

A.Timing and Placement of the Notice

The chief presiding officer of a governmental body, or the officer's designee, must give notice of each meeting of the body to three entities:

1) the public;
2) news media who have submitted a written request for notice; and

3) the official newspaper designated pursuant to state statute or, if none exists, to a news medium likely to give notice in the area.[53]

Failure to give notice to all three places is a violation of the Open Meetings Law. However, a notice to a newspaper can serve as notice to the "public" if it is widely circulated. Therefore, three separate notices are not necessarily required.[54]

At the very minimum, notice should be posted in one or more places that are "likely to be seen by the general public."[55] The Attorney General has advised posting notices at three different locations within the jurisdiction that the governmental body serves.[56] Alternatively, the chief presiding officer may give notice to the public by paid publication in a news medium likely to give notice in the jurisdiction area the body serves.[57] If the presiding officer gives notice in this manner, he or she must ensure that the notice is actually published."[58]

- **TIP:** Other statutes, often governing the substance of the meeting, may require additional notice. Additionally, communities may change local ordinances to require a more effective means of notifying the public of government meetings. If the government is unwilling to make these changes, the public can put the amendment on the election ballot as a direct legislation initiative.[59] However, more stringent notice requirements are not the subject of the Open Meetings Law.

Notice must be posted at least 24 hours before the meeting, unless for "good cause" such timing is "impossible or impractical."[60] Regardless, the notice must be given two hours prior to the meeting and state the "good cause" for not meeting the 24-hour requirement.[61] "Good cause" has not been clearly articulated by the Attorney General or the courts, but the Attorney General notes that all judgments should favor public participation when any doubt arises.[62]

- **TIP:** Notice must be given around the time of the meeting.[63] One notice for all meetings in a given month or year is unacceptable.[64]

Finally, government bodies must meet the above notice requirements even if the session is closed. *See below,* "When Can a Session be Closed?"

B. Content of the Notice

The Open Meetings Law sets specific requirements for adequate notice. Every public notice of a meeting of a governmental body shall set forth:

- time,
- date,
- place,
- subject matter of the meeting, including maters to be considered in any closed session.[65]

- **TIP:** If the public notice of a meeting mentions a public comment period, that means the governmental body will receive information from members of the public at that time.

The formal agenda does not need to be published in the notice. However, the notice should specifically note all matters that the chief presiding officer is aware may come before the body and must be in a form that is "reasonably likely to apprise members of the public and the news media" of the meeting.[66]

As the Attorney General notes, "a good rule of thumb is to **ask whether a person interested in a specific subject would be aware, upon reading the meeting notice, that the subject might be discussed**."[67]

Motions may be raised to reconsider past votes if it is the same subject matter as the current meeting. But, regardless of whether the subject matter is the same as the current meeting, "any discussion or action on the motion should be set over to a later meeting for which specific notice of the subject matter of the motion is given."[68]

VI. When Can a Session Be Closed?

The Open Meeting Law's intent is to give the public the "fullest and most complete information regarding the affairs of government [without impeding] the conduct of governmental business."[69] To carry out this intent, the Open Meetings Law provides a presumption that all meetings will be open.[70] However, there are situations where open meetings would interfere with the "conduct of governmental business." Specifically, there are 13 limited exceptions that allow for closed meetings:[71]

1. Judicial or quasi-judicial hearings.[72] It is important to note that the Wisconsin Supreme Court, in *State ex rel. Hodge v. Turtle Lake*, required some sort of "case," with opposing parties, before this standard is met. This exception does **NOT** include **permit hearings**.[73]
2. Employment: Consideration of dismissal, demotion, discipline, licensing and tenure.[74]
3. Considerations of employment, promotion, compensation and performance.[75]
4. Consideration of financial, medical, social or personal information.[76]
5. Conducting public business with competitive or bargaining implications.[77] Note that a private entity's desire for confidentiality, for competitive or bargaining reasons, does *not* automatically permit a closed meeting.[78] For further discussion, see How Does Open Meetings Law Relate to Land Use Decisions?
6. Conferring with legal counsel with respect to litigation.[79]
7. Considering applications for probation or parole, or considering strategy for crime detection or prevention.[80]
8. Deliberations by the state council on unemployment insurance.[81]
9. Deliberations by the state council on worker's compensation.[82]
10. Specified deliberations involving the location of a burial site.[83]
11. Consideration of requests for confidential written advice from an ethics board.[84]
12. Considering specified matters related to a business ceasing its operations or laying off employees.[85]
13. Considering specified financial information relating to the support of a nonprofit corporation operating an ice rink owned by the state.[86]

