

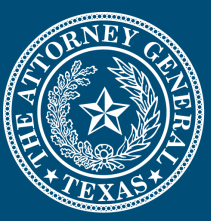


KEN PAXTON  
ATTORNEY GENERAL *of* TEXAS

# Open Meetings Act Basic Training

Becky Casares  
Jennie Hoelscher

Opinion Committee



# Background

What is the purpose of the  
Open Meetings Act?



# Safeguard the Public Interest

“The Act is intended to safeguard the public’s interest in knowing the workings of its governmental bodies. A public body’s willingness to comply with the Open Meetings Act should be such that the citizens of Texas will not be compelled to resort to the courts to assure that a public body has complied with its statutory duty.”

*Cox Enterprises, Inc. v. Board of Trustees of Austin Indep. Sch. Dist.*, 706 S.W.2d 956, 960 (Tex. 1986).



# Presumption of Openness

The provisions of the Open Meetings Act “should be liberally construed to effect its purpose.”

*Finlan v. City of Dallas*, 888 F. Supp. 779, 782 (N.D. Tex. 1995).



# Applicability of the Open Meetings Act

Which governmental bodies are subject to the Open Meetings Act?



# State Entities Subject to the Act

- ▶ A board, commission, department, committee, or agency within the executive or legislative branch of state government that is directed by one or more elected or appointed members
  
- ▶ Examples:
  - Texas Water Development Board
  - Texas Commission on Environmental Quality
  - Texas Department of Transportation



# Political Subdivisions Subject to the Act

- ▶ County commissioners courts
- ▶ Municipal governing bodies
- ▶ Deliberative bodies with rulemaking authority or quasi-judicial power that are classified as departments, agencies, or political subdivisions of a county or a municipality
- ▶ School district boards of trustees
- ▶ Governing boards of special districts created by law



# Other Entities Subject to the Act

- ▶ Local workforce development boards
- ▶ Nonprofits eligible to receive federal funds under the federal community services block grant program
- ▶ Certain property owners' associations in Harris County and the adjacent counties
- ▶ Entities made subject to the Act by their enabling legislation or their own rules or ordinances





# When does the Act Apply?

“Every regular, special, or called meeting of a governmental body shall be open to the public, except as provided by this chapter.”

Tex. Gov’t Code § 551.002.



# Meeting Defined

- ▶ A quorum of members exchange information about public business or public policy over which the body has supervision or control.
- ▶ The governmental body calls a gathering of a quorum of members to receive or give information to or from a third person about public business or public policy over which the governmental body has supervision or control.



# Quorum

- ▶ A majority of a governmental body, unless defined differently by applicable law or rule or the charter of the governmental body



# Requirements of the Act

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How does the Act protect the public's interest in knowing the workings of its governmental bodies?



# How the Act Furthers Openness

- ▶ Notice of Meetings
- ▶ Procedures to ensure openness during open meetings
- ▶ Procedures to ensure closed meetings are limited to the authorized discussions
- ▶ Broadcasting requirements
- ▶ Record keeping requirements



# Notice of Meetings

“A governmental body shall give written notice of the date, hour, place, and subject of each meeting held by the governmental body.”

Tex. Gov’t Code § 551.041.



# Example Notice



**BRAZOS COUNTY  
BRYAN, TEXAS**

## **NOTICE OF MEETING AND AGENDA**

### **BRAZOS COUNTY COMMISSIONERS COURT**

**THE COMMISSIONERS COURT OF BRAZOS COUNTY WILL MEET IN REGULAR SESSION ON SEPTEMBER 24, 2019 AT 10:00 AM IN THE COMMISSIONERS COURTROOM OF THE COUNTY ADMINISTRATION BUILDING, 200 SOUTH TEXAS AVE., SUITE 106, BRYAN, TX 77803**