Land use decisions rarely involve one of the above-listed circumstances, especially given the requisite narrow interpretation.[87] As a rule of thumb, communities should immediately question the use of closed sessions in development and land use meetings. As discussed below, the most commonly used exceptions have been stretched far beyond their narrow meaning and their use may suggest violations of the Open Meetings Law.

A. Closed Meeting Requirements

Even if a meeting is closed, notice must be given with the same timing and content requirements as an open meeting.[88]

Furthermore, the meeting must start as an open meeting and then "convene in closed session."[89] As the Attorney General notes, "all business of any kind, formal or informal, must be initiated, discussed and acted upon in 'open session' unless one of the exemptions in Wis. Stat. § 19.85(1) applies."[90]

Before convening in closed session, the chief presiding officer must:

- Announce and record in open session the nature of the business to be discussed and the specific statutory exception which is claimed to authorize the closed session.[91]

Then the governmental body must:

- Pass a motion, by recorded majority vote, to convene in closed session.[92]

The motion raised prior to convening in closed session must:

- Announce the nature of the business to be considered at the closed session, and the specific statutory exemption that authorizes the closed session.[93]

- **TIP:** The Attorney General thinks the motion to go into closed session must contain enough specificity as to the content of the closed meeting "that the members of the governmental body can intelligently vote on the motion to close the meeting."[94] "The policy of the open meeting law dictates that the exemptions be invoked sparingly and only where necessary to protect the public interest."[95]

Finally, the governmental body may not reconvene in an open meeting after the closed meeting for at least 12 hours, unless notice that the open session will reconvene is given at the "same time and of the same manner" as the notice for the original open session.[96]

B. Voting in Closed Session

The Attorney General recommends that all governmental bodies vote in open session unless it would "compromise the need" for closed session discussion. [97]

VII. How Does the Open Meetings Law Relate to Land Use Decisions?

Open meetings are the key to any successful big-box sprawl challenge. Residents must be able to approach their representatives and government officials with concerns regarding the environmental, economic, community and public health effects of big-box sprawl *before* a decision has been made. Unfortunately, the process of approving a big-box often involves closed sessions, rapid decisions and other actions that prevent public involvement. In certain instances these actions cross the line and violate the Open Meetings Law.

Specifically, community members should keep their eyes out for the following Open Meetings Law issues:

- **Development Agreements and the Improper Use of Closed Sessions for "Competitive and/or Bargaining Reasons."**

Big-box proponents often start the negotiating process long before the public knows that the idea exists. In these cases, community members do not hear about a proposed project until the plans are ready and the city has expressed its intention to annex the land, re-zone the property and/or approve a conditional use permit in a Developers Agreement, Memorandum of Understanding, or a Pre-Annexation Agreement. These agreements are generally created in closed session and released to the public once an agreement between the city and the developer has been reached. Consequently, the public comments are received after the governmental body has committed to a project and formed its opinion. By the time they find out, residents are contending with what appears to be a done deal.

Common Councils and Plan Commissions often cite the Open Meetings Law's exception for conducting public business with competitive or bargaining implications. However, as demonstrated in a recent Court of Appeals case[98], this exception is often stretched far from the narrow interpretation it deserves. Consequently, many of these closed sessions are in fact violations of the Opens Meeting Law.