1. Invocation and Pledge of Allegiance  
- U.S. and Texas Flag - Judge Peters
2. Call for Citizen input and/or concerns

**Consider and take action on agenda items 3-37:**

3. [Proclamation 19-035 declaring October 2019 as National Domestic Violence Awareness Month.](#)
4. [Resolution 19-025 approving the FY 20 Budget of the Brazos County Emergency Communications District; and providing an effective date.](#)
5. [Designation of the day of the week and location for Commissioners Court to convene into Regular Session each week during FY 2020.](#)
6. [Proposed county holidays for the 2020 calendar year.](#)
7. [Appointment of Arthur J. Gallagher & Co., Inc. & All Risks, Ltd. as exclusive insurance broker with respect to Professional Medical Liability Insurance Programs for employees associated with the Health and Wellness Clinic.](#)
8. [Approval of the Following Job Descriptions FY 19:](#)
  - [a. Temp Clerk \(1040 Hours\) Archival Fund \(Class Code 1719, Position 1\) for District Clerk](#)
  - [b. Deputy Constable \(Class Code 1617\) Constable Precinct 2](#)
  - [c. Constable \(Class Code 1614\) Constable Precinct 2](#)
  - [d. Chief Deputy Constable \(Class Code 1618\) Constable Precinct 2](#)
  - [e. Administrative Assistant \(Class Code 1605\) for Constable Precinct 2](#)
9. [Approval of the Following Job Descriptions FY 20:](#)
  - [a. Administrative Specialist \(Class Code 0223\) for County Judge](#)
  - [b. Assistant District Attorney I \(Class Code 415\) for District Attorney](#)
  - [c. Audio Visual Specialist \(Class Code 1235\) for Information Technology](#)
  - [d. Court Reporter \(Class Code 2513\) for 85th District Court](#)
  - [e. Crime Analyst \(Class Code 1418\) for Sheriff's Office](#)
  - [f. Special Projects Administrator \(Class Code 0224\) for County Judge](#)
  - [g. Scanner Clerk \(Class Code 8109\) for Records Management](#)
  - [h. Shop Foreman \(Class Code 2609\) for Fleet Services](#)
10. [Acceptance of donated or unclaimed property left by inmates leaving the Brazos County Jail.](#)



# Providing Information on the Subject

- ▶ Notice must apprise the general public of subjects the governmental body will consider at a meeting.
- ▶ If uncertain, err on the side of providing more detail.
- ▶ Example:

City Council

COUNCIL AGENDA

August 28, 2019

51. 19-706

Authorize a five-year master agreement for solar powered school flasher assemblies, solar powered 24-hour warning flasher assemblies, solar powered radar feedback signs, and solar powered rectangular rapid flashing beacons for the Department of Transportation - J. Q. & G., Inc. Company dba OB Traffic in an estimated amount of \$528,589.87, Traffic Logix Corporation in an estimated amount of \$162,875.00, Consolidated Traffic Control, Inc. in an estimated amount of \$162,700.00, K & K Systems, Inc. in an estimated amount of \$117,985.00, and Iteris Inc. in an estimated amount of \$111,220.00, lowest responsible bidders of seven - Estimated total amount of \$1,083,369.87 - Financing: General Fund





# Timing of Posting

- ▶ Most governmental bodies with statewide jurisdiction must post notice at least seven days before the date of the meeting.
- ▶ Political subdivisions must post at least 72 hours before the scheduled time of the meeting.
- ▶ Generally, all governmental bodies must post notice at least 1 hour before a meeting to address an emergency.



# Best Practice: Certify Timing of Posting

- XI. Discuss Resolution for rewarding Engineering, Bond Counsel and Financial Advisor services for Water/Wastewater Projects in the City of Rosebud.
- XII. Future Agenda Items
- XIII. Adjourn

I certify that the agenda was posted at 202 S. College on September 13, 2019 at 5:00 P.M.

by Mary Quaas  
Mary Quaas, City Secretary

Witnessed by Keith Whitfield  
Keith Whitfield, City Administrator





# Location of Notice – State Entities

- ▶ A state governmental body shall provide notice of each meeting to the Secretary of State, who shall post notice on the Internet.
- ▶ Search meeting agendas of state governmental bodies:  
[https://texreg.sos.state.tx.us/public/pubomquery\\$.startup](https://texreg.sos.state.tx.us/public/pubomquery$.startup)
- ▶ Example:

<b>Agency Name:</b>	<b>Texas Commission on Environmental Quality</b>
<b>Date of Meeting:</b>	10/09/2019
<b>Time of Meeting:</b>	09:30 AM (Local Time)
<b>Board:</b>	Texas Commission on Environmental Quality
<b>Status:</b>	Accepted
<b>Street Location:</b>	12100 Park 35 Circle, Building E, Room 201S
<b>City Location:</b>	Austin