For example, in *Citizens for Responsible Development v. City of Milton*, the Court of Appeals explicitly rejected many of the classic excuses used by governments to close development meetings. Specifically, the Court rejected the following justifications for closed session: 1) the Applicant requested confidentiality regarding its plans; 2) the City needed to protect negotiations from other municipalities that may be competing for the same development; 3) negotiations involved a private landowner and a private land deal; 4) the public will have a chance to comment after negotiations are complete.[99]

As held in *Citizens for Responsible Development*, section 19.85(1)(e) closed sessions are reserved for situations when competitive and/or bargaining reasons *require* a closed session.[100] Government bodies may meet in closed session for the limited purpose of discussing negotiation strategy, but must conduct all negotiations with applicants in open session.[101]

To assure that you are not being denied your rights, ask the following questions when you see the section 19.85(1)(e) exception:

1) **Could anyone else use this information to "compete" with the government in its efforts to establish an agreement with the developer?**

In many negotiations, there are only two parties: the city and the developer. Ask whether there is any other competing interest that could use the discussions to "undercut" the city's bargaining position.

The Court in *Citizens for Responsible Development* explicitly rejected the notion that competition from other municipalities requires closed session negotiations.[102] Other developers interested in the same land would only help the government's bargaining position. In fact, there is no real competition. Therefore, it is reasonable to share all information that is known by the government and the developer. For example, the existence and basic subject of the negotiations, the identity of the parties, and the type of project that is proposed, among other information, should all be discussed in a public setting.

2) **How would public access to these discussions affect the government's ability to "bargain" with the landowner/developer?**

Governments often reason that closed sessions allow them to negotiate better conditions with the Developer. Often, this justification is used when Developer Agreements and Pre-Annexation Agreements are discussed in closed session. The government is trying to "get the best deal" and does not want the developer to know their "bottom line." While this may be valid goal, ask yourself: Is a closed session necessary to accomplish this goal?

In general, public knowledge of the negotiation terms would have no impact on the government's bargaining position. Remember, the government is negotiating on behalf of the public interest and public concerns about the terms of land use agreements should be reflected in the government's position.

As held in Court in *Citizens for Responsible Development*, secrecy is only required when the developer's knowledge of the government discussions would harm the public's bargaining power.[103] "Developing a negotiation strategy or deciding on a price to offer for a piece of land is an example what is contemplated by [the phrase] 'whenever competitive or bargaining reasons require a closed session.'"[104]

According to Attorney General guidance:

> The "competitive or bargaining reasons" exemption permits closed session discussion in situations where the discussions will directly and substantially affect negotiations with a party, but not where the discussion might be one of several factors that indirectly influence the outcome of negotiations with a third party.[105]

Conversely, "[m]ere inconvenience, delay, embarrassment, frustration or even speculation as to the probability of success would be an insufficient basis to close a meeting" pursuant to Wisconsin Statutes section 19.85(1)(e).[106] Rather, the closed

session must be necessary to protect the governmental body's bargaining position against the developer or landowner.

Finally, even if the sessions were properly closed for negotiations, the closed session discussions must be limited to the government discussions of negotiation strategy. Governmental bodies are not allowed to close all discussion of a Developer Agreement or Pre-Annexation Agreement because some parts of the discussion might legitimately be held in closed session.[107] The Attorney General has limited the use of closed meetings under Wisconsin Statutes section 19.85(1)(e) to only those situations when discussions get to the very heart of negotiation strategy.[108]

As the Attorney General notes, after a strategy is decided:

> The question before the governmental body is no longer what strategy the body should adopt in order to obtain an agreement with favorable terms. The question is whether it is in the public's interest to ratify the terms as tentatively agreed to by the parties. Given that the governmental body is not actually engaged in negotiations at that point, it does not appear that "competitive or bargaining reasons" as that phrase is used in section 19.85(1)(e) exist to warrant discussing the agreement in closed session.[109]

- **TIP:** Discussions and deliberations leading up to a vote, and the vote itself, must be conducted in open session.

VIII. What Should I do if I Find a Violation?

Open meetings violations can be enforced on the state and local level. The Attorney General, District Attorney, and members of the public can enforce Open Meetings Laws.[110] District Attorneys, however, can only proceed with enforcement actions after a member of the public sends them a verified open records complaint.[111] The complaint must be signed and notarized by the individual filing it. For convenience and uniformity, the Attorney General's office provides a model complaint. See Model Complaint.