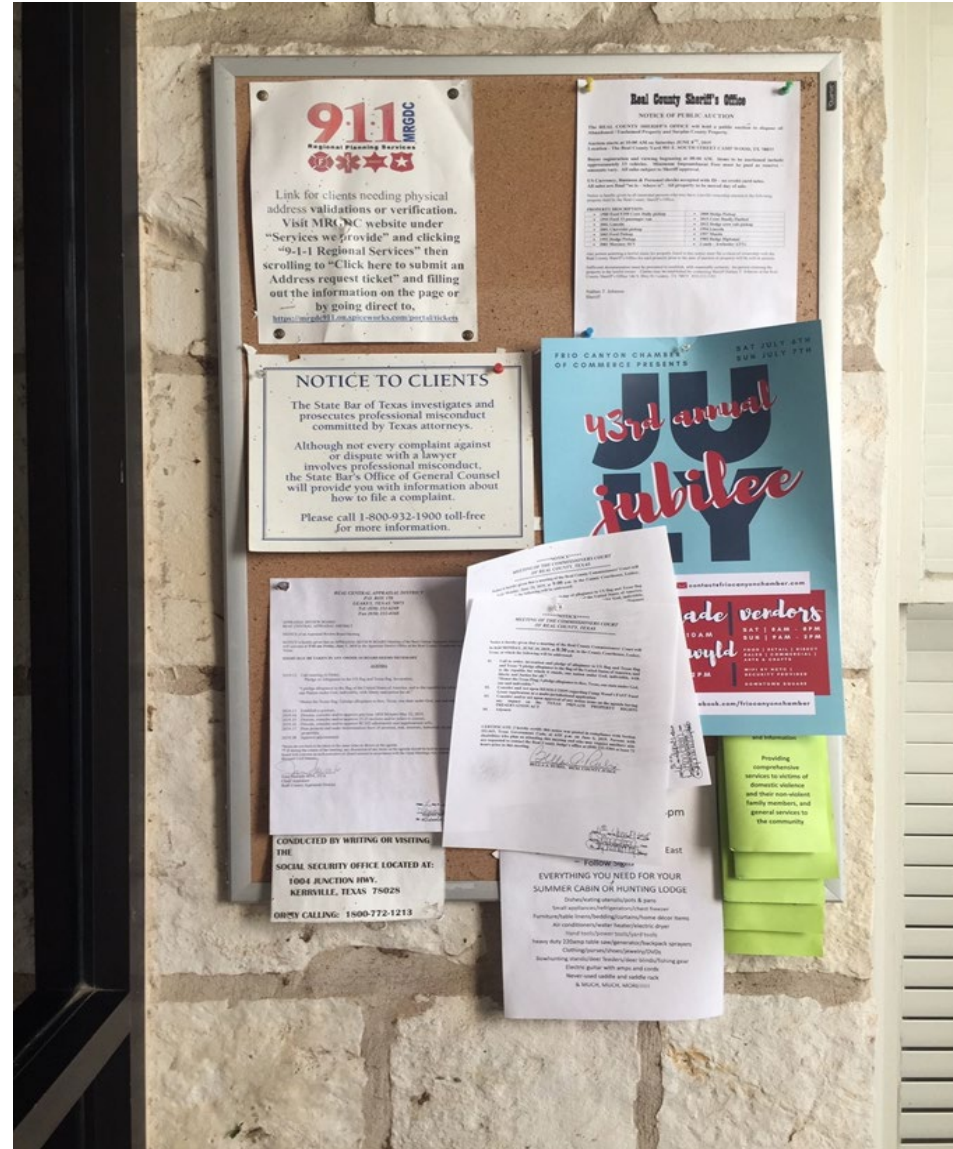


# Location of Notice – Political Subdivisions

- ▶ Counties – on a bulletin board at a place convenient to the public in the county courthouse
- ▶ Municipal governmental bodies – on a bulletin board at a place convenient to the public in city hall
- ▶ School districts – on a bulletin board at a place convenient to the public in the central administrative office of the district
- ▶ Special districts extending into fewer than 4 counties – (1) at a place convenient to the public in the administrative office of the district, and (2) either on a bulletin board at the courthouse of each county in the district or on the district's website