If the District Attorney refuses or fails to commence a legal action within 20 days of receiving the complaint, the individual who filed the complaint has the right to bring an action, in the name of the state, to enforce the open meetings law.[112]

The Attorney General, however, may commence an action any time before or after the 20 day period. Additionally, the Attorney General may step in when the case has statewide significance.

All actions must be filed **within 2 years** of the actions that gave rise to the action or else the action is barred by the court.[113]

Fines vary, but the Attorney General's 2005 Compliance Guide gives an overview:

> Any member of a governmental body who "knowingly" attends a meeting held in violation of the open meetings law, or otherwise violates the law, is subject to a forfeiture of between $25 and $300 for each violation.[114]

- **TIP:** The court can also void actions taken by the board if they were in violation of open meetings laws.[115] This is particularly important if the violation relates to a key land-use decision that community members want to void.

Finally if you hire an attorney, sue and win, you are entitled to receive your attorney's fees and costs for bringing the suit.[116]

Understanding the potential defenses is vital when bringing an open meeting complaint. To directly address possible defenses, one must set forth a couple key facts along with the description of violation:

- The government members that are the subject of the complaint did not make or vote in favor of a motion to prevent the violation; and
- The member was acting in his/her official capacity.

IX. Conclusion

To effectively sustain communities and prevent irresponsible big-box sprawl, residents must insist that sprawl proposals are discussed in open meetings. The law requires all meetings to be open unless a closed session is required under a narrow interpretation of the specific exceptions. Notice should be clear, closed sessions should be rare and the government's actions should be transparent. Public involvement is vital to any reasoned decision and is the key to reigning in irresponsible land-use decisions that encourage sprawl.

[1] Wis. Stat. §§ 19.81, 19.82(1), 19.85(1) (2007).
[2] Wis. Stat. § 19.82.
[3] Wis. Stat. § 19.85.
[4] Wis. Stat. § 19.81(2).
[5] Wis. Stat. § 19.82(1).
[6] Wis. Dep't of Justice, Office of the Att'y Gen., Wisconsin Open Meetings Law: Compliance Guide 1 (Feb. 2007), *available at* http://www.doj.state.wi.us/AWP/OpenMeetings/2005-OML-GUIDE.pdf (last visited July 9, 2007).
[7] Wis. Stat. § 19.82(1).
[8] Wis. Dep't of Justice, *supra* note 6, at 3 (citing 66 Op. Att'y Gen. 113, 115 (1977)). The Attorney General describes quasi-governmental corporations as those that "closely resemble governmental corporations in function, effect or status," even though such corporations were not created directly by governmental bodies. *Id.* (citing 80 Op. Att'y Gen 129, 135 (1991)). However, "[t]he fact that a corporation serves a public purpose is not, in itself, sufficient to make a corporation 'quasi-governmental.'" *Id.* Five main factors used by the Attorney general to determine whether a corporation is quasi-governmental are:

1) whether the corporation serves a public purpose;
2) the extent to which the corporation receives public funding for its operation;
3) whether the bylaws of the corporation either reserve positions on the board of directors for governmental officials or employees, or give a government actor the power to appoint such individuals to the board;
4) whether the government in fact appointed government employees or officials to the corporation's board of directors;
5) whether government employees served as officers of the corporation; and
6) the extent to which the corporation was housed in government offices, used government equipment and was staffed by government employees. *Id.* (citing 80 Op. Att'y Gen. at 136).

Because the definition of "quasi-governmental corporation" is currently unclear, the Wisconsin Supreme Court will soon create a test for determining whether a private corporation is a "quasi-governmental corporation." *See State v. Beaver Dam Area Dev. Corp.*, 2007 WL 704515 (Wis. App. 2007).
[9] Wis. Stat. § 19.82(1).
[10] *Cf.* Wis. Dep't of Justice, *supra* note 6, at 3.
[11] *See* Wis. Stat. § 19.87 (2007).
[12] Wis. Stat. § 19.87(1)-(4).
[13] *State ex rel. Lynch v. Dancey*, 71 Wis. 2d 287, 238 N.W.2d 81 (1976).
[14] *See State ex. rel. Lynch v. Conta*, 71 Wis. 2d 662, 681-83, 239 N.W.2d 313 (1976).
[15] *See State ex. rel. Newspapers v. Showers*, 135 Wis. 2d 77, 398 N.W.2d 154 (1987).
[16] Wis. Dep't of Justice, *supra* note 6, at 5 ("[T]he Attorney General advised in an informal opinion that the courts would be unlikely to conclude that meetings between the administrators of a governmental agency and the agency's employees, or between governmental employees and representatives of a governmental contractor were 'governmental bodies' subject to the open meetings law. Correspondence, June 8, 1998.").
[17] *Id.*
[18] Wis. Stat. § 19.81(2).
[19] *Showers*, 135 Wis. 2d at 102; *see* Wis. Dep't of Justice, *supra* note 6, at 5.
[20] *Id.*
[21] Wis. Dep't of Justice, *supra* note 6, at 6; *Showers*, 135 Wis. 2d at 92 (quoting *Conta*, 71 Wis. 2d at 687).
[22] Wis. Dep't of Justice, *supra* note 6, at 6.
[23] *Id.* (citing 69 Op. Att'y Gen. 143, 145 (1980)).
[24] *Id.* at 6-7/
[25] *Id.*
[26] *Id.*
[27] *State ex rel. Badke v. Greendale Village Bd.*, 173 Wis. 2d 553, 577-78, 494 N.W.2d 408 (1993).
[28] Wis. Dep't of Justice, *supra* note 6, at 7; Wis. Stat. § 19.84(6).
[29] *Badke*, 173 Wis. 2d at 573-79.
[30] *Showers*, 135 Wis. 2d at 102;
[31] Wis. Dep't of Justice, *supra* note 6, at 5 (citing *Showers*, 135 Wis. 2d. at 102-03). Note: In *Badke,* the Wisconsin Supreme Court held that the village board conducted a "meeting," as defined in the open meetings law, when a quorum of the board regularly attended each plan commission meeting to observe the commission's proceedings on a development plan that was subject to the board's approval. 173 Wis. 2d at 572-74. The court stressed that a governmental body is engaged in governmental business when its members gather to simply hear information on a matter within the body's realm of authority. *Id.* at 573-74. The members need not actually discuss the matter or otherwise interact with one another to be

engaged in governmental business. *Id.* at 574-76. The court also held that the gathering of town board members was not chance or social because a majority of town board members attended plan commission meetings with regularity. *Id.* at 576. In contrast, the court of appeals concluded in *Paulton v.Volkmann*, that no meeting occurred where a quorum of school board members attended a gathering of town residents, but did not collect information on a subject the school board had the potential to decide. 141 Wis. 2d 370, 375-77, 415 N.W.2d 528 (Wis. App. 1987).

[32] WIS. STAT.. § 19.82(2).

[33] WIS. DEP'T OF JUSTICE, *supra* note 6, at 7.

[34] WIS. STAT.. §§ 19.83(1); 19.85(1) (2007).

[35] WIS. STAT. § 19.84(1)-(4).

[36] WIS. STAT. § 19.82(3).

[37] WIS. DEP'T OF JUSTICE, *supra* note 6, at 11.

[38] WIS. STAT. § 19.90 (2007).

[39] WIS. STAT.. § 19.88(3) (2007).

[40] WIS. STAT. § 19.82(3).

[41] WIS. DEP'T OF JUSTICE, *supra* note 6, at 10 (citing *Badke*, 173 Wis. 2d at 580-81). Additionally, state governmental meetings must be accessible to people with special needs. *Id.* (citing WIS. STAT. § 19.82(3)). This requirement specifically applies to state governmental bodies and is not necessarily extended to municipal meetings. *Id.*

[42] *Id.*

[43] *Id.* At 11 (citing 67 Op. Att'y Gen. 125, 127 (1978)).