# Best Practice: Protect Your Notice





# Location of Notice – Internet Posting

- ▶ Some entities must post notice on the Internet if they maintain a website or have populations over a certain size:
  - Municipalities
  - Counties
  - School Districts
  - Junior College Districts
  - Economic Development Corporations
  - Regional Mobility Authorities



# Logistic Requirements for Open Meetings

- ▶ Hold the meeting in a location accessible to the public
  - In or near the boundaries of the governmental body
  - Without special access requirements that may prevent entry for the public
- ▶ Provide space for the public so that they may attend the meeting
- ▶ Provide reasonable visual or audio accommodations if requested in advance of the meeting



# Public Comment

- ▶ State entities may, but are not required to, provide for public comment during their meetings.
- ▶ Political subdivisions must allow members of the public interested in speaking on an item on the agenda to do so before or during the governmental body's discussion of that item.
  - May create reasonable rules
  - May not discriminate based on the position taken
  - May not prohibit criticism of the governmental body





# Broadcasting Meetings

- ▶ All governmental bodies may broadcast their open meetings over the Internet.
- ▶ The governing boards of general academic teaching institutions, university systems, and junior college districts must broadcast their meetings over the Internet.



# Recordkeeping for Open Meetings

- ▶ Governmental bodies must prepare and keep minutes or make a recording of each open meeting.
- ▶ If keeping minutes, the minutes must state the subject of each deliberation and indicate each vote, order, decision, or other action taken.
- ▶ The minutes and recordings are public records and must be available for public inspection.



# Example Minutes

**MINUTES  
RAILROAD COMMISSION OF TEXAS  
FORMAL COMMISSION ACTIONS**

August 20, 2019

After providing notice as required by the Texas Open Meetings Act, the Railroad Commission of Texas held an open meeting at the William B. Travis Building, 1701 N. Congress Avenue, in Room 1-111, Austin, Texas, on Tuesday, August 20, 2019 commencing at 9:31 a.m. Chairman Wayne Christian, Commissioner Christi Craddick and Commissioner Ryan Sitton were present. Chairman Christian presided.

**HEARINGS DIVISION**

**SURFACE MINING AND RECLAMATION**

1. SMRD C19-0021-SC-26-E: Application by Texas Municipal Power Agency for acceptance of replacement collateral bond and amendment to letter of credit for reclamation of Permit No. 26D, Gibbons Creek Lignite Mine, Grimes County, Texas.  
The Commission unanimously approved the Examiner's recommendation.
  
2. SMRD C19-0022-SC-38-E: Application by Texas Municipal Power Agency for acceptance of replacement collateral bond and amendment to letter of credit for reclamation of Permit No. 38D, Gibbons Creek Lignite Mine V, Grimes County, Texas.  
The Commission unanimously approved the Examiner's recommendation.



# Members of the Public May Record

- ▶ A person in attendance at an open meeting may record all or any part of the meeting.
- ▶ A governmental body may adopt reasonable rules to maintain order at the meeting as long as the rules do not unreasonably impair a person from recording.



# Required Training on the Act

- ▶ Each elected or appointed public official who is a member of a governmental body must complete training on the requirements of the Act within 90 days of taking office.
- ▶ The governmental body shall maintain and make available for public inspection the record of its members' completion of the training.



# Voidability

- ▶ An action taken by a governmental body in violation of this chapter is voidable.
- ▶ An interested person, including a member of the news media, may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of the Act.
- ▶ A court may assess costs and attorney fees to the prevailing party.



# Exceptions to the General Rules

- ▶ Closed Meetings
- ▶ Social Gatherings
- ▶ Emergencies
- ▶ Online Message Boards
- ▶ Teleconferencing and Videoconferencing



# Closed Meetings or Executive Sessions

- ▶ The Act specifies instances when governmental bodies may conduct closed meetings without allowing public access, including, among others:
  - Consultations with an attorney about pending or contemplated litigation
  - Deliberations regarding the purchase of real property if deliberation in an open meeting would compromise negotiations
  - Deliberation about personnel matters related to a specific employee if the employee does not request a public hearing





# Procedures for Closed Meetings

- ▶ Notice requirements still apply.
- ▶ The governmental body must first convene in open session before going into closed session.
- ▶ The governmental body must identify the specific legal provision allowing for the closed session.
- ▶ The subject of discussions in closed meeting must be limited to what the Act authorizes.
- ▶ No final action or vote may be taken in a closed meeting.