[44] *Id*. at 11 (citing correspondence I-29-91, dated Oct. 17, 1991, containing legal advice from the Department regarding Wisconsin's Open Meetings Law).

[45] WIS. STAT. § 19.90.

[46] WIS. DEP'T OF JUSTICE, *supra* note 6, at 11.

[47] *Id*.

[48] *See* WIS. STAT. § 19.84(2).

[49] WIS. DEP'T OF JUSTICE, *supra* note 6, at 12.

[50] *See, e.g.*, Wis. Stat. §§ 61.25(3) (village clerk), 62.09(11)(b) (city clerk), and 59.23(2)(a) (county clerk) (2007).

[51] WIS. DEP'T OF JUSTICE, *supra* note 6, at 12.

[52] *See* WIS. STAT. § 19.88(3).

[53] WIS. STAT. § 19.84(1); WIS. DEP'T OF JUSTICE, *supra* note 6, at 8.

[54] *See* WIS. DEP'T OF JUSTICE, *supra* note 6, at 7; 66 Op. Att'y Gen. 93, 95 (1977).

[55] *Id.* at 8 (citing 66 Op. Att'y Gen. 93, 95 (1977)).

[56] *Id.* at 8 (citing 66 Op. Att'y Gen. 93, 95 (1977)).

[57] *Id.* (citing 63 Op. Att'y Gen. 509, 510-11 (1974)).

[58] *Id.*

[59] WIS. STAT. § 9.20 (2007).

[60] WIS. STAT. § 19.84(3).

[61] § 19.84(3).

[62] WIS. STAT. § 19.81(1), (4); WIS. DEP'T OF JUSTICE, *supra* note 6, at 10.

[63] WIS. STAT. § 19.84(4) ("[P]ublic notice shall be given…at a time and date reasonably proximate to the time and date of the meeting.")..

[64] WIS. DEP'T OF JUSTICE, *supra* note 6, at 10 (citing 63 op. Att'y Gen. 510, 513 (1974)).

[65] WIS. STAT. § 19.84(2).

[66] WIS. STAT. § 19.84(2); WIS. DEP'T OF JUSTICE, *supra* note 6, at 9 (citing 66 Op. Att'y Gen. at 70).

[67] WIS. DEP'T OF JUSTICE, *supra* note 6, at 9; *see, e.g.*, *State ex rel. H.D. Ent. v. City of Stoughton*, 230 Wis. 2d 480, 486, 602 N.W.2d 72 (Wis. App. 1999) (holding that the subject matter designation "licenses" was specific enough to apprise members of the public that a liquor license would be considered for approval); *see also State ex rel. Olson v. City of Baraboo Joint Review Bd.*, 252 Wis. 2d 628, 638, 643 N.W.2d 796 (Ct. App. 2002) (meeting notice that the Board would deliberate a resolution was sufficient to notify the public that the Board would take action on the resolution).

[68] WIS. DEP'T OF JUSTICE, *supra* note 6, at 9.

[69] WIS. STAT. § 19.81(1).

[70] *See* § 19.81(2).

[71] WIS. STAT. § 19.85(1).

[72] § 19.85(1)(a).

[73] 180 Wis. 2d 62, 72-74, 508 N.W.2d 603 (Wis. 1993) (where the Wisconsin Supreme Court held that a judicial proceeding is not a "case" within the exemption to the Open Meetings Law simply because a decision during the proceeding impacted a particular individual; rather, the word "case" implies a controversy between or among adverse parties and a type of