# Criminal Penalties for Unauthorized Closed Meetings

- ▶ A member of a governmental body commits an offense if a closed meeting is not permitted under the Act and the member knowingly participates in the closed meeting.
- ▶ The offense is a misdemeanor punishable by a fine of between \$100-\$500, confinement in county jail for between 1-6 months, or both.



# Closed Meeting Recordkeeping

- ▶ A governmental body shall either keep a certified agenda or make a recording of proceedings of each closed meeting, except for attorney consultations under section 551.071.
- ▶ If keeping a certified agenda, it must include:
  - A statement of the subject of each deliberation
  - A record of any further action taken
  - An announcement by the presiding officer at the beginning and end of the closed session indicating the date and time
  - Certification by the presiding officer that an agenda kept under subsection (a) is a true and correct record of the proceedings



# Criminal Penalties for Failure to Keep a Certified Agenda or Recording

- ▶ It is a class C misdemeanor to participate in a closed meeting knowing that a certified agenda or recording of the closed meeting is not being made.



# Preserving the Certified Agenda

- ▶ A governmental body must maintain the certified agenda or recording of a closed meeting for at least two years from the date of the meeting.
- ▶ If Open Meetings Act litigation arises, the court is entitled to make an in camera inspection of the certified agenda or recording.
- ▶ The certified agenda or recording is only available for public inspection if ordered by a court.



# Criminal Penalties for Disclosing a Certified Agenda or Recording

- ▶ It is a class B misdemeanor to disclose a certified agenda or recording to a member of the public without a court order.
- ▶ The disclosing person can be liable to a person injured or damaged by the disclosure for actual damages, attorney fees, and exemplary damages.



# Social Gatherings

- ▶ As long as no formal action is taken and any discussion of public business is incidental to the event, a governmental body does not “meet” when a quorum gathers at a:
  - social function
  - regional, state, or national convention or workshop
  - ceremonial event
  - press conference
  - candidate forum, appearance, or debate to inform the electorate



# Emergency Situations

- ▶ An emergency or urgent public necessity exists only if immediate action is required of a governmental body because of:
  - an imminent threat to public health and safety, or
  - a reasonably unforeseeable situation
  
- ▶ Examples of a reasonably unforeseeable situation include:
  - fire, flood, earthquake, hurricane, tornado, or storm
  - power failure, transportation failure, or interruption of communication facilities
  - epidemic
  - riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence





# Addressing Emergencies

- ▶ The Act generally still applies during emergencies, but the timing required for notice of a meeting to address an emergency is shortened.
- ▶ Notice must generally be posted at least one hour before the meeting is convened.
- ▶ The discussion and action on the matter must be directly related to responding to the emergency.
- ▶ The governmental body must clearly identify the emergency in the notice.
- ▶ The meeting can occur by teleconference if convening a quorum of the governmental body is difficult. The public must still be able to attend at the normal meeting location.



# Sample Emergency Notice

## Emergency Meeting Notice Tejas City Council December 5, 2021

An emergency meeting of the City Council of Tejas will be held on December 5, 2021, beginning at 3:00 p.m. in Council Chambers at City Hall, 4220 Main St., Tejas, Texas 76543.

An emergency or urgent public necessity exists that requires immediate action of the Council. The wind damage and flooding resulting from Hurricane Huey has caused significant damage to city infrastructure and emotional and physical distress to city residents, requiring an immediate response.

The subjects to be discussed include: . . . .



# Online Message Boards

- ▶ The Act allows written communications or exchanges of information between members of a governmental body if the writing is posted to an online message board, viewable and searchable by the public.
- ▶ The message board must be prominently displayed on the home page of the governmental body's website.
- ▶ The communication must be displayed in real time and displayed for at least 30 days.
- ▶ Communications must be archived for 6 years.
- ▶ No vote or final action may be taken on the message board.



# Example

## Domestic Violence Awareness Month

by [Louisa Brinsmade](#) » Wed Oct 20, 2021 7:51 pm



[Louisa Brinsmade](#)

Posts: 48

Joined: Mon Oct 19, 2015 4:27 pm

On behalf of Council Member Pool, I am posting the following notice about the proclamation event tomorrow morning.

Hello colleagues,

I am excited to present a proclamation in recognition of Domestic Violence Awareness Month tomorrow morning, and I am extending an invitation to all of you to attend this presentation. The presentations of the proclamations will begin tomorrow at 9:30am in the Boards and Commissions Room at City Hall. The presentation of the Domestic Violence Awareness Month is the second among a total of five total proclamations.

Stephanie Burgess, Victim Services Supervisor at the Austin Police Department will be accepting the proclamation. Several community partners will be joining the event as well and providing a few words, including the following:

- SAFE - Julia Spann, Co-CEO
- National Domestic Violence Hotline - Crystal Justice, Chief External Affairs Officer
- Honorable Judge Dimple Malhotra
- Honorable Judge Aurora Martinez Jones
- Austin Public Health, Office of Violence Prevention

Finally, I encourage you all to wear purple tomorrow in honor of Domestic Violence Awareness Month.

Thank you for your support, and I hope to see you at tomorrow's presentation!

Leslie

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Policy Advisor  
Office of Leslie Pool, Council Member District 7



# Teleconferencing

- ▶ A governmental body may use a telephone conference call to conduct a meeting:
  - in consultation with its attorney
  - to address an emergency situation if convening a quorum in one location is difficult
  
- ▶ Each part of the open meeting must be audible to the public at the location specified in the notice of the meeting.



# Videoconferencing

- ▶ Governmental bodies may use videoconferencing to ensure members can attend the meetings.
- ▶ The requirements for a quorum present at the physical meeting location vary depending on the type of governmental body.
- ▶ Technological requirements exist to ensure members of the public can observe the full discussions occurring by videoconference.



# Attempts to Avoid the Act's Requirements

- ▶ A member of a governmental body commits an offense if the member:
  - knowingly engages in at least one communication among a series of communications that each occur outside of a meeting authorized by the Act and that concern an issue within the jurisdiction of the governmental body in which the members engaging in the individual communications constitute fewer than a quorum but the members engaging in the series of communications constitute a quorum of members; and
  - knew at the time the member engaged in the communication that the series of communications:
    - involved or would involve a quorum; and
    - would constitute a deliberation once a quorum of members engaged in the series of communications



# Communications by Email

- ▶ Deliberation can occur as either a written or oral exchange between members of a governmental body.
- ▶ A series of emails involving a quorum of a governmental body discussing an issue within the jurisdiction of the governmental body could constitute a deliberation and an unauthorized meeting for purposes of the Act.





# Certificate of Training

## CERTIFICATE *of* COURSE COMPLETION

### Open Meetings Act

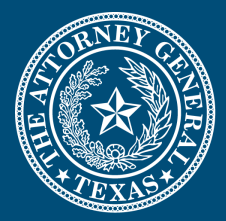
I, **Jennie Hoelscher**, certify that I have completed a course of training on the Texas Open Meetings Act that satisfies the legal requirements of Government Code, Section 551.005.

Certificate is issued effective this 24th of October, 2021.



*NOTICE TO CERTIFICATE HOLDER: You are responsible for the safekeeping of this document as evidence that you have completed this open government training course. The Office of the Attorney General does not maintain a record of course completion for you and is unable to issue duplicate certificates. Government Code Section 551.005(c) requires the governmental body with which you serve to maintain this Certificate of Course Completion and make it available for public inspection.*

Certificate No.: 19-274447M



# How to Obtain the Training Certificate

- ▶ <https://www.texasattorneygeneral.gov/open-government/open-meetings-act-training-confirmation-and-certificate>
- ▶ Complete the information required on the form, including the following:

*Have you viewed one of the Open Government Training videos or attended the OAG's Open Government Conference? (Required)*

Yes ▼

*Access Code (Required)*

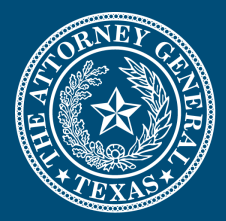
TXOMA873

*Date of Training (Required)*

12/01/2021



- ▶ Click Submit.
- ▶ A certificate will be emailed to the address you provide.



# Questions?

**Open Government Hotline**

(512) 478-6736

Toll Free: (877) 673-6839