proceeding to enforce rights) [hereinafter *Hodge*].
[74] WIS. STAT. § 19.85(1)(b).
[75] *See* § 19.85(1)(c).
[76] § 19.85(1)(f).
[77] § 19.85(1)(e).
[78] *State ex rel. Citizens for Responsible Dev. v. City of Milton*, 731 N.W.2d 640 (Wis. App. 2007).
[79] WIS. STAT. § 19.85(1)(g).
[80] § 19.85(1)(d).
[81] § 19.85(1)(ee).
[82] § 19.85(1)(eg).
[83] § 19.85(1)(em).
[84] § 19.85(1)(h).
[85] § 19.85(1)(i).
[86] § 19.85(1)(j).
[87] *See* WIS. STAT.. §19.81(1); *see also* WIS. DEP'T OF JUSTICE, *supra* note 6, at 18.
[88] If the chief presiding officer knows that a "closed session is contemplated, the notice must contain the subject matter to be considered in closed session. The notice must contain the specific nature of the business, as well as the exemption(s) under which the chief presiding officer believes a closed session is authorized." WIS. DEP'T OF JUSTICE, *supra* note 6, at 9-10 (citing 66 Op. Att'y Gen. at 98); *see, e.g.*, *State ex rel. Schaeve v. Van Lare*, 125 Wis. 2d 40, 47, 370 N.W.2d 271 (Ct. App. 1985).
[89] WIS. DEP'T OF JUSTICE, *supra* note 6, at 12; Wis. Stat. §§ 19.83, 19.85.
[90] WIS. DEP'T OF JUSTICE, *supra* note 6, at 12.
[91] *Id*. at 9-10 (citing 66 Op. Att'y Gen. at 98).
[92] WIS. STAT.. § 19.85(1); *Id.* at 12 (citing 66 Op. Att'y Gen. at 97-98).
[93] § 19.85; WIS. DEP'T OF JUSTICE, *supra* note 6, at 12 (citing 66 Op. Att'y Gen. at 97-98).
[94] WIS. DEP'T OF JUSTICE, *supra* note 6, at 13.
[95] *Id.*
[96] WIS. STAT. § 19.85(2).
[97] WIS. DEP'T OF JUSTICE, *supra* note 6, at 16.
[98] *State ex rel. Citizens for Responsible Dev*, 731 N.W.2d 640.
[99] *Id.* at ¶ 11.
[100] *Id.*; *see* WIS. STAT. § 19.85(1)(e).
[101] *State ex rel. Citizens for Responsible Dev*, 731 N.W.2d at ¶ 19.
[102] 731 N.W.2d 640.
[103] *Id.*
[104] *Id.* at ¶ 19.
[105] WIS. DEP'T OF JUSTICE, *supra* note 6, at 15 (citing Attorney General correspondence dated Mar. 24, 1992).
[106] *Id*. at 15.
[107] *State ex rel. Journal/Sentinel, Inc. v. Pleva*, 151 Wis. 2d 608, 615-16, 445 N.W.2d 689, 692 (Ct. App. 1989), *aff'd*, 155 Wis. 2d 704, 456 N.W.2d 359 (Wis 1990).
[108] *State ex rel. Citizens for Responsible Dev*, 731 N.W.2d at ¶ 19; *e.g.,* 81 Op. Atty. Gen. 139 (June 10, 1994).
[109] 81 Op. Att'y Gen. 139, 141 (1994).
[110] WIS. STAT. § 19.97(1) (2007); WIS. DEP'T OF JUSTICE, *supra* note 6, at 17.
[111] § 19.97(1); WIS. DEP'T OF JUSTICE, *supra* note 6, at 17.
[112] § 19.97(4); WIS. DEP'T OF JUSTICE, *supra* note 6, at 17; *State ex rel. Lawton v. Town of Barton*, 278 Wis. 2d 388, 398-99 (Ct. App. 2004); Wis Stat. § 19.97(4) (2007); *see also Fabyan v. Achtenhagen*, 257 Wis. 2d 310, 315-18, 652 N.W.2d 649 (Wis. App. 2002) (A complaint under Wis. Stat. § 19.97 must be brought in the name of and on behalf of the state; the caption must bear the title "State ex rel…" or the court lacks the competency to proceed.).
[113] *State ex rel. Leung v. City of Lake Geneva*, 265 Wis. 2d 674, 678-79,666 N.W.2d 104 (Ct. App. 2003).
[114] WIS. DEP'T OF JUSTICE, *supra* note 6, at 17; Wis. Stat. § 19.96 (2007).
[115] *See, e.g., Hodge*, 180, Wis.2d at 175.
[116] WIS. STAT. § 19.97(4).